

R13. Administrative Services, Administration.**R13-1. Public Petitions for Declaratory Orders.****R13-1-1. Purpose.**

(1) As required by Section 63G-4-503, this rule provides the procedures 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.

(2) In order of importance, procedures governing declaratory orders are:

(a) procedures specified in this rule pursuant to Title 63G, Chapter 4;

(b) the applicable procedures of Title 63G, Chapter 4;

(c) applicable procedures of other governing state and federal law; and

(d) the Utah Rules of Civil Procedure.

R13-1-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

(a) "agency" means the pertinent division or office of the Department of Administrative Services;

(b) "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

(c) "declaratory order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order;

(d) "director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings;

(e) "order" is defined in Section 63G-3-102; and

(f) "superior agency" means the Executive Director's Office of the Department of Administrative Services.

R13-1-3. Petition Form and Filing.

(1) The petition, or request for agency action, 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 circumstances 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 where the petitioner can be contacted during 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.

R13-1-4. Reviewability.

The agency may 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 prohibited by state or federal law.

R13-1-5. Intervention.

A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R13-1-3.

R13-1-6. 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; and

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

(2) The director may issue an order pursuant to Subsection 63G-4-503(6).

(3) If the director orders an adjudicative proceeding under Subsection 63G-4-503(6):

(a) the proceeding shall be formal and governed by the procedures of Title 63G, Chapter 4 or other applicable law if a petition for intervention has been filed within the limits of Section R13-1-5; and

(b) shall be designated as informal and follow the appropriate procedures of Title 63G, Chapter 4, agency rules, or other applicable law, if a petition for intervention has not been filed within the limits of Section R13-1-5.

R13-1-7. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Sections 63G-4-301 and 63G-4-302.

(a) If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

(b) The petitioner may appeal a director's review or reconsideration decision to the superior agency.

(c) If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

**KEY: appellate procedures, administrative procedures
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63G-4

Notice of Continuation July 11, 2013

R23. Administrative Services, Facilities Construction and Management.**R23-30. State Facility Energy Efficiency Fund.****R23-30-1. Purpose.**

This rule is for the purposes of:

(1) Conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) Establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for this Rule.

Pursuant to Utah Code Section 63A-5-603, the State Building Board shall make rules establishing criteria, procedures, priorities, conditions for the award of loans from the State Facility Energy Efficiency Fund and other requirements for the rule as specified in Section 63A-5-603.

R23-30-3. Definitions.

(1) "Board" means the State Building Board.

(2) "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63A-5-701.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

- (a) Building envelope improvements;
- (b) Increase or improvement in building insulation;
- (c) Lighting upgrades;
- (d) Lighting delamping;
- (e) Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
- (f) Improvements to energy control systems;
- (g) Other energy efficiency projects or programs that a state agency can demonstrate will result in a significant reduction in the consumption of energy; and
- (h) Renewable energy projects.

(4) There is no limit to the total number of loans a single state agency may receive from the Fund.

(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an acceptable energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

(1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

- (a) Building materials;
- (b) Doors and windows;
- (c) Mechanical systems and components including HVAC and hot water;
- (d) Electrical systems and components including lighting and energy management systems;
- (e) Labor necessary for the construction or installation of the energy efficiency project;
- (f) Design and planning of the energy efficiency project;
- (g) Energy audits that identify measures included in the energy efficiency project; and
- (h) Inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund: The costs of a renovation project that are not directly related to energy efficiency measures;

(4) In cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

(1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.

(2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

- (a) Name and location of the state agency;
- (b) Name and location of the building or buildings where the energy efficiency project will take place;

(c) A description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) A description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) A description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) Projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) Projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) A description of how energy cost savings will be measured and verified as well as describing the commissioning procedures for the project;

(i) A description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for its evaluation.

(6) The SBEEP Manager shall make a recommendation to the Board using the following criteria and scoring:

(a) The feasibility and practicality of the project (maximum 30 points);

(b) The projected energy cost payback period of the project (maximum 20 points);

(c) The energy cost savings attributable to eligible energy efficiency measures (maximum 30 points);

(d) The financial need of the agency for the loan including its financial condition (maximum 10 points);

(e) The environmental and other benefits to the state and local community attributable to the project (maximum 10 points);

(f) The availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

(g) If there are matching funds from another source that is available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

(h) The SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the

appropriate expertise assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

(7) The SBEEP Manager provides advice and recommendations to the Board. The SBEEP Manager is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8) Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

(a) Provide a brief description of each project reviewed by the SBEEP Manager;

(b) List the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

(c) List the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;

(d) List the total score and the score for each evaluation criterion for each application;

(e) Specify projects recommended for funding and those not recommended for funding;

(f) Provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than ten (10) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager, the Board will then review and made determinations regarding the applications.

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the

state agency that the Board considers necessary to ensure that the state agency:

- (a) uses the proceeds to pay the cost of the energy efficiency measures; and
- (b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve or deny any such requests if good cause has been submitted by the state agency for such increase.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

(a) This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

(b) This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.

(6) The Board will establish repayment terms and interest rates.

(7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to SBEEP annual reports due at the

beginning of the calendar quarter in which the anniversary of the loan disbursement occurs. This report shall include the following:

(a) A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

(b) A description of any notable problems that have occurred with the building or the project;

(c) A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

(d) Copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) Documentation of energy consumed by the building in the prior year; and

(f) Other information requested by the SBEEP Manager or deemed important by the state agency.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, which is longer.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

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R81. Alcoholic Beverage Control, Administration.**R81-4A. Restaurant Liquor Licenses.****R81-4A-1. Licensing.**

(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-206 (requirements for a master full service restaurant license); and

(b) the department has inspected the restaurant premise(s).

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Full Service Restaurant License as defined by 32B-6-206 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a full service restaurant license must meet all requirements for licensing as a full service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter,

or "grandfathered bar structure".

R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4A-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-202 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-202 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

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Notice of Continuation May 10, 2011

32B-1-607

32B-2-202

32B-5-303(3)

32B-6-202

32B-6-206

R81. Alcoholic Beverage Control, Administration.**R81-4C. Limited Restaurant Licenses.****R81-4C-1. Licensing.**

(1) Limited restaurant licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 to -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4C-2. Application.

(1) No license or sublicense application will be included on the agenda of a monthly commission meeting for consideration for issuance of a limited restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-304 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a limited restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); 32B-6-306 (requirements for a master limited service license); and

(b) the department has inspected the limited restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.

(4) Applicants may apply for a Master Limited Service

Restaurant License as defined by 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.

(a) The five locations must be owned by the same person or entity.

(b) Locations that do not already have a limited service restaurant license must meet all requirements for licensing as a limited service restaurant under subsection (1).

(c) Once the master license is granted, the licensee may add additional locations by filing an application approved by the department demonstrating that the location meets all application requirements under section (1).

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including beer) must be sold in connection with an order for food placed and paid for by a

patron. An order for food may not include food items gratuitously provided by the limited restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-305(4), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-305(7).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Wine dispensing shall be in accordance with Section 32B-5-304(2); and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4C-11. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of

packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4C-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

(1) When the entire limited restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the limited restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to mingle with public patrons of the restaurant.

R81-4C-14. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-302 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-302 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-302(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

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32B-2-202

32B-5-303(3)

32B-6-301 through 305.1

32B-6-207

R81. Alcoholic Beverage Control, Administration.**R81-4D. On-Premise Banquet License.****R81-4D-1. Licensing.**

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32B-6-601 to -604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet or until October 31, 2011 the facility is a "grandfathered facility" under 32B-6-603(4); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate

a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

R81-4D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an on-premise banquet license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-604 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of an on-premise banquet catering license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the on-premise banquet premise.

(2) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(3)(a) All application requirements of Subsection (1)(a) and (2) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(4) Pursuant to 32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the

premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

- (i) be clearly defined;
- (ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and
- (iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the

product was spoiled or non-consumable.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to Section 32B-6-605(9).

(a) The on-premise banquet licensee shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 50%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under 32B-8 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific

location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages**April 30, 2013****Notice of Continuation July 11, 2013****32-1-607****32B-2-202****32B-5****32B-6-601 through 605**

R81. Alcoholic Beverage Control, Administration.**R81-5. Club Licenses.****R81-5-1. Licensing.**

(1) Club liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2)(a) At the time the commission grants a club license the commission must designate whether the club qualifies to operate as an equity, fraternal, dining, or social club based on criteria in 32B-6-404.

(b) After any club license is granted, a club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(e)(i) Pursuant to 32B-6-409, a dining club licensee may convert its dining club license to a different type of retail license for which the dining club licensee qualifies. However, the conversion must occur between July 1, 2011 and June 30, 2013.

(ii) The dining club licensee shall request the conversion in writing supported by evidence to establish that the club qualifies to operate under the new retail license based on the statutory criteria for that type of license.

(iii) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(iv) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new retail license, the commission shall approve the request.

(v) After the conversion, the licensee must then operate under the provisions relevant to the type of retail license to which the club converted. If the dining club is converted to a full-service restaurant, limited-service restaurant, or beer-only restaurant, the bar structure of the dining club is considered a seating grandfathered bar structure for purposes of a full-service restaurant or limited-service restaurant license, or a grandfathered bar structure for purposes of a beer-only restaurant license.

(vi) Such conversions will not be counted against any quota for the type of retail licensee to which the club converted.

(3)(a) A dining club must operate as described in 32B-6-404(3), and must maintain at least 60% of its total club business from the sale of food, not including mix for alcoholic beverages, and service charges. Any dining club that was licensed on or before June 30, 2011, may maintain 50% food sales until July 1, 2012, but must then maintain 60%.

(b) A dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than the required percentage for any quarterly

period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission, or alternatively, to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants a reclassification to a social club, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be reclassified a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed the required percentage.

R81-5-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a club license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-405 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as the type of club license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of club license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal club a copy of the club's bylaws or house rules and any amendment to those records); and

(b) the department has inspected the club premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-5-6. Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-5-7. Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304; and Sections R81-1-9 (Liquor Dispensing Systems) and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-5-9. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the club premises and available at all times for examination by patrons of the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-5-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-5-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the club.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, fraternal, or dining club. A minor may not be on the premises of a social club except to the extent allowed under 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

R81-5-18. Age Verification - Dining and Social Clubs.

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires dining and social club licenses to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Sections 32B-6-406 - 407;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

KEY: alcoholic beverages

July 30, 2013

Notice of Continuation May 10, 2011

32B-1-607

32B-2-202

32B-5

32B-6-401 through 409

R81. Alcoholic Beverage Control, Administration.**R81-10B. Temporary Beer Event Permits.****R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be considered for issuance of the permit, when the requirements of 32B-1-304 and 32B-9-201, -203 and -405 have been met, and a completed application has been received by the department.

(a) Once received -- the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3) Pursuant to 32B-9-403, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32B-9-403. To ensure compliance with this Subsection (3), the director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) whether the event is a convention, community or civic enterprise;
- (d) the type of entertainment, if any, at the event;
- (e) the location of the event;
- (f) the frequency of events held at the same location;
- (g) whether the location is government owned and operated; and
- (h) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(4)(a) The temporary special event beer permit bond, as required by Section 32B-9-405(3), shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the director rules, and that if a violation occurs at the event, the bond may be forfeited.

(5) The director may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The director may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits for Outdoor or Large -Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a temporary special event beer permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before

the director will issue a temporary special event beer permit for an outdoor or a large-scale public event. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -403.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the director to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a temporary special event beer permit. These can

include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the director prior to the director's consideration of the permit application.

(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages, temporary beer event permits
July 1, 2012 32A-1-107
Notice of Continuation July 11, 2013 32A-10

R137. Career Service Review Office, Administration.**R137-1. Grievance Procedure Rules.****R137-1-1. Authority and Purpose of Rule for Grievance Procedures.**

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the person appointed under Subsection 67-19a-201(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of a lower level decision.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties.

"CSRO" means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-406.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be

called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-406 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 4 level.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance case at the evidentiary/step 4 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance issue to the evidentiary/step 4 level.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated evidentiary/step 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-

202(1)(a) and 67-19a-302(1), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRO and CSRO hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRO or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

(b) A person receiving a subpoena issued by the CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person

appearing pro se.

(b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO notice, decision, order or ruling is accomplished when any of the following occurs:

- (i) deposit postage prepaid with the U.S. Postal Service,
- (ii) deposit with State Mail and Distribution Services,
- (iii) personal delivery,
- (iv) facsimile transmission, or
- (v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Hearing Dates, Continuance/Extension of Time.

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, the administrator shall set a date for the evidentiary/step 4 hearing that is:

- (a) within 30 days of the administrator's determination; or
- (b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

- (i) whether the request was timely made in writing; and
- (ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees and reporting employees alleging retaliatory action, as defined by Subsections 67-19a-101(7) and 67-19a-101(8), may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 4 Level.

All grievances shall be reviewed to determine:

(1) Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsections 67-19a-202(1)(a) and 67-19a-202(1)(6), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the CSRO from awarding fees or costs to an employee's attorney or representative. Pursuant to Subsection 67-19a-402.5(6)(a), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee in a retaliatory action grievance.

(2) Pro Se Status. A party or person to a grievance proceeding may appear pro se. When a party or person appears pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). Pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2, or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Sections 67-19a-402 and 67-19a-402.5, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance then becomes a formal complaint necessitating a response. Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. Such responses are to be issued by only one supervisor, director, etc. at each step.

Step 2; If the grievance is not resolved at step 1, the employee may advance their grievance to step 2. Step 2 requires the grievance be reviewed by the agency or division director or designee;

Step 3; If the grievance is not resolved at step 2, the employee may advance their grievance to step 3. Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.

Step 4; If the grievance is not resolved at step 3, the employee may advance their grievance to step 4. Step 4 is an evidentiary de novo hearing conducted before a CSRO hearing officer.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been suspended without pay, demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3. Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO at the evidentiary/step 4 level.

(2) When appealed to the CSRO, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal a reduction in force or abandonment of position according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days of receipt of the decision with the CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(i) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(ii) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-402.5, 67-19a-403 and 67-19a-404.

(2) Determination. The administrator has authority to determine which types of grievances may be heard at the evidentiary/step 4 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 4 level are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in Subsections 67-19a-202(1)(a) or 67-19a-202(1)(b) and referenced in Subsection 67-19a-302(1) and 67-19a-302(3) are precluded from advancement to the evidentiary/step 4 level. When the grievance is precluded from the evidentiary/step 4 level, the matter under dispute shall be deemed as final at the level of the department head/step 3 according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.

(c) A decision reached by the CSRO in reviewing a retaliatory action grievance from a reporting employee, as defined by Subsections 67-19a-101(7) and 67-19a-101(8), may

be appealed to the Utah Court of Appeals.

(6) Summary Judgment. The administrator or the (Presiding Officer, Utah Code Ann. Section 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

- (a) the matter is untimely;
- (b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;
- (c) the grievant lacks standing;
- (d) the grievant has withdrawn or otherwise abandoned the grievance;
- (e) the grievant has not been directly harmed;
- (f) the issue grieved does not qualify to be advanced beyond step 3; or
- (g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and evidentiary/step 4 proceedings before the CSRO.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All initial administrative and evidentiary/step 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file, pursuant to Subsections 67-19a-403(2) and 67-19a-402.5(2)(b)(2), is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person. The hearing officer may also expel any persons whose presence is antagonistic, oppressive, intimidating or appears to have a chilling effect on the witness under examination.

(5) Presentation of Case. Each party is given the opportunity to make an opening statement and to present evidence. After the evidence is closed, each party may offer a closing argument. The moving party may offer one rebuttal.

Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record and make a ruling or take the objection under advisement to be ruled upon later.

(b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsections 67-19a-406(2) and 67-21-3.5.

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205 of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the administrator or appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO administrator or hearing officer has discretion to entertain discovery motions on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the presiding CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRO for the granting of any exceptions to the page limitation provision.

(c) The CSRO may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are subpoenaed to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the presiding CSRO hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The presiding CSRO hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties or in the presiding hearing officer's discretion.

(c) The presiding CSRO hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency may designate one person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify, unless the hearing officer determines it is reasonable to expel the management representative for any or part of the hearing.

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) An evidentiary/step 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a

state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at the jurisdictional and evidentiary/step 4 level are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 4 proceeding.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The Evidentiary/Step 4 Adjudicatory Procedures.

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step 4 Hearing. An evidentiary/step 4 hearing shall be a hearing on the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 4 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to

Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

- (11) Rehearings. Rehearings are not permitted.
- (12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within twenty days after the evidentiary/step 4 decision is issued as provided at Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the evidentiary/step 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the evidentiary/step 4 decision. The CSRO may not share any cost for a transcript or transcription of the evidentiary/step 4 hearing.

R137-1-22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRO.

(b) The petition shall be date-stamped upon receipt in the CSRO.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, decision or order to be reviewed;

(c) describe the circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) include an address and telephone number where the petitioner can be reached during regular work days; and

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The administrator shall prepare the declaratory ruling without unnecessary delay. The CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRO shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the CSRO.

KEY: grievance procedures, reconsiderations

July 22, 2013

Notice of Continuation July 18, 2011

34A-5-106

67-19-16

67-19-30

67-19-31

67-19-32

67-19a et seq.

63G-4 et seq.

R277. Education, Administration.**R277-407. School Fees.****R277-407-1. Definitions.**

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

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

C. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

D. "Provision in Lieu of Fee Waiver" means an alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

E. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

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

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

H. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

I. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-2. Authority and Purpose.

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(2) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, Doe v. Utah State Board of Education, Civil No. 920903376.

B. The purpose of this rule is:

- (1) to permit the orderly establishment of a reasonable system of fees;
- (2) to provide adequate notice to students and families of fee and fee waiver requirements; and
- (3) to prohibit practices that would exclude those unable

to pay from participation in school-sponsored activities.

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

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

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

D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

E. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

F. An elementary school or teacher may provide to parents or guardians a suggested list of supplies. The suggested list shall contain the express language in Section 53A-12-102(2)(c).

G. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

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

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

B. Fees related to extracurricular activities may not exceed limits established by the LEA. Schools shall collect these fees consistent with LEA policies and state law.

R277-407-5. General Provisions.

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the LEA and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire LEA shall be adopted at least once each year by the LEA in a regularly scheduled public meeting of the LEA. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of LEA meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the LEA and made available upon request.

C. Each LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A

reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

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

F. Donations or contributions may be solicited and accepted in accordance with LEA policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.

G. In the collection of school fees, LEAs shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

R277-407-6. Waivers.

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

The LEA fee waiver policy shall include procedures to ensure that:

(1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or LEA administrator consistent with requirements of Section 53A-12-103(5);

(5) the LEA requires documentation of fee waivers consistent with Section 53A-12-103(5);

(6) schools and the LEA submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);

(7) the LEA does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6);

(8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(9) parents are given the opportunity to review proposed alternatives to fee waivers;

(10) a timely appeal process is available, including the opportunity to appeal to the LEA or its designee;

(11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(12) the LEA provides for balancing of financial inequities among schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through

unequal impact on individual schools.

B. A student is eligible for fee waiver as follows:

(1) income verification consistent with Section 53A-12-103(5);

(2) the student receives (SSI) Supplemental Security Income (ONLY THE STUDENT WHO RECEIVES THE SSI BENEFIT QUALIFIES FOR FEE WAIVERS);

(3) the family receives TANF (currently qualified for financial assistance or food stamps);

(4) the student is in foster care (under Utah or local government supervision);

(5) the student is in state custody.

C. In lieu of income verification, supporting documents shall be required for each special category of fee waiver-eligible students:

(1) For TANF, a letter of decision covering the period for which fee waiver is sought from Utah Department of Workforce Services;

(2) For SSI, a benefit verification letter from Social Security;

(3) For state custody or foster care, the youth in custody required intake form and school enrollment letter or both provided by the case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

D. CASE BY CASE DETERMINATIONS MAY BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.

E. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.

F. Student Records

(1) An LEA or school may pursue reasonable methods to collect fees, but shall not exclude students from school or withhold official student records, including written or electronic grade reports, diploma, or transcripts, for fees owed.

(2) An LEA or school may withhold the official student records of a student responsible for lost or damaged school property consistent with Section 53A-11-806, but may not withhold a student's records that would prevent a student from attending school or being properly placed in school.

(3) Consistent with Section 53A-11-504, a school requested to forward a certified copy of a transferring student's record to a new school shall comply within 30 school days of the request.

G. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

R277-407-7. Fee Waiver Reporting Requirements.

Beginning with fiscal year 1990-91, each LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(1) a summary of the number of students in the LEA given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the LEA;

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

- (3) a copy of the LEA's fee schedule for students; and
- (4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.
- (5) consistent fee waiver compliance forms provided by the Utah State Office of Education and required by Doe v. Utah State Board of Education, Civil No. 920903376.

KEY: education, school fees
October 9, 2012
Notice of Continuation August 14, 2012

Art X Sec 3
53A-12-102
53A-12-201
53A-12-204
53A-11-806(2)

Doe v. Utah State Board of Education, Civil No. 920903376

R277. Education, Administration.**R277-411. School District Sponsored School Seminars on Youth Protection-Related Issues.****R277-411-1. Definitions.**

- A. "Board" means Utah State Board of Education
- B. "Opt-out," provided for in Section 53A-15-1302(5), means a written statement provided by a local school superintendent to the Board stating that the local board determined that the topics of substance abuse, bullying, mental health, depression, suicide awareness and internet safety are not of significant interest to families in the school district.
- C. "School-sponsored parent seminar" means a meeting held at the school where school personnel or others invited by the school discuss topics identified in Section 53A-15-1302(2) with those in attendance.
- D. "USOE" means the Utah State Office of Education.
- E. "Youth protection-related issues" means the issues identified in Section 53A-15-1302(2) including substance abuse, including illegal drugs and prescription drugs and drug use prevention; bullying and related problems; student mental health, depression and student suicide awareness; internet safety for students, including pornography addiction and other student-health related problems or issues, as identified by a school district.

R277-411-2. Authority and Purpose.

- A. The rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-1302 which directs the Board to provide resources to school districts about youth protection related issues, directs the Board to accept opt-out information from local school boards and directs the Board to report to the Education Interim Committee about school district activities. The rule is also authorized by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide information and timelines to school districts that allow and assist school districts in satisfying their responsibilities under 53A-15-1302.

R277-411-3. Board/USOE Responsibilities.

- A. The USOE shall provide resources, model curricula and additional information as required under Section 53A-15-1302(2) before August 30, 2013.
- B. To the extent of resources available, the USOE shall provide curricula, materials and resources in both electronic and paper formats.
- C. To the extent of resources available and if requested, the USOE shall make staff and consultants available to assist school districts with anticipated training and parent meetings.
- D. If school districts provide written opt-out notification to the Board, the Board shall review those documents for sufficiency and satisfaction of the law's requirements and notify school districts in a timely manner.
- E. The USOE shall request information from school districts under Section 53A-15-1302(4)(a),(b),(c), and (d) to compile information for the Board's November 2014 report to the Education Interim Committee. The Board may also request information and data from school districts and charter schools in order to develop meaningful curricula and materials to assist school districts.

R277-411-4. School District Responsibilities and Timelines.

- A. A local school board that desires to provide an opt-out notification to the Board shall do so before September 30, 2013.
- B. The Board shall notify a local school board/school district that the opt-out notification was received and was complete and consistent with the law before October 30, 2013.
- C. The notification received from a local school board and

the USOE's response shall be maintained by the USOE.

**KEY: seminars, students, youth protection
July 8, 2013**

**Art X, Sec 3
53A-15-1302
53A-1-401(3)**

R277. Education, Administration.**R277-445. Classifying Small Schools as Necessarily Existent.****R277-445-1. Definitions.**

- A. "ADM" means average daily membership derived from end-of-year data.
- B. "Board" means the Utah State Board of Education.
- C. "Superintendent" means the State Superintendent of Public Instruction.
- D. "USOE" means the Utah State Office of Education.
- E. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(3) which requires the Board to adopt rules that govern the approval of necessarily existent small schools consistent with state law and ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

- (a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or
- (b) 300 for one or two-year secondary schools; or
- (c) 450 for three-year secondary schools; or
- (d) 500 for four-year secondary schools; or
- (e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type requires:

- (a) students in kindergarten through grade six to travel more than 45 minutes;
- (b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

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

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

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

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.

C. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities**April 8, 2013****Notice of Continuation August 14, 2012****Art X Sec 3****53A-1-401(3)****53A-17a-109(1)**

R277. Education, Administration.**R277-491. School Community Councils.****R277-491-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- E. "Educator" means a person who holds a current educator license and is employed by the school district where the person's child attends school.
- F. "Parent" means the parent or legal guardian of a student attending a school district public school.
- G. "Parent or legal guardian member":
- (1) means a member of a school community council who is a parent of a student who will be enrolled at the school at any time during the parent's or legal guardian's term of office; and
 - (2) may not include an educator who is employed at the school.
- H. "School principal" means the principal of the school or designee as assigned by the principal.
- I. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents and legal guardians of additional students who are attending the school.
- J. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority on each council.
- K. "School employee member" means a member of a school community council who is a person employed at a school by the school or school district, including the principal.
- L. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.
- M. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- N. "USDB" means the Utah Schools for the Deaf and the Blind.
- O. "USOE" means the Utah State Office of Education.

R277-491-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. Local boards of education are responsible for school community council operations, plan approval, oversight, and training.
- C. The purpose of this rule is to:
- (1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);
 - (2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school plans, and advise school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;
 - (3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of assessments

and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

- (4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils;
- (5) encourage compliance with the law; and
- (6) increase public awareness of:
 - (a) school trust lands and related land policies;
 - (b) management of the permanent State School Fund established in Utah Constitution Article X, Section 5; and
 - (c) educational excellence.

R277-491-3. School Community Council Member Election Provisions.

- A. Each school shall establish a timeline for the election of parent or legal guardian members of a school community council; the timeline shall remain consistent for at least a four-year period.
- B. The election for the parent or legal guardian members of a school community council shall be held near the beginning of the school year, to be completed by October 15, or held in the spring and completed before the last week of school.
- C. If the election is held in the spring, the school community council shall attempt to notify parents of incoming students about the opportunity to run for the council, and provide those parents with the opportunity to vote in the election.
- D. Terms shall be for two years and shall be staggered so that approximately half of the council positions are elected each year.
- E. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive School LAND Trust Program funds without having a school community council if the schools demonstrate and document a good faith effort to recruit members, have meetings and publicize results. Such determination shall be as recognized and affirmed by the local board of education.
- F. Each school community council shall determine the size of the council by a majority vote of a quorum of council members, provided that the resulting council has at least one employee member, the principal, and a two person majority of parents.
- G. The principal shall provide notice of the school community council elections to the school community at least 10 days prior to the elections. The notice shall include the dates, times, and location of the election, the positions that will be elected and information about becoming a candidate.
- H. Parents and legal guardians may stand for election as parent members of a school community council at a school consistent with the definition of parent member in R277-491-1G.
- I. School community councils are encouraged to establish clear and written timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner.
- J. Ballots and voting are required only if the school community council position(s) is contested.
- K. Parents may vote for the school community council parent members if their child(ren) are enrolled at the school, or to the extent possible consistent with R277-491-3C.
- L. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.
- M. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts or schools allow

voting by electronic means, the opportunity shall be clearly explained on the school district or school website.

N. Following the election, if there are more parent members who are educators in that district than parents who are not educators in that district elected to the council, the parents on that council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in that district.

O. School community council members who were duly elected or appointed prior to a subsequent change in law or Board rule shall be allowed to complete the term for which they were elected. All school community council members shall satisfy requirements of Utah Code and Board rule in subsequent terms.

R277-491-4. Local School Board and School District Responsibilities Relating to School Community Councils.

A. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. School community councils may be asked for information to inform local board decisions.

B. The local school board, in compliance with Section 53A-1a-108, shall ensure that all council members receive annual training, including training for the chair and vice chair about their specific responsibilities, and about the school community council requirements of Sections 53A-1a-108, 53A-1a-108.1, 53A-16-108.5, and 53A-16-101.5.

C. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law and raised by any school community council member.

R277-491-5. School Community Council Principal Responsibilities.

A. Following the election, the principal shall enter and electronically sign on the School LAND Trust website a Principal's Assurance Form that assures the school community council at the school was elected, and that vacancies were filled, as necessary, and that the school community council is properly constituted consistent with Section 53A-1a-108 and R277-477 and R277-491.

B. A principal may not serve as chair or vice-chair of the school community council.

C. Annually, on or before November 15, the principal shall provide the following information on the school website, in the school office, and if needed, through a method that the council decides is best for the parents at the school who do not have internet access, if needed, and as provided in Section 53A-1a-108 and 53A-1a-108.1:

- (1) A list of the members of the school community council and each member's direct email or phone number, or both;
- (2) The school community council meeting schedule; and
- (3) A summary of the annual report about how the School LAND Trust Program funds were used to enhance or improve academic excellence at the school, consistent with Section 53A-1a-108.1(5)(b).

D. Principals shall ensure that school websites fully communicate the opportunities provided to parents to serve on the school community council and how parents can directly influence the expenditure of the School LAND Trust Program funds. The website shall include each school's dollar amount received each year through the program.

R277-491-6. School Community Council Chair Responsibilities.

A. After the council is seated each year, the chair shall be elected by the council from the parent members and the vice-chair shall be elected by the council from the parent or school

employee members.

B. The school community council chair or designee shall:

- (1) post the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting draft minutes) on the school's website at least one week prior to each meeting;
- (2) set the agenda for every meeting;
- (3) conduct every meeting;
- (4) assure that written minutes are kept consistent with Section 53A-1a-108.1(8);
- (5) inform council members on resources available on the School LAND Trust website;
- (6) assure that the council adopts a set of rules of order and procedures, including procedures for electing the chair and vice-chair, that the chair shall follow to conduct each meeting. The rules shall be posted on the school website and be available at each meeting; and
- (7) welcome and encourage public participation.

C. School community council responsibilities do not allow for closed meetings, consistent with Section 53A-1a-108.1.

R277-491-7. School Community Council Business.

A. School community councils shall report on plans, programs, and expenditures at least annually to local boards of education and cooperate with USOE monitoring and audits.

B. School community councils shall encourage participation on the school community council and may recruit potential applicants to apply for open positions on the council.

C. School community councils are encouraged to establish clear and written procedures governing the removal from office of a member who moves away or consistently does not attend meetings, and additional clarifications to assist in the efficient operation of school community councils, consistent with the law and Board rule.

R277-491-8. Development of Plans.

A. School community council members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

- (1) The School Improvement Plan;
- (2) The School LAND Trust Plan;
- (3) The Reading Achievement Plan (for elementary schools); and
- (4) The Professional Development Plan.

B. School community councils are encouraged to advise and inform elected local school board members and other interested community members regarding the uses of these funds.

KEY: school community councils

July 8, 2013

Notice of Continuation May 15, 2013

Art X Sec 3

53A-1-401(3)

R277. Education, Administration.**R277-614. Athletes and Students with Head Injuries.****R277-614-1. Definitions.**

- A. "Agent" means a coach, teacher, school employee, representative or volunteer under Section 26-53-102(1).
- B. "Board" means the Utah State Board of Education.
- C. "Free play" means unstructured student play, games and field days during school hours.
- D. "LEA" means a public school or a public charter school.
- E. "Parent" means a parent or legal guardian of student for whom LEA is responsible.
- F. "Physical education class" means a structured secondary school class period that includes an adult supervisor.
- G. "Sporting event" means activities listed under Section 26-53-102(5) and includes games, classes, tryouts and activities that take place during the regular school day of public schools and activities sponsored by the public schools with exclusions provided in Section 26-53-102(5)(b).
- H. "Traumatic head injury" means any of the signs, observed or self-reported, listed under Section 26-53-102(6).
- I. "USOE" means the Utah State Office of Education.

R277-614-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution X, Section 3 which vests general control and supervision in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in sporting events as defined in the law, including notification to parents of the policy and receipt from parents of signed statements that parents understand and will support the LEA in the enforcement of the policy.

R277-614-3. Board and USOE Responsibilities.

- A. The Board directs all LEAs to develop, pass, post on the LEAs' websites and make available to parents a traumatic head injury policy that meets the requirements of Section 26-53.
- B. The USOE shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing their policies. The model policy shall be available on the USOE website.
- C. The USOE shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.
- D. The USOE shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to identify students' traumatic head injuries, to provide notice to parents and to comply with the law.

R277-614-4. LEA Responsibilities.

- A. All LEAs are identified as amateur sports organizations for purposes of Section 26-53 and shall meet all requirements of the law.
- B. All LEAs shall maintain a traumatic head injury policy for students:
- (1) participating in physical education classes, excluding free play under Section 26-53-102(5)(b)(iii), offered by the LEA; and
 - (2) participating in extracurricular activities sponsored by the LEA or statewide athletic associations or both groups jointly.
- C. An LEA's policy shall include:
- (1) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(2) the prohibition of a student's continued participation until the student is evaluated by a trained qualified health care professional;

(3) a written statement from a trained health care provider clearing the student to resume participation in a sporting event;

(4) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(5) notice at least annually to parents of students who participate in sporting events, including parents' signatures, of an LEA's traumatic head injury policy.

D. An LEA shall post its policy on a district/school or charter school website where the information will be readily accessible to the public and to parents.

KEY: athletes, head injuries**July 8, 2013****Notice of Continuation May 15, 2013****Art X Sec 3
53A-1-401(3)**

R305. Environmental Quality, Administration.**R305-4. Clean Fuels and Vehicle Technology Fund Grant and Loan Program.****R305-4-1. Authorization and Purpose.**

(1) As authorized by Section 19-1-404, this rule establishes procedures for:

(a) providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel, to purchase OEM vehicles, or to retrofit vehicles as provided under Section 19-1-403 to provide air pollution reduction benefits; and

(b) providing loans or state match grants for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle as provided under Section 19-1-403.

(2) As authorized by Section 19-1-404, this rule establishes criteria and conditions for:

- (a) awarding grant and loan program monies; and
- (b) loan repayment and the collection of loans.

R305-4-2. Definitions.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean-fuel vehicle" means clean-fuel vehicle as defined in Subsection 19-1-402(2).

"Department" means the Utah Department of Environmental Quality.

"Fund" means fund as defined in Subsection 19-1-403.

"Government vehicle" means government vehicle as defined in Subsection 19-1-402(6).

"Grant" means monies awarded to an applicant from the fund that do not have to be repaid.

"Electric-hybrid vehicle" means electric-hybrid vehicle as defined in Subsection 19-1-402(3).

"OEM vehicle" means OEM vehicle as defined in Subsection 19-1-402(8).

"Private sector business vehicle" means private sector business vehicle as defined in Subsection 19-1-402(9).

"Refueling equipment" means refueling equipment as defined in Subsection 19-1-402(10)

"Retrofit" means retrofit as defined in Subsection 19-1-402(11).

R305-4-3. Grant and Loan Eligibility.

Eligibility for grants and loans from the fund is limited to projects for government vehicles and private sector business vehicles that meet the eligibility requirements set forth in R307-123, and for refueling equipment dispensing a clean fuel as provided for in Subsection 19-1-403-2(d) within the state of Utah.

R305-4-4. Preliminary Approval Application Procedure.

(1) All grant and loan applicants shall apply on forms provided by the Department as required by Subsection 19-1-404(1)(b)(vii)(A), and shall provide additional project information as requested by the Department.

(2) All private sector businesses applying for a loan shall also complete a financial application that includes the following information:

(a) a current credit report from the NACM Business Credit Services or other reporting bureau authorized by the Department;

(b) a completed balance sheet of the personal or real property that will be used to secure the loan;

(c) copies of federal and state income tax returns for the last two years for the corporation and the applicant; and

(d) additional information as requested by the Department.

(3) All Applicants:

(a) may be charged an application fee of \$140 for vehicle

loans, \$280 for grants, and \$350 for infrastructure loans as authorized in Subsection 19-1-403(4)(a)(ii);

(b) shall sign a statement acknowledging that:

(i) approved projects must meet all the eligibility requirements listed in R307-123; and

(ii) applicants that are pre-approved are not guaranteed project reimbursement by the Department; and

(c) shall agree in writing to the provisions in Subsections 19-1-404(1)(b)(vii)(B) through (E), and

(d) shall, in the event that a vehicle converted, retrofitted, or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident:

(i) continue to repay the loan whether or not the vehicle is repairable; or

(ii) appeal to the Department for a resolution as provided for in Subsection 19-1-404(1)(b)(vii)(C).

(A) Applicants that wish to appeal to the Department shall:

1. provide reasonable documentation that the vehicle converted, retrofitted, or purchased is inoperable through mechanical failure or accident; and

2. propose a course of action that may include adjusting the loan repayment schedule or terms of the loan or grant.

(B) Any remedy pursued by the Department will be handled on a case-by-case basis and at the discretion of the Department.

(4) Once the Department has deemed that the application is complete and the proposed project complies with this rule, the application shall be reviewed by a committee consisting of at least the following:

(a) the DAQ Grant and Loan Program Coordinator or designee;

(b) the DAQ Mobile Section Manager or designee;

(c) two DAQ technical specialists chosen by the Department; and

(d) other members as designated at the discretion of the Department.

(5) The committee will evaluate each application according to the criteria provided in Sections R305-4-6 and 7.

(6) When considering grant and loan applications, the Department may modify the dollar amount or project scope for which a grant or loan is awarded.

(7) Submission of an application under this program and this rule constitutes the applicant's acceptance of the criteria and procedures of this rule.

(8) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

R305-4-5. Final Approval Procedure and Payment Process.

(1) Once an applicant's project has been pre-approved to receive a grant or loan, the applicant shall provide all additional documentation required in R307-123.

(2) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.

(3) Once an applicant has obtained final approval to receive a grant or loan, including signed contract documents, monies from the fund will be issued as reimbursements for the applicant's project costs.

(4) Grant or loan monies for a state match of a federal or non-federal grant will only be issued to the applicant after the applicant's project has been approved by the granting entity for the federal or non-federal grant.

(5) The approved applicant shall continue to comply with the provisions of this rule.

R305-4-6. Prioritization of Awards for Grant Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding grants:

- (1) The feasibility and practicality of the project;
 - (2) The financial need of the applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;
 - (3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant; and
 - (4) The environmental and other benefits to the state and local community attributable to the project.
- (5) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:
- (a) the cost of the project relative to market cost information; and
 - (b) the length of time proposed to complete the project.
- (6) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:
- (i) the technology selected for the project; and
 - (ii) the location of the project.
- (7) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but is not limited to the following criteria:
- (a) the pollution reduction benefits attributable to the project;
 - (b) the location of the project;
 - (c) the ratio of the total project cost to the environmental and other benefits attributable to the project; and
 - (d) the accessibility and openness of any refueling equipment to the public, if applicable.

R305-4-7. Prioritization of Awards for Loan Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding loans:

- (1) The feasibility and practicality of the project;
 - (2) The financial need of applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;
 - (3) Whether and to what extent the monies requested are being provided as a state match of a federal or nonfederal grant;
 - (4) The environmental and other benefits to the state and local community attributable to the project; and
 - (5) The applicant's creditworthiness.
- (6) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:
- (a) the cost of the project relative to market cost information; and
 - (b) the length of time proposed to complete the project.
- (7) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:
- (a) the technology selected for the project; and
 - (b) the location of the project.
- (8) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:
- (a) pollution reduction benefits attributable to the project;
 - (b) the location of the project;
 - (c) the accessibility and openness of any refueling equipment to the public, if applicable; and
 - (d) the ratio of the total project cost to the environmental and other benefits attributable to the project.

R305-4-8. Grant Program Limitations.

- (1) Grant applications shall not be approved if:
 - (a) awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;
 - (b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;
 - (c) the fund balance is zero;
 - (d) awarding a grant to an applicant would result in the fund balance being less than zero;
 - (e) the vehicle purchased with grant funds is an electric-hybrid vehicle;
 - (f) the OEM vehicle purchased with the grant funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant.
 - (g) the amount of a grant for any vehicle will exceed the provisions in Subsections 19-1-403(2)(c); or
 - (h) the total amount awarded, including federal or nonfederal grants, for the purchase of vehicle refueling equipment will exceed the actual cost of the refueling equipment.
- (2) The annual combined total for all grants approved shall not exceed a maximum of \$250,000 as authorized by Subsection 19-1-404(1)(b)(i).
- (3) The maximum number of vehicles purchased, converted, or retrofitted using grant funds by any fleet operator shall not exceed 100 vehicles, as authorized by Subsection 19-1-404(1)(b)(iii).
- (4) The maximum amount that may be approved by the Department for a grant is \$100,000; the minimum amount that may be approved is \$5,000.
- (5) Awards for applicants for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-9. Loan Program Limitations.

- (1) Loan application shall not be approved if:
 - (a) awarding a loan to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;
 - (b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;
 - (c) the fund balance is zero;
 - (d) awarding a loan to an applicant would result in the fund balance being less than zero;
 - (e) the vehicle purchased with loan funds is an electric-hybrid vehicle;
 - (f) the OEM vehicle purchased with the loan funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant;
 - (g) the amount of a loan for any vehicle will exceed the provisions in 19-1-403(2)(b) minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009; or
 - (h) the amount to be loaned for the purchase of vehicle refueling equipment will exceed the provisions in Subsection 19-1-403(2)(d)(ii).
- (2) The total combined loans approved annually shall not exceed \$250,000.
- (3) The maximum amount that may be approved by the Department for a loan is \$100,000; the minimum amount that may be approved is \$5,000.
- (4) Awards for applicants applying for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-10. Servicing the Loans and Loan Repayment.

- (1) Loan repayment schedules shall:
 - (a) not exceed ten years, as required by Subsection 19-1-404(2)(b);
 - (b) be based on the financial situation and income circumstances of each borrower;
 - (c) be amortized with equal payment amounts;
 - (d) be of such amount to pay all interest and principal in full; and
 - (e) consider projected savings from use of the clean fuel vehicle as required by Subsection 19-1-404(2)(a). In determining projected savings, the Department may use all current and relevant market cost information.
- (2) The initial installment payment is due on a date established by the Department.
- (3) Subsequent installment payments are due:
 - (a) on the first day of each month for private sector businesses; or
 - (b) as determined by the Department for government entities.
- (4) A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.
- (5) Loans made from the fund for a government vehicle shall be made with no interest rate as required by Subsection 19-1-404(2)(d).
- (6) Loans made from the fund for a private sector vehicle shall be made at an interest rate provided by Subsection 19-1-404(2)(c).
- (7) Any changes in interest rates, re-negotiation of contract terms or elimination of debt must receive approval by the Department.
- (8) Loan payments received shall be applied first to penalty, next to interest, and then to principal.
- (9) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.
- (10) Penalties for late loan payments shall be:
 - (a) ten percent of the payment due;
 - (b) assessed and payable on payments received by the Department more than 15 days after the due date;
 - (c) assessed only once per scheduled payment; and
 - (d) noticed to the borrower with the amounts of penalty and the total payment due.
- (11) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Department by methods other than the U.S. Postal Service.
- (12) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.
- (13) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R305-4-11. Recovering on Defaulted Loans.

- (1) Loans may be considered in default when three consecutive payments are past due by 30 days or more.
- (2) If the loan is determined to be in default under R305-4-11(1), the Department or Division of Finance may declare the full amount of the defaulted loan, penalty, and interest immediately due.
- (3) The Department or Division of Finance need not give notice of default prior to declaring the full amount due and payable.
- (4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

R305-4-12. Review.

The Department reserves the right to review all data and applicants for continued compliance with this rule during the period the approved applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an applicant in order to effectively administer the program and this rule.

R305-4-13. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for or obligation to the program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle purchased or converted to use a clean fuel or retrofitted in this program.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles
October 8, 2008
Notice of Continuation July 15, 2013

19-1-401

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 director 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 director 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 director, 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 director if the director 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(8)(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.

"Condensable PM_{2.5}" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"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).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"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, the director 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).

"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.

"Filterable PM_{2.5}" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"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 director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

- (a) when the director 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 director 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.

"PM2.5 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 PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO₂, NO_x, and VOC.

"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.

"Primary PM_{2.5}" means the sum of filterable PM_{2.5} and condensable PM_{2.5}.

"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_x 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 director 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 director 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 director 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.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"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;
 PM2.5: 10 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), 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, 2011.

KEY: air pollution, definitions

February 1, 2013

Notice of Continuation July 2, 2009

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-342. Adhesives and Sealants.****R307-342-1. Purpose.**

The purpose of this rule is to limit emissions of volatile organic compounds (VOCs) from adhesives, sealants, primers and cleaning solvents.

R307-342-2. Applicability.

Beginning September 1, 2014, R307-342 applies to any person who manufactures any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Utah or Weber counties and to any person who sells, supplies, or applies any adhesive, sealant, adhesive primer or sealant primer in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties manufactured on or after September 1, 2014.

R307-342-3. Exemptions.

(1) The requirements of R307-342 do not apply to the following:

(a) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory;

(b) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealant, less water and exempt solvents, as applied;

(c) Cyanoacrylate adhesives;

(d) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less or that have a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives;

(e) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less;

(f) Aerosol adhesives and primers dispensed from aerosol spray cans; or

(g) Polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

(2) The requirements of R307-342 do not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents in the following operations:

(a) Tire repair operations, provided the label of the adhesive states "for tire repair only;"

(b) In the production, rework, repair, or maintenance of aerospace vehicles and components, and undersea-based weapon systems;

(c) In the manufacture of medical equipment;

(d) Operations that are exclusively covered by Department of Defense military technical data and performed on site at installations owned and/or operated by the United States Armed Forces.

(e) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992.

(3) The requirements of R307-342 do not apply to commercial and industrial operations if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers used at the source are less than 200 pounds per calendar year.

(4) Adhesive products and sealant products shipped, supplied or sold exclusively outside of the areas specified in R307-342-2 are exempt from the requirements of this rule.

(5) R307-342 shall not apply to any adhesive, sealant, adhesive primer or sealant primer products manufactured for shipment and use outside of the counties specified R307-342-2 as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of the applicable counties and that the manufacturer or distributor has

taken reasonable prudent precautions to assure that the product is not distributed to the applicable counties.

(6) R307-342 shall not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents, provided the total volume of noncomplying adhesives, sealants, primers, cleanup and surface preparation solvents applied facility-wide does not exceed 55 gallons per rolling 12-month period.

(7) Commercial and industrial operations claiming exemption pursuant to R307-342-3 shall record and maintain operational records sufficient to demonstrate compliance.

R307-342-4. Definitions.

The following additional definitions apply to R307-342:

"Acrylonitrile-butadiene-styrene (ABS) welding adhesive" means any adhesive intended by the manufacturer to weld acrylonitrile-butadiene-styrene pipe, which is made by reacting monomers of acrylonitrile, butadiene and styrene.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerospace component" means a fabricated part, assembled part, or completed unit, including passenger safety equipment, of any aircraft, helicopter, missile or space vehicle.

"Architectural sealant or primer" means any sealant or sealant primer intended by the manufacturer to be applied to stationary structures, including mobile homes and their appurtenances. Appurtenances to an architectural structure include, but are not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain gutters and downspouts, and windows.

"Automotive glass adhesive primer" means an adhesive primer labeled by the manufacturer to be applied to automotive glass prior to installation of the glass using an adhesive or sealant.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic (CPVC) plastic" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is typically identified with a CPVC marking.

"Chlorinated polyvinyl chloride (CPVC) welding adhesive" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleanup solvent" means a VOC-containing material used either to remove a loosely held uncured (i.e., not dry to the touch) adhesive or sealant from a substrate or to clean equipment used in applying a material.

"Computer diskette jacket manufacturing adhesive" means any adhesive intended by the manufacturer to glue the fold-over flaps to the body of a vinyl computer diskette jacket.

"Contact bond adhesive" means an adhesive that:

(1) is designed for application to both surfaces to be bonded together;

(2) is allowed to dry before the two surfaces are placed in contact with each other;

(3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

"Contact adhesive" means an adhesive that feels dry to the touch and bonds instantly. Contact adhesives do not include rubber cements that are primarily intended for use on paper

substrates and vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Enclosed cleaning system" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. A spray gun is attached to the enclosed cleaning system by a connection, and solvent is pumped through the gun to clean it. The cleaning solvent falls back into the cleaning system's solvent reservoir for recirculation.

"Flexible vinyl" means non-rigid polyvinyl chloride plastic with at least 5% by weight plasticizer content.

"Fiberglass" means a material consisting of extremely fine glass fibers.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a non-porous substrate, such as flexible vinyl, are excluded from this category.

"Laminate" means a product made by bonding together two or more layers of material.

"Marine deck sealant" or "marine deck sealant primer" means any sealant or sealant primer labeled for application to wooden marine decks.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile and acoustical tile.

"Nonmembrane roof installation/repair adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of nonmembrane roofs and that is not intended for the installation of prefabricated single-ply flexible roofing membrane, including, but not limited to, plastic or asphalt roof cement, asphalt roof coating and cold application cement.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

"Panel installation" means the installation of plywood, pre-decorated hardboard (or tileboard), fiberglass reinforced plastic, and similar pre-decorated or non-decorated panels to studs or

solid surfaces using an adhesive formulated for that purpose.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic cement welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic cement welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Plasticizer" means a material such as a high boiling point organic solvent that is incorporated into a vinyl to increase its flexibility, workability, or distensibility, as determined by ASTM Method E-260-96.

"Polyvinyl chloride (PVC) plastic" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, wood, paper and corrugated paperboard.

"Roadway sealant" means any sealant intended by the manufacturer for application to public streets, highways and other surfaces, including but not limited to curbs, berms, driveways and parking lots.

"Rubber" means any natural or manmade rubber substrate, including styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene and ethylene propylene diene terpolymer.

"Sealant primer" means any product intended by the manufacturer for application to a substrate, prior to the application of a sealant, to enhance the bonding surface.

"Sealant" means any material with adhesive properties, including sealant primers and caulks, that is formulated primarily to fill, seal, waterproof or weatherproof gaps or joints between two surfaces. "Sheet-applied rubber installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene-propylenediene terpolymer, that is field applied to a building roof using one layer of membrane material.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane.

(1) Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes and ducts that protrude through the membrane.

(2) Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes or ducts installed through the membrane.

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane sealant" means any sealant labeled for application to single-ply roof membrane.

"Structural glazing adhesive" means any adhesive intended by the manufacturer to apply glass, ceramic, metal, stone or composite panels to exterior building frames.

"Subfloor installation" means the installation of subflooring material over floor joists, including the construction of any load bearing joists. Subflooring is covered by a finish surface material.

"Surface preparation solvent" means a solvent used to remove dirt, oil and other contaminants from a substrate prior to the application of a primer, adhesive or sealant.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure or blemish in a tire casing by grinding or gouging, applying adhesive, and filling the hole or crevice with rubber.

"Traffic marking tape" means preformed reflective film intended by the manufacturer for application to public streets, highways and other surfaces, including curbs, berms, driveways and parking lots.

"Traffic marking tape adhesive primer" means any primer intended by the manufacturer for application to surfaces prior to installation of traffic marking tape.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

R307-342-5. Emission Standards.

(1) Beginning September 1, 2014, no person shall manufacture any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1.

(2) Beginning September 1, 2014, no person shall sell supply or offer for sale any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 and that was manufactured on or after September 1, 2014.

(3) Beginning September 1, 2014, no person shall apply any adhesive, sealant, adhesive primer or sealant primer with a VOC content in excess of the limits in Table 1 unless that person uses an add-on control device as specified in R307-342-8 or unless the adhesive, sealant, adhesive primer or sealant primer was manufactured before September 1, 2014.

(4) The VOC content limits in Table 1 for adhesives applied to particular substrates shall apply as follows:

(a) If a person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 1, such specific limit is applicable rather than an adhesive-to-substrate limit; and

(b) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

TABLE 1

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates (minus water and exempt compounds (compounds that are not defined as VOC), as applied

Adhesive, Sealant, Adhesive Primer Category	VOC Content Limit (grams VOC/liter)
Adhesives	
ABS welding	400
Ceramic tile installation	130
Computer diskette jacket manufacturing	850
Contact bond	250
Cove base installation	150

CPVC welding	490
Indoor floor covering installation	150
Metal to urethane/rubber molding or casting	850
Multipurpose construction	200
Nonmembrane roof installation/repair	300
Other plastic cement welding	510
Outdoor floor covering installation	250
PVC welding	510
Single-ply roof membrane installation/repair	250
Structural glazing	100
Thin metal laminating	780
Tire retread	100
Perimeter bonded sheet vinyl flooring installation	660
Waterproof resorcinol glue	170
Sheet-applied rubber installation	850
Sealants	
Architectural	250
Marine deck	760
Nonmembrane roof installation/repair	300
Roadway	250
Single-ply roof membrane	450
Other	420
Adhesive Primers	
Automotive glass	700
Plastic cement welding	650
Single-ply roof membrane	250
Traffic marking tape	150
Other	250
Sealant Primers	
Non-porous architectural	250
Porous architectural	775
Marine deck	760
Other	750
Adhesives Applied to the Listed Substrate	
Flexible vinyl	250
Fiberglass	200
Metal	30
Porous material	120
Rubber	250
Other substrates	250

R307-342-6. Application Equipment.

(1) An operator shall only use the following equipment to

apply adhesives and sealants:

- (a) Electrostatic application;
- (b) Flow coater;
- (c) Roll coater;
- (d) Dip coater;
- (e) Hand application method;
- (f) Airless spray and air-assisted airless spray;
- (g) High volume, low pressure spray equipment operated in accordance with the manufacturers specifications; or
- (h) Other methods having a minimum 65% transfer efficiency.

(2) Removal of an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment shall be performed as follows:

- (a) In an enclosed cleaning system;
- (b) Using a solvent with a VOC content less than or equal to 70 grams of VOC per liter of material; or
- (c) Parts containing dried adhesive may be soaked in a solvent if the composite vapor pressure of the solvent, excluding water and exempt compounds, is less than or equal to 9.5 mm Hg at 20 degrees Celsius and the parts and solvent are in a closed container that remains closed except when adding parts to or removing parts from the container.

R307-342-7. Administrative Requirements.

(1) Each person that manufactures adhesives, sealants, and adhesive primers subject to this rule shall maintain records demonstrating compliance.

(2) Commercial and industrial operations that are not exempt under R307-342-3 shall maintain records demonstrating compliance with this rule, including:

- (a) A list of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent in use and in storage;
- (b) A material data sheet for each adhesive, sealant, adhesive primer, sealant primer, cleanup solvent and surface preparation solvent;
- (c) A list of catalysts, reducers or other components used and the mix ratio;
- (d) The VOC content or vapor pressure, as applied; and
- (e) The monthly volume of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent used.

(2) Except as provided in R307-342-6(2), no person shall use materials containing VOCs for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces, other than spray application equipment, unless the composite vapor pressure of the solvent used is less than 45 mm Hg at 20 degrees Celsius.

R307-342-8. Optional Add-On Controls.

(1) VOC emissions from the manufacturer or use of all adhesives, sealants, adhesive primers or sealant primers subject to this rule shall be reduced by an overall capture and control efficiency of at least 85% by weight.

(2) The owner or operator of an emission control system shall provide documentation that the emissions control system will attain the requirements of R307-342-8.

(3) The owner or operator of an emission control system shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-342-9. Container Labeling.

Each manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this rule shall display the following information on the product container or label:

- (1) A statement of the manufacture's recommendation

regarding thinning, reducing, or mixing of the product.

(a) R307-342-9 does not apply to the thinning of a product with water.

(b) If the thinning of the product prior to use is not necessary, the recommendation shall specify that the product is to be applied without thinning.

(2) The maximum or the actual VOC content of the product in accordance with Table 1, as supplied, displayed in grams of VOC per liter of product; and

(3) The maximum or the actual VOC content of the product in accordance with Table 1, which includes the manufacture's maximum recommendation for thinning, as applied, displayed in grams of VOC per liter of product.

KEY: air pollution, adhesives, sealants, primers

August 1, 2013

19-2-104(1)(a)

R307. Environmental Quality, Air Quality.**R307-357. Consumer Products.****R307-357-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from consumer products.

R307-357-2. Applicability.

R307-357 applies to any person who sells, supplies, offers for sale, distributes for sale, or manufactures for sale consumer products on or after the effective date in Table 1 for use in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

R307-357-3. Definitions.

The following additional definitions apply to R307-357:

"Adhesive" means any product that is used to bond one surface to another by attachment.

(1) Adhesive does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

(2) For contact adhesive, construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. This limitation does not apply to aerosol adhesives.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol cooking spray" means any aerosol product designed to reduce sticking on cooking and baking surfaces and is applied on cooking surfaces, baking surfaces, or food.

"Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force but does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop.

(1) Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers which are intended for:

- (a) Home use;
- (b) Use in structural pest control;
- (c) Industrial; or
- (d) Institutional use.

(2) For the purposes of this definition only:

(a) "Home use" means use in a household or its immediate environment.

(b) "Structural pest control" means a use requiring a license under state or federal pesticide licensing requirements.

(c) "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.

(d) "Institutional use" means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any product, including, but not limited to, sprays, wicks, wipes, diffusers, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air.

(1) Air freshener does not include products that are used on the human body, products that function primarily as cleaning products as indicated on the product label, or odor remover/eliminator products.

"All other carbon containing compounds" means all other compounds which contain at least one carbon atom and are not a VOC defined compound or a LVP-VOC.

"All other forms" means all consumer product forms for which no form specific VOC standard is specified, and unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity.

(1) Antimicrobial hand or body cleaner or soap includes, but is not limited to:

- (a) Antimicrobial hand or body washes and cleaners;
- (b) Foodhandler hand washes;
- (c) Healthcare personnel hand washes;
- (d) Pre-operative skin preparations; and
- (e) Surgical scrubs.

(2) Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Anti-static product" means a product that is labeled to eliminate, prevent, or inhibit the accumulation of static electricity.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent/toner" means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores.

(1) This category also includes clarifiers and substrate-impregnated products.

(2) This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

"Automotive hard paste wax" means an automotive wax or polish that is:

- (1) Designed to protect and improve the appearance of automotive paint surfaces;
- (2) A solid at room temperature; and
- (3) Contains 0% water by formulation.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or "swirl marks," and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces.

(1) Automotive wax, polish, sealant or glaze includes, but is not limited to, products designed for use in autobody repair shops, drive-through car washes and products designed for the general public.

(2) Automotive wax, polish, sealant or glaze does not include automotive rubbing or polishing compounds,

automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield but does not include fluids placed by the manufacturer in a new vehicle.

"Bait station insecticide" means containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5% active ingredients.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms but does not include products specifically designed to clean toilet bowls or toilet tanks.

"Brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (1) Biological-type residues such as insect carcasses and tree sap; and
- (2) Road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages but does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, the interior of motor vehicles, household furniture, or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

(1) Carpet and upholstery cleaner includes, but is not limited to, products that make fabric protectant claims.

(2) Carpet and upholstery cleaner does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

"Construction, panel, and floor covering adhesive" means any one component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

(1) Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

(2) Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

(3) Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means any person who purchases, or acquires

any consumer product for personal, family, household, or institutional use, and persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products but does not include other paint products, furniture coatings, or architectural coatings.

"Contact adhesive" means a non-aerosol adhesive that:

(1) Is designed for application to both surfaces to be bonded together;

(2) Is allowed to dry before the two surfaces are placed in contact with each other;

(3) Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(4) Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

(5) Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

(6) Contact adhesive does not include vulcanizing fluids that are designed and labeled for tire repair only.

"Container/packaging" means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended and includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

"Crawling bug insecticide" means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders but does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

(1) For the purposes of this definition only:

(a) "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

(b) "House dust mite" means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-Code" means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals) but does not include equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means any product that is labeled as a

disinfectant or is labeled as a product that destroys or irreversibly inactivates infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered as a disinfectant under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.).

(1) Products that are labeled as both a "sanitizer" and a "disinfectant" are considered disinfectants.

(2) Disinfectant does not include any of the following:

(a) Products labeled as solely for use on human or animals;

(b) Products labeled as solely for agricultural use;

(c) Products labeled as solely for use in swimming pools, therapeutic tubs, or hot tubs;

(d) Products that are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

(e) Products that are pre-moistened wipes or towelettes sold exclusively to medical, convalescent, or veterinary establishments;

(f) Products that are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

(g) Products labeled as bathroom and tile cleaners, glass cleaners, general purpose cleaners, metal polishes, carpet cleaners or fabric refreshers that may also make disinfecting or antimicrobial claims on the label.

"Distributor" means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means any non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled for dry clean only, such as clothing or drapery or s-coded fabrics.

(1) Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place.

(2) Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner.

"Dual purpose air freshener/disinfectant" means an aerosol product that is represented on the product container for use as both a disinfectant and an air freshener or is so represented on any sticker, label, packaging, or literature attached to the product container.

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating but does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

"Electrical cleaner" means a product labeled as a product that removes heavy soils such as grease, grime, or oil from electrical equipment, including, but not limited to, electric motors, armatures, relays, electric panels, or generators.

(1) Electrical cleaner does not include general purpose cleaner, general purpose degreaser, dusting aid, electronic cleaner, energized electrical cleaner, pressurized gas duster, engine degreaser, anti-static product, or products designed to clean the casings or housings of electrical equipment.

"Electronic cleaner" means a product labeled as a product that removes dirt, moisture, dust, flux or oxide from the internal components of electronic or labeled as precision equipment such as circuit boards and the internal components of electronic devices, including, but not limited to, radios, compact disc players, digital video disc players, and computers.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Fabric protectant" means a product labeled as a product to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers but does not include waterproofers or products labeled for use solely on leather.

(1) Fabric protectant does not include pigmented products that are designed to be used primarily for coloring, products used for construction, reconstruction, modification, structural maintenance or repair of fabric substrates, or products that renew or restore fabric and qualifying as either clear coating or vinyl, fabric, leather, or polycarbonate coatings.

"Fabric refresher" means a product labeled to neutralize or eliminate odors on non-laundered fabric, including, but not limited to, soft household surfaces, rugs, carpeting, draperies, bedding, automotive interiors, footwear, athletic equipment, clothing or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, or nylon. Fabric refresher does not include anti-static products, carpet and upholstery cleaners, footwear or leather care products, spot removers, disinfectants, or products labeled for application to both fabric and human skin.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face.

(1) Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms.

(2) Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Flea and tick insecticide" means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs but does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor polish or wax" means a product designed or labeled as a product to polish, wax, condition, protect, temporarily seal or otherwise enhance floor surfaces by leaving a protective finish that is designed or labeled to be periodically replenished.

(1) Floor polish or wax does not include spray buff products, floor wax strippers, products designed or labeled for unfinished wood floors, or coatings subject to architectural coatings regulations.

(2) Floor polish or wax is divided into three categories: products for resilient flooring materials, products for nonresilient flooring materials, and wood floor wax. For the purposes of this section:

(a) "Resilient flooring material" means flexible flooring material, including but not limited to, asphalt, cork, linoleum, no-wax, rubber, seamless vinyl, and vinyl composite flooring.

(b) "Nonresilient flooring material" means flooring of a mineral content that is not flexible, including, but not limited to, terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

(c) "Wood floor wax" means wax-based products for use solely on wood floors.

"Floor seam sealer" means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax but does not include aerosol floor wax strippers or products designed to remove floor wax solely

through abrasion.

"Flying bug insecticide" means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats.

(1) Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product.

(2) For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of two millimeters of mercury (mm Hg) at 20 degrees Celsius, the sole purpose of which is to impart an odor or scent or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors but does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Furniture coating" means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means any non-aerosol adhesive designed for use on a variety of substrates.

(1) General purpose adhesive does not include;

(a) Contact adhesives;

(b) Construction, panel, and floor covering adhesives;

(c) Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

(d) Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General Purpose Cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations and includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means any product labeled as a product that removes or dissolves grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(1) General purpose degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, electrical cleaner, metal polish/cleanser, oven or grill cleaner, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(a) Exclusively sold directly or through distributors to establishments that manufacture or construct goods or commodities; and

(b) Labeled for use in the manufacturing process only.

(2) Solvent cleaning tanks or related equipment includes,

but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils.

(1) General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps.

(2) General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass but does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Graffiti remover" means a product labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish, or shoe polish from a variety of non-cloth or non-fabric substrates.

(1) Graffiti remover does not include paint remover or stripper, nail polish remover, or spot remover.

(2) Products labeled for dual use as both a paint stripper and graffiti remover are considered graffiti removers.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means any product designed for the primary purpose of creating a shine when applied to the hair.

(1) Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair.

(2) Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair Styling Product" means a consumer product manufactured on or after January 1, 2009, that is designed or labeled as a product for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling or sculpting of the hair.

(1) Hair styling product includes, but is not limited to, hair balm, clay, cream, curl straightener, gel, liquid, lotion, paste, pomade, putty, root lifter, serum, spray gel, stick, temporary hair straightener, wax, spray products that aid in styling but do not provide finishing of a hairstyle, and leave-in volumizers, detanglers or conditioners that make styling claims.

(2) Hair styling product does not include hair mousse, hair shine, hair spray, or shampoos or conditioners that are rinsed from the hair prior to styling.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water but does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (1) For agricultural use; or
- (2) Restricted materials that require a permit for use and possession.

"High volatility organic compound (HVOC)" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20 degrees Celsius.

"Household product" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (1) For agricultural use;
- (2) For a use which requires a structural pest control license under applicable state or federal laws or regulations; or
- (3) Restricted materials that require a permit for use and possession.

"Insecticide fogger" means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

"Institutional product" or "Industrial and institutional (I and I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

(1) Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies.

(2) Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric and includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D 4359- 90 but does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts or to loosen rusted or immovable parts or mechanisms.

(1) Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that

are:

(a) Exclusively sold directly or through distributors to establishments that manufacture or construct goods or commodities; and

(b) Labeled for use in the manufacturing process only.

"LVP content" means the total weight, in pounds, of LVP compounds in a product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

(1) Has a vapor pressure less than 0.1 mm Hg at 20 degrees Celsius, as determined by CARB Method 310;

(2) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;

(3) Is a chemical compound with a boiling point greater than 216 degrees Celsius, as determined by CARB Method 310; or

(4) Is the weight percent of a chemical mixture that boils above 216 degrees Celsius, as determined by CARB Method 310.

(5) For the purposes of the definition of LVP-VOC:

(a) "Chemical compound" means a molecule of definite chemical formula and isomeric structure; and

(b) "Chemical mixture" means a substrate comprised of two or more chemical compounds.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a consumer product.

"Medicated astringent/medicated toner" means any product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores.

(1) Medicated astringent/medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products.

(2) Medicated astringent/medicated toner does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound (MVOC)" means any volatile organic compound that exerts a vapor pressure greater than two mm Hg and less than or equal to 80 mm Hg when measured at 20 degrees Celsius.

"Metal polish/cleanser" means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action.

(1) To improve the appearance means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny.

(2) Metal polish/cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals.

(3) Metal polish/cleanser does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Mist spray adhesive" means any aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means any lubricant that is:

(1) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and

(2) Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means any lubricant designed for general purpose lubrication or for use in a wide variety of applications but does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means any liquid product designed or labeled to be used for dispersing, dissolving, or removing contaminants or other organic materials.

(1) Multi-purpose solvent includes:

(a) Products that do not display specific use instructions on the product container or packaging;

(b) Products that do not specify an end-use function or application on the product container or packaging;

(c) Solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories;

(d) Paint clean-up products; and

(e) Products labeled to prepare surfaces for painting.

(2) Multi-purpose solvent does not include any product making any representation that the product may be used as, or is suitable for use as, a consumer product that meets another definition in R307-357-3; such products are subject to the most restrictive limit provisions in R307-357-10(4) and R307-357-10(5).

"Nail polish" means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Non aerosol product" means any consumer product that is not dispensed by a pressurized spray system.

"Non carbon containing compound" means any compound which does not contain any carbon atoms.

"Non-selective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"Oven or grill cleaner" means a product labeled exclusively as a product to remove baked on grease or deposits from food preparation or cooking surfaces.

"Paint" means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate but does not include "Multi-purpose Solvents", paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Paint thinner" means any liquid product used for reducing the viscosity of coating compositions or components or that prominently displays the term paint thinner, lacquer thinner, thinner, or reducer on the front panel of its packaging.

(1) Paint thinner does not include any of the following products:

(a) Artist's solvent/thinner;

(b) Products that are sold in containers with a capacity of five gallons or more and labeled exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings;

(c) Products labeled and used exclusively as an ingredient in a specific coating or coating brand line whereby the coating would not be complete or useable without the specific

ingredient;

(d) Products that meet both of the following criteria:

(i) The principle display panel of the product displays states that the product is used exclusively for the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings; and

(ii) No representation is made anywhere on the product container or packaging or any label or sticker attached thereto that the product is suitable for use or may be used for any other purpose except the thinning of industrial maintenance coatings, zinc-rich primers, or high temperature coatings.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes but does not include "Multi-purpose Lubricants" that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider to be a pesticide.

"Principal display panel or panels" means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

"Product category" means the applicable category which best describes the product as listed in Table 1. "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

"Restricted materials" means pesticides established as restricted materials under applicable state or federal laws or regulations.

"Roll on product" means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber/vinyl protectant" means any product labeled as a product that protects, preserves or renews vinyl or rubber on vehicles, tires, luggage, furniture, or household products such as vinyl covers, clothing, or accessories. Rubber/vinyl protectant does not include products labeled to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Sanitizer" means a product that is labeled as a sanitizer or labeled as a product to reduce, but not necessary eliminate, microorganisms in the air, on surfaces, or on inanimate objects and whose label is registered as a sanitizer under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. section 136 et seq.)

(1) Products that are labeled as both a sanitizer and a disinfectant are considered disinfectants.

(2) Sanitizers do not include:

(a) Disinfectants;

(b) Products labeled solely for use on humans or animals;

(c) Products labeled solely for agricultural use;

(d) Products labeled solely for use in swimming pools,

therapeutic tubs, or hot tubs;

(e) products that are labeled to be used on heat sensitive critical or semi-critical medical devices or medical equipment surfaces;

(f) Pre-moistened wipes or towelettes sold exclusively to medical, convalescent or veterinary establishments;

(g) Products that are labeled to be applied to food-contact surfaces and are not required to be rinsed prior to contact with food; or

(h) Bathroom and tile cleaners, glass cleaners, general purpose cleaners, metal polishers or fabric refreshers that may also make sanitizing or anti-microbial claims on the label.

"Rubbing alcohol" means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces.

(1) Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear/paintable/water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings.

(2) Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

(3) For the purposes of this definition only:

(a) "Removable caulking compounds" means a compound which temporarily seals windows or doors for three to six month time intervals; and

(b) "Clear/paintable/water resistant caulking compounds" means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade, cartridge razor, or other wet shaving system in the removal of facial or other bodily hair.

"Shaving Gel" means an aerosol product that dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor, or other shaving system in the removal of facial or other bodily hair.

"Silicone-based multi-purpose lubricant" means any lubricant which is:

(1) Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane; and

(2) Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

(3) Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

"Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90.

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

(1) "Mounting adhesive" means an aerosol adhesive

designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(2) "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

(a) "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content.

(b) "Plasticizer" means a material such as a high boiling point organic solvent that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91 or from product formulation data.

(3) "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

(4) "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(5) "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

(6) "Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

(a) The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or

(b) The touch-up, repair, or attachment of edgebonding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

(c) For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees Fahrenheit, and at pressures between 1,000 and 1,400 psi.

(7) "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees Fahrenheit.

"Spot remover" means any product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal but does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type I, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C). This definition is as per the Federal Consumer Products Regulation 40 CFR 59 Subpart C.

"Terrestrial" means to live on or grow from land.

"Temporary hair color" means any product that applies color, glitter, or UV-active pigments to hair, wigs, or fur and is removable when washed.

"Tire sealant and inflation" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Type A propellant" means a compressed gas such as CO₂, N₂, N₂O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs),

hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound and includes, but is not limited to, rubberized, mastic, or asphaltic products.

"VOC content" means the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging).

"Wasp and hornet insecticide" means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. "Waterproofer" does not include "Fabric Protectants".

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics) and includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

"Wood cleaner" means a product labeled to clean wooden materials, including but not limited to, decking, fences, flooring, logs, cabinetry, and furniture.

"Wood floor wax" means wax based products for use solely on wood floors.

R307-357-4. Standards.

(1) Except as provided in R307-357-6, 7, 8 and 9, no person shall sell, supply, offer for sale, or manufacture for sale any consumer product manufactured on or after the effective date in Table 1 that contains VOCs in excess of the limits specified in Table 1.

TABLE 1

Table of Standards
(percent volatile organic compounds by weight)

CATEGORY	EFFECTIVE BEGINNING DATES		
	9/1/2014	1/1/2015	1/1/2016
Adhesive Removers:			
Floor and wall covering	5		
Gasket or thread locking	50		
General purpose	20		
Specialty	70		
Adhesives:			
Aerosol mist spray	65		
Aerosol web spray	55		
Special Purpose Spray Adhesives:			
Mounting, automotive Engine compartment,	70		

and flexible vinyl		
Polystyrene foam and automotive headliner	65	
Polyolefin and laminate repair/edgebanding	60	
Construction, panel, and floor	7	
Contact general purpose	55	
Contact special purpose	80	
General purpose	80	
Structural waterproof	15	
Air Fresheners:		
Single-phase aerosols	30	
Double-phase aerosols	25	
Dual-purpose air freshener/disinfectant aerosol	60	
Liquids/pump sprays	18	
Solids/semisolids	3	
Antiperspirants:		
Aerosol	40 HVOC	10 MVOC
Non-aerosol	0 HVOC	0 MVOC
Anti-static product:		
Non-aerosol	11	
Aerosol	80	
Automotive rubbing or polishing compound	17	
Automotive wax, polish, sealant or Glaze:		
Hard paste waxes	45	
Instant detailers	3	
All other forms	15	
Automotive windshield washer fluids	35	
Bathroom and Tile Cleaners:		
Aerosols	7	
Non-aerosols	1	
Brake cleaner	10	
Bug and tar remover	40	
Carburetor or fuel-injection air intake cleaners	10	
Carpet and Upholstery Cleaners:		
Aerosols	7	
Non-aerosols (dilutables)	0.1	
Non-aerosols	3.0	

(ready-to-use)		Aerosols	50	
Cooking spray aerosols	18	Non-aerosols	30	
Disinfectant:		Hair mousses	6	
Aerosol	70	Hair shines	55	
non-aerosol	1	Hairsprays	55	
Deodorants:		Hair styling gels	6	
Aerosol	0 HVOC 10 MVOC	Hair Styling Products:		
Non-aerosol	0 HVOC 0 MVOC	Aerosol and pump sprays	6	
Dusting Aids:		All other forms	2	
Aerosols	25	Heavy-duty hand cleaners or soaps	8	
All other forms	7	Insecticides:		
Electrical cleaner	45	Crawling bug (aerosol)	15	
Electronic cleaner	75	Crawling bug (all other forms)	20	
Engine Degreasers:		Flea and tick	25	
Aerosol	10	Flying bug (aerosol)	25	
Non-aerosol	5	Flying bug (all other forms)	35	
Fabric protectants	60	Foggers	45	
Fabric refresher:		Lawn and garden (all other forms)	20	
Aerosol	15	Lawn and garden (non-aerosol)	3	
Non-aerosol	6	Wasp and hornet	40	
Floor Polishes or Waxes:		Laundry Prewashes:		
Resilient flooring materials	1	Aerosols/solids	22	
Nonresilient flooring materials	1	All other forms	5	
Wood floor wax	90	Laundry starch products	4.5	
Footwear or leather care products:		Metal polishes/ cleansers	30	
Aerosol	75	Multi-Purpose lubricants (excluding solid or semi-solid products)	50	
Solid	55	Multi-purpose Solvent	3	
Other forms	15	Nail Polish Removers	1	
Furniture Maintenance Products:		Non-selective terrestrial herbicides, non-aerosols	3	
Aerosols	17	Oven or Grill Cleaners:		
Non-aerosol (except solid or paste)	3	Aerosols/pump sprays	8	
General Purpose Cleaners:		Non-aerosols	4	
Aerosols	8	Paint remover or strippers	50	
Non-aerosols	4	Paint Thinner	30	3
General Purpose Degreasers:		Penetrants	50	
Aerosols	10	Rubber or Vinyl Protectants:		
Non-aerosols	4	Aerosols		10
Glass Cleaners:		Non-aerosols	3	
Aerosols	12			
Non-aerosols	4			
Graffiti Remover:				

Sanitizer:	
Aerosol	70
Non-aerosols	1
Sealants and caulking compounds	4
Shaving creams	5
Shaving gel	4
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)	60
Spot Removers:	
Aerosols	25
Non-aerosols	8
Temporary hair color aerosol	55
Tire sealants and inflators	20
Toilet/urinal care:	
Aerosols	10
Non-aerosol	3
Undercoatings, aerosols	40
Wood Cleaner:	
Aerosol	17
Non-Aerosol	4

(2) For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 1 shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard to remove soils or stains.

(3) For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the limits specified in Table 1 shall apply to the product only after the maximum recommended dilution has taken place.

(4) Effective September 1, 2016, no person shall sell, supply, offer for sale, or manufacture for use any aerosol adhesive, adhesive removers, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene.

Sell-through products of aerosol adhesive, adhesive removers, and graffiti removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before September 1, 2016, may be sold, supplied, or offered for sale so long as the product container or package displays the date on which the product was manufactured.

(5) No person shall sell, supply, offer for sale, or manufacture any floor wax stripper unless the following requirements are met:

(a) The label of each non-aerosol floor wax stripper shall specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3% by weight or less.

(b) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper shall specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of

12% by weight or less.

(6) Products containing ozone-depleting compounds. For any consumer product for which standards are specified under R307-357-4, no person shall sell, supply, offer for sale, or manufacture for sale any consumer product that contains any of the following ozone-depleting compounds:

- (a) CFC 11 (trichlorofluoromethane);
- (b) CFC 12 (dichlorodifluoromethane);
- (c) CFC 113 (1,1,1 trichloro 2,2,2 trifluoroethane);
- (d) CFC 114 (1 chloro 1,1 difluoro 2 chloro 2,2 difluoroethane);
- (e) CFC 115 (chloropentafluoroethane);
- (f) Halon 1211 (bromochlorodifluoromethane);
- (g) Halon 1301 (bromotrifluoromethane);
- (h) Halon 2402 (dibromotetrafluoroethane);
- (i) HCFC 22 (chlorodifluoromethane);
- (j) HCFC 123 (2,2 dichloro 1,1,1 trifluoroethane);
- (k) HCFC 124 (2 chloro 1,1,1,2 tetrafluoroethane);
- (l) HCFC 141b (1,1 dichloro 1 fluoroethane);
- (m) HCFC 142b (1 chloro 1,1 difluoroethane);
- (n) 1,1,1 trichloroethane; and
- (o) Carbon tetrachloride.

(7) The requirements of R307-357-4(6) shall not apply to any existing product formulation that complies with Table 1 or any existing product formulation that is reformulated to meet the standards set in Table 1, provided the ozone-depleting compound content of the reformulated product does not increase.

(8) The requirements of R307-357-4(6) shall not apply to any ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

R307-357-5. Charcoal Lighter Material Products.

No person shall sell, supply, or offer for sale any charcoal lighter material products unless the product has been issued and conforms to the conditions in a currently effective certification issued by the CARB pursuant to the provisions of 17 CCR 94509(h) as of the effective date of R307-357. A copy of the CARB certification decision shall be submitted to the director upon request.

R307-357-6. Exemptions.

(1) R307-357 shall not apply to any consumer product manufactured for shipment and use outside of the counties specified in R307-357-2 as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the applicable counties and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the applicable counties.

(2) The medium volatility organic compound (MVOC) content standards specified in Table 1 for antiperspirants or deodorants shall not apply to ethanol.

(3) The VOC limits specified in Table 1 shall not apply to fragrances up to a combined level of 2% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2% by weight contained in any antiperspirant or deodorant.

(4) The requirements in Table 1 for antiperspirants or deodorants shall not apply to those VOCs that contain more than ten carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20 degrees Celsius.

(5) The VOC limits specified in Table 1 shall not apply to any LVP-VOC.

(6) The requirements of R307-357-10 shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section

136/136y).

(7) The VOC limits specified in Table 1 shall not apply to air fresheners that are comprised entirely of fragrance, less compounds, not defined as VOCs or exempted under R307-357-6.

(8) The VOC limits specified in Table 1 shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

(9) The VOC limits specified in Table 1 shall not apply to adhesives in containers of one fluid ounce or less.

(10) The VOC limits specified in Table 1 shall not apply to bait station insecticides.

R307-357-7. Innovative Products.

(1) Consumer products that have been granted an innovative products exemption by the CARB under provisions of 17 CCR 94511 as of the effective date of R307-357, shall be exempt from the VOC content limits in Table 1 for the period of time that the innovative product exemption remains in effect.

(2) Any manufacturer claiming such an exemption shall submit to the director upon request, a copy of the CARB exemption decision, including all conditions established by CARB applicable to the exemption before the date that the product is first marketed in the applicable counties.

R307-357-8. Alternate Control Plan (ACP).

(1) Any manufacturer of consumer products who has been granted an ACP agreement by the CARB under provisions of 17 CCR 94540-94555 as of the effective date of R307-357 shall be exempt from complying with the VOC content limits established in Table 1 for the period of time that the ACP agreement remains in effect.

(2) Any manufacturer claiming an ACP agreement shall submit upon request to the director a copy of the ACP decision, including all conditions applicable to the exemption before the date that the product is first marketed in the applicable counties.

R307-357-9. Variances.

(1) Consumer products that have been granted a variance by the CARB under the provisions of 17 CCR 94514 as of the effective date of this rule shall be exempt from complying with the VOC content limits established in Table 1 for the period of time that the variance remains in effect.

(2) Any person claiming a variance shall submit a copy of the variance decision to the director upon request, including all conditions applicable to the variance before the date that the product is first marketed in the applicable counties.

R307-357-10. Administrative Requirements.

(1) Product Dating. Each manufacturer of a consumer product subject to the standards established in Table 1 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

(a) A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of R307-357-10(3) if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day where:

"YY" = two digits representing the year in which the product was manufactured, and

"DDD" = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (i.e. the "Julian date").

(b) The date information shall be located on the container or inside the cover or cap so that it is readily observable or

obtainable by simply removing the cap or cover without disassembling any part of the container or packaging.

(c) The date information shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in Table 1.

(d) No person shall erase, alter, deface or otherwise remove or make illegible any date from any regulated product container without the express authorization of the manufacturer.

(2) The requirements of this provision shall not apply to products containing no VOCs or to products containing VOCs at 0.10% by weight or less.

(3) If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to R307-357-4, an explanation of the date portion of the code shall be supplied to the director within 30 day of written request.

(4) Notwithstanding the definition of product category in R-307-357-3, if anywhere on the container or packaging of any consumer product manufactured on or after the effective date specified in Table 1, or one year thereafter for any FIFRA-registered insecticide, or on any sticker or label affixed thereto, any representation is made that the product may be used as, or is suitable for use as, a consumer product for which a lower VOC limit is specified in R307-357-4, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, antiperspirant/deodorant products or insecticide foggers.

(5) Notwithstanding the provisions of R307-357-10(4), a product that makes ancillary disinfecting, sanitizing, or antimicrobial claims on the label is not subject to the VOC standards for disinfectant or sanitizer if the product is designed and labeled on the principal display panel as a bathroom and tile cleaner, carpet/upholstery cleaner, fabric refresher, general purpose cleaner, glass cleaner, metal polish or cleanser.

R307-357-11. Reporting Requirements.

(1) Upon 90 days written notice, the director may require any responsible party to report information for any consumer product or products the director may specify including, but not limited to, all or part of the following information:

(a) The name of the responsible party and the party's address, telephone number, and designated contact person;

(b) The product brand name for each consumer product subject to registration and the product label;

(c) The product category to which the consumer product belongs;

(d) The applicable product forms listed separately;

(e) An identification of each product brand name and form as a "household product," "I and I Product," or both;

(f) Separate sales applicable counties in pounds per year, to the nearest pound, and the method used to calculate the sales for each product form;

(g) For registrations submitted by two companies, an identification of the company that is submitting relevant data separate from that submitted by the responsible party;

(h) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one tenth of a percent:

(i) Total non-VOC compounds.

(ii) Total LVP-VOCs that are not fragrances.

(iii) Total all other carbon containing compounds that are not fragrances.

(iv) Total all non-carbon containing compounds.

(v) Total fragrance.

(vi) For products containing greater than two% by weight fragrance:

(A) The percent of fragrance that are LVP-VOCs; and

(B) The percent of fragrance that are all other carbon

containing compounds.

(vii) Total paradichlorobenzene.

(i) For each product brand name and form, the identity, including the specific chemical name and associated chemical abstract services (CAVES) number, of the following:

(i) Each non-VOC Compound; and

(ii) Each LVP-VOC that is not a fragrance.

(j) If applicable, the weight percent comprised of propellant for each product;

(k) If applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

(2) In addition to the requirements of section R307-357-11(1), the responsible party shall report or shall arrange to have reported to the director the net percent by weight of each ozone-depleting compound which is:

(a) Listed in R307-357-4(6); and

(b) Contained in a product subject to registration under R307-357-11(1) in any amount greater than 0.1 percent by weight.

(3) For the purpose of R307-357-11 "product form" means the applicable form which most accurately describes the product's dispensing form as follows:

A = Aerosol Product

S = Solid

P = Pump Spray

L = Liquid

SS = Semisolid

O = Other

R307-357-12. Special Reporting Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride.

(1) The requirements of R307-357-12 shall apply to all responsible parties for consumer products that are subject to the standards established in Table 1 and contain perchloroethylene or methylene chloride.

(a) For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

(2) For each consumer product that contains perchloroethylene or methylene chloride, upon request from the director, the responsible party shall report the following information for products sold in the applicable counties within 90 days written notice:

(a) The product brand name and a copy of the product label with legible usage instructions;

(b) The product category to which the consumer product belongs;

(c) The applicable product forms (listed separately);

(d) For each product form listed in R307-357-12(2)(c), the total sales in the applicable counties during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating the sales; and

(e) The weight percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the consumer product.

R307-357-13. Test Methods.

Testing to determine compliance with the requirements of this regulation shall be performed using the CARB Method 310, Determination of Volatile Organic Compounds in Consumer Products, which is herein incorporated by reference.

R307-357-14. VOC Content Determinations Using Product Formulation and Records.

(1) Testing to determine compliance with the requirements of R307-357 may also be demonstrated through calculation of the VOC content from records of the amounts of constituents

used to make the product pursuant to the following criteria:

(a) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents, and these records must be kept for at least three years.

(b) For the purposes of R307-357-13, the VOC content shall be calculated according to the following equation:

$$\text{VOC Content} = ((B-C)/A) \times 100$$

where, A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs, as defined in Table 1, per unit

C = total weight of VOCs exempted under R307-357-6, per unit

(c) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this regulation.

R307-357-15. Determination of Liquid or Solid.

Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359- 90 (2012).

KEY: air pollution, consumer products

August 1, 2013

19-2-101

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,

(i) Delivery of drinking water, such as by a single well, to a portion of a platted subdivision or a portion of a contiguous development, either of which is under the same ownership or control, shall be considered a single public drinking water system; and

(ii) A platted subdivision or other contiguous development of 15 or more lots, under the same ownership or control, is considered to have the corresponding number of connections as there are lots; or

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

(i) A ratio of 3.13 persons per connection shall be used to calculate the individuals served unless, at the time of operation, more accurate information is available. The ratio is based on the statewide average persons per residence in the 2000 census.

(ii) Notwithstanding the threshold for the number of service connections set forth in (a), a drinking water system consisting of at least 8 service connections is considered to serve 25 people, based on the ratio in (b)(i), and consequently is classified as a public drinking water system, unless, at the time of operation, more accurate data can be used.

(iii) The ratio in (b)(i) is only be used to determine whether, prior to construction or modification, any particular water system is considered to be a public water system.

(c) Any person or entity may request a review of the designation of a public water system by submitting documentation to the Director 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 Director under this provision may be challenged as provided in Section 19-1-301.5 and R305-7.

(2) Submetered Properties.

(a) 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.

(b) 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.

(c) 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.

(d) 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 (5) or plan review of modifications or changes to their systems (refer to R309-500).

(3) 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).

(4) Categories of Public Drinking Water Systems

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

(a) "Community water system" (CWS) 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" (NTNCWS) 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.

(5) 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 Director.

(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 Director.

R309-100-5. Approval of Plans and Specifications for Public Water Supply Projects.

(1) The Director 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 Director, 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 Director shall ensure a sanitary survey is conducted at least every three years on all public water systems. The Director 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 Director 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 Director.

(3) Public water systems must provide the Director, at the Director'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 Director, 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 Director, 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 Director;

(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 Director may conduct surveys.

(7) SANITARY SURVEY REPORT CONTENT

The Director 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 Director 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 Director 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 Director 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 Director may result in the imposition of penalties as provided in the Utah Safe Drinking Water Act.

(3) The Director 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 Director'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 Director 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 Director 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

February 3, 2011

19-4-104

Notice of Continuation March 22, 2010

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 Director.

"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 Director 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 Director to bring them into compliance.

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

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

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

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

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

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

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

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

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

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

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

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

"Detectable residual" means the minimum level of free chlorine in the water that the analysis method is capable of detecting and indicating positive confirmation.

"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.

"Director" means the Director of the Division of Drinking Water.

"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 Director and is also part of the Utah Department of Environmental Quality.

"Dose-monitoring Strategy" is the method by which a UV reactor maintains the required dose at or near some specified value by monitoring UV dose delivery. Such strategies must include, at a minimum, flow rate and UV intensity (measured via duty UV sensor) and lamp status. They sometimes include UVT and lamp power. Two common Dose-monitoring Strategies are the UV Intensity Setpoint Approach and the Calculated Dose Approach.

(1) The "UV Intensity Setpoint Approach" relies on one or more "setpoints" for UV intensity that are established during validation testing to determine UV dose. During operations, the UV intensity as measured by the UV sensors must meet or exceed the setpoint(s) to ensure delivery of the required dose. Reactors must also be operated within validated operation conditions for flow rates and lamp status. In the UV Intensity Setpoint Approach, UVT does not need to be monitored separately. Instead, the intensity readings by the sensors account for changes in UVT. The operating strategy can be with either a single setpoint (one UV intensity setpoint is used for all validated flow rates) or a variable setpoint (the UV intensity setpoint is determined using a lookup table or equation for a range of flow rates).

(2) The "Calculated Dose Approach" uses a dose-monitoring equation to estimate the UV dose based on operating conditions (typically flow rate, UV intensity, and UVT). The dose-monitoring equation may be developed by the UV manufacturers using numerical methods; or the systems use an empirical dose-monitoring equation developed through validation testing. During reactor operations, the UV reactor control system inputs the measured parameters into the dose-monitoring equation to produce a calculated dose. The system

operator divides the calculated dose by the Validation Factor (see the 2006 Final UV Guidance Manual Chapter 5 for more details on the Validation Factor) and compares the resulting value to the required dose for the target pathogen and log inactivation level.

"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.

"Duty UV Sensors (or Duty Sensors)" are on-line sensors installed in the UV reactor and continuously monitor UV intensity during UV equipment operations.

"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).

"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 Director 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 Director, 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 Director. 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.

"Inactivation" means, in the context of UV disinfection, a process by which a microorganism is rendered unable to reproduce, thereby rendering it unable to infect a host.

"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").

"Off-specification" means a UV facility is operating outside of the validated operating conditions, for example, at a flow rate

higher than the validated range or a UVT below the validated range).

"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 Director 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 Director, 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 or ultraviolet light irradiation 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," and the ultraviolet light dose. Acceptable primary disinfectants are, chlorine, ozone, ultraviolet light, and chlorine dioxide (see also "CT" and "CT_{99.9}").

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

"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.

"Reference UV Sensors (or Reference Sensors)" are off-line calibrated UV sensors that are used to assess the duty UV sensors' performance and to determine UV sensor uncertainty.

"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 Dose" is the UV dose required for a certain level of log inactivation. Required doses are set forth by the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and R309-215-15(19)(d)(i) Table 215-5 the UV Dose Table.

"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 Director 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 Director 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.

"Target Log Inactivation" means the specific log inactivation the PWS wants to achieve for the target pathogen using UV disinfection. The target log inactivation is driven by requirements of the Surface Water Treatment Rule (SWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), and the log removal/inactivation requirements in R309-215-15, and the Groundwater Rule.

"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 Director 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.

"UV Dose" means the UV energy per unit area incident on a surface, typically reported in units of mJ/cm² or J/m². The UV dose received by a waterborne microorganism in a reactor vessel accounts for the effects on UV intensity of the absorbance of the water, absorbance of the quartz sleeves, reflection and refraction of light from the water surface and reactor walls, and the germicidal effectiveness of the UV wavelengths transmitted. The following terms are related to UV dose:

(1) "Reduction Equivalent Dose (RED)" means the UV dose derived by entering the log inactivation measured during full-scale reactor testing into the UV dose-response curve that was derived through collimated beam testing. RED values are always specific to the challenge microorganism used during experimental testing and the validation test conditions for full-scale reactor testing.

(2) "Required Dose" means the UV dose in units of mJ/cm² needed to achieve the target log inactivation for the target pathogen. The required dose is specified in the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR).

(3) "Validated Dose" means the UV dose in units of mJ/cm² delivered by the UV reactor as determined through validation testing. The validated dose is compared to the Required Dose to determine log inactivation credit.

(4) "Calculated Dose" - the RED calculated using the dose-monitoring equation that was developed through validation testing.

"UV Facility" means all of the components of the UV disinfection process, including (but not limited to) UV reactors, control systems, piping, valves, and building (if applicable).

"UV Intensity" means the UV power passing through a unit area perpendicular to the direction of propagation. UV intensity is used to describe the magnitude of UV light measured by UV sensors in a reactor or with a radiometer in bench-scale UV experiments.

"UV Reactor" means the vessel or chamber where exposure to UV light takes place, consisting of UV lamps, quartz sleeves, UV sensors, quartz sleeve cleaning systems, and baffles or other hydraulic controls. The UV reactor also includes additional hardware for monitoring UV dose delivery; typically comprised of (but not limited to): UV sensors and UVT monitors.

"UV Reactor Validation" is experimental testing to determine the operating conditions under which a UV reactor delivers the dose required for inactivation credit of *Cryptosporidium*, *Giardia lamblia*, and viruses.

"UV Transmittance (UVT)" is a measure of the fraction of incident light transmitted through a material (e.g., water sample or quartz). The UVT is usually reported for a wavelength of 254 nm and a pathlength of 1-cm. If an alternate pathlength is used, it should be specified or converted to units of cm⁻¹.

"Validation Factor" - an uncertainty term that accounts for the bias and uncertainty associated with UV validation testing.

"Validated Operating Conditions" - the operating conditions under which the UV reactor is confirmed as delivering the dose required for LT2ESWTR inactivation credit. These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status. The term "Validated Operating Conditions" is also commonly referred to as the "validated range" or the "validated limits."

"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

May 9, 2011

Notice of Continuation March 22, 2010

19-4-104

R309. Environmental Quality, Drinking Water.

R309-115. Administrative Procedures.

R309-115-1. Administrative Procedures.

Administrative proceedings under Utah Safe Drinking Water Act are governed by Rule R305-7.

KEY: drinking water, adjudicative proceedings, administrative proceedings, hearings

August 29, 2011

19-1-301

Notice of Continuation March 22, 2010

19-1-301.5

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 Director, 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	(see Note 5 below) 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 Director 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 Director that no better water is available. The Director 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 Director 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 Director 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)	0.0000003 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 ₂)
Chloramines	4.0 (as Cl ₂)
Chlorine dioxide	0.8 (as ClO ₂)

(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 Director 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 Director 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 Director.

(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 Director, 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 Director approves the use of the filtration technology. For each approval, the Director 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 Director 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 Director 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 Director.

(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 Director 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 Director 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 primary 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.

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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 Director may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Director 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 Director, 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 Director 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 Director

has the discretion to delete results of obvious sampling errors.

(f) The Director 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 Director 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 Director, the determination of compliance will be based on the annual average of the initial MCL exceedance and any Director 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 Director 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 Director 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 Director for a waiver of the monitoring requirement in paragraph (a) of this section. If the Director grants the waiver, the system is not required to monitor for asbestos.

(c) The Director 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 Director may decrease the quarterly monitoring requirement to the frequency specified in paragraph (a) of this section provided the Director has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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

Director or upon an application by the public water system. The public water system shall specify the basis for its request. The Director 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 Director 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 Director 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 Director 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 Director 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 Director.

(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 Director 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 Director 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 Director 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 Director 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 performed as listed below, provided documentation consistent with R309-600-16 and justifying the continuance of a susceptibility waiver is submitted to the Director 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 Director 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 Director 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 Director determines the system is reliably and consistently below the maximum contaminant level the Director 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 Director 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 Director 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 Director may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Director, 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 Director 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 Director 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 Director may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(l) The Director 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 Director 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 Director 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 Director 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 Director 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 Director may also issue waivers for the initial round of monitoring for 1,2,4-trichlorobenzene.

(h) The Director 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 Director 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 Director 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 Director determines that the system is reliably and consistently below the MCL, the Director 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 Director 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 Director 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 Director.

(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 Director 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 Director may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director.

(c) Reduced monitoring: The Director 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 Director.

(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 Director 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 Director 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 Director 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 Director. Systems already designated by the Director shall continue to sample until the Director 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 Director 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 Director 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 Director 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 Director 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 Director. Systems already designated by the Director as systems using waters contaminated by effluents from nuclear facilities shall continue to sample until the Director 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 Director, 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 Director 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 Director 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 Director 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 Director to monitor for beta particle and photon radioactivity can not apply to the Director 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 Director 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 Director 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 Director 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 Director 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.

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 Director. 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 Director 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 Director.

(c) Transient non-community water systems are not required to monitor ground water sources for turbidity unless so ordered by the Director.

(d) Samples may be taken from a representative location in the distribution system. However, the Director 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 Director 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 Director. Monitoring after public notification shall be at a frequency and duration designated by the Director.

(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).

KEY: drinking water, source monitoring, compliance determinations

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Notice of Continuation March 22, 2010

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 Director may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Director 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 Director, 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 Director 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 Director 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 Director.

(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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director may waive the requirement to collect five routine samples the next month the system provides water to the public if the Director 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 Director shall document this decision in writing; and

(B) The Director or his representative shall sign the document; and

(C) The Director will make the document available to the EPA and the public.

(ii) The Director 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 Director 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 Director 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 Director 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 Director 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 Director shall document this decision in writing; and

(B) The Director or his representative shall sign the document; and

(C) The Director 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 Director 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 Director and public - If fecal coliforms or *E. coli* are confirmed present (as per R309-200-5(6)(b)), the system shall notify the Director 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 Director 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 Director 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 Director of this decision and begin the required public notification.

(6) Best Available Technology

The Director 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 Director.

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 Director 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 Director 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 Director 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 Director 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 Director 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 Director to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the Director that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Director 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 Director 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 Director 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 Director 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 Director 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 Director may require any such system to conduct additional monitoring or to take other action the Director 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 Director. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Director, 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 Director may require a system to repeat treatment steps previously completed by the system where the Director determines that this is necessary to implement properly the treatment requirements of this section. The Director 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 Director 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 Director 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 Director 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 Director may require the system to perform corrosion control studies (R309-210-6(4)(b)). If the Director does not require the system to perform such studies, the Director 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 Director 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 Director requires that such studies be conducted.

(iv) Step 4: If the system has performed corrosion control studies under step 2, the Director 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 Director 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 Director designates optimal corrosion control treatment.

(vii) Step 7: The Director 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 Director-designated optimal water quality control parameters (R309-210-6(4)(a)(viii)) 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 Director 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 Director herein waives the requirement for prior Director 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 Director 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 Director must approve this reduction of the minimum number of samples in writing based on a request from the system or onsite verification by the Director. The Director 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 Director specifies water quality parameter values for optimal corrosion control

After the Director 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 Director 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 Director 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 Director. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The Director 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 Director 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 Director 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 Director. Samples collected once every three years shall be collected no later than every third calendar year. The Director 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 Director 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 Director has approved a different sampling period in accordance with paragraph (d)(iv)(D)(I) of this section.

(I) The Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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) Director approval of waiver application. The Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director may require the system to conduct additional water quality parameter monitoring in accordance with R309-210-6(5)(b) to assist the Director in reviewing the system's recommendation.

(ii) Studies of corrosion control treatment required for small and medium-size systems.

The Director 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 Director 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 Director 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

Director shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(B) The Director shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Director 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 Director under R309-210-6(4)(a)(iv).

(vi) Review of treatment and specification of optimal water quality control parameters

The Director 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 Director 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 Director 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 Director 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 Director 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 Director determines to reflect optimal corrosion control treatment for the system. The Director may designate values for additional water quality control parameters determined by the Director to reflect optimal corrosion control for the system. The Director 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 Director 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 Director 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 Director. Daily values are calculated as follows. The Director 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 Director 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 Director 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 Director'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 Director (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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director determines that treatment is needed, the Director 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 Director requests additional information to aid in its review, the water system shall provide the information by the date specified by the Director in its request. The Director shall notify the system in writing of the determination and set forth the basis for the decision.

(C) Installation of source water treatment

Each system shall properly install and operate the source water treatment designated by the Director under R309-210-6(4)(b)(ii)(B).

(D) Review of source water treatment and specification of maximum permissible source water levels

The Director 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 Director. Based upon its review, the Director 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 Director shall notify the system in writing and explain the basis for the decision.

(E) Continued operation and maintenance

Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Director 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 Director.

(F) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Director 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 Director 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 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 Director 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 Director 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 Director 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 Director 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 Director. 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 Director 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 Director 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 Director. 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 Director 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
100 or less

1
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 Director 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 Director specifies water quality parameter values for optimal corrosion control.

After the Director 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 Director 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 Director-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 Director 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 Director 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 Director 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 Director 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 Director in making any determinations (i.e., determining concentrations of water quality parameters) under this section or R309-210-6(4)(a).

(g) The Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director in R309-210-6(4)(b)(ii)(D) for at least three consecutive years; or

(B) The Director 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 Director in R309-210-6(4)(b)(i)(E).

(iv) The Director 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 Director prior to delivery. The Director 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 Director, 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 Director; specifically, the Director 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 Director.

(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 Director.

(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 Director 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 Director. The Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director, in writing, (unless the Director has waived the requirement for prior Director 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 Director 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 Director. For example, upon approval by the Director, 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 Director 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 Director 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 Director 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 Director has waived prior Director 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 Director, or if no specific time is designated by the Director, 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 Director describing the change or addition. The Director 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 Director 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 Director, 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 Director 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 Director 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 Director :

(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 Director within 24 months after the Director designated the treatment.

(e) Lead service line replacement reporting requirements

Systems shall report the following information to the Director 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 Director 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 Director 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 Director 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 Director under R309-210-6(4)(c)(v)).

(iii) The annual letter submitted to the Director 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 Director, and in a time and manner prescribed by the Director, 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 Director 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 Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director for a waiver of the monitoring requirement in paragraph (a) of this section. If the Director grants the waiver, the system is not required to monitor for asbestos.

(c) The Director 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 Director may decrease the quarterly monitoring requirement to the frequency specified in paragraph (a) of this section provided the Director has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Director 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 Director 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 sub-section 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 Director.

(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 Director. 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 Director 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 Director 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 Director 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 Director 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 Director no later than the date of the first report required under R309-105-16(2). The Director may also require the plan to be submitted by any other system. After review, the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 the Director 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 Director 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 Director 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 Director by or receive very small system waiver from the

Director 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 Director 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 Director by or receive very small system waiver from the Director 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 Director 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 Director by or receive very small system waiver from the Director 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 Director 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 Director by or receive very small system waiver from the Director 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 Director 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 Director by or receive very small system waiver from the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director. 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 Director modifies the R309-210-10 monitoring requirements that the water system recommended in the IDSE report or if the Director approves alternative monitoring locations, the water system must keep a copy of the Director's notification on file for 10 years after the date of the Director's notification. The water system must make the IDSE report and any Director notification available for review by the Director 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 Director 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 Director 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 Director rejects some of the data, the water system must either conduct additional monitoring to replace rejected data on a schedule the Director 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 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 Director 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 Director inquiries concerning the model. If the water system fails to correct deficiencies or respond to inquiries to the Director'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 Director. 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 Director modifies the R309-210-10 monitoring requirements the water system recommended in the IDSE report or if the Director approves alternative monitoring locations, the water system must keep a copy of the Director's notification on file for 10 years after the date of the Director's notification. The water system must make the IDSE report and any Director notification available for review by the Director 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 Director 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 Director 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 Director may require standard monitoring under R309-210-9(2) or a system specific study under R309-210-9(3).

(iii) The Director 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 Director notification available for review by the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 fails 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 Director 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 undisinfected 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 Director 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 Director 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 Director 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 Director has reduced monitoring requirements under the Director 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 Director 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 Director-approved reasons, after consultation with the Director 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 Director 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 Director 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 sub-section 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 LRAs.

(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 Director may return the system to routine monitoring at the Director'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 Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 sub-section, 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 Director 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 Director 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
September 24, 2009
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19-4-104

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 Director may modify the monitoring requirements given herein as is deemed appropriate.

(2) The Director 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 Director, 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 Director continuous disinfection shall not be interrupted nor terminated unless so authorized, in writing, by the Director.

(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 Director 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 Director 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 Director 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 operating capacity approved by the Director for the plant where the Director 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 Director 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 Director, 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	
	<i>Giardia</i>	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 Director 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 Director 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 Director may reduce the sampling frequency to as little as once per day if the Director determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the Director may reduce the turbidity sampling frequency to as little as once per day, regardless of the type of filtration treatment used, if the Director 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 Director). 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 Director 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 Director -

If the repeat sample confirms that the turbidity limit has been exceeded, the supplier shall report this fact to the Director 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 Director 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 Director 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 Director or a third party approved by the Director 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 Director 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 Director 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 Director by the 10th of the following month.

(ii) If a system was required to report to the Director 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 Director 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 Director or a third party approved by the Director 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 Director or a third party approved by the Director 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 Director 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:

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 Director'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-

TABLE 215-2
RESIDUAL GRAB SAMPLE FREQUENCY

System size by population Samples/day

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 Director 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 CaCO₃), 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 Director 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 CaCO₃), 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 CaCO₃), 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 Director 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 ₃		
	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 Director, 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 Director approves the alternative minimum TOC removal (Step 2) requirements, the Director may make those requirements retroactive for the purposes of determining compliance. Until the Director 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 Director 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 Director, 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 Director approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve Director 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:

TABLE 215-4
ENHANCED COAGULATION STEP 2 TARGET pH

ALKALINITY (mg/L as CaCO ₃)	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 Director 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 CaCO₃), 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 CaCO₃), 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 Director 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 Director determines that a system's profile is unnecessary. The Director 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 Director 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 Director 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 Director 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 Director not later April 16, 1999. Until the Director 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 Director in writing of their election not later than December 31, 1999.

(v) If the system elects to request that the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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

Director.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the Director for review as part of sanitary surveys conducted by the Director.

(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 Director 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 Director.

(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 Director 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 Director.

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 Director that it will monitor for Cryptosporidium as described in paragraph (a)(iv) of this section. The system must notify the Director 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 Director may approve monitoring for an indicator other than E. coli under paragraph (a)(ii) of this section. The Director 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 Director must be provided to the system in writing and must include the basis for the Director'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 Director 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 Director 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 Director 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 Director 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 Director 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 Director.

(iv) Systems must submit sampling schedules for the second round of source water monitoring R309-215-15(2)(b) to the Director.

(v) If EPA or the Director 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 Director approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the Director 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 Director approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the Director 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 Director 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 Director 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 Director may approve a system to collect a source water sample after chemical treatment. To grant this approval, the Director 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 Director 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 Director 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. 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 Director 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 Director 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 Director.

(d) All systems must report results from the second round of source water monitoring required under R309-215-15(2)(b) to the Director.

(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 Director 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. 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 Director may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the Director 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 Director approves reporting to the Director rather than EPA. Systems serving fewer than 10,000 people must report this information to the Director.

(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 Director 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 Director may disapprove the data. Alternatively, the Director may approve the previously collected data if the system reports additional source water monitoring data, as determined by the Director, 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 Director 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 Director 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 Director 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 Director.

(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 Director.

(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 Director.

(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 Director.

(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 Director 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 Director 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 Director 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 requirements.

(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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director-approved program comprising required elements, annual program status report to Director, 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 Director-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 Director with a Director-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 Director 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 Director a proposed watershed control plan no later than one year before the applicable treatment compliance date in R309-215-15(13). The Director 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 Director 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 Director 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 Director. 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 Director 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 Director 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 Director. The survey must be conducted according to State guidelines and by persons the Director approves.

(i) The watershed sanitary survey must meet the following criteria: encompass the region identified in the Director-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 Director 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 Director 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 Director 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 Director determines that a system is not carrying out the approved watershed control plan, the Director 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 Director 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 Director, 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 Director-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 Director and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Director determines that microbial removal has been compromised, the Director may revoke treatment credit until the system implements corrective actions approved by the Director 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

Director 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 Director-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 Director 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 Director 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 box 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 Director-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 Director 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 Director 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)(ii) through (ix) of this section to the Director. 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 discretely 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_{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_{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_{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 Director.

(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 Director. 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 = $3.16 \times 10^6 \times$ (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: $LRV = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ 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 (LRV_{C-Test}). If fewer than 20 modules are tested, then LRV_{C-Test} is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then LRV_{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 Director.

(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 Director, 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: $LRV_{DIT} = \text{LOG}_{10} (Q_p / (VCF \times Q_{breach}))$ Where: LRV_{DIT} = the sensitivity of the direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{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: $LRV_{DIT} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ Where: LRV_{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 Director.

(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 Director 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 Director summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(A) Unless the Director 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 Director-approved alternative parameter and if the alternative parameter exceeds a Director-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 Director 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 Director 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 Director 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.

(i) 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 based on 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: $\text{Log credit} = (0.0397 \times (1.09757)^{T_{\text{emp}}}) \times \text{CT}$.

(c) Site-specific study. The Director may approve alternative chlorine dioxide or ozone CT values to those listed in paragraph (b) above on a site-specific basis. The Director must base this approval on a site-specific study a system conducts that follows a protocol approved by the Director.

(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 ²)	Giardia lamblia UV dose (mJ/cm ²)	Virus UV dose (mJ/cm ²)
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 Director 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 Director designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol the Director 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 Director 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 Director 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 Director 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 Director 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 Director-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 Director approved protocol no later than the applicable treatment compliance date in R309-215-15(13).

(B) As required by the Director, monthly verification of operation within conditions of Director 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 Director-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 Director 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, 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 Director-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 Director 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 Director-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 Director-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 Director, ground water systems must provide the Director with any existing information that will enable the Director 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 Director-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 Director 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 Director must specify how much time the system has to collect the sample.

(B) If approved by the Director, 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 Director 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 Director 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 Director 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 Director 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 Director criteria for distribution system conditions that will cause total coliform-positive samples.

(b) Assessment Source Water Monitoring. If directed by the Director, ground water systems must conduct assessment source water monitoring that meets Director-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. Director-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 Director 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 in accordance with R309-210-4(1) and R309-200-4(3) 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 Director 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 Director 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 Director 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 Director with written notice from the laboratory that improper sample analysis occurred; or

(B) The Director 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 Director 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 Director of its invalidation decision and have it analyzed for the same fecal indicator using the analytical methods in paragraph (c) of this section. The Director 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 Director 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 Director 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 Director-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 Director, 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 Director, 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 Director, 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 Director 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 Director directs the ground water system to implement a specific corrective action, the ground water system must consult with the Director regarding the appropriate corrective action within 30 days of receiving written notice from the Director 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 Director 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. 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 Director 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 Director) of receiving written notification from the Director 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 Director 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 Director plan review processes or other Director guidance or direction, if any, including Director-specified interim measures; or

(B) be in compliance with a Director-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 Director-approved corrective action plan and schedule must also be approved by the Director.

(II) If the Director specifies interim measures for protection of the public health pending Director 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 Director.

(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 Director-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 Director of a significant deficiency or notification of a fecal indicator-positive ground water source sample that is not invalidated by the Director 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 Director 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 Director of a significant deficiency must inform the public served by the water system in a manner approved by the Director of any significant deficiency that has not been corrected within 12 months of being notified by the Director, or earlier if directed by the Director. 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 Director;

(II) The Director-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 Director, 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 Director, 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 Director-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 Director in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Director-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 Director must include engineering, operational, or other information that the Director requests to evaluate the submission. If the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a Director-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 Director-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 Director in writing that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Director-approved combination of 4-log virus inactivation and removal) before or at the first customer for the ground water source. Notification to the Director must include engineering, operational, or other information that the Director 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 Director-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 Director 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 Director-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 Director 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 Director-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 Director. If any daily grab sample measurement falls below the Director-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 Director-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 Director-specified monitoring requirements and must operate the membrane filtration in accordance with all Director-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 Director-specified compliance requirements; and

(III) The integrity of the membrane is intact.

(C) Alternative treatment. A ground water system that uses a Director-approved alternative treatment to meet the requirements of this subpart by providing at least 4-log treatment of viruses (using inactivation, removal, or a Director-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 Director-specified monitoring requirements; and

(II) Operate the alternative treatment in accordance with all compliance requirements that the Director 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 Director-approved combination of 4-log virus inactivation and removal) before or at the first customer for a ground water source if the Director 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 Director) of receiving written notice from the Director of the significant deficiency, the system:

(i) Does not complete corrective action in accordance with any applicable Director plan review processes or other Director guidance and direction, including Director specified interim actions and measures, or

(ii) Is not in compliance with a Director-approved corrective action plan and schedule.

(b) Unless the Director 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 Director) 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 Director plan review processes or other Director guidance and direction, including Director-specified interim measures, or

(ii) Is not in compliance with a Director-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 Director-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 Director:

(i) A ground water system conducting compliance monitoring under R309-215-16(3)(b) must notify the Director any time the system fails to meet any Director-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 Director 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 Director 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 Director within 30 days of the total coliform positive sample that it met the Director 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 Director-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 Director-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 Director-specified compliance requirements for membrane filtration and of parameters specified by the Director for Director-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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Notice of Continuation March 22, 2010

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 Director.

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 Director 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 Director 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 Director 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 Director 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 Director for limiting distribution of the notice must be granted in writing.

(c) A copy of the notice must also be sent to the Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director. 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 Director.

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 Director determines that a Tier 1 notice is required;

(b) Violations of the monitoring and testing procedure requirements, where the Director 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 Director-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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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. Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director, 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 Director 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 Director 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 Director.

(1) Applicability of the special notice: The owner or operator of a non-community water system granted permission by the Director 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 Director 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 Director-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 Director on behalf of the Public Water System.

(1) The Director may give the notice required by this rule on behalf of the owner and operator of the public water system if the Director 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
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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 Director, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Director 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: Director 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 Director, 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 Director of a significant deficiency or notice from a laboratory of a fecal indicator-positive ground water source sample that is not invalidated by the Director 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 Director 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 Director 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 Director-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 Director 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 Director, 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 Director.

(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 Director.

(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 Director.

(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 Director. 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 Director, 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 Director.

(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 Director.

(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 Director; 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

September 24, 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 Director 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 Director, 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 Director 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 Director.

(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 Director, 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, Electrolysis 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 Director. The continued use of bottled water shall be reviewed at least annually and only allowed after the Director 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 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 63G-3 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 Director. 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 Director. 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

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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 Director. 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 required 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 additions 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 Director, 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 Director. 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 Director.

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 Director 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 Director.

(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 Director 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 Director.

(1) Exceptions.

The Director 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 Director 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 Director. 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
March 8, 2006
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19-4-104

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 Director 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 Director 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 Director 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 Director 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 Director 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) "Director" means the Director of the Division of Drinking Water.

(j) "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.

(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 Director.

(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 Director shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) The Director 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 Director 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 Director 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 of 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 Director 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 Director 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 Director. For all other state programs, the PWS's assessment is subject to review by the Director; as a result, a PWS's DWSP Plan may be disapproved if the Director 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 Director 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 these criteria. Sewer lines that comply with these criteria may be assessed as adequately controlled potential contamination sources.

(a) Unprotected Aquifers -

(i) Zone one- all sewer lines and laterals shall be at least 50 feet from the wellhead or margin of the collection area, and be constructed in accordance to R309-515-6.

(ii) Zone two- all sewer lines and laterals within zone two or a management area shall be constructed in accordance with R309-515-6.

(b) Protected Aquifers - in zone one all sewer lines and laterals shall be constructed in accordance with R309-515-6, and shall be at least 10 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 Director 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 Director'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 Director 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 Director.

KEY: drinking water, environmental health
November 15, 2012 **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) "Director" means the Director of the Division of Drinking Water.

(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 Director 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 Director.

R309-605-5. Exceptions.

(1) Exceptions to the requirements of R309-605 or parts thereof may be granted by the Director 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 Director 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 Director 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 Director, and in all other correspondence with the Division.

(2) Each PWS shall notify the Director 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 Director 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 Director 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 Director 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 Director 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 Director.

(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 Director 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 Director 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 Director shall review each DWSP Plan submitted by PWSs and "concur," "conditionally concur" or "disapprove" the plan.

(b) The Director 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 Director 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 Director.

(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 Director. 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.

(II) 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 Director may require an individual assessment for a Potential Contamination Source if the Director 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 Director. 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 Director; as a result, a PWS's DWSP Plan may be disapproved if the Director 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 Director unless a PWS or a group of PWSs demonstrates otherwise, per R309-605, and receives concurrence from the Director 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 Director 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 Director 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 Director 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 Director'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 Director 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
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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(2)(c) of the Utah Code, the Director 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 Director.

(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 Director 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
1. PUBLIC HEALTH AND WELFARE (SELECT ONE)	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD (SELECT ONE)	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
5. ABILITY TO MEET FUTURE DEMANDS (Select One)	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
6. OVERALL URGENCY (Select One)	
A. System is generally out of water. There	

is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in 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
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefiting connection	16
B. \$501 to \$1,500	14
C. \$1,501 to \$2,000	11
D. \$2,001 to \$3,000	8
E. \$3,001 to \$5,000	4
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	19
B. 71 to 80% of State Median AGI	16
C. 81 to 95% of State Median AGI	13
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
3. APPLICANT'S COMMITMENT TO PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	17
B. 15 to 25% of project funds	14
C. 10 to 15% of project funds	11

D. 5 to 10% of project funds	8
E. 2 to 5% of project funds	4
F. Less than 2% of project funds	0
4. 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	16
B. 2.01 to 2.50% of local median AGI	12
C. 1.51 to 2.00% of local median AGI	8
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)	
A. Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	5
B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
C. Is creating or enhancing a regionalization plan	16
D. Has a rate structure encouraging conservation	6
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 from the Division Director 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.

R309-700-14. Committal of Funds and Approval of Agreements.

After the 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 Director before execution. The applicant shall notify the Director 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 Director, written approval will be issued by the Director in accordance with R309-500-9 to commence using the project facilities.

KEY: loans, interest buy-downs, credit enhancements, hardship grants

July 1, 2011

Notice of Continuation March 23, 2010

19-4-104

73-10c

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 cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; 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(2)(c) of the Utah Code, the Director 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 Director.

(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

Deficiency Description

Points Received

Source Quality/Quantity

Health Risk (select one)

A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0

Compliance with SDWA (select all that apply)

A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10

Total 100

Treatment

Deficiency Description Points Available

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 Points Available

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 Points Available

Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10

Total 75

Emergencies

Upon the Board finding of an emergency as required by R309-705-9. Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:

* Rate Factor = (Average System Water Bill/Average State Water Bill)

** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI) as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	16
B. \$501 to \$1,500	14
C. \$1,501 to \$2,000	11
D. \$2,001 to \$3,000	8
E. \$3,001 to \$5,000	4
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	19
B. 71 to 80% of State Median AGI	16
C. 81 to 95% of State Median AGI	13
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
3. APPLICANT'S COMMITMENT TO PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	17
B. 15 to 25% of project funds	14
C. 10 to 15% of project funds	11
D. 5 to 10% of project funds	8
E. 2 to 5% of project funds	4
F. Less than 2% of project funds	0
4. 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	16
B. 2.01 to 2.50% of local median AGI	12
C. 1.51 to 2.00% of local median AGI	8
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)	
A. Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	5
B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
C. Is creating or enhancing a regionalization plan	16
D. Has a rate structure encouraging conservation	6
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

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 Director 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 Director, written approval will be issued by

the Director 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

July 1, 2011

Notice of Continuation March 23, 2010

19-4-104

73-10c

R309. Environmental Quality, Drinking Water.**R309-800. Capacity Development Program.****R309-800-1. Authority.**

(1) Under authority granted in Utah Code 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).

R309-800-2. Purpose.

(1) The SDWA makes certain federal funds available to states, through the Drinking Water State Revolving Loan Program as defined in 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, managerial, and financial capacity of water systems. The Program's goals are:

(a) to promote long-term compliance with drinking water regulations, and

(b) to promote the public health protection objectives of the SDWA.

(c) to promote compliance with the requirements of the State of Utah's Groundwater Rule, R309-215-16, in identifying and correcting significant deficiencies in technical, managerial, and/or financial capacity.

R309-800-3. Definitions.

(1) Definitions for terms used in this rule are given in R309-110, except as modified below.

(2) "Capacity Development" means the 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.

R309-800-4. 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 with SDWA requirements or State drinking water rules 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 noncompliance by the State or the EPA.

(b) Managerial Capacity Criteria:

(i) The system owner(s) shall be clearly identified to the Director;

(ii) The system shall meet all of the operator certification requirements as per R309-300 and backflow technician certification requirements as per R309-305.

(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 Director 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.

(3) Public Water Systems that use ground water, except those that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment, but including consecutive systems receiving finished ground water shall be subject to the sanitary survey requirements of R309-100-7 and the significant deficiency requirements of R309-215-16(3) in order to be in compliance with the Capacity Development Program requirements.

R309-800-5. Requirements for New Community and New Non-transient, Non-community Water Systems.

(1) Feasibility Review, (See R309-100-6).

(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, available on the Internet at www.drinkingwater.utah.gov/blank_forms.htm.

(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 R309-300 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 specified in R309-400, and/or administrative and/or civil penalties and fines.

R309-800-6. Minimum Capacity Required for Financial Assistance Under Provisions of R309-700 and R309-705.

(1) Applicants for financial assistance shall complete an application form, available on the Internet at www.drinkingwater.utah.gov/blank_forms.htm. The application shall include project information and water system financial

information and will be used to determine eligibility, establish project priority ranking, and provide a basis for determining financial assistance parameters.

(2)(a) As described in (3) below, applicants for financial assistance from the Federal Drinking Water State Revolving Loan Program are required to complete and submit Capacity Development worksheets to the Executive Secretary.

(b) As described in (4) below, the Executive Secretary may require an applicant for a loan from the State's Revolving Loan Program to complete and submit Capacity Development worksheets for review.

(3) Financial assistance under the provisions of R309-705, Financial Assistance: Federal Drinking Water State Revolving Fund Loan Program. Financial assistance shall not be available to a water system that lacks the technical, managerial, or financial capability to maintain SDWA compliance, or is in significant non-compliance with any provisions of R309-200 through 225 or 500 through 550, unless:

(a) The use of the financial assistance will ensure compliance with SDWA and Utah rules; or

(b) The owner of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to maintain long-term compliance with SDWA.

(4) Financial assistance under the provisions of R309-700 Financial Assistance: State Drinking Water State Revolving Fund Loan Program. A Capacity Development Assessment may be necessary before the Executive Secretary considers whether a project is eligible for financial assistance under the State's Revolving Loan Program. The decision will be based on available water system information obtained through sanitary surveys, site visits, monitoring and reporting data, or other valid means. If, after review of available information, the Executive Secretary determines that a Capacity Development Assessment is necessary, he will require that the applicant complete and submit the Capacity Development worksheets to the Division. Otherwise, a Capacity Development Assessment is not required.

KEY: drinking water, funding, regionalization, capacity development

May 23, 2011

19-4-104

Notice of Continuation March 23, 2010

R392. Health, Disease Control and Prevention, Environmental Services.**R392-103. Food Handler Training and Certificate.****R392-103-1. Purpose.**

(1) This rule requires that food handler training, testing, issuing of a food handler certificate, and fees follow uniform statewide standards.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with food-borne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper training allows food handlers the ability to apply the knowledge gained to prevent food-borne diseases. Testing of food handlers confirms that knowledge of correct food handling techniques was gained. A food handler permit that is recognized statewide provides a tool for the Department to verify that food handlers have received state approved training and testing.

(4) State and local monitoring of this process is critical to protect the public. Coordination between this process and inspection of regulated facilities is necessary to quickly and effectively respond to identified risks. Recognizing the essential work of state and local public health officials, with accountability to state and local elected officials, maintains control and responsiveness to public health concerns.

R392-103-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Executive Director" means the Executive Director of the Utah Department of Health or designated representative.

(3) "Food Handler" means a person who works with unpackaged food, food equipment or utensil, or food-contact surfaces for a food service establishment as defined in R392-100.

(4) "Food Handler Permit" means a permit issued by a local health department to allow a person to work as a food handler.

(5) "Food Handler Certificate" means the documentation of a certificate of completion of food handler training indicating passing of a Department approved exam before a food handler permit is issued.

(6) "Independent Instructional Design and Testing Expert" means a person who has received training and has a graduate degree from an accredited University with a certification in psychometrics and expertise in Instructional Design.

(7) "Local Health Officer" means the director of the jurisdictional local health department as defined in 26A, Chapter 1, or his designated representative.

(8) "Approved Food Handler Training Provider" means an entity that provides a food handler training program approved by the Utah Department of Health.

R392-103-3. Food Handler Permit Issuing Procedure, Reciprocity, and Renewal.

(1) A food handler must have a valid food handler permit issued by a local health officer in the local health district where the food handler resides at the time the certificate is issued. The local health officer shall issue a food handler permit by mail or in person to a food handler that has a valid certificate indicating they have taken a course and passed an exam from an approved food handler training provider unless R392-103-4(1)(a) or (b) applies.

(2) After a food handler applicant passes a Department approved exam, an approved food handler training provider shall issue a food handler a certificate of completion and transmit electronically or by mail notification of the certificate to the local health department where the applicant resides. To inhibit fraud, each certificate issued shall be uniquely numbered

by the food handler training provider using their own numbering system. The certificate shall contain the name of the person to whom the certificate is issued, the date of issuing, and also list the food handler training provider who issued the certificate. The certificate shall be valid for 30 days toward getting a food handler permit and shall be valid statewide as proof of training and testing allowing the person to work as a food handler for 30 days from the initial date of employment. The food handler applicant must have a food handler permit within 30 days of the date of initial employment.

(3) The approved food handler training provider shall send notification to the local health department where an applicant resides that a certificate has been issued. This notification must take place within 5 business days after the applicant passes the exam. The local health department may use this information at any time to verify that an applicant has received a certificate from an approved food handler training provider.

(4) Local health departments shall accept food handler permits issued under authority of this rule until the date of expiration, revocation, or suspension of the food handler permit.

(5) A person may obtain a food handler permit by providing to the local health department a valid certificate of completion of an approved food handler training program, completing a local health department approved application either through the food handler training provider or at a local health department, and paying a food handler permit fee. The fee for the permit shall be no more than \$15 and shall be uniform statewide.

(6) Food handler permits issued shall contain the following information:

- (a) "Utah Food Handler Permit" as the title;
- (b) Name of the food handler;
- (c) Expiration Date;

(d) Identification number which begins with a two letter unique identifier of the training provider and up to 6 characters following the two letter identifier;

(e) Name of health department who issued the permit;

(f) "This Permit is Not a Legal Form of Identification" stated at the bottom of the permit;

(g) Utah State seal; and

(h) On the back of the permit, the following information must be presented:

(i) Permit must be presented upon request by the health authority;

(ii) Permit may be revoked for cause; and

(iii) No other food handler permit is approved in the State of Utah.

(7) Except when Subsections R392-103-3(11) through (13) apply, a food handler must possess a valid food handler permit issued by a local health officer before being allowed to handle food served to the public.

(8) With the exception of temporary events, food service establishments shall have a copy of the food handler permit of each employee that works in the establishment available upon request of the local health department inspector. If the food handler is working at a temporary event, at least one person must have a food handler permit to show to the health authority, if asked, but does not have to have a copy of the permit in an establishment file.

(9) Food handler permits shall be valid for 3 years from the date of issuance. Food handler permits must be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved food handler training provider, and receiving a food handler permit from the local health department.

(10) Food Service employees must successfully complete a training course within 14 days after the day on which the person begins employment, unless they already have a current certificate or food handler permit, and shall not handle food

until they have received a certificate of completion qualifying them for a food handler permit.

(11) The local health officer shall accept a food handler permit issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona, Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment that meets the exemption requirements of Section 26-15a-105(1)(i).

(12) A person working as a food handler for a food service establishment shall obtain a food handler permit no later than seven days after the expiration of an existing food handler permit.

(13) An individual certified as a food safety manager under R392-101 shall be exempt from the requirement of obtaining a food handler permit under this section.

R392-103-4. Suspension or Revocation of Food Handler Permits.

(1) The local health officer may revoke or suspend a food handler permit if:

(a) A food handler is ill with a disease that may be transmitted through the handling of food or,

(b) If two or more inspections within two years document that the same food handler has at least twice failed to apply the same learning objective listed in R392-103-5 or,

(c) A food handler shows willful disregard to food safety that has the potential to endanger the public.

(2) The local health department may confiscate any food handler permit which cannot be authenticated by a local health department, or that has been revoked or suspended.

(3) A food handler may re-apply to a local health department for reinstatement of a food handler permit by requesting a hearing with the local health department and demonstrating to the local health department to their satisfaction why the permit should be reinstated.

R392-103-5. Food Handler Training Requirements.

(1) A food handler training provider must receive approval from the Department before offering training to food handlers in the state. A food handler training provider must provide basic instruction focused on Utah Rule R392-100 (which incorporates the FDA national model food code standard), shall include at least 75 minutes of training time offered either in an internet based course or trainer led course or a combination of both, and shall contain basic training information regarding the Centers for Disease Control top five risk factors associated with food-borne illness outbreaks including the bulleted learning objectives as listed below (a) through (d):

(a) Proper hot or cold holding temperatures of food which requires time or temperature control for safety;

List the temperature danger zone.

Describe the correct procedure for holding cold foods and hot foods, receiving foods, and proper date and time marking.

List the appropriate temperatures for refrigerators, freezers and steam tables.

Identify the hazards of leaving potentially hazardous foods (foods that require time or temperature controls for safety, TCS) at room temperature.

Define potentially hazardous foods (foods that require time or temperature controls for safety, TCS).

List the population groups that are the most vulnerable to food-borne illness.

Discuss how bacterial growth occurs in food.

Identify the most common causes of food-borne illness.

List sources of microbes.

(b) Proper cooking, reheating, and cooling temperatures of food;

List the required final cook temperatures for foods.

List the final temperature for reheating leftovers.

Describe the relationship between cooking time and temperature in killing microorganisms.

Describe the steps used to cool food rapidly.

Describe the proper procedure to thaw frozen foods.

(c) Control of dirty or contaminated utensils and equipment including prevention of cross contamination and proper ware washing and sanitizing;

Discuss how a food handler might contaminate food.

Define cross-contamination.

List the possible sources of cross-contamination when handling food.

Identify the steps to prevent cross-contamination.

Stress the importance of eliminating bare-hand contact with ready-to-eat food through utensils or gloving.

Define cleaning and sanitizing and correct procedures for each.

Identify the chemicals that can be used to clean and sanitize food-contact surfaces.

Describe the correct concentration of cleaning and sanitizing solutions used on food-contact surfaces and how to test the concentrations.

Identify when surfaces should be cleaned and sanitized.

Describe the correct procedures to use and store chemicals.

Describe the 3-sink method of cleaning and sanitizing pots and pans and how to correctly dry dishes.

Describe the correct procedure for cleaning and sanitizing using a dish machine.

Proper cleaning and sanitizing steps.

Describe the correct procedures for storing dishes and utensils.

Describe the correct procedures to handle trash and garbage.

(d) Employee health and hygiene requirements including food-borne illness prevention training, and using food from only approved sources;

List the personal hygiene practices that the food handler can take to prevent food contamination.

Describe the steps necessary for proper hand washing and when a double hand wash is required.

Describe how hands become contaminated and when and where hand washing should occur.

List appropriate clothing and hair restraints.

List the five major food borne illness diseases and symptoms that must be reported to the manager.

Describe the correct procedures to prevent food-borne illness from a cut, burn or other wound.

Describe under what conditions an employee may eat, drink or use any form of tobacco and the precautions to take after these activities.

Define a food-borne illness.

State how often a food handler permit has to be renewed.

Define approved source of food and what sources are and are not approved.

(2) An approved food handler training provider shall add training objectives and topics which the Department identifies by rule as being a cause of a food-borne illness outbreak or serious threat to the health of food service facility patrons.

(3) Each time a food handler permit is renewed, the food handler must take a training course from an approved food handler training provider before they may take a food handler exam.

(4) A person may not serve as an instructor of an approved food handler training program unless the person is registered with a local health department as an instructor.

(5) An approved food handler training provider must maintain a list of past and current trainers registered with a local health department denoting the dates the trainer taught food handler courses. The trainer list must be available for audit by

the Department. On-line trainers must maintain a list of which course version is taught on-line by date.

(6) An approved food handler training provider must maintain a system to verify a certificate of completion upon request of the Department, or local health department, or food service establishment where the food handler is employed.

(7) An approved food handler training provider may charge a reasonable fee. An approved food handler training provider may collect both the training fee and food handler permit fee at the same time from the applicant when the applicant initially pays for the training course.

(8) A food handler training provider may not advertise to the public or represent to the public that they offer approved food handler training programs which will allow individuals to obtain a food handler permit in the state if they are not approved by the Department.

R392-103-6. Examination Requirements.

(1) An approved food handler training provider shall use the bank of food handler exam questions issued by the Department and obtained through application to the Department, or a Department approved set of questions as approved in R392-103-6(2). Exams must contain 40 multiple choice questions with 10 randomly selected questions from each category listed in R392-103-5 (a) through (d). An approved food handler training provider must routinely rotate exam questions from the exam question bank, the order of exam questions, and the answer order of the multiple choice questions.

(2) If a food handler training provider elects not to use the Department issued questions, the food handler training provider may request approval of a different bank of exam questions. For approval, the food handler training provider shall pay to the Department a fee to review the exam questions. The fee shall reflect actual costs, but shall not exceed \$500. The food handler training provider shall also submit to the Department the proposed bank of at least 200 exam questions organized by the required learning objectives listed in this rule with at least 25 questions from each objective. In addition, the food handler training provider shall contract, at their own expense, with a Department approved independent instructional design and testing expert to evaluate the proposed bank of exam questions. The independent instructional design and testing expert shall analyze a food handler training provider's bank of exam questions to determine if the exam questions effectively measure the applicant's knowledge of the learning objectives outlined in this rule and meet the appropriate testing standards for question structure. To be approved, the independent instructional design and testing expert must provide the Department with a positive recommendation based on their analysis. The Department must approve any change in the provider offered bank of exam questions before implementation. Exam approval is good for three years, after which a provider must re-apply for exam approval.

(3) The Department may require changes to the exam questions if the Department finds that the questions inadequately test the learning objectives. An approved food handler training provider shall update the exam questions used within thirty (30) days of written notice of the change.

(4) A person taking a food handler exam must answer at least 75% of the questions correctly to pass the examination to be eligible to receive a food handler permit.

(5) A food handler examination offered by an approved food handler training provider may be written, oral, or on-line. Oral exams may be conducted individually when circumstances require it such as when an applicant's language or reading abilities interfere with taking a written or an on-line exam.

(6) An approved food handler training provider shall implement procedures to ensure that cheating on examinations does not take place. An approved food handler training provider

shall ensure that exams are protected from being compromised, protected from unauthorized access, and available to candidates only during exam time.

(7) An approved food handler training provider shall routinely randomize the exam question order.

(8) An approved food handler training provider shall inform persons taking a food handler course, at the beginning of the course, that downloading exams onto a flash drive or other portable electronic devices or distribution of any exam by the individual in any way to other persons is strictly prohibited. An approved food handler training provider shall also notify persons taking a food handler exam that note taking, use of a cell phone or other recording device, talking to or receiving aid to answer questions from another person during the exam process is strictly prohibited. Violation of the exam security requirements shall invalidate the certificates of completion of all those involved, and a training provider shall report violations to the local health department. A provider shall not issue a certificate of completion to those involved in violation of on-line exam security unless the next successfully completed exam is proctored.

(9) An approved food handler training provider must maintain records of each candidate's name, address of residence including street, city, county and zip code, date of birth, gender, date of examination, pass or fail certificate status, and name of instructor for at least three years and provide this to the local health department within the jurisdiction that the applicant resides. The provider shall send this information to the local health department within whose jurisdiction the applicant resides within 5 business days as required in R392-103-3(1).

(10) An approved food handler training provider shall offer a course evaluation to persons taking approved courses and exams.

(11) An approved food handler training provider must implement procedures to prevent the duplication of certificates of completion.

(12) An approved food handler training provider who offers exams in person either written or on a computer at the facility must proctor the exam. An approved food handler training provider shall require a person taking a course and exam to provide a signature attesting that the person has complied with exam requirements.

(13) An approved food handler training provider who offers exams on line must implement procedures to reasonably inhibit fraudulent attempts to circumvent the food handler training and exam requirements in this rule such as a person taking an exam in place of another person, and procedures to reasonably ensure an individual taking an approved course and exam is focused on training materials and actively engaged throughout the training period.

(14) An approved internet based food handler training provider's exam offered over the internet shall meet the following exam protocols:

(a) An approved internet based food handler training provider shall submit documentation to the Department on initial approval, audit, or by request regarding the security measures taken to inhibit fraud. Exam protocols will be evaluated by the Department or local health department during the approval process and may be audited by the Department at any time to determine if the protocols are preventing fraudulent activities.

(b) An approved internet based food handler training provider shall require a food handler applicant to provide all applicant information required by this rule and shall electronically link the information to the exam before the exam may be offered. An approved internet based food handler training provider administrator shall document any repeat taking of the exam and shall require a food handler applicant to retake a food handler training course after no more than three failed

attempts to pass the exam.

(c) The start and end time of the exam shall be logged.

(d) An approved internet based food handler training provider shall track the Internet Protocol address or similar electronic location of an individual who takes an on-line course and exam.

(e) An approved internet based food handler training provider shall present pre-exams at the end of each learning section and at a minimum of four pre-exams per course. The pre-exams must be completed at a 75% correct rate before allowing a person to the next section. All pre-exams must contain a minimum of four questions and be completed before allowing the exam to be provided to a person.

(f) An approved internet based food handler training provider shall provide technical support to users by way of the internet, phone, or other method in case technical difficulties occur.

(g) An approved internet based food handler training provider shall require persons taking a course and exam to provide an electronic signature attesting that the person has complied with exam requirements.

(15) An approved internet based food handler training provider must monitor exam protocols and periodically (at a minimum of monthly), perform a self-review to assess that the system is working and to ensure that each exam meets exam protocols before issuing a certificate of completion. Any instance of suspected violation of exam protocols must be reported to the local health department where the applicant resides.

R392-103-7. Food Handler Training Provider Approval, and Auditing.

(1) An approved food handler training provider must offer both training and testing to be approved by the Department in consultation with the local health department before they may offer food handler training and testing in the state.

(2) An approved food handler training provider that has been approved by the Department or a local health department before the effective date of this rule may continue to provide food handler training and testing for 90 days from the effective date of this rule. After 90 days, all food handler training providers must be re-approved by the Department according to the requirements of this rule to continue operating in the state.

(3) As part of the approval process, the Department or local health department designee shall provide prospective food handler training providers a copy of this rule. Food handler training providers must sign an affidavit provided by the Department that states the provider will comply with the requirements of this rule and shall abide by confidentiality agreements if the provider chooses to use the Department provided exam. A food handler provider must present to the Department a summary of how the training program meets the training objectives contained in R392-103-5.

(4) A food handler training provider shall be open to audit during the initial approval process and also during any subsequent audits to Department authentication of the following information:

- (a) Any documents used in the food handler training, and
- (b) Identity of instructors and providers.

(5) A food handler training provider must submit an application for re-approval to the Department every three years. The food handler training provider shall follow the requirements of R392-103-7 to apply for re-approval.

(6) A food handler training provider is subject to Department audit to determine compliance with this rule. A food handler training provider shall allow the Department unrestricted access to provider course training and testing materials, provide unrestricted on-line access to training sites, and unrestricted access to classroom training sessions. The

Department may conduct audits either at random or on a complaint basis to determine compliance with the requirements of this rule.

(7) If the Department finds that an approved food handler training provider is non-compliant during an audit, the Department shall revoke the registration and the food handler training provider shall cease offering training classes and food handler certificates until the Department mandated corrective action is taken to correct the violation. Until the violation is corrected, certificates issued by this food handler training provider shall not be accepted for the issuing of food handler permits by the local health officer from the date the food handler training provider was found to be non-compliant.

(8) An approved food handler training provider shall comply with the Americans with Disability Act (ADA) access requirements irrespective of the size of the training operation.

KEY: food handler training, food handler certificates, food handler permits, food handler testing
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-14A. Hospice Care.****R414-14A-1. Introduction and Authority.**

This rule is authorized by Sections 26-1-5 and 26-18-3, and Pub L. No. 111 148 of the Affordable Care Act. It implements Medicaid hospice care services as found in 42 U.S.C. 1396d(o).

R414-14A-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

- (1) "Attending physician" means a physician who:
 - (a) is a doctor of medicine or osteopathy; and
 - (b) is identified by the client at the time he or she elects to receive hospice care as having the most significant role in the determination and delivery of the client's medical care.
- (2) "Cap period" means the 12-month period ending October 31 used in the application of the cap on reimbursement for inpatient hospice care as described in Subsection R414-14A-23(5).
- (3) "Employee" means an employee of the hospice provider or, if the hospice provider is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" includes a volunteer under the direction of the hospice provider.
- (4) "Hospice care" means care provided to terminally ill clients by a hospice provider.
- (5) "Hospice provider" means a provider that is licensed under the provisions of Rule R432-750 and is primarily engaged in providing care to terminally ill individuals.
- (6) "Physician" means a doctor of medicine or osteopathy who is licensed by the state of Utah.
- (7) "Representative" means an individual who has been authorized under state law to make health care decisions, including initiating, continuing, refusing, or terminating medical treatments for a client who cannot make health care decisions.
- (8) "Terminally ill" means the client has a medical prognosis to live no more than six months if the illness runs its normal course.
- (9) "Adult" means a hospice client who is at least 21 years of age.

R414-14A-3. Client Eligibility Requirements.

- (1) A client who is terminally ill may obtain hospice care pursuant to this rule.
- (2) A client's certification of a terminal condition required for hospice eligibility must be based on a face-to-face assessment by a physician conducted no more than 90 days prior to the date of enrollment.
- (3) A client dually enrolled in Medicare and Medicaid must elect the hospice benefit for both Medicare and Medicaid. The client must receive hospice coverage under Medicare. Election for the Medicaid hospice benefit provides the client coverage for Medicare co-insurance and coverage for room and board expenses while a resident of a Medicare-certified nursing facility, intermediate care facility for people with an intellectual disability (ICF/ID), or freestanding hospice facility.

R414-14A-4. Program Access Requirements.

- (1) Hospice care may be provided only by a hospice provider licensed by the Department, that is Medicare certified in accordance with 42 CFR Part 418, and that is a Medicaid provider.
- (2) A hospice provider must have a valid Medicaid provider agreement in place prior to initiating hospice care for Medicaid clients. The Medicaid provider agreement is effective on the date a Medicaid provider application is received in the Department and may not be made retroactive to an earlier date,

including an earlier effective date of Medicare hospice certification.

(3) At the time of a change of ownership, the previous owner's provider agreement terminates as of the effective date of the change of ownership.

(4) The Department accepts all waivers granted to hospice agencies by the Centers for Medicare and Medicaid Services as part of the Medicare certification process.

(5) Hospice agencies participating in the Medicaid program shall provide hospice care in accordance with the requirements of 42 CFR Part 418.

R414-14A-5. Service Coverage.

Hospice care categories eligible for Medicaid reimbursement are the following:

(1) "Routine home care day" is a day in which a client who has elected to receive hospice care is at home and is not receiving continuous home care as defined in Subsection R414-14A-5(2). For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(2) "Continuous home care day" is a day in which a client who has elected to receive hospice care receives a minimum of eight aggregate hours of care from the hospice provider during a 24-hour day, which begins and ends at midnight. The eight aggregate hours of care must be predominately nursing care provided by either a registered nurse or licensed practical nurse. Continuous home care is only furnished during brief periods of crisis in which a patient requires continuous care that is primarily nursing care to achieve palliation or management of acute medical symptoms. Extended stay residents of nursing facilities are not eligible for continuous home care day.

(3) "Inpatient respite care day" is a day in which the client who has elected hospice care receives short-term inpatient care when necessary to relieve family members or other persons caring for the client at home.

(4) "General inpatient care day" is a day in which a client who has elected hospice care receives general inpatient care for pain control or acute or chronic symptom management that cannot be managed in a home or other outpatient setting. General inpatient care may be provided in a hospice inpatient unit, a hospital, or a nursing facility.

(5) "Room and Board" is medication administration, performance of personal care, social activities, routine and therapeutic dietary services, meal service including direct feeding assistance, maintaining the cleanliness of the client's room, assistance with activities of daily living, durable equipment, prescribed therapies, and all other services unrelated to care associated with the terminal illness that would be covered under the Medicaid State Plan nursing facility benefit.

R414-14A-6. Hospice Election.

(1) A client who meets the eligibility requirement for Medicaid hospice must file an election statement with a particular hospice. If the client cannot cognitively make informed health care decisions or is under 18 years of age, the client's legally authorized representative may file the election statement.

(2) Each hospice provider designs and prints his own election statement. The election statement must include the following:

- (a) identification of the particular hospice that will provide care to the client;
- (b) the client's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the client's terminal illness;
- (c) for adult clients, acknowledgment that the client waives certain Medicaid services as set forth in Section R414-14A-9;
- (d) acknowledgment that the client or representative may

revoke the election of the hospice benefit at any time in the future and therefore become eligible for Medicaid services waived at the time of hospice election as set forth in Section R414-14A-8; and

(e) the signature of the client or representative.

(3) The effective date of the election may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement

(4) An election to receive hospice care remains effective through the initial election period and through the subsequent election periods without a break in care as long as the client:

(a) remains in the care of a hospice;

(b) does not revoke the election; and

(c) is not discharged from the hospice.

(5) The hospice provider must notify the Department at the time a Medicaid client selects the hospice benefit, including selecting the hospice provider under a change of designated hospice. The notification must include a copy of the hospice election statement and the physician's certification of terminal illness for hospice care. Authorization for reimbursement of hospice care begins no earlier than the date notification is received by the Department for an eligible Medicaid client, except as provided in Section R414-14A-20.

(6) Subject to the conditions set forth in this rule, a client may elect to receive hospice care during one or more of the following election periods:

(a) an initial 90-day period;

(b) a subsequent 90-day period; or

(c) an unlimited number of subsequent 60-day periods.

R414-14A-7. Change in Hospice Provider.

(1) A client or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(2) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(3) To change the designation of hospice provider, the client must file, with the hospice provider from which care has been received and with the newly designated hospice provider, a statement that includes the following information:

(a) the name of the hospice provider from which the client has received care;

(b) the name of the hospice provider from which the client plans to receive care; and

(c) the date the change is to be effective.

(4) The client must file the change on or before the effective date.

R414-14A-8. Revocation and Re-election of Hospice Services.

(1) A client or legal representative may voluntarily revoke the client's election of hospice care at any time during an election period.

(2) To revoke the election of hospice care, the client or representative must file a statement with the hospice provider that includes the following information:

(a) a signed statement that the client or representative revokes the client's election for Medicaid coverage of hospice care.

(b) the date that the revocation is to be effective, which may not be earlier than the date that the revocation is made; and

(c) an acknowledgment signed by the patient or the patient's representative that the patient will forfeit Medicaid hospice coverage for any remaining days in that election period.

(3) Upon revocation of the election of Medicaid coverage of hospice care for a particular election period, a client:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage for the benefits waived under Section R414-14A-9 (for adult clients); and

(c) may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

(4) If an election has been revoked, the client or his representative may at any time file an election in accordance with this rule for any other election period that is still available to the client.

(5) Hospice providers may not encourage adult clients to temporarily revoke hospice services solely for the purpose of avoiding financial responsibility for Medicaid services that have been waived at the time of hospice election as described in Section R414-14A-9.

(6) Hospice providers must send notification to the Department within ten calendar days that a client has revoked hospice benefits. Notification must include a copy of the revocation statement signed by the client or the client's legal representative.

R414-14A-9. Rights Waived to Some Medicaid Services for Adult Clients.

(1) For the duration of an election for hospice care, an adult client waives all rights to Medicaid for the following services:

(a) hospice care provided by a hospice other than the hospice designated by the client, unless provided under arrangements made by the designated hospice; and

(b) any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or are duplicative of hospice care except for services:

(i) provided by the designated hospice;

(ii) provided by another hospice under arrangements made by the designated hospice; and

(iii) provided by the client's attending physician if the services provided are not otherwise covered by the payment made for hospice care.

(2) Medicaid services for illnesses or conditions not related to the client's terminal illness are not covered through the hospice program but are covered when provided by the appropriate provider.

R414-14A-10. Concurrent Care for Clients Under 21 Years of Age.

(1) For the duration of the election of hospice care, clients under 21 years of age may only receive hospice care which is provided by the designated hospice, or that has been provided under arrangements made by the designated hospice.

(2) Clients under 21 years of age who elect to receive Medicaid hospice care may also receive concurrent Medicaid State Plan treatment for the terminal illness and other related conditions.

(3) For life prolonging treatment rendered to clients under 21 years of age, Medicaid shall reimburse the appropriate Medicaid enrolled medical care providers directly through the usual and customary Medicaid billing procedures. Hospice providers are not responsible to reimburse medical care providers for life prolonging treatment rendered to hospice clients who are under 21 years of age.

(4) Each pediatric hospice provider shall develop a training curriculum to ensure that the hospice's interdisciplinary team members, including volunteers, are adequately trained to provide hospice care to clients who are under 21 years of age. All staff members and volunteers who provide pediatric hospice care must receive the training before they provide hospice care services, and at least annually thereafter. The training shall include the following pediatric specific elements:

(a) Growth and development;

(b) Pediatric pain and symptom management;

(c) Loss, grief and bereavement for pediatric families and

the child;

(d) Communication with family, community and interdisciplinary team;

(e) Psycho-social and spiritual care of children;

(f) Coordination of care with the child's community.

(5) For pediatric care, the Hospice Program shall adopt the National Hospice and Palliative Care Organization's (NHPCO) Standards for Hospice Programs.

R414-14A-11. Notice of Hospice Care in a Nursing Facility, ICF/ID, or Freestanding Inpatient Hospice Facility.

(1) The hospice provider must notify the Department at the time a Medicaid client residing in a Medicare certified nursing facility, a Medicaid-certified ICF/ID, or a Medicare freestanding inpatient hospice facility elects the Medicaid hospice benefit or at the time a Medicaid client who has elected the Medicaid hospice benefit is admitted to a Medicare certified nursing facility, a Medicaid certified ICF/ID, or a Medicare freestanding inpatient hospice facility.

(2) The notification must include a prognosis of the time the client will require skilled nursing facility services under the hospice benefit.

(3) Except as provided in Section R414-14A-20, reimbursement for room and board begins no earlier than the date the hospice provider notifies the Department that the client has elected the Medicaid hospice benefit.

R414-14A-12. Notice of Independent Attending Physician.

The hospice provider must notify the Department at the time a Medicaid client designates an attending physician who is not a hospice employee.

R414-14A-13. Extended Hospice Care.

(1) Clients who accumulate 12 or more months of hospice benefits are subject to an independent utilization review by a physician with expertise in end-of-life and hospice care selected by the Department.

(2) If Medicare determines that a patient is no longer eligible for Medicare reimbursement for hospice services, the patient will no longer be eligible for Medicaid reimbursement for hospice services. Providers must immediately notify Medicaid upon learning of Medicare's determination. Medicaid reimbursement for hospice services will cease the day after Medicare notifies the hospice provider that the client is no longer eligible for hospice care.

R414-14A-14. Provider Initiated Discharge from Hospice Care.

(1) The hospice provider may not initiate discharge of a patient from hospice care except in the following circumstances:

(a) the patient moves out of the hospice provider's geographic service area or transfers to another hospice provider by choice;

(b) the hospice determines that the patient is no longer terminally ill; or

(c) the hospice provider determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's behavior (or the behavior of other persons in the patient's home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired.

(2) The hospice provider must carry out the following activities before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a diligent effort to resolve the problem that the patient's behavior or situation presents;

(c) ascertain that the discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem and efforts to resolve the problem in the patient's medical record.

(3) Before discharging a patient for any reason listed in Subsection R414-14A-14(1), the hospice provider must obtain a physician's written discharge order from the hospice provider's medical director. If a patient also has an attending physician, the hospice provider must consult the physician before discharge and the attending physician must include the review and decision in the discharge documentation.

(4) A client, upon discharge from the hospice during a particular election period, for reasons other than immediate transfer to another hospice:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage of the benefits waived during the hospice coverage period; (for adult clients); and

(c) may at any time elect to receive hospice care if the client is again eligible to receive the benefit in the future.

(5) The hospice provider must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change if that patient cannot continue to be certified as terminally ill. The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because the patient is no longer terminally ill.

R414-14A-15. Hospice Room and Board Service.

If a client residing in a nursing facility, ICF/ID or a freestanding hospice inpatient unit elects hospice care, the hospice provider and the facility must have a written agreement under which the total care of the individual must be specified in a comprehensive service plan, the hospice provider is responsible for the professional management of the client's hospice care, and the facility agrees to provide room and board and services unrelated to the care of the terminal condition to the client. The agreement must include:

(1) identification of the services to be provided by each party and the method of care coordination to assure that all services are consistent with the hospice approach to care and are organized to achieve the outcomes defined by the hospice plan of care;

(2) a stipulation that Medicaid services may be provided only with the express authorization of the hospice;

(3) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice provider;

(4) the delineation of the roles of the hospice provider and the facility in the admission process; needs assessment process, and the interdisciplinary team care conference and service planning process;

(5) requirements for documenting that services are furnished in accordance with the agreement;

(6) the qualifications of the personnel providing the services; and

(7) the billing and reimbursement process by which the nursing facility will bill the hospice provider for room and board and receive payment from the hospice provider.

(8) In cases in which nursing facility residents revoke their hospice benefits, it is the responsibility of the hospice provider to notify the nursing facility of the revocation. The notice must be in writing and the hospice provider must provide it to the nursing facility on or before the revocation date.

R414-14A-16. In Home Physician Services.

In-home physician visits by the attending physician are authorized for hospice clients if the attending physician determines that direct management of the client in the home setting is necessary to achieve the goals associated with a hospice approach to care.

R414-14A-17. Continuous Home Care.

When the hospice provider determines that a patient requires at least eight hours of primarily nursing care in order to manage an acute medical crisis, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary and were in compliance with an established plan of care in order to meet a particular crisis situation. Continuous home care is a covered benefit only as necessary to maintain the terminally ill client at home.

R414-14A-18. General Inpatient Care.

(1) General inpatient care is authorized without prior authorization for an initial ten calendar day length of stay. Prior authorization is required for any additional general inpatient care days during the same stay to verify that the client's needs meet the requirements for general inpatient care. If a hospice provider requests additional days, the subsequent requests are subject to clinical review and approval by qualified Department staff.

(2) General inpatient care days may not be used due to the breakdown of the primary care giving living arrangements or the collapse of other sources of support for the recipient.

(3) Prior authorization for additional days beyond the initial ten calendar day stay must be obtained before the hospice care is provided, except as allowed in Section R414-14A-20.

R414-14A-19. Inpatient Respite Care.

When the hospice provider determines that a patient requires a short-term inpatient respite stay in order to relieve the family members or other persons caring for the client at home, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary to relieve a particular caregiver situation. Inpatient respite care may not be reimbursed for more than five consecutive days at a time. Inpatient respite care may not be reimbursed for a patient residing in a nursing facility, ICF/ID, or freestanding hospice inpatient unit.

R414-14A-20. Notification and Prior Authorization Grace Periods.

(1) If a new patient is already Medicaid eligible upon admission to hospice care, the hospice provider must submit a prior authorization request form to the Department in order to receive reimbursement for hospice services it renders, except in the following circumstances:

(a) during weekend, holidays, and after regular Department business hours, a hospice provider may begin service to a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a grace period up to ten calendar days before notifying the Department;

(b) before the end of the ten calendar day grace period, the hospice provider must complete and submit the prior authorization request form to the Department in order to receive reimbursement for hospice services it renders;

(c) if the hospice provider does not submit the prior authorization request form timely, the Department will not reimburse the provider for the care that it renders before the date that the form is received.

R414-14A-21. Post-Payment for Services Provided While in Medicaid-Pending Status.

(1) If a new client is not Medicaid eligible upon admission to hospice services but becomes Medicaid eligible at a later date, the Department will reimburse a hospice provider retroactively to allow the hospice eligibility date to coincide with the client's Medicaid eligibility date if:

(a) the Department determines that the client met Medicaid

eligibility requirements at the time the service was provided;

(b) the hospice care met the prior authorization criteria at the time of delivery; and

(c) the hospice provider reimburses the Department for care related to the client's terminal illness delivered by other Medicaid providers during the retroactive period.

(2) The hospice provider must provide a copy of the initial care plan and any other documentation to the Department adequate to demonstrate the hospice care met prior authorization criteria at the time of delivery.

R414-14A-22. Hospice Care Reimbursement.

(1) The Department shall provide payment for hospice care in accordance with the methodology set forth in the Utah Medicaid State Plan.

(2) A hospice provider may not charge a Medicaid client for a service that the client is entitled to receive under Medicaid.

(3) Medicaid reimbursement to a hospice provider for services provided during a cap period is limited to the cap amount specified in Subsection R414-14A-23(5).

(4) Medicaid does not apply the aggregate caps used by Medicare.

(5) The Department provides payment for hospice care on the basis of the geographic location where the service is provided as described in the Medicaid State Plan.

(6) Routine home care, continuous home care, general inpatient care, inpatient respite care services, and hospice room and board, are reimbursable to the hospice provider only.

(7) Hospice general inpatient care and inpatient respite care are not reimbursed by Medicaid for services provided in a Veterans Administration hospital or military hospital.

R414-14A-23. Payment for Hospice Care Categories.

(1) The Department establishes payment amounts for the following categories:

- (a) Routine home care.
- (b) Continuous home care.
- (c) Inpatient respite care.
- (d) General inpatient care.
- (e) Room and Board service.

(2) The Department reimburses the hospice provider at the appropriate payment amount for each day for which an eligible Medicaid recipient is under the hospice's care.

(3) The Medicaid reimbursement covers the same services and amounts covered by the equivalent Medicare reimbursement rate for comparable service categories.

(4) The Department makes payment according to the following procedures:

(a) Payment is made to the hospice for each day during which the client is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day.

(b) Payment is made for only one of the categories of hospice care described in Subsection R414-14A-23(1) for any particular day.

(c) On any day in which the client is not an inpatient, the Department pays the hospice provider the routine home care rate, unless the client receives continuous home care as provided in Subsection R414-14A-5(2) for a period of at least eight hours. In that case, the Department pays a portion of the continuous home care day rate in accordance with Subsection R414-14A-23(4)(d).

(d) The hospice payment on a continuous care day varies depending on the number of hours of continuous services provided. The number of hours of continuous care provided during a continuous home care day is multiplied by the hourly rate to yield the continuous home care payment for that day. A minimum of eight hours of licensed nursing care must be furnished on a particular day to qualify for the continuous home care rate.

(e) Subject to the limitations described in Subsection R414-14A-23(5), on any day on which the client is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the client is discharged. For the day of discharge, the appropriate home care rate is paid unless the client dies as an inpatient. In the case where the client dies as an inpatient, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than five days at a time.

(5) Payment for inpatient care is limited as follows:

(a) The total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicaid clients not exceed 20 % of the total days for which these clients had elected hospice care. Clients afflicted with AIDS are excluded when calculating inpatient days. For a client who is under 21 years of age, an inpatient stay in a hospital for the purpose of receiving life prolonging treatment for the terminal illness is not counted toward the cap on reimbursement for inpatient hospice care.

(b) At the end of a cap period, the Department calculates a limitation on payment for inpatient care for each hospice to ensure that Medicaid payment is not made for days of inpatient care in excess of 20 percent of the total number of days of hospice care furnished to Medicaid clients by the hospice.

(c) If the number of days of inpatient care furnished to Medicaid clients is equal to or less than 20% of the total days of hospice care to Medicaid clients, no adjustment is necessary.

(d) If the number of days of inpatient care furnished to Medicaid clients exceeds 20% of the total days of hospice care to Medicaid clients, the total payment for inpatient care is determined in accordance with the procedures specified in Subsection R414-14A-23(5)(e). That amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice.

(e) If a hospice exceeds the number of inpatient care days described in Subsection R414-14A-23(5)(d), the total payment for inpatient care is determined as follows:

(i) Calculate the ratio of the maximum number of allowable inpatient days to the actual number of inpatient care days furnished by the hospice to Medicaid clients.

(ii) Multiply this ratio by the total reimbursement for inpatient care made by the Department.

(iii) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(iv) Sum the amounts calculated in Subsection R414-14A-23(5)(e)(ii) and (iii).

(6) The hospice provider may request an exception to the inpatient care payment limitation if the hospice provider demonstrates the volume of Medicaid enrollees during the cap period was insufficient to reasonably achieve the required 20% ratio.

R414-14A-24. Payment for Physician Services.

(1) The following services performed by hospice physicians are included in the rates described in Sections R414-14A-22 and 23:

(a) General supervisory services of the medical director.

(b) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(2) For services not described in Subsection R414-14A-24(1), direct care services related to the terminal illness or a related condition provided by hospice physicians are reimbursed according to the Medicaid reimbursement fee schedule for

physician services. Services furnished voluntarily by physicians are not reimbursable.

(3) Services of the client's attending physician, including in-home services, are reimbursed according to the Medicaid fee schedule for State Plan physician services. Services furnished voluntarily by physicians are not reimbursable.

R414-14A-25. Hospice Payment Covers Special Modalities.

No additional Medicaid payment will be made for chemotherapy, radiation therapy, and other special modalities of care for palliative purposes regardless of the cost of the services.

R414-14A-26. Payment for Nursing Facility, ICF/ID, and Freestanding Inpatient Hospice Unit Room and Board.

(1) For clients in a nursing facility, ICF/ID, or a freestanding hospice inpatient unit who elect to receive hospice care from a Medicaid enrolled hospice provider, Medicaid will pay the hospice provider an additional per diem for routine home care services to cover the cost of room and board in the facility. For nursing facilities and ICFs/ID, the room and board rate is 95 % of the amount that the Department would have paid to the nursing facility or ICF/ID provider for that client if the client had not elected to receive hospice care. For freestanding hospice inpatient facilities, the room and board rate is 95% of the statewide average paid by Medicaid for nursing facility services.

(a) For clients under 21 years of age, the room and board rate is 100% of the amount that the Department would have paid to the nursing facility or ICF/ID for that client if the client had not elected to receive hospice care.

(2) The Department shall reimburse the hospice provider for room and board. Upon receiving payment for room and board, the hospice provider shall reimburse the nursing facility. The reimbursement is payment in full for the services described in Section R414-14A-15. The facility cannot bill Medicaid separately.

(3) If a hospice enrollee in a nursing facility, ICF/ID, or a freestanding hospice inpatient unit has a monetary obligation to contribute to his cost of care in the facility, the facility must collect and retain the contribution. The hospice must reimburse the facility the reduced amount received from Medicaid directly or from a Medicaid Health Plan.

R414-14A-27. Limitation on Liability for Certain Hospice Coverage Denials.

If the hospice provider or the Department determines that a client is not terminally ill while receiving hospice care under this rule, the client is not responsible to reimburse the Department. If the Department denies reimbursement to the hospice provider, the hospice provider may not seek reimbursement from the client.

R414-14A-28. Medicaid Health Plans and Hospice.

(1) If a Medicaid-only client is enrolled in a Medicaid health plan, the hospice selected by the client must have a contract with the health plan. The health plan is responsible to reimburse the hospice for hospice care. The Department will not directly reimburse a hospice provider for a Medicaid-only client covered by a health plan.

(2) If a Medicaid-only client enrolled in a health plan elects hospice care before being admitted to a nursing facility, ICF/ID, or a freestanding hospice inpatient unit, the health plan is responsible to reimburse the hospice provider for both the hospice care and the room and board until the client is disenrolled from the health plan by the Department. At the point the health plan determines that the enrollee will require care in the nursing facility for greater than 30 days, the health plan will notify the Department of the prognosis of extended nursing facility services. The Department will schedule

disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities.

(3) If a hospice enrollee is covered by Medicare for hospice care, the Medicaid health plan is responsible for the health plan's payment rate less any amount paid by Medicare and other payors. The health plan is responsible for payment even if the Medicare covered service is rendered by an out-of-plan provider or was not authorized by the health plan.

(4) The health plan is responsible for room and board expenses of a hospice enrollee receiving Medicare hospice care while the client is a resident of a Medicare-certified nursing facility, ICF/ID, or freestanding hospice facility until the client is disenrolled from the health plan by the Department. On the 31st day, the client is disenrolled from the health plan and enrolled in the Medicaid fee-for-service hospice program. At the point the Department determines that the enrollee will require care in the nursing facility for greater than 30 days, the Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities. The room and board expenses will be set in accordance with Section R414-14A-26.

(5) The hospice provider is responsible for determining if an applicant for hospice care is covered by a Medicaid health plan prior to enrolling the client, for coordinating services and reimbursement with the health plan during the period the client is receiving the hospice benefit, and for notifying the health plan when the client disenrolls from the hospice benefit.

R414-14A-29. Marketing by Hospice Providers.

Hospice providers may not engage in unsolicited direct marketing to prospective clients. Marketing strategies shall remain limited to mass outreach and advertisements, except when a prospective client or legal representative explicitly requests information from a particular hospice provider. Hospice providers shall refrain from offering incentives or other enticements to persuade a prospective client to choose that provider for hospice care.

R414-14A-30. Medicaid 1915c HCBS Waivers and Hospice.

(1) For hospice enrollees covered by a Medicaid 1915c Home and Community-Based Services Waiver, hospice providers shall provide medically necessary care that is directly related to the patient's terminal illness.

(2) The waiver program may continue to provide services that are:

(a) unrelated to the client's terminal illness and;

(b) assessed by the waiver program as necessary to maintain safe residence in a home or community-based setting in accordance with waiver requirements.

(3) The waiver case management agency and the hospice case management agency shall meet together upon commencement of hospice services to develop a coordinated plan of care that clearly defines the roles and responsibilities of each program.

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26-18-3

R438. Health, Disease Control and Prevention, Laboratory Services.**R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah.****R438-13-1. Introduction.**

The purpose of these rules is to enable the proper execution of Section 26-26, for controlling the humane use of animals obtained from impound establishments for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, medical, and biological sciences; and the testing, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

R438-13-2. Definitions.

"ADMINISTRATOR" means a Department of Health staff member appointed by the Director to administer these rules.

"ANIMAL" means any unredeemed, abandoned or stray dog or cat impounded and requested by an institution for purposes specified in Section 26-26-(1-7), as amended, and these rules. Animals obtained from any source other than an establishment are not covered by these rules. Owners of voluntarily released animals may elect by signature whether the animal may or may not be used in research.

"ANIMAL FACILITY" means an area where impounded animals are housed or kept for recovery.

"COMMITTEE" means a body of seven individuals appointed by the Director for purposes of these rules.

"DEPARTMENT" means the Utah Department of Health.

"DIRECTOR" means the Executive Director of the Department of Health.

"ESTABLISHMENT" means any public place maintained for the impounding, care, and disposal of animals seized by lawful authority.

"INSPECTION TEAM" means an animal control officer recommended by the Utah Animal Control Officers' Association (UACO) and one licensed veterinarian, both approved by the institution being inspected and appointed by the Administrator.

"INSPECTOR" means a representative of the United States Department of Agriculture (USDA) or a qualified person acceptable to the Director.

"INSTITUTION" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry, or other educational, hospital or scientific establishment, as determined by the committee and approved by the Director, which is properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, or the cause, prevention, control, or cure of diseases or abnormal conditions of human beings or animals.

"PHYSICIAN" means any person who is licensed by the Utah Department of Commerce under either the Utah Medical Practice Act or the Utah Osteopathic Medicine Licensing Act to practice medicine and surgery in all its branches, or a physician in the employment of the government of the United States who is similarly qualified.

"VETERINARIAN" means any person who is licensed by the Department of Commerce under the Veterinary Practice Act to practice veterinary medicine, surgery, and dentistry or a veterinarian in the employment of the government of the United States who is similarly qualified.

R438-13-3. Department of Health - Power to Certify Institutions.

The Department, under the powers and duties conferred upon it by Section 26-26-2, may issue a certificate to obtain impounded animals to any institution requesting such certification upon being assured that the institution meets the requirements of Section 26-26-1 et seq., and has satisfied the requirements for certification as detailed in these rules, as determined after an inspection.

R438-13-4. Committee - Responsibilities, Membership, and Term of Appointment.

There is created an Impound Animals Advisory Committee pursuant to Section 26-1-20 Utah.

A. Responsibilities

The committee shall review and evaluate all applications of institutions requesting certification under these rules, or applications for renewal of certification, as well as cause to be investigated any complaints of violation of Section 26-26-1 et seq. these rules by any individual, institution, or establishment, and shall inform the Director of its findings and make recommendations for or against certification or enforcement of the law and these rules.

B. Membership

The committee shall include not less than one representative from the following: institutions directly involved with the use of laboratory animals, a physician, a representative of establishments, a veterinarian, a representative of animal welfare advocates, and two other members to be appointed by the Director, one of which must represent the public. The committee shall elect a chairman and a vice chairman from its membership for terms not to exceed one year. The committee shall meet a minimum of two times annually.

C. Terms of Appointment

Appointments shall be made for a period of three years. Any member may be appointed to a second consecutive term; however, no more than two consecutive terms may be served. A former committee member may return after an absence of one term.

R438-13-5. Administrator - Duties and Responsibilities.

The Director may appoint a member of the Department staff to be responsible for the administration of these rules. The administrator shall be a nonvoting member of the committee and shall issue certificates, receive and review all applications and records, conduct investigations, and receive and review reports of an inspector, consistent with the requirements of Section 26-26 and shall advise the committee of all findings.

R438-13-6. Requirements for Institutions for Certification.

Any institution requesting certification under this act shall be found to have the proper personnel and facilities for the care and humane treatment of any animal procured under this act, and so shown by the application and by an inspection of the animal facilities by an inspector.

A. Personnel

The care and management of animals shall be performed by qualified personnel.

1. The animal facilities shall be under the direct supervision of a diplomate of the American College of Laboratory Animal Medicine, a physician, veterinarian, or dentist, or a person formally trained in the biological sciences and having no less than three years of pertinent training and experience in animal care, or a person qualified by specialized education, training and experience essentially equivalent to the above categories.

2. Animal care personnel shall be qualified by training and experience in the care of animals as determined by the animal facility supervisor.

3. Apprentice personnel shall be under the direct and immediate supervision of regular animal care personnel.

4. The size of the animal care staff shall be adequate to assure daily attention to the needs of the animals.

5. Provision shall be made for the emergency care of animals whenever needed.

B. Physical Facilities and Animal Care

1. Sanitary practices and humane care of animals shall conform to standards as described in the National Institutes of Health Publication No. 86-23 revised 1985, "Guide for the Care

and Use of Laboratory Animals" and the Animal Welfare Act 9 CFR parts 1, 2, 3 1990 edition which are incorporated by reference.

2. At the conclusion of an experiment which does not require euthanasia for the collection of samples, the institution may, providing the establishment agrees and for the purpose of adoption, return to the establishment any healthy animal posing no contagious threat to humans. If the establishment does not agree to accept the animal, the institution shall euthanize the animal.

C. Inspections

Institutions seeking initial certification must submit evidence of a successful on-site inspection of their impounded animal facilities by the United States Department of Agriculture (USDA). Institutions unable to be inspected by USDA are subject to inspection by a Department of Health inspection team. After initial certification, institutions wishing to maintain certified status shall be inspected at least annually by the USDA, an inspection team or both.

D. Fees

Fees for certification will be set and administered by the Department, with approval of the State Legislature.

E. Animal Care and Use Committee

Each institution shall appoint an animal care and use committee. This committee should include a scientist from the institution, a doctor of veterinary medicine, and a person who is not affiliated with the institution in any way other than a member of the committee.

This committee should be responsible for evaluating the animal care and use program. Its duties should include those described in NIH publication No. 86-23, Guide for the Care and Use of Laboratory Animals.

R438-13-7. Application for Certification.

Application for certification shall be initiated by the institution wishing to obtain unredeemed impounded animals. The application shall be made on a form furnished by the Department, and shall include:

- A. the name and address of the institution;
- B. the name of the person who will be responsible for the supervision of procurement and handling of the animal. The Administrator must be notified within ten days of personnel changes;
- C. an estimate of the maximum number and species of animals to be obtained by the institution during the calendar year.
- D. the names of members of the institution's animal care and use committee.

R438-13-8. Issuance of Certificate.

A. Upon receipt of an application, an inspector shall review the animal facility of the institution and shall submit a report of the review to the committee. The inspector's report shall be attached to the application and the recommendations made by the committee and submitted to the Director. It shall be the prerogative of the Director to determine if the institution meets the requirements of Section 26-26-1 et seq. and these rules.

B. A certificate, once granted, cannot be transferred.

C. Any certificate shall be valid only for the calendar year for which it is issued. Any institution wishing to renew a certificate shall do so on a form furnished by the Department, and shall state any changes made or contemplated since the most recent application was submitted.

D. The certificate of approval or duplicate thereof, as supplied by the Department, shall be displayed in a prominent place in the approved animal quarters or approved laboratory.

R438-13-9. Records.

Each institution shall appoint a person to be responsible for the procurement of and maintenance of records on all animals obtained from establishments. Records shall be kept by the institution of all animals procured under certification on forms provided by the Department. Information for the purpose of record keeping shall be provided on the "Record of Transfer and Receipt of Impounded Animal" form and the "Requisition of Impounded Animals" form.

A. Records shall include:

1. a description of the animal, including breed, if known;
2. the date and place where the animal was procured;
3. the physical condition of the animal when received by the institution;
4. the cage or pen number or other identification;
5. the experimental or scientific use of the animal, including information as to whether anesthesia was or was not used;
6. name and address of person who adopted animal, if adopted;
7. the method of euthanasia of the animal, if euthanasia is performed.

B. The institution is to provide a copy of the "Record of Transfer and Receipt of Impounded Animals" form, with parts A and B completed, to an establishment for each animal received.

C. After the final disposition of the animal, a copy of the completed form shall be mailed or delivered to the administrator by the institution.

The completed form shall be maintained by the institution for not less than two years and shall be made available for inspection at any time deemed necessary by the Director or his authorized representative.

R438-13-10. Requisitions.

An establishment may require written requisitions for animals prior to their release to an institution. The requisition shall be executed in duplicate on forms provided by the Department. The original shall be furnished to the establishment and one copy retained by the institution. The requisition shall include:

- A. name and address of the institution;
- B. name and address of the establishment;
- C. number, species, size and sex of the animals desired;
- D. number of certificate;
- E. date requisition was issued.

R438-13-11. Duties of Establishments.

A. Each establishment shall keep a public record of all animals received and disposed.

B. Whenever a request for impounded animals is submitted to a supervisor of an establishment, it shall be his duty to make available to the institution the number of animals of the species, size, and sex specified in the requisition, from the unredeemed animals in his charge. If the number of animals specified by the requisition is not available, the supervisor shall immediately make available all unredeemed animals as are then in the establishment under his supervision. The supervisor shall then withhold from destruction all unredeemed animals of the species, size, and sex specified by the requisition until the number of animals is sufficient to complete the requisition. The institution shall accept the available animals and provide for their transportation to the institution.

C. The institution shall compensate the establishment for the actual expense for holding animals beyond the time of notice to the institution of their availability until they have been obtained by the institution.

D. At any time after a requisition has been issued to an establishment and before notice of the availability of the animals requisitioned has been made to the institution, the institution

may cancel all or any unfilled part of the requisition.

E. It shall be unlawful for any establishment to release any animal to an institution not holding a valid certificate issued under these rules.

R438-13-12. Receipts.

Whenever unredeemed animals are received by an institution, the institution shall furnish the establishment a receipt therefor. Receipts shall be issued in triplicate and shall be countersigned by a representative of the establishment. A copy shall be mailed or delivered to the administrator by the institution and one copy shall be retained by the institution. A receipt shall be issued for each animal obtained. The receipt shall show the date that the animal was delivered to the agent of the institution by the establishment, and the signature of the person to whom it was delivered.

R438-13-13. Maintenance of Animals by the Institution.

A. No animal obtained by an institution on requisition as herein provided shall be sold or given into the possession of any other person or organization unless released to its previous owner or adopted after the experiment to a private citizen for possession as a pet. All animals shall be transported immediately from the establishment to the institution in a humane manner and maintained by the institution for the remainder of the life of the animal unless adopted under the provision of these rules. Nothing shall prohibit the institution from releasing an animal to its previous owner if satisfactory proof of ownership is provided to the institution. The institution may require the owner to reimburse the institution for actual expenses for maintaining the animal from the time it was received by the institution until it was delivered to the previous owner.

B. Any animal procured by an institution under these rules shall be handled, transported and disposed of in a humane manner.

R438-13-14. Revocation of Certification.

Violation of Section 26-26-1 et seq. or these rules violates Section 26-23-6 and is cause to consider the cancellation of any certificate issued under these rules.

A. Notification of Intent To Revoke

Upon receipt of evidence of a violation, the Director shall issue written notice, pursuant to Section 63-46b-3, of intent to revoke the certificate of the institution 30 days following receipt of notice.

B. Notice of Hearing

The institution shall have 15 days from receipt of notice to file a written response to show why the certificate should not be revoked, and to request an informal hearing under Sections 63-46b-4 and 63-46b-5. If requested by the institution, the Director shall grant an informal hearing upon 15 days written notice.

C. Action On Hearing

If after the hearing the Director decides the certificate shall be revoked, copies of the revocation shall be sent to the institution and all establishments providing animals for the institution. Institutions may seek review of agency action as outlined in Section 63-46b-12.

R438-13-15. Renewal of Canceled Certificate.

An institution may submit an application for the renewal of a certificate canceled by reason of violation of the law or these rules not less than 30 days after final action was taken. The application shall be accompanied by documented evidence that the reason for cancellation has been removed. Upon being assured that the institution is acting in good faith and upon receipt of a favorable recommendation from the committee, the Director may issue a new certificate.

R438-13-16. Complaint.

Anyone who files a complaint with the Department against an individual, institution or establishment violating any part of R438-13 et seq., shall supply in writing specific information regarding the alleged violation or violations. The complaint shall include the time, date, place, individual or persons involved and the names of witnesses who may be called upon to testify. This statement must be in the form of a sworn affidavit and must be notarized. Preliminary investigations of complaints may be conducted at the discretion of the Director or a designated representative without the filing of a notarized sworn affidavit.

**KEY: animals, laboratories, laboratory animals
1989**

26-26-1 to 7

Notice of Continuation July 12, 2013

R512. Human Services, Child and Family Services.**R512-41. Qualifying Adoptive Families and Adoption Placement.****R512-41-1. Purpose and Authority.**

(1) The purpose of this rule is to define the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a family or individual who completes Child and Family Services training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(d) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(e) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including kin or Child and Family Services employees, must meet all of the following requirements, pursuant to Rule R512-40:

(a) Complete the adoption training program approved by Child and Family Services;

(b) Be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;

(c) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;

(d) Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-41-4. Adoption Evaluation Requirements.

(1) An adoption evaluation must be consistent with the standards of the Child Welfare League of America (the evaluation may be done by a licensed child placement agency or Child and Family Services) and must include the following:

(a) An autobiography or psychosocial information gathered from the prospective adoptive parent(s) and family members;

(b) A behavioral assessment of the prospective adoptive parent(s) and children living at home;

(c) A statement that applicants are not cohabiting in a relationship that is not a legal marriage and are in compliance with Section 78B-6-117;

(d) A health status verification of the prospective adoptive parent(s) and children living at home;

(e) A verification of financial status;

(f) An assessment of home safety and health;

(g) A criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;

(h) A screening of all adults present in the home against

the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;

(i) An assessment of the prospective adoptive parent(s) parenting skills;

(k) Recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) In the matching process, the selection of the adoptive parent(s) will be in the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, the adoption committee should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(8) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

(9) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).

(10) Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.

R512-41-6. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court has freed the child for adoption.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The adoption committee is also responsible for recommending removal of the child from a placement.

(3) The adoption committee will consist of at least three members to include senior-level Child and Family Services staff

and one or more members from an outside agency with expertise in adoption or foster care.

(4) Anyone who has information regarding the child and the potential matching families may be invited by the adoption committee to present information but not to participate in the deliberations. The adoption committee will reach its decision through consensus. If consensus cannot be reached, the adoption committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the final decision.

(5) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

(6) Any member of the adoption committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(7) Child and Family Services will send written notification of selection to the adoptive parent(s).

(8) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

(9) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(10) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(11) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

(2) The adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform the adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.

(3) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

(4) Child and Family Services' supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the adoption committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.

(4) If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-10. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the adoption assistance committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78B-6-144.

KEY: child welfare, adoption

**July 22, 2013
Notice of Continuation May 7, 2009**

**62A-4a-102
62A-4a-105
62A-4a-205.6**

R512. Human Services, Child and Family Services.**R512-302. Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver.****R512-302-1. Purpose and Authority.**

(1) The purposes of this rule are to clarify:

(a) Qualification, selection, payment criteria, and roles and responsibilities of a caregiver while a child is receiving Out-of-Home Services, and

(b) Roles and responsibilities of Child and Family Services to a caregiver for a child receiving Out-of-Home Services in accordance with Rule R512-300.

(2) This rule is authorized by Section 62A-4a-102. Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 672 authorizes federal foster care. 42 USC Section 672 (2010), and 45 CFR Parts 1355 and 1356 (2008) are incorporated by reference.

R512-302-2. Definitions.

In addition to definitions in R512-300-2, the following terms are defined for the purposes of this rule:

(1) "Caregiver" means a licensed resource family, also known as a licensed foster family, and may also include a licensed kin provider or a foster family certified by a contract provider that is licensed as a child placing agency. Caregiver does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(2) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(3) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(4) "Out-of-Home Services" means those services described in Rule R512-300.

(5) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

R512-302-3. Qualifying as a Caregiver for a Child Receiving Out-of-Home Services.

(1) An individual or couple shall be licensed by the Office of Licensing as provided in Rule R501-12 to qualify as a caregiver for a child receiving Out-of-Home Services. After initial licensure, the caregiver shall take all steps necessary for timely licensure renewal to ensure that the license does not lapse.

(2) A caregiver qualifying for an initial license and any adults living in the home shall complete criminal background checks required by Section 78A-6-308 and P.L. 109-248 before a child in state custody may be placed in that home.

(3) Child and Family Services or the contract provider shall provide pre-service training required in Rule R501-12-5 after the provider has held an initial consultation with the individual or couple to clearly delineate duties of caregivers.

(4) The curriculum for pre-service and in-service training shall be developed by the contract provider and approved by Child and Family Services according to Child and Family Services' contract with the provider.

(5) Child and Family Services or the contract provider shall verify in writing a caregiver's completion of training required for licensure as provided in Rule R501-12-5.

(6) Child and Family Services or the contract provider shall also verify in writing a caregiver's completion of supplemental training required for serving children with more difficult needs.

(7) Once a license is issued, the caregiver's name and identifying information may be shared with the court, Assistant Attorney General, Guardian ad Litem, foster parent training contract provider, resource family cluster group, foster parent associations, the Department of Health, and the child's primary

health care providers.

R512-302-4. Selection of a Caregiver for a Child Receiving Out-of-Home Services.

(1) A caregiver shall have the experience, personal characteristics, temperament, and training necessary to work with a child and the child's family to be approved and selected to provide Out-of-Home Services.

(2) An Out-of-Home caregiver shall be selected according to the caregiver's skills and abilities to meet a child's individual needs and, when appropriate, an ability to support both parents in reunification efforts and to consider serving as a permanent home for the child if reunification is not achieved. When dictated by a child's level of care needs, Child and Family Services may require one parent to be available in the home at all times.

(3) An Out-of-Home caregiver shall be selected according to the caregiver's compatibility with the child, as determined by Child and Family Services exercising its professional judgment. The best interest of the child shall be Child and Family Services' primary consideration when making a placement decision.

(a) Child and Family Services may consider the Out-of-Home caregiver's possession or use of a firearm or other weapon, espoused religious beliefs, or choice to school the child outside the public education system in accordance with Section 63G-4-104.

(b) Child and Family Services may consider the child's sex, age, behavior, and the composition of the foster family.

(4) A child in state custody shall be placed with an Out-of-Home caregiver who is fully licensed as provided in Rule R501-12. A child may be placed in a home with a probationary license only if the Out-of-Home caregiver is a child-specific placement.

(5) An Out-of-Home caregiver shall be given necessary information to make an informed decision about accepting responsibility to care for a child. The worker shall obtain all available necessary information about the child's permanency plan, family visitation plans, and needs such as medical, educational, mental health, social, behavioral, and emotional needs, for consideration by the caregiver.

(6) If the court has not given custody to a non-custodial parent or kin provider, to provide safety and maintain family ties, the child shall be placed in the least restrictive placement that meets the child's special needs and is in the child's best interests, according to the following priorities:

(a) A relative of the child.

(b) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent.

(c) A former foster placement, shelter facility, or other foster placement designated by Child and Family Services.

(7) If a child is reentering custody of the state, the child's former Out-of-Home caregiver shall be given preference as provided in Section 62A-4a-206.1.

(8) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

(9) Selection of an Out-of-Home caregiver for an Indian child shall be made in compliance with the Indian Child Welfare Act, 25 USC Section 1915 (2007), which is incorporated by reference.

R512-302-5. Child and Family Services' Roles and Responsibilities to a Caregiver for a Child Receiving Out-of-Home Services.

(1) Child and Family Services shall actively seek the involvement of the caregiver in the child and family team process, including participation in the child and family team, completing an assessment, and developing the child and family plan as described in Rule R512-300-4.

(2) The child and family plan shall include steps for

monitoring the placement and a plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

(3) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's caregiver in plan development.

(4) The caregiver shall be provided a copy of the completed child and family plan.

(5) The caregiver has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with Sections 78A-6-310 and 78A-6-317.

(6) Child and Family Services shall provide support to the caregiver to ensure that the child's needs are met, and to prevent unnecessary placement disruption.

(7) Options for temporary relief may include paid respite, non-paid respite, childcare, and babysitting.

(8) The worker shall provide the caregiver with a portable, permanent record that provides available educational, social, and medical history information for the child and that preserves vital information about the child's life events and activities while receiving Out-of-Home Services.

R512-302-6. Roles and Responsibilities of a Caregiver of a Child Receiving Out-of-Home Services.

(1) An Out-of-Home caregiver shall be responsible to provide daily care, supervision, protection, and experiences that enhance the child's development as provided in a written agreement entered into with Child and Family Services and the child and family plan.

(2) The caregiver shall be responsible to:

(a) Participate in the child and family team process.

(b) Provide input into the assessment and child and family plan development process.

(c) Complete goals and objectives of the plan relevant to the caregiver.

(d) Promptly communicate with the worker the child's progress and concerns and progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

(e) Support and assist with parental visitation.

(3) The caregiver shall document individualized services provided for the child, when required, such as skills development or transportation.

(4) The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving Out-of-Home Services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

R512-302-7. Payment Criteria for a Caregiver of a Child Receiving Out-of-Home Services.

(1) An Out-of-Home caregiver shall receive payments according to the rate established for the child's need level, not upon the highest level of service the caregiver has been trained to provide.

(2) The daily rate for the monthly foster care maintenance payment provides for the child's board and room, care and supervision, basic clothing and personal incidentals, and may also include a supplemental daily payment based upon a child's medical need or to assist with care of a youth's child while residing with the youth in an Out-of-Home placement. Foster care maintenance may also include periodic one-time payments for special needs such as an initial clothing allowance, additional needs for a baby, additional clothing, gifts, lessons or equipment, recreation, non-tuition school expenses, and other needs recommended by the child and family team and approved by Child and Family Services.

(3) A caregiver may also be reimbursed for transporting a foster child for visitation with a parent or siblings, to participate in case activities such as child and family team meetings and reviews, and for transporting the child to activities beyond those normally required for a family. The caregiver must document all mileage on a form provided by Child and Family Services.

(4) The caregiver shall submit required documentation to receive payments for care or reimbursement for costs.

R512-302-8. Child Abuse Reporting and Investigation of a Caregiver Providing Out-of-Home Services.

(1) Investigation of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living with an Out-of-Home caregiver shall be investigated by staff designated for this purpose by the Department of Human Services or law enforcement as provided in Section 62A-4a-202.3.

R512-302-9. Removal of a Child from a Caregiver Providing Services.

(1) Removal of a child from a caregiver shall occur as provided in Section 62A-4a-206 and Rule R512-31.

R512-302-10. Cohabitation Not Permitted for Foster Parents.

(1) A foster parent or foster parents must comply with Section 78B-6-137 which states that they are not cohabiting with another person in a sexual relationship. Child and Family Services gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in state custody may be foster parents pursuant to Section 78A-6-307.

KEY: child welfare

July 22, 2013

Notice of Continuation May 16, 2013

62A-4a-102

62A-4a-105

63G-4-104

78A-6-308

Pub. L. 109-248

R527. Human Services, Recovery Services.**R527-5. Release of Information.****R527-5-1. Statutory Authority and Purpose.**

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules by Title 62A, Chapter 11, Section 107(8).

(2) This rule establishes how ORS records may be accessed under Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA).

R527-5-2. Definitions.

(1) Terms used in this rule are defined either explicitly in section 63G-2-103 or implicitly in the text of subsection 63G-2-201.

(2) "Restricted", as used in subsection 63G-2-201(3)(b), refers to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation. These records are not subject to the procedures for access and disclosure outlined in GRAMA.

R527-5-3. Request for Release of Information.

(1) Written requests for information governed by GRAMA may be submitted in accordance with section 63G-2-204 to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

(2) Written requests for expedited release of information in accordance with section 63G-2-204 may be submitted to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

R527-5-4. Appeal of Denial of Request for Release of Information.

A request to appeal the denial to access a record governed by GRAMA shall be submitted in accordance with Section 63G-2-401 to:

(1) the Director of the Office of Recovery Services for records maintained by ORS.

R527-5-5. Public Information.

(1) In accordance with Utah Code Sections 63G-2-103 (21) and 63G-2-201 a record is public unless classified as private, controlled, protected, or exempt.

(2) In accordance with Utah Code Section 63G-2-307, a record may be classified or reclassified at any time, including after the record has been requested.

R527-5-6. Private Information.

(1) Private records include the following:

(a) the address, date of birth, and Social Security number (SSN) of ORS case participants;
(b) information about state employees, former employees and applicants, except as provided for in 63G-2-302.

(2) Private records may be disclosed when:

(a) disclosure is required by other statutes;
(b) disclosure is for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by the Office of Recovery Services;

(c) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has voluntarily been given, or a parent's attorney, demonstrates that the other party's address is

required in order to serve legal process as the result of a judicial action to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the person whose address is being sought has requested that case information be safeguarded;

(d) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has been voluntarily given, or a parent's attorney, requests the other party's address related to parent-time based on Title 62A, Section 11, Subsection 304.4;

(e) income information is needed to establish a support order or review a support order for possible modification. This information may only be released to the court or administrative Presiding Officer, the other party or the other party's authorized representative;

(f) a case participant's Social Security number, address or employment information is needed by authorized governmental entities, including law enforcement agencies and;

(i) the requesting entity enforces, litigates or investigates civil, criminal or administrative law and the record is necessary to a proceeding or investigation; or

(ii) the requesting entity is one that collects information for pre-sentence, probationary or parole purposes.

(g) a governmental agency provides written assurance that the record is necessary to the governmental entity's duties and functions and will be used for a purpose similar to the purposes for which ORS collected or obtained the information and that the record use produces a public benefit outweighing the individual privacy right protecting the record;

(3) A private record shall be disclosed in accordance with the requirements of Utah Code Section 63G-2-202.

(4) Private records may not be released when a protective order has been issued in violation of 42 USC 654(26), or if there is reason to believe the release of information may result in physical or emotional harm to the person.

R527-5-7. Controlled Information.

(1) A record is controlled if it meets the requirements of Utah Code Section 63G-2-304.

(2) Controlled records can only be released under the provisions of Utah Code Section 63G-2-202(2).

R527-5-8. Protected Information.

(1) A record is protected if it meets the requirements of Utah Code Section 63G-2-305.

(2) Protected records can only be released under the provisions of Utah Code Section 63G-2-202(4).

R527-5-9. Restricted Records Exempt from Release Under GRAMA.

(1) A record is restricted from release by ORS if it meets the requirements of Utah Code Section 63G-2-201(3)(b).

R527-5-10. Fees.

(1) ORS may provide requested records without a charge unless:

(a) The request is for records which require programmer assistance.

(b) The request is a repeat request by the same requester for information already provided within the last three months.

(2) Contact ORS Records for specific fee amounts.

KEY: accessing records, record requests, GRAMA compliance, records fees

June 15, 2013

Notice of Continuation January 6, 2012

62A-11-107

62A-11-304.4(4)

63G-2

R590. Insurance, Administration.**R590-186. Bail Bond Surety Business.****R590-186-1. Purpose.**

This rule establishes uniform criteria and procedures for the initial and renewal licensing, of a bail bond surety company, and sets standards of conduct for those in the bail bond surety business in the State of Utah.

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure, and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer Chapter 35 of Title 31A;

(3) Subsection 31A-35-401(1)(c) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond applicants applying for licensure;

(5) Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond surety company.

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond surety business.

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$300,000, including a minimum of \$100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504.

R590-186-5. Company License Renewal.

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$300,000, at least \$100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) the following items are required as indicated:

(i) renewal in 2002, 2008, and 2014: a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation; or

(ii) renewal in 2005, 2011, and 2017: a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to \$250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

(4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).

R590-186-6. Agent License and Renewal.

(1) Bail bond surety companies and insurers are required to issue bail bonds only through licensed bail bond agents that have been contracted with and appointed by the insurer or designated by the bail bond surety company for whom they are issuing bail bonds.

(2) All persons doing business as bail bond agents must be licensed in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing. Bail bond agent licenses are individual limited line licenses. These licenses are issued for a two year period and require no licensing examination or continuing education.

(3) Individual bail bond agent licenses must be renewed at the end of the two year licensing period in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal.

R590-186-7. Unprofessional Conduct.

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

- (1) having a license as a surety revoked in this or any other state;
- (2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;
- (3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;
- (4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;
- (5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;
- (6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;
- (7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;
- (8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;
- (9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;
- (10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;
- (11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;
- (12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:
 - (a) the amount of the bail;
 - (b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;
 - (c) the additional collateral, if any, that will be held by the surety;
 - (d) the incarcerated person's obligations to the surety and the court;
 - (e) the conditions upon which the bond may be revoked;
 - (f) any additional charges or interest that may accrue;
 - (g) any co-signors or indemnitors that will be required; and
 - (h) the conditions under which the bond may be exonerated and the collateral returned.
- (13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;
- (14) using a bail bond agent not contracted and appointed by the bail bond surety company;
- (15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;
- (16) requiring unreasonable collateral security;
- (17) failing to provide an itemized statement of all expenses deducted from collateral, if any;
- (18) requiring as a condition of his executing a bail bond

that the principal agree to engage the services of a specified attorney;

- (19) preparing or issuing fraudulent or forged bonds or power of attorney;
- (20) signing, executing, or issuing bonds by an unlicensed person;
- (21) executing bond without countersignature by a licensed agent at time of issue;
- (22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them;
- (23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;
- (24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;
- (25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;
- (26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;
- (27) acting as an unlicensed bail bond enforcement agent;
- (28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner, including outstanding judgments; and
- (29) using deceptive or intimidating practices in which to gain bail bond business.

R590-186-8. Investigating Unprofessional Conduct.

The Board and the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, or bail bond surety agent. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

- (1) Investigations shall be completed in the following manner:
 - (a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.
 - (b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to him.
 - (c) At the next meeting of the Board the commissioner shall present to the Board the complaint and the action undertaken by the Department to investigate the complaint.
 - (d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, request additional investigation, or conduct its own investigation.
 - (i) If the Board conducts its own investigation it may take and record witness statements under oath and may request any documents or other evidence from any person, including necessary financial records.
 - (ii) Witnesses may be compensated for their appearances as specified in 31A-2-301.
 - (iii) The Board may request a Subpoena from the commissioner to compel the production of documents or other evidence or to compel the testimony of a witness.

(iv) After the Board completes its investigation, it shall:
 (A) close the investigation if the allegations have been shown to be unfounded or if the matter complained of is satisfactorily resolved; or

(B) if the investigation shows that unprofessional conduct did occur that requires the imposition of sanctions, it shall compile the evidence necessary to pursue the matter in an administrative proceeding by the Department of Insurance, and shall make a written report of its findings and of its recommendations for the penalties to be applied, and forward the report and evidence to the commissioner for further action within 15 days of the conclusion of the investigation.

(2) Except for matters referred to the commissioner for further proceedings, the Board shall retain in the Utah Insurance Department a file on each of the investigations it conducts concerning unprofessional conduct for a period of 5 years. Files regarding investigations conducted by the Board shall be classified as protected under Governmental Records Access and Management Act (GRAMA).

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

KEY: insurance
February 10, 2011
Notice of Continuation July 12, 2013

31A-35-104
31A-35-301
31A-35-401
31A-35-406

R590-186-9. Bonding Limits.

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE	
Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
\$250,000 line of credit or net worth/\$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least \$100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond company who has qualified for the 10 to 1 ratio if that bail bond company's line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.

R590-186-10. Publication of Licensed Bail Bond Surety Companies.

On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.

R590-186-11. Definition.

In reference to subsection 31A-35-701(5) "members of their immediate families" shall be defined as: spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, and half-sister.

R590-186-12. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14. Severability.

R592. Insurance, Title and Escrow Commission.**R592-10. Title Insurance Regulation Assessment for Title Insurance Agencies and Title Insurers.****R592-10-1. Authority.**

This rule is promulgated by the Title and Escrow Commission (Commission) pursuant to Subsections:

- (1) 31A-2-404(2)(d) which requires the Commission to determine by rule the assessment required by 31A-23a-415; and
- (2) 31A-23a-415(2)(d) which requires the Commission to establish the amount of costs and expenses that will be covered by the assessment.

R592-10-2. Purpose and Scope.

- (1) The purposes of this rule are to:
 - (a) establish the categories of costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance and the audits of title agencies;
 - (b) require the reporting by a title insurance agency and a title insurer of the mailing address and physical location of each office in each county where the title agency or title insurer maintains an office;
 - (c) establish a calculation method for the calculation of the number of title insurance agency or title insurer offices; and
 - (d) determine the premium year used in calculating the assessment of title insurers.
- (2) This rule applies to all title insurers and title insurance agencies.

R592-10-3. Definitions.

(1) For the purpose of the rule the Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:

- (a) "Office" means each physical location of a title insurance agency or a title insurer in a county. Office includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

- (1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and
- (2) will include the following expenses:
 - (a) salary and state paid benefits;
 - (b) travel expenses, including daily vehicle expenses;
 - (c) computer hardware and software expenses;
 - (d) e-commerce expenses;
 - (e) wireless communications expenses; and
 - (f) training expenses.

R592-10-5. Office Report.

(1) A title insurance agency and a title insurer shall submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the title insurance agency or title insurer maintains an office:

- (a) the opening or closing of an office;
- (b) a change of address of an office; or
- (c) a change in the manager of an office.
- (2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.
- (3) The department's Office Report Form, which is available on the department's website, shall be used to report changes in offices.
 - (a) An actual copy of the form may be used or may be adapted to a particular word processing system.

(b) If adapted, the content, size, font, and format must be similar.

R592-10-6. Calculation Method for the Calculation of the Number of Title Insurance Agency Offices.

- (1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.
- (2) An annual assessment calculation for a title insurance agency or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.
- (3) A title insurance agency or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

R592-10-7. Premium Year for Title Insurer Assessment.

- (1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.
- (2) The direct premiums written shall be taken from the insurer's annual statements for that year.

R592-10-8. Assessment Payment.

- (1) An annual assessment shall be paid by the due date on the invoice.
- (2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R592-10-10. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will 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: title insurance**May 19, 2009****Notice of Continuation July 12, 2013****31A-2-201****31A-23a-415**

R600. Labor Commission, Administration.**R600-2. Operations.****R600-2-1. Business Hours.**

The offices of the Commission shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. The Labor Commission's Parowan office shall be open for receipt of official documents between the hours of 8:00 a.m. to 5:00 p.m. Monday through Thursday. Commission offices shall not be open for business Saturday or Sunday and on state-recognized holidays. Any official document, including fax transmissions, received when the Commission is not open, including fax transmissions after 5:00 p.m. shall be considered received on the next working day.

KEY: Labor Commission, hours of business

July 8, 2013

34A-1-104

Notice of Continuation June 19, 2012

R612. Labor Commission, Industrial Accidents.**R612-200. Workers' Compensation Rules - Filing and Paying Claims.****R612-200-1. Reporting and investigating injuries.****A. Employer's Obligation to Report Injury.**

1. Time requirements. Within 7 days after first notice of a work-related injury, except an injury requiring only first aid treatment as defined in subsection B. of this rule, an employer must report the injury as follows:

a. Insured employer. An insured employer must report the injury to its workers' compensation insurance carrier.

b. Self-insured employer. A self-insured employer must report the injury to its claims administrator.

c. Uninsured employer. An uninsured employer must report the injury directly to the Division.

d. An employer is deemed to have notice of a workplace injury upon the earliest of the following:

i. Observation of the injury;

ii. Verbal or written notice of the injury from any source;

or

iii. Receipt of any other information sufficient to warrant further inquiry by the employer.

2. Penalty for failure to properly report injury. The Division may impose a civil assessment of up to \$500 against an employer for each occurrence in which the employer fails to report a work-related injury as required by this rule.

B. First Aid.

1. Injury Required Treatment Only by First Aid Need Not Be Reported. An employer is not required to report a work injury that requires only first aid treatment.

a. First aid treatment is limited to medical care provided on-site or at an employer-sponsored free clinic. It may include an initial visit and one subsequent follow-up visit within 7 days of the injury or, if provided by a licensed health professional in an employer-sponsored free clinic, then an initial visit and two subsequent visits within 14 days of the injury.

b. The Employer must maintain health records on site for first aid treatment. (This does not apply to reporting it on OSHA's 300 log).

2. Treatments That Constitute First Aid. First aid treatment is limited to the following types of medical care:

a. Non-prescription medications at non-prescription strength.

b. Tetanus immunizations;

c. Cleaning, flushing or soaking wounds on the skin surface;

d. Applying bandages, gauze pads, etc.;

e. Hot or cold therapy, limited to hot or cold packs, contrast baths and paraffin;

f. Use of any totally non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.;

g. Use of temporary immobilization devised while transporting an accident victim (splints, slings, neck collars, or back boards);

h. Drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;

i. Eye patches, simple irrigation, or use of a cotton swab to remove foreign bodies not embedded in or adhered to the eye;

j. Use of irrigation, tweezers, cotton swab or other simple means to remove splinters or foreign material from areas other than the eye;

l. Use of finger guards;

m. Massages;

n. Drinking fluids to relieve heat stress.

3. Treatments That Are Not Considered First Aid. First aid does not include treatment of any injury that has resulted in a loss of consciousness, inability to work, work restriction, or transfer to another job.

C. Insurer and Self-Insured Employer's Duty to File First

Report of Injury.

1. Purpose of First Report of Injury. The First Report of Injury is used to provide notice of work injuries to the Division as required by Section 34A-2-407 of the Utah Workers' Compensation Act and Section 34A-3-108 of the Utah Occupational Disease Act.

2. Incorporation by Reference of Technical Standards Governing First Reports of Injury. The Labor Commission hereby adopts and incorporates by reference the Industrial Accidents Division Claims EDI Implementation Guide ("EDI Implementation Guide") and the Utah Claims R3 EDI Tables ("EDI Tables"). (Date/version, etc.)

3. Compliance with EDI Implementation Guide and EDI Tables.

a. Each First Report of Injury must comply with the formatting standards and content requirements of the EDI Implementation Guide and EDI Tables and must contain the following minimum information:

i. Date of Injury;

ii. Type of loss (injury or occupational disease);

iii. Basic injury information, including a) nature of Injury (strain, puncture etc); b) part of body affected (hand, foot etc); and cause of injury (burn, fall, exposure etc);

iv. Description of event or conditions leading to injury or disease;

v. Injured worker's first and last name;

vi. Injured worker's date of birth;

vii. Injured worker's social security number, Green Card number, Employment Visa number, or Passport number. If none of these identification numbers are available, the entity preparing the First Report of Injury must contact the Division to obtain a substitute identification number;

viii. Injured worker's mailing address;

ix. Injured worker's employment status (part or full time);

x. Date employer had notice of the injury;

xi. Employer's name;

xii. Employer's federal employer identification number or federal tax identification number;

xiii. Employer's unemployment insurance number; and

xiv. Employer's physical business address.

b. The claim administrator shall report the appropriate First Report of Injury (FROI) based on the EDI standard, which includes the ability to communicate immediate denial and under investigation. In the event of denial or under investigation, the claim administrator must provide the claimant written notice of determination and reasons for it.

4. Time requirement for filing First Report of Injury. Within 7 days of receiving notice of a work injury, an insurance carrier or self-insured employer must submit a First Report of Injury for the injury to the Division.

a. An insurance carrier or self-insured employer is deemed to have notice of a workplace injury or disease upon receipt of verbal or written notice of the injury that includes the names of the employer and employee and the date of injury.

b. An employer that is not self-insured and does not have workers' compensation insurance must report any work injury directly to the Division.

c. The Division may impose a civil assessment of up to \$500 against an insurance carrier or self-insured employer for each occurrence or failure to properly report a work injury as required by this rule. The penalty shall be applied only to the improperly filed report as a whole and not applied to each required date element required by section 3.a.

D. Investigation of Claims. An insurance carrier, claim administrator or uninsured employer shall promptly investigate the claim and either accept or deny the claim within 21 days of the date of notice. IF, with exercise of reasonable diligence, the insurance carrier, claim administrator or uninsured employer cannot complete its investigation within the initial 21-day

period, it shall within that initial 21-day period submit to the Division a "First Report of Injury - Under Investigation" and provide a similar written notice to the subject employee. The insurance carrier, claim administrator or uninsured employer shall then be allowed 24 days in addition to the initial 21-day period to complete its investigation.

1. The Division may impose a civil assessment of up to \$500 against an insurance carrier or self-insured employer for each occurrence of failure to properly report its compensability determination by the conclusion of the additional 24-day period provided by this subsection. The penalty shall be applied only to the improperly filed report as a whole and not applied to each required data element required by section 3.a.

E. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

F. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;
2. Injury or occupational disease did not occur within the scope of employment;
3. Medical information does not support the claim;
4. Claim was not filed within the statute of limitations;
5. Claimant is not an employee of the employer he/she is making a claim against;
6. Claimant has failed to cooperate in the investigation of the claim;
7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;
8. Tested positive for drugs or alcohol; or
9. Other - a very specific reason must be given.

G. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-200-2. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;
2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-200-3. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-200-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

Unaccrued Weeks	X	Weekly Benefit \$	X	Cumulative Discount	=	Discount \$
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-200-5. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-200-6. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-200-7. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a

series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1, 1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step - Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner,

the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

- (i) the requesting party has a substantial possibility of prevailing on the merits;
- (ii) the requesting party will suffer irreparable injury unless a stay is granted; and
- (iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step - Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

D. For purposes of this rule, the following standards and definitions apply:

1. Other work reasonably available: Subject to medical restrictions and other provisions of the Act and rules, other work is reasonably available to a claimant if such work meets the following criteria:

a. The work is either within the distance that a resident of the claimant's community would consider to be a typical or acceptable commuting distance, or is within the distance the claimant was traveling to work prior to his or her accident;

b. The work is regular, steady, and readily available; and

c. The work provides a gross income at least equivalent to:

(1) The current state average weekly wage, if at the time of the accident the claimant was earning more than the state average weekly wage then in effect; or

(2) The wage the claimant was earning at the time of the accident, if the employee was earning less than the state average weekly wage then in effect.

2. Cooperation: As determined by an administrative law judge, an employee is not entitled to permanent total disability compensation or subsistence benefits unless the employee fully cooperates with any evaluation or reemployment plan. The ALJ will evaluate the cooperation of the employee using, but not limited to, the following factors: attendance, active participation, effort, communication with the plan coordinator, and compliance with the requirements of the vocational plan. In determining if these factors were met, the ALJ shall consider relevant changes in the employee's documented medical condition.

3. Diligent Pursuit: The employer or its insurance carrier shall diligently pursue the reemployment plan. The ALJ will evaluate the employer or insurance carrier's diligent pursuit of the plan using, but not limited to, the following factors: timely payment of expenses and benefits outline in the vocational plan, and as required by the educational institution providing the vocational training, communication with the employee, compliance with the requirements of the vocational plan, and timely modification of the plan as required by documented changes in the employee's medical condition.

4. Resolution of disputes regarding "cooperation" and "diligent pursuit": If a party believes another party is not cooperating with or diligently pursuing either the evaluations necessary to establish a plan, or the requirements of an approved reemployment or rehabilitation plan, the aggrieved party shall submit to the workers' compensation mediation unit an outline of the specific instances of non-cooperation or lack of diligence. Other parties may submit a reply. The Mediation Unit will promptly schedule mediation to reestablish cooperation among the parties necessary to evaluate or comply with the plan. If

mediation is unsuccessful, a party may request the Adjudication Division resolve the dispute. The Adjudication Division will conduct a hearing on the matter within 30 days and shall issue a written decision within 10 days thereafter.

R612-200-8. Burial Expenses.

(1) Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to \$8,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

(2) Beginning in the year 2004 and every two years thereafter, the Commission shall review this rule and shall make such adjustments as are necessary so that the burial expense provided by this rule remains equitable when compared to the average cost of burial in this state.

**KEY: workers' compensation, filing deadlines, time, administrative proceedings
July 8, 2013**

**34A-2-101 et seq.
34A-3-101 et seq.
34A-1-104**

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**R649-9. Waste Management and Disposal.****R649-9-1. Introduction.**

1. Section 40-6-5 UCA authorizes the board to regulate the disposal of produced water and oil-field wastes. It is the intent of the board and division to regulate E and P wastes and facilities for the disposal of these wastes in a manner that protects the environment, limits liability to producers, and minimizes the volume of waste.

2. These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities and the cleanup requirements for E and P waste related sites.

3. Design and construction requirements for disposal facilities approved prior to July 1, 2013 shall remain as previously permitted. Design and construction changes to these facilities after July 1, 2013 shall meet the following requirements as determined by the division.

4. These rules are intended for E and P waste disposal facilities excluding Class II injection wells and pits associated with wells.

R649-9-2. General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the division to verify the status of the facility. The division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

1.3. All approved disposal facilities not located at a well site shall be identified with a suitable sign showing facility name, operator, location and emergency number.

1.4. The disposal facility shall be fenced and maintained to deter access by livestock and wildlife and, if determined necessary by the division, equipped with flagging or netting to deter entry by birds and waterfowl.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

2.4. Disposal facilities shall be operated in accordance with an approved application and in a manner that does not cause safety or health hazards.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. Whenever possible, injection of E and P waste into approved Class II wells is the division's preference.

3.2. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall submit, to the division, an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes. This plan will include:

4.1. The type and estimated annual volume of wastes that will be or have been generated.

4.2. The facilities to be used for disposal.

4.3. The description of any waste reduction or minimization procedures.

4.4. Any onsite disposal/treatment methods or programs to be implemented by the operator.

4.5. If changes are made to the plan during the year, then the operator shall notify the division in writing, within 30 days,

of this change.

R649-9-3. Permit and Application Requirements for Disposal Facilities.

1. No waste disposal facility shall operate without a division-issued permit.

2. Applications for new disposal facilities or modifications shall be submitted to the division and shall include the following:

2.1. Previously submitted material may be included by reference provided they are current and readily available to the division.

2.2. Evidence justifying the need for the proposed facility or expansion of an existing facility.

2.3. Names and addresses of all applicants, principal officers and owners with 25 percent or more interest in the facility.

2.4. Materials or products to be applied to the land surface or subsurface shall meet the division's current cleanup levels for contaminated soil and other wastes.

2.5. If leachability and/or toxicity are of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure (TCLP), Synthetic Precipitation Leaching Procedure (SPLP) or any other test approved by the division.

2.6. A contingency plan designed to minimize any hazards to fresh water, public health and safety, or the environment in the event of an unplanned fire, explosion, or a release of contaminants or oil field waste to the air, soil, surface water or ground water.

2.7. A solid waste stream management plan describing all chemical processes, estimated volumes and chemical profiles used in the treatment of waste and odor, any products generated by these processes, method and schedule for disposal of precipitated solids and complete list of all wastes to be accepted at the facility.

2.8. A topographic map and drawing of the site, on a suitable scale, that identifies all geologic cross sections, side slopes, equipment, secondary containment, test borings, roads, fences, gates, wells and springs, drainage patterns, pipelines, surface area to be disturbed, buildings and chemical storage areas within one mile of the site perimeter and location relative to other site facilities. The drawings shall be of professional quality.

3. Siting requirements for new disposal facilities and modifications.

3.1. The disposal facility shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.

3.2. The disposal facility shall be located a minimum of one mile from residences or occupied buildings not associated with the facility unless a waiver has been signed by the owners of the residences and buildings within one mile.

4. Geologic and hydrological requirements for new disposal facilities or modifications.

4.1. The disposal facility shall not be located in a geologically or hydrologically unsuitable area, such as aquifer recharge areas, protection zones for public drinking water sources, flood plains, drainage bottoms, and areas on or near faults, within 500 feet of a wetland, water-course or lakebed, permeable soil where ground water is less than 50 feet below the lowest elevation at which the operator will place oilfield waste, or within the area overlying a subsurface mine.

4.2. Regional and local geologic information shall include bedrock strike and dip, fracture patterns, slope stability, faulting, folding, rockfall, landslides, subsidence or erosion potential, and surface water features that may affect the design and operation of the facility.

4.3. Geological and hydrological evidence showing that

the proposed disposal method will not adversely affect existing water quality or major uses of such waters.

4.3.1. Any intentional discharge of water will require an additional permit from the Division of Water Quality.

4.4. Test borings shall be taken in sufficient quantity and to an adequate depth, not to exceed 50 feet, to define subsurface conditions to assure that the facility will be constructed on a firm stable base.

4.5. Representative analysis of facility surface and subsurface soils submitted to the division shall include TDS, major cations and anions or other analysis determined necessary by the division for establishing background soil concentrations.

4.6. Geologic cross-sections submitted to the division shall include depth to shallow ground water, formation names, and type and name of the shallowest fresh water aquifer beneath the proposed site.

4.7. If determined necessary by the division, applicant shall submit ground water analysis of the aquifer(s) beneath the proposed site.

4.8. If determined necessary by the division, applicant shall submit potentiometric maps of the shallowest aquifer(s).

5. Engineering and design requirements for new disposal facilities and modifications.

5.1. Disposal facilities shall be designed and sealed by a registered engineer and inspected by a registered engineer during construction.

5.1.1. A construction certification shall be submitted, by the engineer, prior to the Division issuing an operation permit for the facility.

5.2. The disposal facility shall be designed appropriately for the intended purpose.

5.3. Facilities shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health and safety, and the environment for the life of the operation.

5.3.1. The disposal facility shall be designed with secondary containment to capture the largest potential release in the event of a catastrophic failure.

5.4. Facilities shall be designed and constructed so as to prevent run-on and run-off of surface water, up to peak discharge from a 25 year, 24 hour storm.

5.5. The facility shall be designed such that disposal can only occur when an attendant is on duty, unless loads can be monitored or otherwise isolated for inspection before disposal or other security measures approved by the division.

R649-9-4. Specific Requirements Applicable to Evaporation Facilities.

1. Evaporation facilities shall be designed, constructed and operated to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

2. Applicant shall submit detailed construction/installation diagrams of ponds, side slopes, liners, pond storage capacity, leak detection systems, dikes or levees, wind fences, piping, enhanced evaporation systems with justification, water treatment systems and tanks.

2.1. Detailed information shall be submitted for all enhanced evaporation systems which demonstrates that unlawful discharge will not occur.

2.2. The facility shall be designed, maintained and operated to separate oil from produced water prior to discharge into a pond.

3. Applicant shall submit detailed construction/installation diagrams of unloading facilities and an explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation on the ponds.

3.1. The unloading facility shall be designed, maintained and operated to adequately process the anticipated maximum

daily quantity of produced water.

3.2. The unloading facility shall be designed with a leak detection system if determined necessary by the division.

3.2.1. Applicant shall submit procedures for repair should leakage occur.

4. Applicant shall submit the maximum daily quantity of water to be disposed of and a representative water analysis of such water that includes the concentrations of chlorides and sulfates, pH, total dissolved solids "TDS", and information regarding any other significant constituents if requested by the division.

5. Applicant shall submit climatological data describing the average annual evaporation and precipitation.

6. Ponds shall be designed, maintained and operated to meet the following requirements.

6.1. Ponds shall be designed for 10 acre-feet of water or less, unless otherwise approved by the division.

6.2. Ponds shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.

6.3. Ponds shall be designed to prevent unauthorized surface or subsurface discharge of water.

6.4. Ponds shall be designed to include a 2-foot free-board at all times.

6.5. Pond levees shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1.

6.5.1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.

6.5.2. Vertical height of the levees shall not exceed 25 percent of the total vertical depth of the pond.

7. Ponds shall be designed with two synthetic liners, an upper primary and lower secondary liner, with a leak detection system between them. Synthetic liners shall be installed according to the manufacturer's instructions.

7.1. The primary liner shall be impervious (a hydraulic conductivity no greater than 1×10^{-9} cm/sec) and constructed with a minimum 60-mil HDPE or equivalent liner approved by the division.

7.2. The secondary liner shall be impervious and constructed with a minimum 40-mil HDPE or equivalent liner approved by the division.

7.3. If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction and settling movements in the underlying earth, without cracking.

7.4. Materials used in lining ponds shall be impervious and resistant to weather, tears and punctures, sunlight, hydrocarbons, aqueous acids, alkalis, salt, fungi, or other substances that might be contained in the produced water.

7.5. Applicant shall submit the type, thickness, strength, and life span of material(s) to be used for lining the pond and the method of installation.

7.6. Applicant shall submit procedures for repair of the liner, should leakage occur.

8. Applicant shall submit detailed construction/installation diagram for the leak detection system.

8.1. The leak detection design shall include, a drainage and collection system placed between the upper and lower liners and sloped so as to facilitate the earliest possible detection of a leak.

8.2. The leak detection design shall include a vertical riser outside the dike allowing direct visual inspection of the sump from the surface.

8.2.1. The sump shall be designed to extend a minimum of two feet below the inlet line from the pond, allowing visual detection of any fluid and sampling of fluid.

8.2.2. Designed with a removable top for the sump riser that will prevent entry of fluids.

8.3. Designed with leak detection piping capable of withstanding chemical attack from oil field waste, structural loading from stresses and disturbances from overlying oil field waste and cover materials, equipment operation, expansion and/or contraction, and facilitate clean-out maintenance.

9. Evaporation facilities shall be operated to separate oil from produced water prior to discharge into a pond and prevent unauthorized surface discharge of water.

9.1. Hydrocarbon accumulation, other than de minimis quantities, on an evaporation pond is considered a violation and shall be removed within 24 hours.

9.2. Overspray from sprinklers and/or overspray caused by wind, including foam, outside lined areas are considered a violation and shall be corrected immediately.

9.3. Sampling and testing of soils suspected to be contaminated from overspray may be required by the division.

R649-9-5. Specific Requirements Applicable to Landfarms.

1. Landfarms for the bioremediation of oil contaminated soils and materials shall be designed and constructed to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

1.1. Landfarms shall be constructed on native soil with a hydraulic conductivity of no greater than 1×10^{-6} cm/sec.

1.2. With division approval, fresh water may be added as necessary to enhance bioremediation and control dust.

1.3. Application of microbes and nutrients for enhancing bioremediation requires prior division approval.

2. Landfarms shall be operated to meet the following requirements:

2.1. E and P waste accepted by the landfarm shall be sufficiently free of liquid content to pass a 60-mesh liquid paint filter test.

2.2. Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding liquid within 24 hours.

2.3. Within 72 hours after receipt of E and P waste the operator shall spread and disk the waste in twelve-inch or less lifts.

2.4. Soils shall be disked and turned regularly, a minimum of once a month.

2.5. Conduct treatment and soil monitoring to ensure that prior to adding an additional lift the soil concentrations do not exceed the division's current salinity and hydrocarbon cleanup standards.

2.6. Maintain records of the landfarm remediation activity. The records shall be readily accessible for division review.

R649-9-6. Other Disposal Facility Requirements.

1. Facilities used for the treatment and disposal of E and P wastes other than evaporation ponds and landfarms shall be permitted by the division. This may include activities such as composting, solidifying, other bioremediation, water treatment, and others.

2. Application Requirements for Other Disposal Facilities require the following in addition to R 649-9-3, Permit and Application Requirements for Disposal Facilities:

2.1. A complete description of the proposed facility.

2.2. Processes involved including a complete list of all wastes to be accepted at the facility and products generated.

2.3. Maps and drawings of suitable scale showing all facilities and equipment.

R649-9-7. Noticing of Disposal Facilities.

1. The applicant for a new facility or major modification shall give written notice of the application, by certified mail, return receipt requested, to surface and mineral owners of record within one-half mile of the facility, the county commission of the county where the facility is located, and affected tribal and government agencies.

1.1. The notice shall include information describing the facility's location, basic plan of operations, and the applicant's name and address.

1.2. The applicant shall furnish the division proof of required notices.

1.3. The division may extend the distance requirements for notice if the division determines that the proposed disposal facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile.

2. Within 30 days of the submission of an application for a disposal facility, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the division shall provide for a public notice to be published in a newspaper of general circulation in the county where the facility is to be located.

R649-9-8. Bonding of Disposal Facilities.

1. Disposal facilities, other than injection wells and their associated facilities, shall be bonded according to this rule in order to protect the State and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the State with adequate security for site reclamation and post closure cost should a facility owner default.

2. Permits issued after July 1, 2013 for new disposal facilities or modifications and facilities being reviewed for 5-year permit renewals, shall submit site reclamation and post closure cost estimates from a responsible third party contractor for division approval.

2.1. The applicant shall bond in the amount of the approved estimated site reclamation and post closure costs, or \$25,000, whichever is greatest.

3. Bonds accepted shall be of the same type as those accepted for wells i.e. surety, collateral, or a combination of the two as described in R649-3-1.

4. The total bond will be held by the division or financial institution until the facility has been closed and inspected by the division in accordance with a division approved closure plan.

5. Bond amounts, for permits approved prior to July 1, 2013 will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

\$14,000 per acre of pit, partial acres will be calculated at the rate of \$14,000 per acre; plus

\$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus

\$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.

\$10,000 Minimum bond amount.

5.1. Operators of disposal facilities permitted prior to July 1, 2013 shall have until July 1, 2018 (five years) to submit, to the division, a disposal facility site reclamation and post closure bond as required above in R649-9-8.2.

6. All disposal facilities, except injection wells covered by R649-3-1, will be covered by an adequate and acceptable bond before being permitted to accept any E and P waste.

7. Forfeiture of the bond shall be the same as those for wells as described in R649-3-1.16.

R649-9-9. Permit and Renewal Approval, Denial, Revocation, Suspension, Modification or Transfer.

1. Permit and renewal approval.

1.1. Construction approvals issued by the division are valid for one year from approval date. An extension may be granted by the division.

1.2. Operating approvals issued by the division for waste

management facilities shall remain in effect for five years from the approval date.

1.3. After division review, permits may be renewed for successive 5-year terms.

1.3.1. Prior to renewal approval, the division shall review the operation, compliance history, bonding and technical requirements for the disposal facility.

1.3.2. The division, after notice to the operator, may require modifications of the disposal facility permit, including modifications necessary to the facility permit terms and conditions consistent with statutes, rules or judicial decisions.

2. An application may be denied if:

2.1. A complete application is not submitted.

2.2. The application does not meet R649-9-3.3 on siting and/or R649-9-3.4 on geologic and hydrologic requirements.

2.3. The proposed disposal facility or modification may be detrimental to fresh water, public health, safety or the environment.

2.4. The applicant is unable to justify good cause for the proposed facility.

2.5. An applicant or owner in the facility has a history of failure to comply with division rules and orders, state or federal environmental laws, or is in current violation of a division or board order requiring corrective action.

3. Revocation, suspension, or modification of a permit.

3.1. The division may revoke, suspend, or impose additional operating conditions or limitations on a disposal facility permit at any time, for good cause, after notice to the operator.

3.2. The division may suspend a waste disposal permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment.

3.3. Suspension of a disposal facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation.

3.4. If the division suspends a disposal facility permit, the disposal facility shall not accept oil field waste during the suspension period.

4. Transfer of a permit.

4.1. The operator shall not transfer a permit without the division's prior written approval.

4.2. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee.

4.3. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval.

4.4. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the transferee may request, within 10 days of receipt of the notice, a public hearing before the board.

4.5. Until the division approves the transfer and the required assurance is in place, the division shall not release the transferor's financial assurance.

R649-9-10. Construction and Inspection Requirements for Disposal Facilities.

1. Division personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construction and operation of the facility.

2. The division shall be notified at least 72 hours prior to the installation of leak detection systems or liners.

3. The division shall be notified after completion of facility construction so that a final inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

4. Failure to meet the requirements and standards for construction and operation of a disposal facility shall be

considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

R649-9-11. Reporting and Recordkeeping for Disposal Facilities.

1. All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be reported, within 24 hours, to the division.

2. Each producer who utilizes any approved produced water disposal facility shall comply with the reporting requirements of R649-8-11.

3. Each operator of a disposal facility, excluding disposal wells, shall report to the division on a quarterly basis.

3.1. This report shall include the volume and type of wastes received at the facility during the quarter and results of the weekly leak detection system inspections.

3.2. Berms and outside walls shall be inspected quarterly and after a major rainfall or windstorm. Berm erosion or loss of integrity shall be reported to the division and may require immediate action.

4. The occurrence of water in a leak detection system during operation constitutes liner failure and requires immediate action.

4.1. The division has the option of allowing the operator a short period of time to take corrective action.

4.2. Further utilization will be allowed only after liner repairs and an inspection by the division.

5. Each owner/operator of a disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the division for at least six years.

R649-9-12. Closure and Post Closure of Disposal Facilities.

1. A plan for final closure of a disposal facility shall be submitted to the division, for approval, at least 60 days prior to cessation of operations. The closure plan shall include the following:

1.1. Provisions for removal of all equipment, buildings, fences and roads at the site.

1.2. Removal of berms.

1.3. Removal of liquids and solid waste to a division approved facility.

1.4. Disposal method for liners.

1.5. Plans and procedures for sampling and testing soils and ground water at the site.

1.5.1. Soils shall meet division cleanup standards or background levels whichever is less stringent.

1.6. A monitoring plan if required by the division.

1.7. Consideration of post disposal land use and landowner requests when the closure plan is developed.

2. During closure operations, the operator shall maintain the disposal facility to protect fresh water, public health, safety and the environment.

3. Location of the closed disposal facility shall be documented with the county recorder's office.

4. The bond for the disposal facility will be released when the division approved closure plan requirements have been met, as determined by the division.

R649-9-13. Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of these rules shall be submitted to the director in writing and provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied.

KEY: oil and gas law

July 1, 2013

Notice of Continuation February 3, 2012

40-6-5(3)

R651. Natural Resources, Parks and Recreation.**R651-204. Regulating Waterway Markers.****R651-204-1. Placement of Waterway Markers.**

No person shall place on or near the waters of this state any waterway marker, except a diver's flag, without written authorization by a federal agency operating within federal authority or by the division.

R651-204-2. Hazards to Navigation.

(1) Definitions

(a) "Hazard to Navigation" means, any object permanently placed on or under the waters of this state that is an obstacle to navigation, including but not limited to:

- (i) pier or shoreline dock greater than 75 feet
- (ii) floating dock or inflatable recreational equipment;
- (iii) commercial fishing or scientific devices;
- (iv) navigational aids;
- (v) slalom courses, jump/rail or other recreational device;
- (vi) vessels moored outside of a designated mooring area.

(b) "Permanent" means intended to be left on the waterway overnight or unattended during the day.

(2) No person shall place any permanent or anchored objects on the waters of this state without written authorization by a federal agency operating within federal authority or by the division.

(3) All permitted water obstacles must be visibly marked with the owner's name with letters that are:

- (a) a contrasting color to the object; and
- (b) at least one inch in height with the letter width proportionate to the height.

(4) Each permitted water obstacle must be marked with lights if placed overnight. Marker lights

(a) must meet United States Coast Guard requirements;

(b) must float at least 39 inches above the water;

(c) must be an amber or white color flashing light that flashes a minimum of 30 flashes per minute and is visible for up to one-half mile; and

(d) if buoyed, the buoy must be self-righting and have a three inch silver radar reflective band around the top.

(5) Placement of water obstacles without a proper permit or failure to abide by the permit requirements constitute a violation of board rules and the water obstacles must be removed by the entity that placed the obstacle immediately upon notification. Water obstacles that create a hazard may be removed by the division at the owner's expense. Any damages incurred during removal by the division will not be the responsibility of the division.

R651-204-3. Destruction of Waterway Markers.

No person shall remove, destroy, or damage any waterway marker authorized to be placed by a federal agency or by the division; nor shall any person moor any vessel to a waterway marker, except mooring buoys.

KEY: boating

July 8, 2013

73-18-4(2)

Notice of Continuation January 26, 2011

R651. Natural Resources, Parks and Recreation.**R651-214. Temporary Registration.****R651-214-1. Temporary Registration.**

(1) A vessel dealer may apply for temporary registrations to be used on motorboats or sailboats sold by his business. The application to obtain temporary registrations is the same as outlined in Section R651-213-1.

(2) Each temporary registration will be valid for a period not to exceed 30 days from date of issue.

(3) A temporary registration will not be valid on any motorboat or sailboat held in the dealer's inventory for sale or any motorboat or sailboat not sold by the same dealer who issued the registration.

(4) A dealer shall not issue more than one temporary registration for any motorboat or sailboat.

(5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the vessel sold, the name and address of the purchaser, and the date issued.

(6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the Division of Motor Vehicles during regular business hours.

(7) If the Division of Motor Vehicles has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registration issuance privileges may be canceled. Upon cancellation, the dealer will surrender all unissued temporary registrations to the Division of Motor Vehicles within 15 days.

(8) Temporary Operating Authority

(a) The division, or its authorized representatives, may grant a temporary permit to operate a vessel for which:

(i) application for registration has been made, or, in the case of a newly purchased vessel, will be made

(ii) evidence of ownership is provided; and

(iii) the proper fees have been paid.

(b) The temporary permit allows the vessel to be operated pending complete registration by displaying the temporary permit.

(c) If a vessel is operated on a temporary permit issued under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

(9) Relocation Permit

(a) Under rules made by the administrator, relocation permits may be issued by the division or its authorized representatives.

(b) Relocation permits allow use of the waterways for a time period not to exceed 96 hours.

(c) The division or its authorized representative may issue relocation permits without requiring a property tax clearance for the vessel on which the permit is to be used.

(d) Relocation permits allow for the purpose of testing for mechanical or seaworthiness of vessels.

(e) If a vessel is operated on a relocation permit under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

KEY: boating

July 8, 2013

73-18-7(18)(d)

Notice of Continuation February 10, 2011

R651. Natural Resources, Parks and Recreation.

R651-216. Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation.

R651-216-1. Navigation Lights On Motorboats Less Than 40 Feet.

Motorboats of less than 40 feet in length shall exhibit the navigation lights shown in either figure 1, 2, or 3.

R651-216-2. Navigation Lights On Motorboats 40 Feet or Greater in Length.

Motorboats 40 feet in length or greater in length shall exhibit the navigation lights shown in either figure 1 or 2.

R651-216-3. Navigation Lights On Sailboats.

Sailboats shall exhibit the navigation lights shown in either figure 4, 5, or 6.

R651-216-4. Navigation Lights On Sailboats Under Motor Power.

A sailboat under motor power shall exhibit the motorboat navigation light requirements.

R651-216-5. Navigation Lights On Manually Propelled Vessels.

A vessel manually propelled may exhibit the navigation lights required for sailboats or have ready at hand a flashlight or lighted lantern showing a white light which shall be displayed in sufficient time to prevent collision (figure 7).

R651-216-6. Displaying All Around White Anchor Light On Vessels At Anchor.

Vessels at anchor shall display an all-round white anchor light unless anchored in a designated mooring area.

R651-216-7. Visible Range.

TABLE

LOCATION	CLASS A, 1, or 2	CLASS 3	DEGREES
Masthead light	2 miles	3 miles	225
All-round light	2 miles	2 miles	360
Side lights	1 mile	2 miles	112.5
Stern light	2 miles	2 miles	135

R651-216-8. Use of Non-Navigational Lights.

Vessels may only display lights as outlined above, except: (a) a spotlight or other non-navigational light may be used intermittently to locate a hazard to navigation, or (b) non-navigational lights may be used during a federal or state permitted marine parade, or (c) a spotlight or other non-navigational light may be used when actively engaged in fishing, bow fishing or scientific research on board vessels that are not in a navigational channel and that are being operated at a wakeless speed.

**KEY: boating
July 8, 2013**

Notice of Continuation February 10, 2011

73-18-8(2)

R651. Natural Resources, Parks and Recreation.

R651-611. Fee Schedule.

R651-611-1. Use Fees.

All fees for the Division of Parks and Recreation may not exceed, but may be less than, the amounts stated in the division's fee schedule.

KEY: parks, fees

July 8, 2013

Notice of Continuation January 24, 2011

79-4-203(8)

TABLE

1. Application Fees	
Easement, Grazing permit, Construction/Maintenance, Special Use Permit, Waiting List	\$250.00
2. Assessment and Assignment Fees	
Contract Assignment	\$20.00
Fee collection, return checks, and duplicate document	\$30.00
Staff or researcher time per hour	\$50.00
Equipment and building rental per hour	\$100.00
Photo copy each	\$1.00
3. Boating Fees	
Boat Mooring	
Day Use	\$6.00
Boat Camping (2:00pm)	\$20.00
In/Off Season with or without Utilities (per foot)	\$7.00
Watercraft Launch Fee	\$25.00
Boat Storage	\$200.00
4. Dry Storage	
Boating Season, Overnight until 2:00pm, Off-Season, Unsecured	\$75.00
5. Camping Fees	
Camping Extra Vehicle Fees	\$15.00
Camping Fees	\$28.00
Group Camping Fees	\$400.00
Reservation Fee	\$10.65
6. Entrance Fees	
Bicycles and Pedestrians	\$20.00
Bicycles and Pedestrians Annual Pass	\$24.00
Motor Vehicles	
Day Use Annual Pass	\$75.00
Commercial Dealer Demo Pass	\$200.00
Commercial Groups - per person	\$3.00
Commuter Annual Pass	\$10.00
Parking Fee	\$5.00
Causeway	\$2.00
Entrance Fees	\$15.00
Group Site Day-Use Fees	\$250.00
7. Golf Course Fees	
School Teams, Tournament Fee (per player)	\$6.00
Gift Certificate Fee (per player)	\$6.00
8. Golf Course GREENS FEES	
Promotional Pass -	
Single person - Personal golf cart	\$400.00
20 Round Card Pass	\$260.00
Promotional Promotional Pass	\$1,100.00
9 holes	\$18.00
9. Golf Course Fees RENTALS	
Club Rental, per 9 holes	\$17.00
Motorized cart, per 9 holes	\$16.00
Pull carts, pre 9 holes	\$3.50
Companion Fee	\$7.00
Driving Range	\$9.00
10. Lodging Fees	
Cabins and Yurts	\$80.00
11. Repository Fees	
Curation Fee (per storage unit)	\$700.00
Annual Repository Agreement Fee (per storage unit)	\$80.00
Annual Agreement Fee	\$50.00
12. Boating Section Fees	
Statewide Boat Registration Fee	\$25.00
Carrying Passengers for Hire Fee	\$200.00
Boat Livery Registration Fee	\$100.00
13. Boating Education Fee	
Division's Personal Watercraft Course	\$12.00
State Issued and Replacement Boating Education certificate	\$5.00
14. OHV Program Fee	
Statewide OHV Registration Fee	\$22.00
State issued permit to non-resident OHVs, in which there is no reciprocity	\$30.00
15. OHV Education Fee	
Division's Off-highway Vehicle Program Safety Certificate	\$30.00
State Issued and Replacement OHV Safety Certificate	\$2.00

R651. Natural Resources, Parks and Recreation.**R651-614. Fishing, Hunting and Trapping.****R651-614-1. Applicability of the Utah Fish and Game Code.**

Fishing, hunting and trapping shall be in accordance with the Utah Fish and Game Code, with the following provisions.

R651-614-2. Fishing near Public Areas.

Fishing from or within 100 feet of any public float designed for water sports, developed beaches, public loading docks, or boat ramps is prohibited.

R651-614-3. Ice Fishing.

Ice fishing is prohibited in areas posted closed by the park manager.

R651-614-4. Hunting Wildlife.

Hunting of any wildlife is prohibited within the boundaries of all park areas except those designated open as follows:

- (1)(a) Antelope Island State Park - By special permit only
- (b) Antelope Island permits to hunt bison shall be available, distributed and utilized consistent with the following statutes and rules of the Division of Wildlife Resources to the same extent as if the bison were considered wildlife: (1) Utah Code Sections 23-13-2; 23-19-1, 23-19-5; 23-19-6, 23-19-9(11), 23-19-11 and 23-20-27; (2) Utah Administrative Code Sections R657-5-4, R657-5-8 through 12, R657-5-14 and 15, R657-5-24 and 25, R657-5-27 and 28, R657-5-34, R657-5-37, R657-5-53, R657-5-62, and Rules R657-12, R657-23, R657-32, R657-42, and R657-50.
- (c) Subsection R651-614-4(1)(b) shall be applied retroactively only to the incorporation of Utah Administrative Code Sections R657-5-24, R657-5-25, R657-5-27, R657-5-34, and R657-5-37.
 - (2) Coral Pink Sand Dunes State Park - small game
 - (3) Deer Creek State Park - small game and waterfowl
 - (4) East Canyon State Park - small game
 - (5) Gunlock State Park - waterfowl
 - (6) Huntington State Park - waterfowl
 - (7) Hyrum State Park - small game
 - (8) Jordanelle State Park - big and small game and waterfowl
 - (9) Minersville - waterfowl
 - (10) Quail Creek State Park - waterfowl
 - (11) Rockport State Park - waterfowl
 - (12) Scofield State Park - waterfowl
 - (13) Starvation State Park - big and small game
 - (14) Steinaker State Park - waterfowl, falconry between October 15 and April 14 annually.
 - (15) Pioneer Trail, Mormon Flat Unit - big and small game
 - (16) Wasatch Mountain State Park - big and small game
 - (17) Yuba State Park - small game

R651-614-5. Hunting with Firearms.

Hunting with rifles and handguns on park areas designated open is prohibited within one mile of all park area facilities, including, but not limited to buildings, camp/picnic sites, overlooks, golf courses, boat ramps and developed beaches. Shotguns and archery equipment are prohibited within one-quarter mile of above stated areas.

R651-614-6. Trapping.

All trapping on park areas is prohibited except when authorized and permitted by the park manager.

KEY: parks

July 8, 2013

Notice of Continuation June 27, 2013

79-4-501

R651. Natural Resources, Parks and Recreation.

R651-622. Rock Climbing.

R651-622-1. Permit Required for Technical Rock Climbing.

Technical rock climbing is prohibited without a permit.

R651-622-2. Installation of Hardware/Equipment.

Installation of new or the removal of existing, permanently installed technical rock climbing equipment or hardware is prohibited without a permit.

KEY: parks

October 4, 1999

Notice of Continuation July 2, 2013

79-4-501

R651. Natural Resources, Parks and Recreation.

R651-623. Sale or Distribution of Printed Material.

R651-623-1. Permit Required.

The sale, posting, or distribution of printed matter is prohibited without a permit.

KEY: parks

1989

Notice of Continuation July 5, 2013

79-4-501

79-4-304

R651. Natural Resources, Parks and Recreation.**R651-624. Sanitation.****R651-624-1. Garbage and Rubbish.**

Disposing of garbage and rubbish of any kind other than at points or places designated for the disposal of materials is prohibited.

R651-624-2. Trailer Refuse or Waste.

Draining or dumping refuse or wastes from any trailer or other vehicle except in places or receptacles provided for that use is prohibited.

R651-624-3. Cleaning and Washing at Hydrants.

Cleaning food or washing clothing or articles of household use at campground hydrants is prohibited.

R651-624-4. Fish Cleaning.

Cleaning fish at campground hydrants or any other facility not specifically designed for that purpose is prohibited. All fish entrails or other inedible fish parts shall be disposed of in an appropriate fish cleaning station or trash can.

KEY: parks**October 4, 1999****Notice of Continuation July 5, 2013****79-4-501**

R651. Natural Resources, Parks and Recreation.

R651-625. Shirts and Shoes.

R651-625-1. Shirts and Shoes Required in Museums, Visitor Centers and Administrative Offices.

Persons without shirts and/or shoes are prohibited from entering museums, visitor centers and administrative offices of the park system.

KEY: parks

1989

Notice of Continuation July 5, 2013

79-4-501

79-4-304

R651. Natural Resources, Parks and Recreation.

R651-626. Skating, Skateboards and Motorized Transportation Devices.

R651-626-1. Use of Roller Skates, Inline Skates, Motorized Transportation Devices (MTD), and Skateboards.

The recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards is prohibited except in locations designated and posted for that activity by the park manager.

KEY: parks

July 5, 2004

Notice of Continuation July 5, 2013

79-4-304

79-4-203

R651. Natural Resources, Parks and Recreation.

R651-627. Swimming.

R651-627-1. Prohibited Swimming Areas.

Where posted, swimming is prohibited to promote safety, in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-2. Scuba Diving.

Scuba diving shall only be participated in when in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-3. Public Health Closures.

Swimming is prohibited when a public health closure has been posted by the park manager or other public health agency.

KEY: parks

December 2, 1999

79-4-501

Notice of Continuation July 5, 2013

R651. Natural Resources, Parks and Recreation.

R651-628. Trails and Walks.

R651-628-1. Bicycles and Motor Vehicles.

Bicycling, rollerblading, roller skating, skateboarding, or operating motor vehicles on any trail or walk not specifically designated and posted for that purpose is prohibited.

R651-628-2. Interference with Normal Use of Trails and Walks.

Blocking, restricting, or otherwise interfering with the normal use of any trail is prohibited.

R651-628-3. Must Stay on Walks and Designated Trails.

Persons are required to stay on walks and designated trails in posted areas.

KEY: parks

October 4, 1999

Notice of Continuation July 5, 2013

79-4-501

R651. Natural Resources, Parks and Recreation.

R651-629. Unattended Property.

R651-629-1. Personal Property.

Unclaimed personal property shall be handled in accordance with Title 77, Chapters 24 and 24a.

R651-629-2. Impounded Property.

Whenever property interferes with the safe or orderly operation of the park, the property may be impounded.

R651-629-3. Lost and Found Articles.

All lost and found articles shall be deposited by the finder at the park area office.

R651-629-4. Impound of Vehicle.

The impound of a vehicle shall be in compliance with Title 41, Chapter 1a.

KEY: parks

1989

79-4-501

Notice of Continuation July 5, 2013

R651. Natural Resources, Parks and Recreation.

R651-631. Winter Sports.

R651-631-1. Permitted Areas.

Skiing, sledding, tobogganing, snowshoeing, skating, and other similar winter sports activities are allowed except where posted closed or upon roads and parking areas open to highway vehicle use.

KEY: parks

1989

79-4-304

Notice of Continuation July 5, 2013

R651. Natural Resources, Parks and Recreation.

R651-632. Enforcement.

R651-632-1. Authorized Law Enforcement Officers.

Any law enforcement officer authorized under Title 77, Chapter 1a may enforce the rules promulgated under this chapter.

KEY: parks

1989

Notice of Continuation July 5, 2013

79-4-501

53-13-103

R651. Natural Resources, Parks and Recreation.**R651-633. Special Closures or Restrictions.****R651-633-1. Emergency Closures or Restrictions.**

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(5) Palisade State Park - Cliff diving is prohibited;

(6) Red Fleet State Park - Cliff diving/jumping is prohibited; and

(7) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March 15 to June 1,

(c) The last half-mile of the Johnson Canyon Trail is closed annually from March 15 through September 14 except by permit or guided walk; this portion of trail is open from September 15 through March 14.

(d) Black Rocks Canyon is closed annually from March 15 to June 30,

(e) West Canyon climbing routes are closed annually from February 1 to June 1.

(f) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

(g) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks**March 14, 2013****Notice of Continuation July 5, 2013****79-4-203****79-4-304****79-4-501**

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) The established speed limit is 15 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and the Bear Lake CMP.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a vessel in an area adjacent to the landowner's property at Bear Lake, the adjacent landowner shall:

(a) provide proof of being an adjacent landowner as defined in 65A-2-6(1) and above in R652-70-300(2)(c).

(b) complete the online Mussel-Aware Boater Program and receive a Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) Each adjacent landowner surrounding Bear Lake may only be issued two(2) beach launching permits annually. They will not be replaced if lost or stolen.

(a) The permit is valid for the calendar year within which the permit is issued.

(b) the permit is for the sole purpose of launching or retrieving a water vessel.

(c) the permit does not authorize parking or operating a motor vehicle in an area designated as closed in the Bear Lake Comprehensive Management Plan in violation of 65A-3-1(3).

(11) the division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits to adjacent landowners in compliance with the requirements listed above.

(a) the agreement will allow the entity or agency to establish a minimal fee not to exceed \$25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke or deny an adjacent landowner a permit to launch under the

following circumstances:

(a) the adjacent landowner fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the adjacent landowner fails to acquire a lease or permit for structures placed on sovereign lands that may include but not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

**KEY: sovereign lands, permits, administrative procedures
July 8, 2013 65A-10-1
Notice of Continuation April 2, 2012**

R657. Natural Resources, Wildlife Resources.**R657-44. Big Game Depredation.****R657-44-1. Purpose and Authority.**

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

- (1) the procedures, standards, requirements, and limits for assessing big game depredation; and
- (2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means 90 days, or some longer period as approved in writing by the division, during which the division shall take action to prevent further depredation and during which compensation for damage will be calculated.

(e) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(f) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(g) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, authorizing the landowner or lessee to take specified big game animals for personal use within a designated area.

(h) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(i) "Nuisance" describes a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

(j) "Once-in-a-lifetime species" for the purposes of this section, includes bull moose and bison, bighorn sheep, and mountain goat regardless of sex.

(k) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

- (a) orally to expedite a field investigation; or
- (b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after

receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

- (i) removing the big game animals causing depredation; or
- (ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

- (A) herding;
- (B) capture and relocation;
- (C) temporary or permanent fencing; or
- (D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk;

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) The Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board of which:

(A) mitigation permit vouchers for antlerless deer may authorize the take of one or two deer as determined by the division;

(B) the division may not issue mitigation permit vouchers for moose, bison, bighorn sheep, or mountain goat; and

(C) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the landowner's or lessee's private lands where depredation is occurring.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

- (a) the landowner or lessee; or
- (b) a landowner association that:
 - (i) applies in writing to the division;
 - (ii) provides a map of the association lands;
 - (iii) provides signatures of the landowners in the

association; and

(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desires the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i)(A) the division determines that the big game animals in the geographic area significantly contribute to the wildlife management units;

(B) the landowner or lessee agrees to perpetuate the animals on their land; and

(C) the damage, or expected damage, to the landowner's or lessee's cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit; or

(ii)(A) the big game damage occurs on the landowner's or lessee's cleared and planted land;

(B) the division and the affected landowner or lessee desire the animals to be permanently removed; and

(C) the damage, or expected damage, to the cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(d) The hunting area for a mitigation permit or permit voucher issued under this subsection includes the landowner's or lessee's cleared and planted land where the depredation occurs and may include a buffer zone established by the division that surrounds, or is adjacent to, that land.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation may be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game

animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Sections 23-13-3 and 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation and Nuisance Hunts for Buck Deer, Bull Elk or Buck Pronghorn or Once-in-a-Lifetime Species.

(1)(a) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts that are not published in the guidebook of the Wildlife Board for taking big game may be held.

(b) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts may be held when the buck deer, bull elk, buck pronghorn or once-in-a-lifetime species are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) determined to be nuisance.

(2) The depredation or nuisance hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing an unfilled limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional

division representative, to not come from a limited entry or once-in-a-lifetime unit.

(4) Post-season depredation or nuisance animal hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(5) A person may participate in the depredation hunter pool, for depredation or nuisance hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation or nuisance hunt must possess an unfilled, valid, limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for the species to be hunted, or must purchase the appropriate permit before participating in the depredation or nuisance hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, buck pronghorn or once-in-a-lifetime species harvested during a depredation or nuisance hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation or nuisance hunt in a limited entry or once-in-a-lifetime unit and harvests a trophy animal or a once-in-a-lifetime species, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation or nuisance hunt permits for buck deer, bull elk, buck pronghorn or once-in-a-lifetime species may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, buck pronghorn or once-in-a-lifetime species in one calendar year.

R657-44-8. Depredation and Nuisance Hunts for Antlerless Deer, Elk, Moose or Doe Pronghorn.

(1) When deer, elk, pronghorn or moose are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, or are determined to be nuisance, antlerless or doe hunts not listed in the guidebook of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation or nuisance animal hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, moose or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation or nuisance hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, moose or doe pronghorn permit shall purchase an appropriate permit.

(4) Hunters with depredation or nuisance hunt permits for antlerless deer, elk, moose or doe pronghorn may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule

R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk, pronghorn, or once-in-a-lifetime species are causing damage or are determined to be nuisance, hunts not listed in the guidebooks of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, pronghorn or once-in-a-lifetime species depredation or nuisance hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the guidebooks of the Wildlife Board for taking big game.

(4) A person who has obtained a once-in-a-lifetime species depredation or nuisance hunt permit and has successfully harvested an animal may not obtain any other once-in-a-lifetime permit or hunt during any other once-in-a-lifetime hunt for that species as provided in R657-5, except for

(5) The division shall develop a process by which hunters can apply to the depredation hunter pool and post that process on the division website.

(6) Hunters who have not obtained the appropriate deer, elk, pronghorn or once-in-a-lifetime species permit shall purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the permit.

KEY: wildlife, big game, depredation

July 22, 2013

Notice of Continuation June 19, 2012

23-16-2

23-16-3

23-16-3.5

R657. Natural Resources, Wildlife Resources.**R657-64. Predator Control Incentives.****R657-64-1. Purpose and Authority.**

(1) This rule is promulgated under authority of Section 23-30-104 to establish procedures for:

- (a) targeted predator control and general predator control programs administered by the division for the benefit of mule deer; and
- (b) creation and distribution of educational and training materials related to mule deer protection.

R657-64-2. Definitions.

(1) Terms used in this rule are defined in Section 23-30-102 and 23-13-2.

(2) In addition:

- (a) "Division" means the Utah Division of Wildlife Resources.
- (b) "General predator control" means a predatory animal removal effort by the division, which uses the public to remove predators for the benefit of mule deer.
- (c) "GPS" means Global Positioning System location in either the form of Latitude-Longitude coordinate or Universal Transverse Mercator (UTM) coordinate.
- (d) "Marked" means the permanent clipping or punching of ears on the predatory animal carcass or pelt.
- (e) "Predatory animal" means a coyote.
- (f) "Targeted area" means an area within the State of Utah specifically identified for predatory animal removal during a specified season.
- (g) "Targeted predator control" means a predatory animal removal effort by the division or its contractors:
 - (i) to remove predatory animals in an area where high predation on mule deer occurs; and
 - (ii) that focuses on specific locations and certain times.
- (h) "State" means State of Utah.

R657-64-3. Predatory Animal Control Programs.

(1) Two predatory animal control programs are created within the division to provide financial incentive to participants for the removal of coyotes detrimental to mule deer production.

(a) The General Predator Control Program provides a financial incentive to any registered participant to remove coyotes within the State.

(i) The financial incentive to participate in the program and remove coyotes under the conditions prescribed in this rule and by the division is \$50 compensation per animal, unless otherwise adjusted by the division, to be paid in accordance with R657-64-4.

(b) The Targeted Predator Control Program provides compensation by contract to preapproved vendors to remove coyotes within prescribed areas of the State and during specified times of the year where predation on deer is most prevalent.

(2) Participants in either program are not granted special authority to take coyotes beyond that available to non-participants, and each shall comply with all applicable federal, state, and local laws.

(3)(a) Except as provided in Subsection (3)(b) participants in both programs are required to follow all relevant rules and regulations related to trapping and firearm use, as detailed in state code and rule R657-11, "Taking Furbearers."

(b) The division may exempt a participant in the Targeted Predator Control Program from specified provisions of R657-11 which the division determines necessary to effectively control coyotes in a targeted area that are detrimental to mule deer production.

R657-64-4. General Predator Control Program.

(1) A person may participate in the General Predator Control Program, provided the applicant:

(a) completes an online application, including the applicant's:

- (i) full name;
- (ii) mailing address;
- (iii) phone number;
- (iv) e-mail address;
- (v) date of birth; and
- (vi) social security number;

(b) completes an online orientation and training course for participation in the program;

(c) agrees to the requirements of this rule and any additional terms and conditions specified by the division for program participation on its webpage;

(d) acknowledges and agrees to the division submitting an Internal Revenue Service Form 1099 each calendar year where compensation totals require reporting under federal law;

(e) acknowledges and agrees to verify that all coyotes submitted for compensation are taken by the applicant within the State.

(f) acknowledges and agrees to collect and submit accurate GPS data documenting the precise location where each coyote is taken; and

(g) acknowledges and agrees to not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts in the area.

(2) The division may deny an application to participate in the program for any of the following reasons:

- (a) the application is incomplete or filled out incorrectly;
- (b) the application contains false or misleading information;
- (c) the applicant has failed to complete the online orientation and training course required in Subsection (1)(b);
- (d) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division;
- (e) the applicant's hunting privileges are suspended in the State at the time of application;
- (f) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or
- (g) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.

(3) Upon approval of the application, the division shall issue a registration number authorizing the applicant's participation in the program which will remain valid until June 30th each year, unless earlier suspended pursuant to R657-64-11.

(4) Registered program participants will be eligible to receive from the division \$50 for each qualifying coyote presented, unless otherwise adjusted by the division, subject to the following conditions:

(a) requests for payment shall be made only on the designated check-in dates and at the locations identified by the division;

(b) any coyote presented to the division for the incentive payment must:

- (i) be taken by the participant within the State on or after July 1, 2012;
- (A) Program participants are not authorized to trespass or take coyotes on tribal trust lands without written tribal authorization.
- (ii) include the full pelt or the scalp with both ears attached, with neither previously marked or damaged to the extent that marking is unascertainable;
- (iii) include the lower jaw removed from the carcass with canine teeth intact ;
- (iv) be permanently marked by the division; and

(c) requests for payment shall be made only on the designated check-in dates and at the locations identified by the division;

(b) any coyote presented to the division for the incentive payment must:

- (i) be taken by the participant within the State on or after July 1, 2012;

(A) Program participants are not authorized to trespass or take coyotes on tribal trust lands without written tribal authorization.

(ii) include the full pelt or the scalp with both ears attached, with neither previously marked or damaged to the extent that marking is unascertainable;

(iii) include the lower jaw removed from the carcass with canine teeth intact ;

(iv) be permanently marked by the division; and

(c) requests for payment must be on a signed, division-approved compensation form that:

(i) provides the name, mailing address, and registration number of the participant;

(ii) records the date and GPS location where each coyote is taken; and

(iii) verifies that the participant personally took the coyotes, the information provided is accurate, and all program terms and conditions have been complied with.

(5) Program participants may designate a third party to check-in their coyotes with the division at the designated times and locations, provided:

(a) the compensation form referred to in subsection (4)(c) is completed and signed by the program participant that took the coyotes;

(b) the lower jaw and either the full pelt or the scalp (with both ears attached) of each coyote is presented to the division, as required in Subsection (4)(b)(ii) and (iii), with the compensation form; and

(c) the compensation form identifies and authorizes the person that will present it to the division for compensation.

(6) Compensation for qualified coyotes will be documented by written receipt at the time of submission to the division and payment by check will be mailed at a later date.

(7) Participants shall be responsible for disposing of coyote pelts and ears presented to the division for compensation, but the division may retain the lower jaw.

R657-64-5. Targeted Predator Control Program.

(1) The division may award contracts and compensate eligible vendors for targeted coyote removal services in areas of the State and at times specified in the contract.

(a) Selected vendors will be compensated as prescribed in the contract and are ineligible to receive the \$50 incentive under the General Predator Control Program in R657-64-4 for coyotes taken under contract in the Targeted Predator Control Program.

(b) Vendors participating in the Targeted Predator Control Program must submit to the division the lower jaw removed from the carcass with canine teeth intact and either the full pelt or the scalp with both ears attached for each coyote for which compensation credit is sought.

(i) The division will document each animal and mark its ears, and may retain its lower jaw.

(c) Contract vendors shall:

(i) be responsible for disposal of all coyote pelts and ears presented to the division for compensation credit, but the division may retain the lower jaw;

(ii) not interfere with USDA Wildlife Services employees conducting similar coyote removal efforts within a targeted area;

(iii) verify that all coyotes presented for compensation credit were taken:

(A) by them personally or by another person operating under their direct supervision; and

(B) within the areas and time periods prescribed in the contract; and

(iv) provide and verify the accuracy of GPS data documenting the precise location where each coyote is taken.

(2)(a) The division may establish a list or pool of preapproved vendors for participation in the Targeted Predator Control Program.

(b) Preapproved vendors are eligible to receive a coyote removal contract.

(c) The division may select one or more of the approved vendors for use in each targeted area for the season.

(d) The division has full discretion to select any vendor to contract with among the pool of preapproved vendors and is under no obligation to use all the vendors or to provide equal opportunity to them.

(e) The division is not bound to select vendors in any year,

and does not guarantee that any vendor will be selected.

(3)(a) A person or business entity may become a preapproved vendor in the Targeted Predator Control Program by complying with the following:

(i) complete and submit to the division an application on the form provided by the division; and

(ii) participate in the General Predator Control Program under R657-64-4 for one or more years with compensation credit awarded by the division for 25 or more coyotes each year.

(A) In the case of a business entity, one or more of the entity's principals or owners must satisfy the requirements in Subsection (3)(a)(ii).

(b) The division may deny an application for preapproved vendor status in the Targeted Predator Control Program for any of the following reasons:

(i) the application is incomplete or filled out incorrectly;

(ii) the application contains false or misleading information;

(iii) the applicant has previously violated any of the terms of this rule or participation requirements imposed by the division;

(iv) the applicant's hunting privileges are suspended in the State at the time of application;

(v) the applicant has been convicted of or entered a plea in abeyance to any crime of dishonesty in the previous five years; or

(vi) the applicant has committed any other crime, or violation of law or contract that bears a reasonable relationship to their reliability in accurately reporting the locations and times that predatory animals are taken.

R657-64-6. Trap Locations.

(1) Program participants and contract vendors are required to provide GPS data documenting the precise location where each coyote is taken.

(2) To the extent GPS data discloses the location of trap lines and public disclosure of that data exposes the traps to the possibility of theft and damage, the data may be classified as "protected" under Section 63G-2-305(2) and restricted from public disclosure pursuant to Title 63G, Chapter 2, Government Records Access and Management Act, provided the requirements of Subsection (3) are satisfied.

(3) Any person desiring to protect GPS data from public disclosure that locates trap lines must submit to the division a written claim of confidentiality explaining:

(a) the financial and commercial harm reasonably expected to occur if the data is subject to public disclosure; and

(b) why the person submitting the data has a greater interest in prohibiting access than the public in obtaining access.

R657-64-7. Coordination.

(1) The division will coordinate with the Department of Agriculture and Food and the Agricultural and Wildlife Damage Prevention Board created in Section 4-23-4 to:

(a) minimize unnecessary duplication of predatory animal control efforts;

(b) prevent interference between predatory animal control programs administered under Title 4, Chapter 23, Agricultural and Wildlife Damage Prevention Act and this rule; and

(c) enhance the effectiveness of predatory animal control efforts and maximize the benefit to both mule deer and livestock.

R657-64-8. Education and Training.

The division may conduct and administer training, education, and outreach activities related to mule deer protection and predator control.

R657-64-9. Appropriation of Funds.

(1) Funding for the predatory animal control programs in this rule is appropriated annually by the Legislature.

(2) Should appropriated funding be reduced or eliminated, funds available for compensation in the two predatory animal control programs may be ended without prior public notice.

(3) Once the annual funding allocation for coyote removal is expended for the general or targeted control programs in a given year, no further payments will be made for that year, regardless of pelts or ears that may be held by program participants.

R657-64-10. Liability.

(1)(a) Any person who participates in either predatory animal control program under this rule assumes full and complete liability and responsibility for their acts and omissions while engaged in removing coyotes or redeeming them for compensation.

(b) To the extent provided under the Utah Governmental Immunity Act and the liability limitations in this rule, the division shall not be liable in any civil action for any act or omission of a program participant while removing coyotes or redeeming them for compensation.

(2) It is the responsibility of program participants to read, understand and comply with this rule and all other applicable federal, state, county, and municipal laws, regulations, and ordinances.

R657-64-11. Violations.

(1) The division may suspend, terminate, or deny any authorization under this rule to participate in either or both predatory animal control programs for any of the violations listed in R657-64-4(2) or R657-64-5(3)(b).

(2) Providing false information to the division or otherwise violating the provisions of this rule may be criminally prosecuted under applicable offenses defined in the Utah Code.

KEY: wildlife, predators, game laws, wildlife laws

July 8, 2013

23-30-102

23-30-104

23-13-17

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-300. Concealed Firearm Permit and Instructor Rule.****R722-300-1. Purpose.**

The purpose of this rule is to establish procedures whereby the bureau administers the Concealed Firearms Act in accordance with Title 53, Chapter 5, Part 7.

R722-300-2. Authority.

This rule is authorized by Subsection 53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

R722-300-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or an LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Subsection 53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Subsection 53-5-704(8);

(c) "certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection 53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Subsection 53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to Section 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(j) "NRA" means the National Rifle Association;

(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 77-36-1; or

(ii) 18 U.S.C Subsection 921(a)(33);

(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

(i) Section 32A-12-209;

(ii) Section 32A-12-220;

(iii) Subsection 41-6a-501(2) related to the use of alcohol;

(iv) Section 41-6a-526; or

(v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

(n) "offense involving the unlawful use of narcotics or controlled substances" means:

(i) any offense listed in Subsection 41-6a-501(2) involving the use of a controlled substance;

(ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or

(iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide;

(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification, however revocation does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

R722-300-4. Application for a Permit to Carry a Concealed Firearm.

(1)(a) An applicant seeking to obtain a permit shall submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau with the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card, which consists of the fee established by Sections 53-5-704 and 53-5-707, along with the FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection 53-5-704(6)(d);

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) a copy of the applicant's current concealed firearm permit or concealed weapon permit issued by the applicant's state of residency if the applicant is a nonresident who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law, unless the applicant is an active duty service member who presents orders

requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(a) may not be required to pay the application fee; and

(b) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection 53-5-704(6)(d) by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:

(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

- (A) the Utah Computerized Criminal History database;
- (B) the National Crime Information Center database;
- (C) the Utah Law Enforcement Information Network;
- (D) state driver license records;
- (E) the Utah Statewide Warrants System;
- (F) juvenile court criminal history files;
- (G) expungement records maintained by the bureau;
- (H) the National Instant Background Check System;
- (I) the Utah Gun Check Inquiry Database;
- (J) Immigration and Customs Enforcement records; and
- (K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

- (i) five years in the case of a class A misdemeanor;
- (ii) four years in the case of a class B misdemeanor; or
- (iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall issue a permit to the applicant within 60

days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsections 53-5-704(2) and 53-5-704(3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-5. Application for a Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor shall submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau with the applicant's residential or physical address and public contact information;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, as required by Subsection 53-5-704(9)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2)(a) An applicant who has not completed a firearm instructor training course from the NRA or POST, may meet the requirement in R722-300-5(1)(b)(v) by providing evidence that the applicant has completed a firearm instructor training course that is at least eight hours long and includes the following training components:

(i) instruction and demonstration on:

(A) the safe, effective, and proficient use and handling of firearms;

(B) firearm draw strokes;

(C) the safe loading, unloading and storage of firearms;

(D) the parts and operation of a handgun;

(E) firearm ammunition and ammunition malfunctions, including misfires, hang fires, squib loads, and defensive/protection ammunition vs. practice ammunition;

(F) firearm malfunctions, including failure to fire, failure to eject, feed way stoppage and failure to go into battery;

(G) shooting fundamentals, including shooter's stance, etc.; and

(H) firearm range safety rules; and

(ii) a practical exercise with a proficiency qualification course consisting of not less than 30 rounds and a required score of 80% or greater to pass.

(b) The evidence required in R722-300-5(2)(a) shall include a copy of the:

(i) course completion certificate showing the date the course was completed and the number of training hours completed; and

(ii) training curriculum for the course completed.

(3)(a) If the bureau determines that an applicant meets the requirements found in Subsection 53-5-704(9), the bureau shall

issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the residential or physical address listed on the application.

(4)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.

(1)(a) An applicant seeking to renew a permit or an instructor certification shall submit a completed renewal packet to the bureau.

(b) The renewal packet for an applicant seeking to renew a permit shall include:

(i) a written renewal form provided by the bureau with the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years; and

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card, unless the applicant is an active duty service member who presents orders requiring the active duty service member to report for duty in Utah or an active duty service member spouse who presents the active duty service member's orders requiring the service member to report for duty in Utah.

(c) The renewal packet for an applicant seeking to renew an instructor certification shall include:

(i) a written renewal form provided by the bureau with the applicant's residential or physical address and the applicant's public contact information;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card; and

(iv) evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection 53-5-704(9)(c), within one year of the date of the application.

(2) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(3)(a) A fee will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than 30 days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(4) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(5)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(6)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor

certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-7. Application for a Temporary Permit to Carry a Concealed Firearm.

(1)(a) In order to obtain a temporary permit an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish extenuating circumstances which would justify the need for a temporary permit to carry a concealed firearm.

(2) When reviewing an application for a temporary permit to carry a concealed firearm the bureau shall conduct the same background investigation as provided in R722-300-4.

(3)(a) If the bureau finds that extenuating circumstances exist to justify the need for a temporary permit, the bureau shall issue a temporary permit to the applicant.

(b) The temporary permit shall be mailed to the applicant at the address listed on the application.

(4) If the bureau finds that the applicant is otherwise eligible to receive a permit under Section 53-5-704, the bureau shall request that the applicant surrender the temporary permit prior to the issuance of the permit under Section 53-5-704.

R722-300-8. LEOJ Permits.

(1)(a) In order to obtain an LEOJ permit under Section 53-5-711, an applicant shall submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant shall provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for an LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue an LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

(5)(a) When the bureau receives notice that an LEOJ permit holder resigns or is terminated from a position as a law enforcement official or judge, the LEOJ permit will be revoked and the bureau shall issue a permit, pursuant to Section 53-5-704, if the former LEOJ permit holder otherwise meets the requirements found in that section.

(b) If a former LEOJ permit holder gains new employment as a law enforcement official or judge, the bureau shall re-issue an LEOJ permit.

R722-300-9. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or an LEOJ Permit.

(1) A permit may be suspended or revoked for any of the

following reasons:

- (a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);
- (b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or
- (c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

- (a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or
- (b) the instructor knowingly and willfully provided false information to the bureau.

(3) An LEOJ permit may be suspended or revoked for any of the following reasons:

- (a) the bureau determines that an LEOJ permit holder is no longer employed as a law enforcement official or judge; or
- (b) an LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or an LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested.

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, or LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection 53-5-704(16).

R722-300-10. Review Hearing Before the Board.

(1)(a) Review hearings before the board shall be informal and be conducted according to the provisions in Section 63G-4-203.

(b) At the hearing, the bureau shall establish the allegations contained in the notice of agency action by a preponderance of the evidence.

(2) Upon request, an applicant, permit holder, instructor, or LEOJ permit holder who is seeking review before the board is entitled to review all the materials in the bureau's file upon which the bureau intends to use in the hearing.

(3) In accordance with Section 63G-4-209 the board may enter an order of default against an applicant, permit holder, instructor, or LEOJ permit holder who fails to appear at the hearing.

(4) Within 30 days of the date of the hearing the board shall issue an order which:

- (a) states the board's decision and the reasons for the board's decision; and
- (b) indicates that the applicant, permit holder, instructor, or LEOJ permit holder has a right to appeal the decision of the board by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

R722-300-11. Records Access.

(1)(a) Information, except for the name of certified instructors and their public contact information, provided to the bureau by an applicant shall be considered "private" in accordance with Subsection 63G-2-302(2)(d).

(b) The name of certified instructors and their public contact information shall be considered public information.

(2) Information gathered by the bureau and placed in an applicant's file shall be considered "protected" in accordance with Subsection 63G-2-305(9).

(3) When a permit has been issued to an applicant, the names, address, telephone numbers, dates of birth, and Social Security numbers of the applicant are protected records pursuant

to Section 53-5-708.

**KEY: concealed firearm permits, concealed firearm permit instructors
July 8, 2013**

53-5-701 through 53-5-711

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.****R722-310-1. Purpose.**

The purpose of the rule is to establish procedures for the licensing of bail enforcement agents, bail bond recovery agencies, bail recovery agents, and bail recovery apprentices.

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:
(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "licensee" means an individual who has received a bail enforcement agent license, bail bond recovery agency license, bail recovery agent license or bail recovery apprentice license;

(e) "revocation" means the permanent deprivation of a bail bond recovery license, however revocation does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and

(f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.

R722-310-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a state-issued driver license or identification card;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115; and

(vi) documentation from an approved provider indicating that the applicant has completed the 16-hour training program, described in Subsection 53-11-108(4).

(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.

(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant shall also provide:

(a) the name under which the bail bond recovery agency will operate; and

(b) a certificate of workers' compensation insurance, if applicable.

(4) If the applicant is applying for license as a bail recovery agent, the applicant shall also provide:

(a) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement; and

(b) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(5) If the applicant is applying for license as a bail recovery apprentice, the applicant shall also provide verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(6) If the applicant is seeking to carry a firearm as a licensee, the applicant shall comply with all of the requirements found in R722-300 and provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the 16-hour firearms training course required in Subsection 53-11-108(5).

(7)(a) Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.

(b) Application packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

R722-310-5. Training Program Requirements.

(1) The 16-hour training program described in Subsection 53-11-108(4), which is required for licensure, shall be provided by a training program provider approved by the board.

(2) Training program providers seeking to become approved by the board shall provide a detailed course curriculum for the board's review.

(3)(a) Training programs which are approved by the board shall be open to anyone who wishes to attend.

(b) If a training provider charges a fee for the training program, the same fee shall apply to all participants in the training program.

(4) Training program providers shall notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.

(5)(a) Bureau investigators shall periodically monitor approved training programs to ensure that the training program is providing instruction as required by Subsection 53-11-108(4).

(b) The training program may not charge an investigator a fee for monitoring the program.

(6) If the board receives information that a training program is not providing instruction as required by Subsection 53-11-108(4), the board may terminate its approval of the training program after notice and an opportunity for a hearing before the board.

R722-310-6. Verification of Experience.

(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, an applicant shall provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.

(2) The verification of experience shall be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work performed.

(3) The bail bond recovery work shall have been performed within ten years from the date of the application.

R722-310-7. Credit for Specified Training.

(1) An applicant who wishes to receive credit towards the experience requirement for licensure, shall provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Subsections 53-11-114(1)(b) or 53-11-114(1)(c).

(2) An applicant may receive up to 1,000 hours of credit towards the experience requirement for licensure under Section 53-11-114.

(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the 16-hour training course required by Subsection 53-11-108(4).

R722-310-8. Renewal of a License.

(1)(a) A licensee seeking to renew a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(iv) evidence that the licensee has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and

(v) evidence that the licensee has a \$10,000 surety bond which meets the requirements described in Subsection 53-9-110(3).

(2)(a) Once the renewal packet is complete, the bureau shall review it to determine if the licensee meets the requirements for renewal.

(b) If the bureau determines the licensee does not meet the requirements for renewal, the bureau shall submit the renewal packet to the board for their review at the next regularly scheduled meeting.

(c) Renewal packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

(3) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-310-4.

R722-310-9. Requirements for Continuing Classroom Instruction.

(1)(a) Four of the eight hours of continuing classroom instruction required by Subsection 53-11-111(2) shall be provided by the bureau.

(b) The course provided by the bureau shall provide updates on Utah law, administrative changes, and other pertinent information designed to enhance the licensee's knowledge of bail recovery.

(2) The remaining four hours of continuing classroom instruction required under Subsection 53-11-111(2) may be at the discretion of the licensee.

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The 16-hour firearms training program described in Subsection 53-11-108(5), shall be provided by a bail enforcement firearms instructor approved by the bureau.

(2) A bail enforcement firearms instructor approved by the bureau shall be a certified Utah concealed firearm permit instructor under Subsection 53-5-704(8) and be in good standing with the bureau.

(3)(a) Each approved bail enforcement firearms instructor shall adhere to the curriculum adopted by the bureau.

(b) An instructor may supplement, but may not detract from the set curriculum.

R722-310-11. Notice to Commissioner.

A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency, or any change of employees or contract employees, to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.

R722-310-12. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

(2)(a) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(b) The bureau may deny a license renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.

(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.

(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within 30 days from the date that the written decision is issued.

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee, and may affirm, adopt, modify, supplement, reverse, or reject the board's findings, or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within 60 days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies the licensee as a bail enforcement agent, bail bond recovery agency, bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may possess and display a badge that is identical to the badge depicted on the bureau's website in accordance with Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge shall be 2.55 inches high and 2.66 inches wide;

(ii) the badge shall be in the shape of a five-point star on a circle;

(iii) the star shall be gold in color and the circle must be silver in color;

(iv) the center of the star shall be black in color and contain a seal with the phrase "Liberty and Justice For All";

(v) the text of the badge shall be written in block lettering and must be black;

(vi) the silver circle shall contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge shall contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3) The design approved by the board under Subsection 53-11-121(5) shall contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back in writing which is:

(a) at least two inches in height on the back;

(b) at least one half of an inch in height on the front; and

(c) in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agent, bail bond recovery agent, bail bond recovery apprentice, license
July 8, 2013 **53-11**
Notice of Continuation May 12, 2010

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**R722-330. Licensing of Private Investigators.****R722-330-1. Purpose.**

The purpose of this rule is to establish procedures for the licensing of private investigator agencies, registrants, and apprentices.

R722-330-2. Authority.

This rule is authorized by Subsection 53-9-103(6) which provides that the commissioner may make rules as necessary to administer the Private Investigator Regulation Act.

R722-330-3. Definitions.

(1) Terms used in this rule are defined in Section 53-9-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:
(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "FBI" means the Federal Bureau of Investigation;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "legal resident of this state" means a person who has established a domicile in Utah, as that term is defined in Section 41-1a-202;

(e) "license" means a license for a private investigator agency, registrant, or apprentice;

(f) "revocation" means the permanent deprivation of a private investigator license, however revocation of a private investigator license does not preclude an individual from applying for a new private investigator license if the reason for revocation no longer exists; and

(g) "suspension" means the temporary deprivation, for a specified period of time, of a private investigator license.

R722-330-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a state-issued driver license or identification card;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints; and

(v) the non-refundable license and registration fee in the amount indicated in Section 53-9-111 plus the FBI fingerprint processing fee, in the form of cash, check, money order, or credit card.

(2) If an applicant is applying for an agency license, the applicant shall also provide:

(a) the name under which the applicant intends to do business;

(b) a completed Verification of Investigative Experience Form which documents that the applicant has performed 10,000 hours of investigative experience as provided in Subsection 53-9-108(3);

(c) a certificate of liability insurance for the applicant in an

amount of not less than \$500,000 as described in Subsection 53-9-109(3); and

(d) a certificate of workers' compensation insurance, if applicable.

(3) If the applicant is applying for a registrant license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant;

(c) a completed Verification of Investigative Experience Form which documents that the applicant has performed 2,000 hours of investigative experience as provided in Subsection 53-9-108(3); and

(d) a surety bond for the applicant in an amount of not less than \$10,000 as described in Subsection 53-9-110(3).

(4) If the applicant is applying for an apprentice license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant; and

(c) a surety bond for the applicant in an amount of not less than \$10,000 as described in Subsection 53-9-110(3).

R722-330-5. Verification of Investigative Experience.

(1)(a) When completing the Verification of Investigative Experience Form for an agency or registrant license, the applicant shall describe, in detail, the number of hours and the type of investigative work which the applicant performed.

(b) The investigative experience shall have been performed within ten years from the date of the application while the applicant was working as a licensed private investigator or an investigator for a governmental entity.

(c)(i) The Verification of Investigative Experience Form shall be certified by the private investigator or governmental employer for whom the applicant performed the investigative work.

(ii) If the applicant is unable to provide certification from a private investigator or governmental employer, the applicant may provide certification from the individual for whom the applicant performed the investigative work.

(2) An applicant seeking to receive credit towards the investigative experience requirement for licensure under Subsection 53-9-108(5), shall provide written documentation of the degree or certification for which the applicant is seeking credit.

R722-330-6. Issuance of License.

(1)(a) Upon receipt of a completed application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements for licensure.

(b) Once the background check is complete, the bureau shall submit the completed application packet to the board for review, unless the application is for an apprentice license.

(c)(i) The bureau shall review all applications for apprentice licenses to determine whether the applicants meet the requirements for licensure.

(ii) If the bureau finds that an applicant for an apprentice license meets the requirements for licensure, the bureau shall issue the apprentice license within five days.

(iii) If the bureau finds that an applicant for an apprentice license does not meet the requirements for licensure, the bureau shall submit the application to the board.

(2)(a) The board shall review all application packets submitted by the bureau to determine whether an applicant meets the requirements for licensure.

(b) If the board determines that an applicant meets the requirements for licensure, the board shall direct the bureau to

issue the license.

(3) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-9-108(1)(b), the board shall consider any mitigating circumstances submitted by the applicant.

(4)(a) If the board determines that an applicant does not meet the qualifications for licensure the board shall deny the application.

(b) The board shall issue a written denial which states the reasons why the license was denied and indicates that the applicant may request a hearing before the board by filing a written request within 30 calendar days from the date the board's written denial was issued.

(5)(a) If the applicant requests a hearing, the board shall conduct an informal hearing during which the applicant may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision and indicates that the decision may be reviewed by the commissioner if the applicant files a written request for review with the commissioner within 30 calendar days.

(6)(a) If the applicant requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the applicant, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the applicant may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-7. Renewal of a License.

(1)(a) A licensee seeking to renew a license shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years; and

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-9-111.

(2) If the licensee has an agency license, the licensee must also provide evidence that the licensee has a valid certificate of:

(a) liability insurance for the licensee in an amount of not less than \$500,000 as described in Subsection 53-9-109(3); and

(b) workers' compensation insurance, if applicable.

(3) If the licensee has a registrant or an apprentice license, the licensee must provide evidence that the licensee has a valid surety bond for the licensee in an amount of not less than \$10,000 as described in Subsection 53-9-110(3).

(4) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-330-4.

(5) If the licensee meets the qualifications for renewal the bureau shall renew the license.

(6)(a) If the bureau determines that the licensee does not meet the qualifications for renewal the bureau shall deny the renewal.

(b) The bureau's written denial shall state the reasons why the renewal was denied and indicate that the licensee may request a hearing before the board by filing a written request within 30 calendar days from the date the bureau's written denial was issued.

(7)(a) If the licensee requests review by the board, the board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision, and indicates that the decision may be reviewed by the commissioner if the licensee files a written request for review with the commissioner within 30 calendar days.

(8)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-8. Suspension and Revocation of a License.

(1) The bureau shall conduct an investigation, as provided in Section 53-9-117, if the bureau is made aware of an allegation that a licensee has engaged in conduct in violation of Section 53-9-118.

(2) The bureau shall notify a licensee who is the subject of an investigation of the date and time of the board meeting where the board will consider the bureau's investigative findings.

(3) The board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to the bureau's investigative findings and recommendations.

(4) The board shall issue a written decision, within ten business days after the hearing, which states the reasons for the board's decision, and indicates that the licensee may appeal to the commissioner by filing a written request within 15 calendar days from the date that the board's written decision was issued.

(5)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-9. Records Access.

(1)(a) Information other than name and mailing or business address supplied to the division by an applicant or licensee, including a completed application or renewal form, shall be considered "private" information in accordance with Subsection 63G-2-302(2)(d).

(b) The names of licensees and their mailing or business address shall be considered public information.

(2)(a) Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsection 63G-2-305(9).

(b) If such information is used as the basis for the denial, suspension, or revocation of a license, the applicant or licensee shall be entitled to access the information.

KEY: private investigators, license

July 8, 2013

53-9-101 through 53-9-119

Notice of Continuation April 22, 2010

R746. Public Service Commission, Administration.**R746-344. Filing Requirements for Telephone Corporations With Less Than 5,000 Access Line Subscribers.****R746-344-1. Purpose.**

A. Standard filing requirements are to provide uniformity of information for general rate case filings. The required information shall be filed on schedules, approved by the Commission, with the application for a change in rates. Providing this information with the rate application shall simplify proceedings, eliminate expense, and enhance the effectiveness of the fact finding process.

B. The standard filing requirements will provide factual information in an organized and referenced manner. This information may be used by the Commission, the Division of Public Utilities, or other interested parties to the case.

R746-344-2. Applicability.

The completion of the schedules approved by the Commission shall fulfill the requirement to provide necessary information to support proposed rate changes for telephone utilities with less than 5,000 subscriber access lines as set forth in Sections 54-7-12(7). The completed approved schedules shall be received by the Commission at least 30 days in advance of the proposed effective date of the rate changes.

R746-344-3. Hearing Process.

A. The Commission may, upon its own motion or upon complaint, set the case for hearing. If the case is set for hearing, the applicant may resubmit the schedules contained in the filing requirements as its primary exhibits. The Commission may require written direct testimony.

B. The applicant must provide notice of the hearing to its customers according to the Commission's Rules of Practice and Procedure, R746-100.

R746-344-4. Selection of a Test Year.

The applicant must base its rate change application on twelve months of data called a test year. The proposed test year can be historical, forecasted, or a combination of historical and forecasted months, not to exceed twelve months of forecasted data from the date the application is first received by the Commission.

R746-344-5. Forecasted Data.

A. The applicant shall provide the Commission with one copy of assumptions and the supporting work papers used to develop forecasted data. The applicant may be required by the Commission to provide updated actual data as it becomes available or to recalculate the forecasted data using justifiable alternative assumptions. An applicant which utilizes forecasted data for the test year, shall use an average rate base and capital structure to calculate the revenue deficiency.

B. The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies.

R746-344-6. Toll Revenues.

The applicant shall provide the Commission with a copy of the work papers and methodology used to develop the toll revenues included in the case.

R746-344-7. Audited Financial Statements.

If the applicant is audited by an independent certified public accounting firm, the applicant shall provide the Commission with one copy of the most recent audited financial statements, management letters and opinions prepared by that firm.

R746-344-8. Assistance Service.

Approved schedules will be self-explanatory. The applicant may contact the Division of Public Utilities for assistance if it does not understand the rate-making process for the schedules. A letter requesting assistance should be sent to:

Manager, Telecommunications Section
Division of Public Utilities
160 East 300 South Street
P.O. Box 45802
Salt Lake City, Utah 84145

KEY: public utilities, telecommunications, rules and procedures

1988

54-7-12(5)(6)

Notice of Continuation July 31, 2013

R746. Public Service Commission, Administration.**R746-345. Pole Attachments.****R746-345-1. Authorization.**

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and 54-3-1, 54-4-1, and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility, as defined in 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 54-2-1(23)(b), solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.

B. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B)(3)(d).

C. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

D. "Make-Ready Work" -- The changes to be made to a pole owner's poles, its own pole attachments, the existing pole attachments of other attaching entities, or the existing additional equipment associated with such attachments, which changes may be needed to accommodate a proposed additional pole attachment. Such make-ready work is coordinated by the pole owner and is performed by the owners of the poles or owners of the pole attachments and additional equipment or as otherwise agreed to by these owners.

E. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

F. "Pole Owner" -- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

G. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

H. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

I. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in

47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, if available, and they would like a two-alternative make-ready bid. The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option. In the first alternative, the pole owner and attaching

entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. An applicant may, at its own discretion, exercise any of the self-build options given for the required make-ready work subject to the conditions made.

9. An applicant may reject a make-ready estimate if it wishes to contest, before the Commission, that the make-ready estimate or make-ready construction time line is not prepared in good-faith, or is unreasonable or not in the public interest.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these

attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception -- Electrical power pole attachments do not need to be labeled.

R746-345-5. Rental Rate Formula and Method.

A. Rate Formula -- Any rate based on the rate formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission. A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." "Gross cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. "Net cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot;

and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(i) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(A)(3)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(A)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

B. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the

Commission if the dispute process is not before the Commission.

B. Settlement -- If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
August 29, 2006 **54-4-13**
Notice of Continuation July 31, 2013

R746. Public Service Commission, Administration.**R746-404. Regulation of Promotional Programs of Electric and Gas Public Utilities.****R746-404-1. General Provisions.**

An application for approval of promotional programs of the above utilities shall be filed with the Public Service Commission of Utah 30 days before they are to be put into effect. An application for a promotional program requires a docket number and must include a proposed tariff section. The application must also include a forecasted description of net ratepayer benefit. A copy of the application shall be sent by first class mail to the Division of Public Utilities, Committee of Consumer Services, utilities with competing programs and to any other party so designated by the Commission. Any affected person desiring a hearing should notify the Commission in writing within 20 days of the filing of the application. If no person requests a hearing or additional time to investigate, the application shall take effect at the expiration of 30 days from the time of filing. If a hearing or additional time is requested, an order by the Commission is needed for program approval.

R746-404-2.

"Promotional Programs" shall include all programs that allow, give, or promise cash, replacement allowances, discounts, rebates, appliances, equipment, or facilities to a person, firm, association, corporation, or group whatsoever, in consideration of the use of the service of the electric or gas public utility offering the inducement, excluding line extensions made pursuant to rules and orders on file with the Commission. Testing, research, or demonstration projects are not considered promotional programs for purposes of this rule.

R746-404-3.

The following standards shall apply to promotional programs:

A. No promotional program shall be implemented without prior Commission approval.

B. A promotional program may not vary the rates, charges, rules and regulations of the tariff pursuant to which service is rendered to the customer without prior Commission approval.

C. Each promotional program must be uniformly and contemporaneously available to all similarly situated customers.

D. The promotional program must be reasonably expected to promote the interests of the utility and its customers. There must be a demonstrable net ratepayer benefit.

KEY: public utilities, rules and procedure, programs**1988****54-4-1****Notice of Continuation July 31, 2013****54-4-7**

R746. Public Service Commission, Administration.**R746-406. Advertising by Electric and Gas Utilities.****R746-406-1. General Provisions.**

Except as provided in Subsection C, no electric or gas utility may recover from a person, other than shareholders or other owners of the utility, a direct or indirect expenditure by the utility for political, promotional or institutional advertising.

A. For the purposes of this rule:

1. The term "advertising" means the commercial use, by an electric or gas utility, of media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to the utility's consumers.

2. The term "political advertising" means advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to an issue of public dispute.

3. The term "promotional advertising" means advertising for the purpose of encouraging a person to select or use the service or additional service of an electric or gas utility or the selection or installation of an appliance or equipment designed to use that utility's service.

4. The term "institutional advertising" means advertising which is designed to create, enhance, or sustain an electric or gas utility's public image or good will with the general public or the utility's customer.

B. For the purposes of this rule, the terms "political advertising," "promotional advertising," and "institutional advertising" do not include:

1. advertising which informs consumers how they can conserve energy, use energy wisely, or reduce peak demand for energy;

2. advertising required by law or regulation, including advertising required under Part 1 of Title II of the National Energy Conservation Policy Act;

3. advertising regarding service interruption, safety measures, or emergency conditions;

4. advertising concerning employment opportunities with the utility; or

5. an explanation of existing or proposed rate schedules, or notifications of hearing thereon, or

6. information about the availability of energy assistance programs.

C. Notwithstanding the foregoing provisions, expenditures relating to promotional and institutional advertising may be recovered in rates if the Commission has found, after due consideration in either a rate case or separate proceeding prior to implementation, that the advertising is in the public interest.

KEY: public utilities, advertising

1988

Notice of Continuation July 31, 2013

54-4-1

54-4-7

R746. Public Service Commission, Administration.**R746-500. Americans With Disabilities Act Complaint Procedure.****R746-500-1. Authority and Purpose.**

A. This rule is promulgated pursuant to Section 54-1-1 and Section 63G-3-201(2) of the State Administrative Rulemaking Act. The Commission, pursuant to 28 CFR 35.107 adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

B. The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

R746-500-2. Definitions.

A. "ADA" means Americans With Disabilities Act.

B. "The ADA coordinator" means the Commission Secretary or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

1. Office of Planning and Budget;
2. Department of Human Resource Management;
3. Division of Risk Management;
4. Division of Facilities Construction Management; and
5. Office of the Attorney General.

D. "CFR" means Code of Federal Regulations, 1991 edition.

E. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of the impairment; or being regarded as having an impairment.

F. "Individual with a disability," hereafter individual, means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the Commission.

G. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

H. "Public Entity" means a state or local government; a department, agency, special purpose district, or other instrumentality of a state or local government.

R746-500-3. Filing of Complaints.

A. An individual who feels he has been discriminated against by or at the Commission may file a complaint by filing in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, a complaint alleging an act of discrimination occurring before the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. Each complaint shall be filed with the Commission's ADA coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

1. include the individual's name and address;
2. include the nature and extent of the individual's

disability;

3. describe the Commission's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;

4. describe the action and accommodation desired; and

5. be signed by the individual or by a legal representative of that individual.

D. A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, the alleged victims of discrimination.

R746-500-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure that relevant facts are determined and documented. This may include gathering the information listed in Subsection 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Commission's staff in determining what action shall be taken on the complaint. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable within the Commission's budget and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R746-500-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing, or in another suitable format, what action shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability, in writing or other suitable format, why the decision is being delayed and what additional time is needed to reach a decision.

R746-500-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the chairman of the Commission or a designee other than the Commission's ADA coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review by the Commission's chairman, or designee, of information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Commission chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the Commission chairman or designee shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days

after receiving the appeal and shall be in writing or another format suitable to the individual.

G. If the Commission chairman or his designee is unable to reach a decision within the ten working day period the individual shall be notified, in writing or other suitable format, why the decision is being delayed and the additional time needed to reach a decision.

R746-500-7. Classification of Records.

The record of each complaint and appeal, and the written records produced or received as part of those actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, Commission chairman or their designee issues the decision, when a portion of the record that may pertain to the individual's medical condition shall remain classified private as defined under Section 63G-2-302, or as controlled as defined in Section 63G-2-304. Other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Commission chairman or designees shall be classified as public information.

R746-500-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures at 28 CFR Subpart F, beginning with Part 35.170; or other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

1993

Notice of Continuation July 31, 2013

63G-3-201(2)

63G-2-302

63G-2-304

63G-2-305

67-19-32

**R765. Regents (Board of), Administration.
R765-604. New Century Scholarship.**

R765-604-1. Purpose.

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage students to accelerate their education by earning an associate's degree in high school from an institution within the Utah System of Higher Education.

R765-604-2. References.

- 2.1. 53B-8-105, Utah Code Annotated 1953
- 2.2. Regents' Policy and Procedures R609, Regents' Scholarship

R765-604-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents, or a home-school student.

3.2. "Associate's Degree" means an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.5.2. of this rule.

3.3. "Awards" means New Century Scholarship funds.

3.4. "Board" means the Utah State Board of Regents.

3.5. "Completes the requirements for an associate's degree" means that an applicant completes either of the following:

3.5.1. all the required courses for an associate's degree from an institution within the Utah System of Higher Education that offers associate's degrees; and applies for the associate's degree from the institution; or

3.5.2. all the required courses for an equivalency to the associate's degree from a higher education institution within the Utah System of Higher Education that offers baccalaureate degrees but does not offer associate's degrees.

3.6. "High school" means a public high school established by the Utah State Board of Education or a private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.7. "High school graduation date" means the day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this rule.

3.8. "Home-schooled" refers to a student who has not graduated from a Utah high school and received a high school grade point average (GPA).

3.9. "Math and science curriculum" means the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.10. "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section 4 of this rule.

3.11. "Reasonable progress" means enrolling and completing at least fifteen credit hours during fall and spring semesters and earning a 3.3 grade point average or higher each semester. If applicable, applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.12. "Recipient" means an applicant who receives an award under the requirements set forth in this rule.

3.13. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester

grade point average and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment.

3.14. "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.

3.15. "The Utah System of Higher Education" means the institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State University, Salt Lake Community College, and Snow College.

R765-604-4. Recipient Requirements.

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by applicant's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled Applicants: For Utah home-schooled applicants the following requirement applies:

4.2.1. If a home-schooled applicant would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the applicant would have completed high school.

4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

4.3. Mandatory Fall Term Enrollment: A recipient shall enroll in and successfully complete fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral or leave of absence from the Board under subsection 8.7 of this rule.

4.4. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.5. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.6. Regents' Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

R765-604-5. Application Procedures.

5.1. Application Contact: Qualifying students shall apply for the award through the Board.

5.2. General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work an applicant has completed to meet the requirements for the associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If an applicant is enrolled at an

institution which does not offer an associate's degree or an institution that will not award the associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.4. Application Deadline: Applicants shall meet the following deadlines to qualify for an award:

5.4.1. Application Submission: Applicants must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before September 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.

5.4.3. Priority Deadline: A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority of consideration for awards.

5.5. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. Awards.

6.1. Value of the Award: The award is up to the amount provided by the law and determined each Spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with subsection 6.2. The award shall be disbursed semester-by-semester over the shortest of the following time periods:

6.1.1. Four semesters of full-time enrollment in fifteen credit hours.

6.1.2. Sixty credit hours.

6.1.3. Until the student meets the requirements for a baccalaureate degree.

6.2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award.

6.3. Eligible Institutions: An award may be used at either

6.3.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.3.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.4. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student is earning a baccalaureate degree.

6.5. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.6. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4.6 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

7.1.1. Four semesters of enrollment in fifteen credit hours;

7.1.2. Sixty credit hours; or

7.1.3. Until the recipient meets the requirements for a baccalaureate degree.

7.2. Enrollment Documentation: The recipient shall submit to the Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is enrolled.

7.3. Award Payable to Institution: The award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies, and equipment required for instruction.

7.4. Dropped Hours After Award: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours the scholarship will be revoked (see 8.1) unless the student needs fewer than fifteen credit hours for completion of a degree.

R765-604-8. Continuing Eligibility.

8.1. Reasonable Progress Toward Degree Completion: The Board may cancel a recipient's scholarship if the student fails to:

8.1.1. Maintain 3.3 GPA: to maintain a 3.3 GPA or higher for each semester for which the student has received awards.; or

8.1.2. Reasonable Progress: to make reasonable progress (fifteen credit hours) toward the completion of a baccalaureate degree and submit the documentation by the deadline as described in subsection 8.2. A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll in fifteen credit hours continuously for fall and spring semesters.

8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to the Board a copy of his or her grades for verification of grade point average and has completed a minimum of fifteen credit hours each semester. Recipients will not be paid for the coming semester until the requested documentation has been received. If the recipient at any time fails to maintain a 3.3 grade point average or higher following probation or fails to enroll and complete fifteen credit hours, the scholarship may be revoked. These documents must be submitted by the following dates:

8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

8.2.4. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

8.3. Probation: If a recipient earns less than a 3.3 GPA in any single semester, the recipient must earn a 3.3 GPA or better the following semester to maintain eligibility for the scholarship. If the recipient again at any time earns less than a 3.3 GPA the scholarship will be revoked.

8.4. Final Semester: A recipient will not be required to enroll in fifteen credit hours if the recipient can complete the degree program with fewer credits.

8.5. No Awards After Five Years: The Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

8.6. No Guarantee of Degree Completion: An award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

8.7. Deferral or Leave of Absence.

8.7.1. A recipient shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll in fifteen credit hours.

8.7.2. A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.7.3. Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

9.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

9.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

9.2.1. Appeals shall be postmarked within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

9.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

9.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

9.2.4. Appeals are not accepted for late document submission.

9.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

9.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the New Century Scholarship address.

9.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the commissioner of higher education.

**KEY: higher education, secondary education, scholarships
July 8, 2013 53B-8-105
Notice of Continuation December 21, 2009**

R765. Regents (Board of), Administration.**R765-609. Regents' Scholarship.****R765-609-1. Purpose.**

The Regents' Scholarship encourages Utah high school students to prepare for college academically and financially by taking a core course of study in grades 9-12 and saving for college. This statewide scholarship is aligned with the Utah Scholars Core Course of Study which is based on national recommendations as outlined by the State Scholars Initiative. The courses required by the scholarship are proven to help students become college and career ready. In addition, this scholarship encourages high school students to complete meaningful course work through their senior year.

R765-609-2. References.

2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.

2.2. Utah Admin. Code Section R277-700-6, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).

2.3. Regents' Policy and Procedures R604, New Century Scholarship.

R765-609-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents.

3.2. "Base award" means a one-time scholarship to be awarded to applicants who complete the eligibility requirements of section 4.1 of this policy.

3.3. "Board" means the Utah State Board of Regents.

3.4. "Core Course of Study" means the Utah Scholars Core Course of Study taken during grades 9-12, which includes:

3.4.1. 4.0 credits of English;

3.4.2. 4.0 credits of mathematics taken in a progressive manner (at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II or Math 3);

3.4.3. 3.5 credits of social studies;

3.4.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.4.5. 2.0 credits of the same world or classical language, other than English, taken in a progressive manner.

3.5 "Eligible Institutions" means USHE, or at any private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges.

3.6. "Exemplary Academic Achievement award" means a renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.7. "High school" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.8. "Home-schooled" refers to a student who has not graduated from a Utah high school and received letter grades for the Core Course of Study in grades 9-12.

3.9. "Recipient" means an applicant who receives an award under the requirements set forth in this policy.

3.10. "Regents' Diploma Endorsement" means a certificate or transcript notation that may be awarded to students who qualify for the Exemplary Academic Achievement award of the Regents' Scholarship.

3.11. "Reasonable progress" means enrolling and completing at least fifteen credit hours during Fall and Spring semesters and earning a 3.3 grade point average (GPA) or higher

each semester.

3.12. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment.

3.13. "Scholarship Review Committee" means the committee approved to review Regents' Scholarship applications and make final decisions regarding awards.

3.14. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).

3.15. "UESP" means the Utah Educational Savings Plan.

3.16. "USHE" means the Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State University, Utah Valley University, and Salt Lake Community College.

R765-609-4. Conditions of the Regents' Scholarship Program and Program Terms.

4.1. Base Award: To qualify for the Regents' Scholarship Base award, the applicant shall satisfy the following criteria:

4.1.1. Complete the Core Course of Study as defined in section 3.4 of this policy.

4.1.2. GPA: The applicant shall demonstrate completion of the Core Course of Study with a cumulative high school GPA of at least 3.0.

4.1.3. Minimum Grade requirement: the applicant shall have no individual core course grade lower than a "C" on a transcript. Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.1.4. ACT Score: The applicant shall submit at least one verified ACT score.

4.1.5. Utah High School Graduation: The applicant shall have graduated from a Utah high school.

4.1.6. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.1.7. No Criminal Record Requirement: A recipient shall not have a criminal record; with the exception of a misdemeanor traffic citation.

4.1.8. Mandatory Fall Term Enrollment: A recipient shall enroll in fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral from the Board under subsection 7.2.

4.1.9. New Century Scholarship: A recipient shall not receive a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R604.

4.2. Exemplary Academic Achievement award: To qualify for the Regents' Scholarship Exemplary Academic Achievement award, the applicant shall satisfy all requirements for the Base award, and additionally meet all of the following requirements:

4.2.1. Required GPA: The applicant shall have a cumulative high school GPA of at least 3.5.

4.2.2. Minimum Grade requirement: the applicant earns a course grade on a transcript of "B" or above in each individual course listed in Utah Code 53B-8-109(1)(d)(i). Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.2.3. Required ACT Score: The applicant shall submit a verified composite ACT score of at least 26.

4.2.4. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary Academic Achievement Award, the recipient shall submit renewal documents providing evidence of reasonable progress toward degree completion.

4.2.4.1. If the recipient fails to maintain a 3.3 GPA in a single semester the recipient is placed on probation and shall earn a 3.3 GPA or better the following semester to maintain eligibility. If the recipient again at any time earns less than a 3.3 GPA or fails to enroll and complete fifteen credit hours, except as outlined in section 7.2 of this policy, the scholarship may be revoked.

4.2.4.2. Each semester, the recipient shall submit renewal documents to the Scholarship Review Committee providing evidence of making reasonable progress, by the deadlines listed below:

4.2.4.2.1. For Fall semester renewal documents shall be submitted by September 30.

4.2.4.2.2. For Spring/Winter semester renewal documents shall be submitted by February 15.

4.2.4.2.3. For Summer semester renewal documents shall be submitted by June 30.

4.2.4.2.4. If the recipient is attending Brigham Young University during Spring term renewal documents shall be submitted by May 30.

4.2.5. A recipient will not be required to enroll in fifteen credit hours if the student can complete his/her degree program with fewer credits.

4.3. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.3.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.3.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.3.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.4. Student Transfer: A scholarship may be transferred to a different eligible institution upon request of the student.

4.5. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum grade requirement, nor do they qualify toward the scholarship renewal requirements.

R765-609-5. Application Procedures.

5.1. Application Deadline: Applicants shall submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship.

5.2. Required Documentation: Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified the scholarship award may be denied. Required documents that shall be submitted with a scholarship application include:

5.2.1. the official online application;

5.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. A final transcript showing the last semester of

coursework will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

5.2.3. verified ACT score(s); and

5.2.4. a class schedule form, provided by the Board, demonstrating the courses and credits that the student will complete during grade twelve. Simply submitting a high school transcript does not satisfy this requirement.

5.3. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, and will not be reviewed.

R765-609-6. Amount of Awards and Distribution of Award Funds.

6.1. Funding Constraints of Awards: The Board may limit or reduce the Base award and/or the Exemplary Academic Achievement award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

6.2. Amount of Awards.

6.2.1. Base Award: The Base award of up to \$1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

6.2.2. Exemplary Academic Achievement Award: The Exemplary Academic Achievement award is up to the amount provided by law and as determined each spring by the Board based on legislative funding and the number of applicants. The Exemplary Academic Achievement award may be renewed for the shortest of the following:

6.2.2.1. Four semesters of enrollment in fifteen credit hours;

6.2.2.2. Sixty-five credit hours; or

6.2.2.3. Until the student meets the requirements for a baccalaureate degree.

6.3. Distribution of Award Funds.

6.3.1. Enrollment Documentation: The award recipient shall submit to the Scholarship Review Committee a copy of the college class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.

6.3.2. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense including: tuition, fees, books, supplies, equipment required for course instruction, or housing.

6.3.3. Credit Hours Dropped After Award Payment: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours, the scholarship will be revoked.

6.4. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional \$400 in state funds to be added to the total scholarship award.

6.4.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, \$100 (i.e., up to \$400 total for all four years) to the recipient's award if at least \$100 was deposited into the account for which the applicant is named the beneficiary.

6.4.2. If no contributions are made to an applicant's UESP account during a given year, the matching amount will likewise be \$0.

6.4.3. If contributions total more than \$100 in a given

year, the matching amount will cap at \$100 for that year.

6.4.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

R765-609-7. Time Constraints and Continuing Eligibility.

7.1. Time Limitation: A Regents' Scholarship recipient shall use the award in its entirety within five years after his/her high school graduation date.

7.2. Deferral or Leave of Absence: A recipient shall apply for a deferral or leave of absence if they do not continuously enroll in fifteen credit hours.

7.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

7.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

7.3. No Guarantee of Degree Completion: Neither a Base award nor an Exemplary Academic Achievement award guarantees that the recipient will complete his or her associate or baccalaureate program within the recipient's scholarship eligibility period.

R765-609-8. Scholarship Determinations and Appeals.

8.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

8.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

8.2.1. Appeals shall be (postmarked) within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

8.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

8.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

8.2.4. Appeals are not accepted for late document submission.

8.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

8.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the Regents' Scholarship address.

8.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the Commissioner of Higher Education.

R765-609-9. Rules for Completing Course Work.

9.1. Although a course may meet state and individual district high school graduation requirements, the course may not meet the scholarship requirements. If a required course is not taught at the school the student attends they can elect to enroll in the Utah Electronic High School, distance education concurrent enrollment, or a course offered at another accredited Utah high school or college. Course work found at additional online sources shall be from an accredited institution approved by the Board.

9.2. Applicants are required to complete the entire curriculum for a course. For example, if a course is designed to be taken as a full year or for one full credit, the student shall

complete the entire course in order to have it count toward the completion of a requirement for the scholarship.

9.3. Course work that is "tested out" of is not accepted for the Regents' Scholarship.

9.4. In each content area, the courses completed shall be unique.

9.4.1. Students cannot take a standard course and then enroll in the honors version of the same class and count both toward meeting the credit requirement and, in cases, the requirement of progression.

9.4.2. Repeated course work does not count toward the credit fulfillment.

9.5. Weighted Grade: The grade earned in any course designated on the student's high school transcript as Advanced Placement (AP) International Baccalaureate (IB), or a college course concurrent enrollment shall be weighted (only if a college transcript is provided) according to the Scholarship Review Committee's standard procedures.

9.6. College Course Work: The Scholarship Review Committee reserves the right to apply a 3:1 ratio in relation to college course work. If an applicant enrolls in and completes a college course worth three or more college credits, this may be counted as one full credit toward the scholarship requirements. However, the student then is evaluated on the college grade earned, with the weight added to the college grade earned.

**KEY: higher education, scholarships, secondary education
July 8, 2013 53B-8-108**

R805. Regents (Board of), University of Utah, Administration.**R805-2. Government Records Access and Management Act Procedures.****R805-2-1. Purpose.**

The purpose of this rule is to establish procedures for the University of Utah in accordance with the Government Records Access and Management Act ("GRAMA").

R805-2-2. Authority.

This rule is authorized by Sections 63A-12-104(2), 63G-2-204(2)(d), and 63G-3-201 of the Utah Code.

R805-2-3. Allocation of Responsibility.

All operating units of the University of Utah, e.g., departments, institutes, offices, divisions, centers, schools, and colleges, shall be considered as a single governmental entity for purposes of this rule.

R805-2-4. Requests for Access.

The University of Utah is a governmental entity of the State of Utah and is not an agency of the federal government. As such, the University of Utah is not subject to the federal Freedom of Information Act.

Access to student records held by the University of Utah is governed by the Family Educational Rights and Privacy Act and not GRAMA.

Access to records containing protected health information that are created or maintained by the University of Utah in its capacity as an entity covered by the Health Insurance Portability and Accountability Act ("HIPAA"), as amended, is governed by HIPAA and not GRAMA.

A person requesting access to a record subject to GRAMA, and held by the University of Utah, must submit a written request that identifies the requested record with reasonable specificity.

The written request must also contain the name, mailing address, and, if available, the daytime telephone number of the person making the request. Such requests shall be directed as follows:

- (1) Requests for personnel records shall be sent to the Office of the Chief Human Resources Officer.
- (2) Requests pertaining to financial records shall be sent to the Office of the Vice President for Administrative Services.
- (3) Requests pertaining to purchasing activities shall be sent to the Director of the University Purchasing Department.
- (4) Requests pertaining to athletics shall be sent to the Athletics Director.
- (5) All other requests shall be sent to the office of the vice president responsible for overseeing the operating unit of the University of Utah in which the records are maintained. A list of those officials follows.
 - (a). Senior Vice President, Academic Affairs.
 - (b). Senior Vice President, Health Sciences.
 - (c). Vice President, Administrative Services.
 - (d). Vice President, General Counsel.
 - (e). Vice President, Government Relations.
 - (f). Chief Human Resources Officer.
 - (g). Vice President, Institutional Advancement.
 - (h). Vice President, Research.
 - (i). Vice President, Student Affairs and Services.

A person making a request should consult the University's Web site for current mailing addresses.

R805-2-5. Appeals from University Determinations.

Appeals from University determinations under GRAMA shall be directed to the Records Officer, who has been designated by the University President to hear appeals pursuant to section 63G-2-401(9).

R805-2-6. Fees.

As allowed by GRAMA, the University of Utah charges fees in connection with its response to a records request. A fee schedule may be obtained from the University Records Officer.

KEY: higher education, GRAMA, records

March 24, 2011

Notice of Continuation July 8, 2013

63G-2-204(2)

63A-12-104

63G-3-201

R918. Transportation, Operations, Maintenance.**R918-4. Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.****R918-4-1. Purpose and Authority.**

The purpose of this rule is to establish a procedure for using volunteer groups and third party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-4-2. Application for the Adopt-A-Highway Program.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor shall submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

R918-4-3. Conditions of Adopt-A-Highway Participation.

If the Adopt-A-Highway application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

- (1) the location of the right-of-way;
- (2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;
- (3) safety rules;
- (4) information concerning safety apparel that must be used and that is recommended;
- (5) the name of the entity or organization that is applying for the permit;
- (6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;
- (7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;
- (8) a date when the agreement will terminate, along with any automatic renewal provisions;
- (9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;
- (10) no person under the age of eleven years may participate in the litter pick-up program or be on the right-of-way;
- (11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;
- (12) volunteers shall stay off the traveled area of the

roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities such as the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

R918-4-4. Conditions of Sponsor-A-Highway Participation.

A business, government entity, group, or person participating in the Sponsor-A-Highway program shall:

- (1) be legally empowered to enter a contract in the state of Utah; and
- (2) use their legal name or a registered DBA name.

R918-4-5. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-6. Recognition Signs.

(1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

R918-4-7. Replacement of Signs.

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

R918-4-8. UDOT's Responsibilities.

UDOT shall:

- (1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;
- (2) furnish litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel;
- (3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and
- (4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer
March 12, 2012 **72-1-201**
Notice of Continuation August 1, 2013

R994. Workforce Services, Unemployment Insurance.**R994-403. Claim for Benefits.****R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday of the week in which the claimant requests reopening unless good

cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department,

unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for

work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the

normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

- (i) willing to accept any work within his or her ability;
- (ii) actively seeking work consistent with the limitation; and
- (iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not

considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any

other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact,

(b) the name of the employer or other identifying information such as a job reference number,

(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,

(d) details of the position for which the claimant applied,

(e) method of contact, and

(f) results of the contact.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's

request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (6) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided

when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait

and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution

of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by

the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

R994-403-302. Foreign Travel.

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant

travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

**KEY: filing deadlines, registration, student eligibility,
unemployment compensation**

August 1, 2013

35A-4-403(1)

Notice of Continuation May 16, 2013

R994. Workforce Services, Unemployment Insurance.**R994-508. Appeal Procedures.****R994-508-101. Right to Appeal an Initial Department Determination.**

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) The time permitted for an appeal is fifteen calendar days from the date on the Department decision unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-

406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

R994-508-105. Response to an Appeal.

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

R994-508-106. Notice of the Hearing.

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the legal issues to be considered at the hearing;

(d) the procedure for submitting written documents;

(e) the consequences of not participating;

(f) the procedures and limitations for requesting a continuance or rescheduling; and

(g) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

R994-508-107. Department to Provide Documents.

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

R994-508-108. Discovery.

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the

opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less intimidating;

(c) it is not unduly burdensome;

(d) it is necessary for the parties to properly prepare for the hearing; and

(e) it does not cause unreasonable delays.

(3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

R994-508-109. Hearing Procedure.

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a

party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

(a) reschedule the hearing to another time;

(b) allow the parties time to review the documents at an in-person hearing;

(c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or

(d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

R994-508-110. Telephone Hearings.

(1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.

(2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

R994-508-111. Evidence, Including Hearsay Evidence.

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source

whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

R994-508-112. Procedure For Use of an Interpreter at the Hearing.

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

R994-508-113. Department a Party to Proceedings.

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

R994-508-114. Ex Parte Communications.

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

R994-508-115. Requests for Removal of an ALJ from a Case.

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied

and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

R994-508-116. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue, or reopen a hearing on the ALJ's own motion or on the motion of a party.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after the decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

R994-508-118. What Constitutes Grounds to Reopen a Hearing.

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief

from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.

(3) Requests to reopen are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

R994-508-119. Withdrawal of Appeal.

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-120. Prompt Notification of Decision.

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

R994-508-122. Finality of Decision.

The ALJ's decision is binding on all parties and is the final decision of the Department unless appealed within 30 days of date the decision was issued.

R994-508-201. Attorney Fees.

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the

Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

R994-508-202. Petition for Approval of Fee.

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

R994-508-203. Criteria for Evaluation of Fee Petition.

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

R994-508-204. Appeal of Attorney's Fee.

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set forth the reason or reasons for the appeal.

R994-508-301. Appeal From a Decision of an ALJ.

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board

has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

R994-508-302. Time Limit for Filing an Appeal to the Board.

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

R994-508-303. Procedure for Filing an Appeal to the Board.

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

- (a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;
- (b) the name and social security number of the claimant in cases involving claims for unemployment benefits;
- (c) the grounds for appeal; and
- (d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

R994-508-304. Response to an Appeal to the Board.

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

R994-508-305. Decisions of the Board.

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

R994-508-307. Withdrawal of Appeal to the Board.

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

R994-508-401. Jurisdiction and Reconsideration of Decisions.

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date

of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

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Notice of Continuation May 16, 2013 35A-4-508(5)
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