

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed November 02, 2018, 12:00 a.m. through November 15, 2018, 11:59 p.m.

Number 2018-23  
December 01, 2018

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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# SPECIAL NOTICES

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Long-Acting Reversible Contraceptives

#### Long-Acting Reversible Contraceptives

The Division of Medicaid and Health Financing (DMHF) will submit a change to the Medicaid State Plan to update the inpatient hospital reimbursement Diagnosis Related Group (DRG) methodology for long-acting reversible contraceptives (LARCs). This state plan amendment (SPA 18-0009-UT) will create additional and separate payments to DRG hospitals for the insertion of LARCs immediately after childbirth.

DMHF estimates total annual expenditures to increase by \$117,000.

The SPA is pending approval from the Centers for Medicare & Medicaid Services and the proposed effective date is January 1, 2019.

A copy of this change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the change are also available at local county health department offices.

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## Health Health Care Financing, Coverage and Reimbursement Policy

### 1115 Primary Care Network Waiver Amendment

#### PUBLIC HEARING 1115 Primary Care Network Waiver Amendment

The Utah Department of Health, Division of Medicaid and Health Financing (DMHF) will hold public hearings to discuss a proposed amendment to the 1115 Primary Care Network Demonstration Waiver.

DMHF is requesting authority to cover clinically managed residential withdrawal management services (referred to as social detoxification), for Medicaid eligible adults, age 18 and older, who reside in Salt Lake County. Services will be provided through Volunteers of America's Adult Detoxification Center and Center for Women and Children.

This amendment will be discussed at public hearings to be held on Monday, December 10, 2018, from 4:00 p.m. to 6:00 p.m., and on Thursday, December 20, 2018, from 2:00 p.m. to 4:00 p.m. as part of the Medical Care Advisory Committee (MCAC) meeting.

Both hearings will be held in Room 125 at the Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah.

A conference line is available for those who would like to participate by phone: 1-877-820-7831, passcode 378804#.

Individuals requiring an accommodation to fully participate in the meeting may contact Jennifer Meyer-Smart at 801-538-6338 by 5:00 p.m. on Thursday, December 6, 2018.

A copy of the DMHF Request for Amendment is available online at <https://medicaid.utah.gov/waiver-application>.

#### End of the Special Notices Section



# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

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## Governor's Proclamation Calling the Sixty-Second Legislature Into the Twelfth Extraordinary Session

### PROCLAMATION

**WHEREAS**, since the close of the 2018 General Session of the 62<sup>nd</sup> Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

**WHEREAS**, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 62<sup>nd</sup> Legislature of the State of Utah into the Twelfth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 14<sup>th</sup> day of November 2018, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2018 General Session of the Legislature of the State of Utah.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 12<sup>th</sup> day of November 2018.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2018/12/E



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 02, 2018, 12:00 a.m., and November 15, 2018, 11:59 p.m. are included in this, the December 01, 2018, issue of the *Utah State Bulletin*.

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

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least January 2, 2019. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 31, 2019, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

**PROPOSED RULES** are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page**

**Education, Administration**  
**R277-437**  
**Student Enrollment Options**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43397

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These changes to rule R277-437 update the rule's references to special education students in response to recent case law deriving from a Utah case with the Office of Civil Rights.

**SUMMARY OF THE RULE OR CHANGE:** R277-437 is being changed to update the rule's references to special education students and to update recommended formatting and technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53E-3-401(4) and Subsection 53G-6-405

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes are not expected to have any additional fiscal impact on state government revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule clarifies the open enrollment standards for all students and the calculation and payment provisions of for students that are split enrolled between local education agencies (LEAs). The payment provisions between LEAs for split enrollment is a practice that exists already.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any additional fiscal impact on local governments' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule clarifies the open enrollment standards for all students and the calculation and payment provisions of for students that are split enrolled between LEAs. The payment provisions between LEAs for split enrollment is a practice that exists already.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any additional fiscal impact on small businesses' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule clarifies the open enrollment standards for all students and the calculation and payment provisions of for students that are split enrolled between LEAs. The payment provisions between LEAs for split enrollment is a practice that exists already.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any additional fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule clarifies the open enrollment standards for all students and the calculation and payment provisions of for students that are split enrolled between LEAs. The payment provisions between LEAs for split enrollment is a practice that exists already.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021

State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**  
**R277-437. Open Enrollment[Student Enrollment Options].**  
**R277-437-[2]1. Authority and Purpose.**  
 [A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public

school system under the Board, by 53E-3-501(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53G-6-405 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53G-6-401 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.]

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Subsection 53G-6-405, which directs the Board to provide a formula by rule for resident students to attend school districts under 53G-6-401.

- (2) The purpose of this rule is:
  - (a) to establish necessary definitions;
  - (b) to establish a formula for the residual per pupil expenditure for school districts to reimburse each other for full and part-time nonresident students;
  - (c) to summarize school, school district, and state responsibilities under Section 53G-6-401; and
  - (d) to provide a standard statewide open enrollment form required under Subsection 53G-6-402(4)(b)(ii).

**R277-437-[1]2. Definitions.**

(1) "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

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

(2) "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

(3) ["District of residence"] "Resident district" means a student's school district of residence under Section 53G-6-302.

(4) "[Residual]Resident district's per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula calculated by the Superintendent:

- (a) [F]take total expenditures before interfund transfer for:
  - (i) maintenance and operation;
  - (ii) tort liability; and
  - (iii) capital projects[-];
- (b) [S]subtract the following from the sum of [(+)(4)(a),

- above:
  - (i) resident district's taxes collected under the Minimum School Program;
  - (ii) state revenue;
  - (iii) federal revenue; and
  - (iv) expenditures for site acquisition or new facility construction, which [(new facility construction)]includes remodeling that increases building square footage or other major remodeling[-if approved by the USOE Director of Finance-]; and

(3) [D]divide the remainder of (4)(a) and (4)(b)[(+ and (2)] above by the total student membership of the district as reported in

the most recent annual year-end Membership Report.~~[State Superintendent's Annual Report.]~~

~~[F.]~~ "Safety emergency" means a situation in which:

~~(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or~~

~~(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.]~~

~~[G.]~~(5) "School of residence" means the school which a student would normally attend in the student's district of residence.

~~[H.]~~(6) "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

~~(7) "Split enrollment" means a student that is enrolled in two or more LEAs simultaneously during a school year.~~

~~[I.]~~ "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

~~[J.]~~ "USOE" means the Utah State Office of Education.]

### **R277-437-3. Local School Board and District Responsibilities.**

~~[A.]~~(1) A local school board shall have policies describing procedures for a student[s] to follow in applying to attend school[s] other than the~~[if]~~ student's respective schools of residence.

~~(2) A Local school board[s] shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of [Section 53G-6-401 et seq.]~~Title 53G, Chapter 6, Part 4, School District Enrollment.

~~[B.]~~(3) The school district shall adjust timelines for open enrollment applications if the district is developing a district-wide reconfiguration of ~~[its]~~the district's schools consistent with Subsection 53G-6-401(1).

~~[C.]~~(4) A school district may establish longer or broader timelines for enrollment than required by law.

~~[D.]~~(5) If construction, remodeling, or other circumstances beyond the control of the local school board do not reasonably permit the local school board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Subsection 53G-6-402(4)(c).

~~[E.]~~(6)(a) As required under Subsection 53G-6-405(2), a resident district shall pay to a nonresident district one-half of the resident district's ~~[residual]~~per student expenditure for each resident student properly registered in the nonresident district.

~~(b) A resident district may pay a nonresident district any additional amount if agreed upon by both districts.~~

~~(c) No payments shall be made pursuant to this rule for split enrollment of a student.~~

~~(d) Funding for students who are split enrolled shall be provided to the participating LEAs in accordance with Section R277-419-6.~~

~~(7) An agreement between the resident district and a nonresident district may be made prior to the acceptance of a requesting student and shall be done outside of the Statewide Online Education Program process described in R277-726.~~

~~[F.]~~(8) ~~[Each]~~A local school board shall establish a procedure to consider appeals of ~~[any]~~a student's denial of initial or continued enrollment of a nonresident student under Subsection 53G-6-404(1).

~~[G.]~~(9) A local school board ~~[of education]~~may deny a student's request for enrollment ~~[of nonresident students]~~for a reason[s] identified in Title 53G, Chapter 6, Part 4, School District Enrollment~~[R277-437-H]~~.

~~[H.]~~(10) This rule does not govern eligibility for nonresident students to participate in activities supervised by the Utah High School Activities Association (UHSA)~~[if students transfer under Section 53G-6-401]~~.

### **R277-437-4. Special Education Open Enrollment Requirements. [State Board of Education Responsibilities.]**

~~A. Capacity for special education classrooms shall:~~

~~(1) be consistent with Utah Special Education Caseload Guidelines; and~~

~~(2) depend on staffing and funding constraints of the receiving school district.~~

~~B. A model standard enrollment options application form shall be available on the USOE website.]~~

~~(1) When considering an open enrollment request for a student who qualifies for special education services, a nonresident district shall:~~

~~(a) consider the individual needs of the student and whether the nonresident district can meet the student's needs when determining whether there is capacity to accept the student; and~~

~~(b) establish policies and procedures for open enrollment that do not have the effect of discriminating against a student who qualifies for special education services.~~

~~(2) The policies and procedures described in Subsection (1), as applied or implemented, may not lead to the categorical denial of accepting a nonresident student who qualifies for special education services.~~

~~(3) The Superintendent may provide model policies that meet the requirements of this section.~~

### **R277-437-5. Transportation.**

~~(1) A school resident district may transport the district's[its] students to schools in other districts under Subsection 53G-6-405(3)(b) (i).~~

**KEY: public education, enrollment options**

**Date of Enactment or Last Substantive Amendment: [February 7, 2014]2018**

**Notice of Continuation: December 16, 2013**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(1)(b); 53G-6-405; 53G-6-401 et seq.; 53E-3-401(4)**

**Education, Administration**  
**R277-470**  
**Charter Schools - General Provisions**

**NOTICE OF PROPOSED RULE**  
 (Repeal)  
 DAR FILE NO.: 43374  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative session, the Legislature passed H.B. 313. H.B. 313 made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers, therefore the Board recommends repealing Rule R277-470.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 directed the Board to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers. New Rule R277-554, which governs specific programs operated by the State Charter School Board, includes language from repealed rule R277-470. (Editor's note: Rule R277-554 appears under file number 43395 in this issue of the Utah State Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53E-3-401 and Section 53G-5-408

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This repeal is not expected to have any fiscal impact on state budget revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **LOCAL GOVERNMENTS:** This repeal is not expected to have any fiscal impact on local governments' revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **SMALL BUSINESSES:** This repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This repeal is not expected to have any fiscal impact on persons' other than small businesses, businesses, or local government entities revenues or expenditures as this rule is being eliminated and moved to a new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There were no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

~~**[R277. Education, Administration.**~~

~~**R277-470. Charter Schools - General Provisions.**~~

~~**R277-470-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized under:~~
  - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
  - ~~(b) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school; and~~
  - ~~(c) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2)(a) The purpose of this rule is to provide directions to charter schools for federal funds and startup and implementation funding.~~
- ~~(b) The rule also provides criteria for a charter school mentoring program and additional charter school-specific directives.~~

~~**R277-470-2. Definitions.**~~

- ~~(1) "Charter school authorizers" means entities that authorize a charter school under Section 53G-5-102.~~
- ~~(2) "Charter schools" means schools acknowledged as charter schools by charter school authorizers under Sections 53G-5-~~

~~305, 53G-5-306, and this rule or by the Board under Section 53G-5-304.~~

~~(3) "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.~~

~~(4) "ESEA" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.~~

~~(5) "Expansion" means a proposed increase of students or adding grade level(s) in an operating charter school at a single location.~~

~~(6) "Mentor," for purposes of the mentoring program, means an individual or organization with expertise or demonstrated competence, willing to advise charter schools, approved by the State Charter School Board to participate in the mentoring program.~~

~~(7) "Mentoring program," for purposes of this rule, means the State Charter School Board mentoring program.~~

~~(8)(a) "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area.~~

~~(b) The parent school and all satellites shall be considered a single local education agency for purposes of public school funding and reporting.~~

~~(9) "State Charter School Board" means the board designated in Section 53G-5-201.~~

~~(10) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Superintendent by which local education agencies submit plans and budgets for approval of the Superintendent.~~

~~(11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education local education agencies and the Superintendent, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.~~

~~**R277-470-3. Maximum Authorized Charter School Students.**~~

~~(1) Local school boards and institutions of higher education may approve charter schools by notifying the Board by October 1 of the state fiscal year one year prior to opening of proposed charter schools, including authorized numbers of students and other information as required in Sections 53G-5-305 and 53G-5-306.~~

~~(2) The Board, in consultation with the State Charter School Board and charter school authorizers, may approve schools, expansions and satellite charter schools for the total number of students authorized under Sections 53G-6-504 and 53G-5-301.~~

~~(3) The number of students requested from all charter school authorizers shall be considered and approved by the Board.~~

~~**R277-470-4. Charter Schools and ESEA Funds.**~~

~~(1) Charter schools that desire to receive ESEA funds shall comply with the requirements of this R277-470-4.~~

~~(2) To obtain its allocation of ESEA formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application and identify its economically disadvantaged students in the October UTREx submission.~~

~~\_\_\_\_\_ (3) If the school does not operate a federal school lunch program, the school:~~

~~\_\_\_\_\_ (a) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or~~

~~\_\_\_\_\_ (b) may use the Charter School Declaration of Household Income form provided by the Superintendent for this purpose.~~

~~\_\_\_\_\_ (4) A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.~~

~~**R277-470-5. Charter School Start-up and Implementation Grants:**~~

~~\_\_\_\_\_ (1) Charter schools that desire to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of this R277-470-5.~~

~~\_\_\_\_\_ (2) To receive a State Charter School Board start-up or implementation grant, a charter school shall be eligible and meet the requirements consistent with Section 53G-5-404.~~

~~\_\_\_\_\_ (3) New schools and satellite schools are eligible for start-up and implementation grant funds.~~

~~\_\_\_\_\_ (4) A charter school may not receive start-up and implementation grant funds for school expansion.~~

~~\_\_\_\_\_ (5) Eligible charter schools shall complete an application and may be awarded a grant for no more than 36 months.~~

~~\_\_\_\_\_ (6) Only schools that have not received state start-up or implementation grant funds in prior years are eligible.~~

~~\_\_\_\_\_ (7) The State Charter School Board shall determine amounts and conditions for distribution of state start-up or implementation grant funds.~~

~~\_\_\_\_\_ (8) Grant funds may only be used for allowable expenditures as provided by the State Charter School Board.~~

~~\_\_\_\_\_ (9) Grant recipients shall participate in monitoring activities and shall provide monitoring information to the Superintendent, as directed.~~

~~\_\_\_\_\_ (10)(a) Charter schools shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds.~~

~~\_\_\_\_\_ (b) An exception may be made for schools that convert status due to either federal or state law requirements for academic purposes.~~

~~**R277-470-6. Charter School Mentoring Program:**~~

~~\_\_\_\_\_ (1) The State Charter School Board shall identify critical mentoring needs of charter schools and, through an RFP application process, allocate mentoring funds to one or more qualified individuals or organizations to meet identified needs.~~

~~\_\_\_\_\_ (2) Mentoring program participants shall provide information to the Superintendent as requested.~~

~~\_\_\_\_\_ (3) The State Charter School Board shall:~~

~~\_\_\_\_\_ (a) receive an annual program report from participating mentors and charter schools; and~~

~~\_\_\_\_\_ (b) evaluate the mentoring program annually.~~

~~**R277-470-7. Charter School Parental Involvement:**~~

~~\_\_\_\_\_ (1) Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.~~

~~\_\_\_\_\_ (2) Charter schools that elect to receive School LAND-Trust funds shall comply with Subsection R277-477-3(3).~~

~~**R277-470-8. Transportation:**~~

~~\_\_\_\_\_ (1) Charter schools are not eligible for to-and-from-school transportation funds.~~

~~\_\_\_\_\_ (2) A charter school that provides transportation to students shall comply with the inspection and safety requirements of Section 53-8-211.~~

~~\_\_\_\_\_ (3) A school district may provide transportation for charter school students on a space-available basis on approved routes.~~

~~\_\_\_\_\_ (4)(a) School districts may provide transportation or transportation information to charter school students and their parents who participate in transportation by the school district as guests.~~

~~\_\_\_\_\_ (b) Charter schools or charter school students may forfeit with no recourse the privilege of transportation for violation of district policies.~~

~~**R277-470-9. Miscellaneous Provisions:**~~

~~\_\_\_\_\_ (1) The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Subsection 53G-5-503(4)(a).~~

~~\_\_\_\_\_ (a) Individuals making reports about threats shall report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Section 62A-4a-403 and Subsection 53G-9-203(3)(a).~~

~~\_\_\_\_\_ (b) Additionally, individuals may report threats to the health, safety or welfare of students to the charter school governing board, provided that:~~

~~\_\_\_\_\_ (i) reports shall be made in writing;~~

~~\_\_\_\_\_ (ii) reports shall be timely; and~~

~~\_\_\_\_\_ (iii) anonymous reports shall not be reviewed further.~~

~~\_\_\_\_\_ (c) Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.~~

~~\_\_\_\_\_ (d) Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.~~

~~\_\_\_\_\_ (2) The Board shall have authority for final approval of all charter schools that receive minimum school program funds.~~

~~\_\_\_\_\_ (3) All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.~~

~~**KEY: education, charter schools**~~

~~**Date of Enactment or Last Substantive Amendment: August 7, 2018**~~

~~**Notice of Continuation: July 13, 2018**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-3-401(4); 53F-2-702; 53G-5-304; 53G-5-305; 53G-5-306; 53-8-211]**~~

**Education, Administration**  
**R277-481**  
**Charter School Oversight, Monitoring**  
**and Appeals**

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 43399

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. Therefore, the Board is repealing R277-481 and adopting new rule R277-553. (EDITOR'S NOTE: New Rule R277-553 can be found in this December 1, 2018, Bulletin under DAR No. 43401.)

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (2018) directed the Board to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. New rule, R277-553, governs charter school oversight by authorizers and includes language from this repealed rule, R277-481.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53G-5-102 and Section 53G-5-305 and Section 53G-5-306

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule repeal is not expected to have any fiscal impact on state budget revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **LOCAL GOVERNMENTS:** This rule repeal is not expected to have any fiscal impact on local governments' revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **SMALL BUSINESSES:** This rule repeal is not expected to have any fiscal impact on small businesses revenues or expenditures as this rule is being eliminated and moved to a new rule.
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**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
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**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
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<b>Fiscal Benefits</b>			
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Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
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<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**[R277. Education, Administration.**

**R277-481. Charter School Oversight, Monitoring and Appeals.**

**R277-481-1. Authority and Purpose.**

- (1) This rule is authorized under:
  - (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board; and
  - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.
- (2)(a) The purpose of this rule is to establish procedures for oversight and monitoring charter agreements and charter schools for compliance with minimum standards.
- (b) The rule also provides appeals criteria and a process for schools found out of compliance with chartering entity findings.

**R277-481-2. Definitions.**

- (1) "Chartering entities" means entities that authorize a charter school under Subsection 53G-5-102(3).
- (2) "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53G-5-305, 53G-5-306, and this rule or by the Board under Section 53G-5-304.
- (3)(a) "Charter school agreement" or "charter agreement" means the terms and conditions for the operation of an approved charter school.
- (b) The charter school agreement shall be maintained by the Superintendent and is considered the final, official and complete agreement.
- (4) "Charter school deficiencies" means the following information:
  - (a) a charter school is not satisfying financial, academic or operational obligations as required in its charter agreement;
  - (b) a charter school is not providing required documentation after being placed on warning status; or
  - (c) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.
- (i) Fraud or misuse of funds need not rise to the minimal standard.
  - (ii) Fraud or misuse of funds may include
    - (A) failure to properly account for funds received at the school;
    - (B) failure to follow regularly established accounting and receipting practices; or
    - (C) failure to provide data, financial records, or information as requested by the State Charter School Board or the Board.
- (5) "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- (6) "Probation" means a formal process and time period during which a school is permitted to demonstrate its full compliance with its charter agreement and all applicable laws, rules and regulations.
- (7) "State Charter School Board" means the board designated in Section 53G-5-201.
- (8) "Warning status" means an informal status in which a school is placed through written notification from the the school's authorizer for the school's failure to maintain compliance with its charter agreement, applicable laws, rules or regulations.

**R277-481-3. State Charter School Board Oversight, Minimum Standards, and Consequences.**

- (1) The State Charter School Board shall provide direct oversight to the charter schools for which it is the chartering entity, including requiring all charter schools to:
  - (a) comply with their charter agreements containing clear and meaningful expectations for measuring charter school quality.
  - (b) annually review charter agreements, as maintained by the Superintendent;
  - (c) regularly review other matters specific to effective charter school operations, including a comprehensive review of governing board performance at least once every five years; and
  - (d) audit and investigate claims of fraud or misuse of public assets or funds.
- (2) All charter schools authorized by the State Charter School Board shall also meet the following minimum standards:

~~\_\_\_\_\_ (a) charter schools shall have no unresolved material findings, financial condition findings or repeat significant findings in the school's independent financial audit, federal single audit or Board audits;~~

~~\_\_\_\_\_ (b) charter schools shall maintain a minimum of 30 days cash on hand or the cash or other reserve amount required in bond covenants, whichever is greater;~~

~~\_\_\_\_\_ (c) charter schools shall have no violations of federal or state law or regulation, Board rules or Board directives;~~

~~\_\_\_\_\_ (d) charter schools shall have all teachers properly licensed and endorsed for teaching assignments in CACTUS; and~~

~~\_\_\_\_\_ (e) charter school governing boards shall ensure all employees and board members have criminal background checks on file.~~

~~\_\_\_\_\_ (3)(a) A charter school that fails to meet any of the minimum standards or a significant number of performance standards may be placed on warning status and notified in writing by the school's authorizer.~~

~~\_\_\_\_\_ (b) While a school is on warning status, the school may seek technical assistance from the school's authorizer to remedy any deficiencies.~~

~~\_\_\_\_\_ (4)(a) If any minimum standard or a significant number of performance standards has not been met by an assigned date following designation of warning status, the State Charter School Board shall notify the school in writing of the specific minimum standard(s) the school did not meet.~~

~~\_\_\_\_\_ (b) Based on the State Charter School Board's review of the charter school's noncompliance, progress and response to technical assistance, the State Charter School Board may place the school on probation for up to one calendar year following the designation of warning status.~~

~~\_\_\_\_\_ (c)(i) Upon placing a school on probation, the State Charter School Board shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules and regulations with which the school is not in full compliance.~~

~~\_\_\_\_\_ (ii) This written plan shall set forth the terms and conditions and the timeline that the school shall follow in order to be removed from probation.~~

~~\_\_\_\_\_ (d) If the school complies with the written plan in a timely manner, the State Charter School Board shall remove the school from probation.~~

~~\_\_\_\_\_ (c)(i) While a school is on probation, it shall be required to satisfy certain requirements and conditions set forth by the State Charter School Board.~~

~~\_\_\_\_\_ (ii) If the school fails to satisfy specific requirements and conditions by a date established by the State Charter School Board, the State Charter School Board may terminate the school's charter.~~

~~\_\_\_\_\_ (f) While a school is on probation, the school may seek technical assistance from the State Charter School Board staff to remedy any deficiencies.~~

~~\_\_\_\_\_ (g) The State Charter School Board may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.~~

**~~R277-481-4. Charter School Governing Board Compliance with Law.~~**

~~\_\_\_\_\_ (1) The Board may review or terminate the charter based upon factors that may include:~~

~~\_\_\_\_\_ (a) failure to meet measures of charter school quality which includes adherence to a charter agreement required and monitored by chartering entities; or~~

~~\_\_\_\_\_ (b) charter school deficiencies; or~~

~~\_\_\_\_\_ (c) failure of the charter school to comply with federal or state law or regulation, Board rules, or Board directives.~~

~~\_\_\_\_\_ (2) If a charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted to require compliance with such law or rule; all other provisions of the school's charter shall remain in full force and effect.~~

~~\_\_\_\_\_ (3) A charter school governing board may amend its charter agreement by receiving approval from its chartering entity consistent with Section 53G-5-303.~~

~~\_\_\_\_\_ (4) Chartering entities shall obtain approval by the Board before amending charter agreements specific to:~~

~~\_\_\_\_\_ (a) changes to mission and purpose;~~

~~\_\_\_\_\_ (b) waivers from Board administrative rule;~~

~~\_\_\_\_\_ (c) expansions of student enrollment;~~

~~\_\_\_\_\_ (d) expansions of grade levels that will put students in different weighted pupil unit grade level categories; and~~

~~\_\_\_\_\_ (e) revolving loans.~~

~~\_\_\_\_\_ (5) A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.~~

**~~R277-481-5. Chartering Entity Oversight and Monitoring.~~**

~~\_\_\_\_\_ (1) Local school board and institutions of higher education chartering entities shall:~~

~~\_\_\_\_\_ (a) visit a charter school at least once during its first year of operation in order to ensure adherence to and implementation of approved charter and to finalize a review process;~~

~~\_\_\_\_\_ (b) visit a charter school as determined in the review process;~~

~~\_\_\_\_\_ (c) provide written reports to a charter school after the visits that set forth strengths, deficiencies, corrective actions, timelines and the reason for charter termination, if applicable; and~~

~~\_\_\_\_\_ (d) audit and investigate claims of fraud or misuse of public assets or funds.~~

~~\_\_\_\_\_ (2) Chartering entities shall notify the Board within 20 days of charter school deficiencies that initiate corrective action by chartering entities.~~

**~~R277-481-6. Charter School Financial Practices and Training.~~**

~~\_\_\_\_\_ (1) Charter school business administrators shall attend business meetings required by the school's authorizer.~~

~~\_\_\_\_\_ (2) Charter school governing board members and school administrators shall be invited to all appropriate Board-sponsored training, meetings, and sessions for traditional school district financial personnel.~~

~~\_\_\_\_\_ (3) The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.~~

~~\_\_\_\_\_ (4)(a) A charter school shall appoint a business administrator consistent with Sections 53G-4-302 through 53G-4-303.~~

~~\_\_\_\_\_ (b) The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.~~

~~\_\_\_\_\_ (5) The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.~~

~~\_\_\_\_\_ (6) Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.~~

~~\_\_\_\_\_ (7) Charter schools are not eligible for necessarily existent small schools funding under Subsection 53F-2-304(2) and Rule R277-445.~~

**R277-481-7. Remediating Charter School Financial Deficiencies.**

~~\_\_\_\_\_ (1) Upon receiving credible information of charter school deficiencies, the chartering entity shall immediately direct an independent review or audit through the charter school governing board.~~

~~\_\_\_\_\_ (2) The chartering entity or the Board through the chartering entity may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53G-5-503.~~

~~\_\_\_\_\_ (3) The chartering entity or the Board may:~~

~~\_\_\_\_\_ (a) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;~~

~~\_\_\_\_\_ (b) immediately terminate the flow of state funds;~~

~~\_\_\_\_\_ (c) recommend cessation of federal funding to the school;~~

~~\_\_\_\_\_ (d) take immediate or subsequent corrective action with employees who are responsible for charter school deficiencies consistent with Section 53A-1a-509; or~~

~~\_\_\_\_\_ (e) any combination of the foregoing Subsections (3)(a) through (d).~~

~~\_\_\_\_\_ (4) The recommendation by the chartering entity shall be made within 20 school days of receipt of complaint of deficiency(ies).~~

~~\_\_\_\_\_ (5) The chartering entity may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).~~

~~\_\_\_\_\_ (6) The Board shall consider and affirm or modify the chartering entity's recommendation(s) for remediating a charter school's deficiency(ies) within 60 days of receipt of information from the chartering entity.~~

~~\_\_\_\_\_ (7) In addition to remedies provided for in Section 53G-5-501, the chartering entity may provide for a remediation team to work with the school.~~

**R277-481-8. Appeals Criteria and Procedures.**

~~\_\_\_\_\_ (1) Only an operating charter school, a charter school that has been recommended for approval to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal chartering entity administrative decisions or recommendations to the Board.~~

~~\_\_\_\_\_ (2) The following chartering entity administrative decisions may be appealed to the Board:~~

~~\_\_\_\_\_ (a) termination of a charter;~~

~~\_\_\_\_\_ (b) denial of proposed amendments to charter agreement;~~

~~\_\_\_\_\_ (c) denial or withholding of funds from charter school governing boards; and~~

~~\_\_\_\_\_ (d) denial of a charter.~~

~~\_\_\_\_\_ (3) The chartering entity shall, upon taking any of the administrative actions:~~

~~\_\_\_\_\_ (a) provide written notice of denial to the charter school or approved charter school;~~

~~\_\_\_\_\_ (b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and~~

~~\_\_\_\_\_ (c) post information about the appeals process on its website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.~~

~~\_\_\_\_\_ (4) A charter school governing board chair or authorized agent (appellant) may submit a written appeal to the Superintendent within 14 calendar days of the chartering entity administrative action under Subsection (3).~~

~~\_\_\_\_\_ (5)(a) The Superintendent shall, in consultation with Board Leadership, review the written appeal and determine if the appeal addresses an administrative decision by a chartering entity.~~

~~\_\_\_\_\_ (b) If the Superintendent and Board Leadership determine that the appeal is appropriate, Board Leadership shall designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.~~

~~\_\_\_\_\_ (c) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the chartering entity and staff.~~

~~\_\_\_\_\_ (d) The Hearing shall be held no more than 45 days following receipt of the written appeal.~~

~~\_\_\_\_\_ (e) The hearing officer shall establish procedures that provide fairness for all parties, which may include:~~

~~\_\_\_\_\_ (i) a request for parties to provide a written explanation of the appeal and related information and evidence;~~

~~\_\_\_\_\_ (ii) a determination of time limits and scope of testimony and witnesses;~~

~~\_\_\_\_\_ (iii) a determination for recording the hearing;~~

~~\_\_\_\_\_ (iv) preliminary decisions about evidence; and~~

~~\_\_\_\_\_ (v) decisions about representation of parties.~~

~~\_\_\_\_\_ (6) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.~~

~~\_\_\_\_\_ (7) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.~~

~~\_\_\_\_\_ (8) The recommendation of the chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in his sole discretion, determines that the chartering entity's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.~~

~~\_\_\_\_\_ (9) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.~~

~~\_\_\_\_\_ (10) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.~~

**KEY: charter schools, oversight, monitoring, appeals**

**Date of Enactment or Last Substantive Amendment: August 7, 2018**

**Notice of Continuation: July 13, 2018**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-5]**

Education, Administration  
**R277-482**  
Charter School Timelines and Approval  
Processes

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 43392

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (2018) directed the Board to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers. New Rule R277-552 governs charter school approval processes and timelines, and includes language from R277-482. Therefore, R277-482 is being repealed and new rule R277-552 implemented in its place per legislative changes. (EDITOR'S NOTE: Rule R277-552 is being adopted in this December 1, 2018, Bulletin as DAR File No. 43394.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53E-3-401 and Section 53G-5-302 and Section 53G-5-304 and Section 53G-5-305 and Section 53G-5-306

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule repeal is not expected to have any fiscal impact on state budget revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **LOCAL GOVERNMENTS:** This rule repeal is not expected to have any fiscal impact on local governments' revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **SMALL BUSINESSES:** This rule repeal is not expected to have any fiscal impact on small businesses' revenues or expenditures as this rule is being eliminated and moved to a new rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule repeal is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures as this rule is being eliminated and moved to a new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah

according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule repeal has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**[R277. Education, Administration.**  
**R277-482. Charter School Timelines and Approval Processes.**  
**R277-482-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;
  - (c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;
  - (d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;
  - (e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school; and
  - (f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds.
- (2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

**R277-482-2. Definitions.**

- (1) "Amendment" means a change or addition to a charter agreement.
- (2) "Authorizer" or "charter school authorizer" means the following that authorize the establishment of a charter school:
  - (a) the State Charter School Board;
  - (b) a local school board; or
  - (c) a higher education institution.
- (2) "Charter agreement" means the same as that term is defined in Section 53A-1a-501.3.
- (3) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3
- (4) "Charter school governing board" means the board designated in a charter agreement to make decisions for the governance and operation of a charter school.
- (5) "Expansion" means a proposed increase of students or adding a grade level in an operating charter school with the same school number.
- (6) "Satellite charter school" means a charter school affiliated with an operating charter school, which has the same charter school governing board and a similar program of instruction, but has a different school number than the affiliated charter school.
- (7) "School number" means a number that identifies a school within an LEA that:
  - (a) receives money from the state;
  - (b) enrolls or prospectively enrolls a full-time student;
  - (c) employs an educator as an instructor who provides instruction consistent with Section R277-502-5;
  - (d) has one or more assigned administrators;
  - (e) is accredited consistent with Section R277-410-3; and
  - (f) administers a required statewide assessment to a student.

**R277-482-3. State Charter School Board Applicant Training.**

- (1) A charter school applicant that is seeking to have a charter authorized by the State Charter School Board shall attend:
  - (a) pre-application training;
  - (b) planning year training; and
  - (c) other training sessions designated by the State Charter School Board.
- (2) The State Charter School Board shall schedule pre-application training sessions multiple times annually that may be available electronically.

**R277-482-4. Charter School Information for Students and Parents.**

- (1) A charter school shall have a website that contains the following information:
  - (a) the charter school's governance structure, including the name, qualification, and contact information of all charter school governing board members;
  - (b) the number of new students that will be admitted into the school by grade;
  - (c) the school calendar, which shall include:
    - (i) the first and last days of school;
    - (ii) scheduled holidays;
    - (iii) scheduled professional development days; and
    - (iv) scheduled non-school days;
  - (d) timelines for acceptance of new students consistent with Section 53G-6-503;

~~(e) the requirement and availability of a charter school student application;~~  
~~(f) the application timeline to be considered for enrollment in the charter school;~~  
~~(g) procedures for transferring to or from a charter school;~~  
~~(h) timelines for a transfer;~~  
~~(i) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Subsection 53G-6-503(9);~~  
~~(j) the charter school governing board's policies; and~~  
~~(k) other items required by:~~  
~~(i) the charter school's authorizer;~~  
~~(ii) statute; and~~  
~~(iii) Board rule.~~  
~~(2) A new or expanding charter school shall have an operative and readily accessible website containing the information described in Subsection (1) at least 180 days before the proposed opening day of school.~~

**~~R277-482-5. Timelines – Charter School Starting Date and Facilities.~~**

~~(1) A charter school authorizer may:~~  
~~(a) accept the proposed starting date from a charter school applicant; or~~  
~~(b) negotiate and recommend a different starting date to the Board.~~  
~~(2) A charter school may receive state funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.~~  
~~(3) A State Charter School Board authorized school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.~~  
~~(4) A State Charter School Board authorized charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.~~  
~~(5) A charter school shall comply with Rule R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53G-7-202.~~  
~~(6) The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the charter school authorizer's recommendation.~~

**~~R277-482-6. Procedures and Timelines to Change Charter School Authorizers.~~**

~~(1) A charter school may transfer to another charter school authorizer.~~  
~~(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.~~  
~~(3) The charter school authorizer transfer application shall include:~~  
~~(a) current governing board members;~~  
~~(b) financial records that demonstrate the charter school's financial position, including the charter school's:~~

~~(i) most recent annual financial report (AFR);~~  
~~(ii) annual project report (APR); and~~  
~~(iii) audited financial statement;~~  
~~(c) test scores, including all state required assessments;~~  
~~(d) current employees and assignments;~~  
~~(e) board minutes for the most recent 12 months; and~~  
~~(f) affidavits, signed by all board members certifying:~~  
~~(i) the charter school's compliance with all state and federal laws and regulations;~~  
~~(ii) all information on the transfer application is complete and accurate;~~  
~~(iii) the charter school is current with all charter school governing board policies;~~  
~~(iv) the charter school is operating consistent with the charter school's charter agreement; and~~  
~~(v) there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the charter school.~~  
~~(4) A charter school seeking to transfer charter school authorizers shall submit a position statement from the current charter school authorizer about the charter school's status, compliance with the charter school authorizer requirements, and any unresolved concerns to the proposed new charter school authorizer.~~  
~~(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.~~  
~~(6) Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.~~

**~~R277-482-7. Charter School Expansion Requests.~~**

~~(1) A charter school authorizer shall maintain the final, official, and complete charter agreement.~~  
~~(2) A charter school may request approval for an expansion if:~~  
~~(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and~~  
~~(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or~~  
~~(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.~~  
~~(3) If the charter school authorizer approves a charter school expansion, the expansion shall be submitted to the Board for approval before October 1 of the state fiscal year prior to the school's intended expansion date.~~  
~~(4) For an expansion approved by an authorizer that is not the State Charter School Board, the charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the State Charter School Board and to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion.~~  
~~(5) When considering whether to approve a charter school's request for an expansion, an authorizer shall consider the following:~~  
~~(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement, giving~~

preference to schools that have been successfully operated for three years or more;

~~(b) the academic performance data of students at the charter school, giving preference to charter schools with students who are performing on standardized assessments at or above:~~

~~(i) the standard established in the charter school's charter agreement; and~~

~~(ii) the average academic performance of other district and charter schools in the area;~~

~~(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:~~

~~(i) most recent annual financial report (AFR);~~

~~(ii) annual program report (APR); and~~

~~(iii) audited financial statement;~~

~~(d) whether the charter school has a waiting list for enrollment;~~

~~(e) adequacy of the charter school's facility;~~

~~(f) impact to local government entities, including the information described in Section 53E-3-710;~~

~~(g) any student safety issues; and~~

~~(h) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines;~~

~~(6) A charter school requesting an expansion shall provide the information described in Subsection (5) to the authorizer and the Board with the charter school's request for expansion.~~

**R277-482-8. Requests for a New Satellite School for an Approved Charter School.**

~~(1) A charter school and its satellite are a single LEA for purposes of public school funding and reporting.~~

~~(2) An existing charter school may submit an amendment request to the charter school's charter authorizer for a satellite charter school if:~~

~~(a) the charter school satisfies requirements of federal and state law, regulations, and rule;~~

~~(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;~~

~~(c) the students at the charter school are performing on standardized assessments at or above the standard in the charter agreement;~~

~~(d) the proposed satellite charter school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;~~

~~(e) adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite charter school; and~~

~~(f) the charter school provides any additional information or documentation requested by the charter school authorizer or the Board.~~

~~(3) a satellite charter school that receives School LAND-Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.~~

~~(4) A satellite charter school may receive state funding if the Board approves the satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.~~

~~(5) When considering whether to approve a charter school's request for a satellite charter school, an authorizer shall consider the following:~~

~~(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement;~~

~~(b) the academic performance data of students at the charter school, giving preference to charter schools with students who are performing on standardized assessments at or above:~~

~~(i) the standard established in the charter school's charter agreement; and~~

~~(ii) the average academic performance of other district and charter schools in the area;~~

~~(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:~~

~~(i) most recent annual financial report (AFR);~~

~~(ii) annual program report (APR); and~~

~~(iii) audited financial statement;~~

~~(d) any student safety issues;~~

~~(e) whether the charter school has a waiting list for enrollment;~~

~~(f) the charter school's governing board performance and capacity to open and operate a satellite campus;~~

~~(g) adequacy of the satellite charter school's facility;~~

~~(h) impact to local government entities, including the information described in Section 53E-3-710; and~~

~~(i) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines;~~

~~(6) A charter school requesting a satellite charter school shall provide the information described in Subsection (5) to the authorizer and the Board with the charter school's request for a satellite school.~~

~~(7) The approval of a satellite charter school by the charter school authorizer requires ratification by the Board and will expire 24 months following the ratification if a building site is not secured for the satellite charter school.~~

**KEY: training, timelines, expansion, satellite**

**Date of Enactment or Last Substantive Amendment: April 9, 2018**

**Notice of Continuation: March 30, 2016**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1a-502.5; 53A-1a-504; 53A-1a-505; 53A-1a-515; 53A-1a-513; 53A-1a-521]**

Education, Administration  
**R277-509**  
 Licensure of Student Teachers and  
 Interns

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 43373

FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the Utah State Board of Education's (Board) redesign of the Educator Licensing System, the need for student teacher/internship licenses has been eliminated. Under the new system these individuals will be required to hold an associate educator license.

**SUMMARY OF THE RULE OR CHANGE:** R277-509 is amended to have a sunset clause of 6/30/2020 as it will no longer be necessary after that date.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53E-3-401(4) and Subsection 53E-6-201(1) and Subsection 53E-6-402(1)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.
- ◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.
- ◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the

Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Net Fiscal Benefits:</b>	\$0	\$0	\$0
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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**  
**R277-509. Licensure of Student Teachers and Interns.**  
**R277-509-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Subsection 53E-6-201(1), which permits the Board to issue licenses for educators; and
  - (d) Subsection 53E-6-402(1), which directs the Board to establish a procedure for obtaining and evaluating relevant information about license applicants.
- (2) The purpose of this rule is to specify the procedure under which the Board issues licenses to student teachers and interns.

**R277-509-2. Definitions.**

- (1) "Cooperating teacher" means a licensed teacher employed by an LEA who is qualified to directly supervise a student teacher or intern during the period the student teacher or intern is assigned to the LEA.
  - (2)(a) "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered.
  - (b) An intern is supervised primarily by the school system while maintaining a continuing relationship with college personnel as part of a planned program designed to produce a demonstrably competent professional.
  - (3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
  - (4) "Student teacher" means a college student preparing to teach who is assigned a period of guided teaching during which

the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

**R277-509-3. Issuing Licenses.**

- (1) The Superintendent shall recommend applicants enrolled in teacher preparation programs for student teacher or intern licenses.
- (2) The Utah Professional Practices Advisory Commission shall review background check information and make recommendations to the Board regarding student teacher and intern license applicants in accordance with Rule R277-214.
- (3)(a) An LEA may not give a student teacher or intern an unsupervised classroom assignment prior to issuance of a license in accordance with this Rule R277-509.
- (b) If an LEA assigns a student teacher or intern to a position in violation of Subsection (3)(a), the Superintendent shall not recognize the service as fulfilling the student teacher's or intern's requirements for Level 1 licensure.
- (c) An LEA is responsible to verify with the Board that a student teacher or intern has appropriate licensure.
- (4) A teacher preparation programs may allow an unlicensed student teacher or intern to complete student teaching or intern hours only if the university provides a constant supervisor for the student teacher's or intern's work in the public schools.
- (5)(a) The Superintendent may only recommend for licensure a student teacher or intern assigned to elementary, middle, or secondary schools under cooperating teachers for part of their preparation program.
- (b) A supervising administrator must be permanently assigned to the building to which an intern is assigned.
- (6) A student teacher or intern license is valid only for the period of time indicated on the license.

**R277-509-4. Effective Dates.**

- (1) This rule shall be effective through June 30, 2020.
- (2) This rule shall sunset on July 1, 2020.

**KEY: student teachers, interns, teacher preparation programs**  
**Date of Enactment or Last Substantive Amendment:**  
**[November 7, 2017]2019**  
**Notice of Continuation: September 13, 2017**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-201; 53E-3-401; 53E-6-402**

**Education, Administration**  
**R277-550**  
**Charter Schools – Definitions**

**NOTICE OF PROPOSED RULE**  
 (New Rule)  
 DAR FILE NO.: 43400  
 FILED: 11/15/2018

**RULE ANALYSIS**  
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2018 Legislative Session, the Legislature

passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (2018) directed the Board to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. This new rule, R277-550, establishes definitions specific to the new charter school rules.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule is not expected to have any fiscal impact on state government revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **LOCAL GOVERNMENTS:** This new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **SMALL BUSINESSES:** This new rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**  
**R277-550. Charter Schools - Definitions.**  
**R277-550-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Title 53G, Chapter 5, Charter Schools, which allows the Board to make rules governing aspects of operations of charter schools.
- (2) The purpose of this rule is to establish definitions for rules governing charter schools.
- (3) The definitions contained in this rule apply to Rules R277-550 through R277-555.

**R277-550-2. Definitions.**

- (1) "Amendment" means a change or addition to a charter agreement.

(2) "Authorizer" means an entity approved to authorize the establishment of a charter school under Sections 53G-5-304 through 53G-5-306.

(3) "Charter school" means a public school created in accordance with the provisions of Title 53G, Chapter 5, Charter Schools.

(4)(a) "Charter school agreement" or "Charter agreement" means a written agreement between a charter school and its authorizer containing the terms and conditions for the operation of a charter school.

(b) The charter school agreement maintained by a charter school's authorizer is the final, official, and complete agreement.

(5) "Charter school deficiency" means:

(a) failure of a charter school to comply with its charter agreement, including governance, financial, academic, or operational obligations;

(b) failure of a charter school to comply with the requirements of state or federal law or board rule;

(c) failure of a charter school to meet terms established by the school's authorizer as part of a remediation process; or

(d) fraud or misuse of funds by charter school governing board members or employees.

(6) "Charter school governing board" means the local board that governs a charter school.

(7) "Expansion" means:

(a) an increase in the number of grade levels offered by a charter school identified by a single school number; or

(b) an increase in the number of students for which a charter school identified by a single school number is authorized to receive funding.

(8) "Mentor" means an individual or organization with expertise or demonstrated competence, approved by the State Charter School Board to advise charter schools in the Mentoring Program.

(9) "Mentoring program" means the State Charter School Board mentoring program.

(10) "Probation" means a written formal action and notification through which a school is required to demonstrate the school's compliance with the authorizer's probationary requirements.

(11) "Replication school" means a charter school affiliated with an existing charter school physically located in the state of Utah that:

(a) has the same governing board as the existing charter school;

(b) has a similar program of instruction as the existing charter school;

(c) is located at a different site or in a different geographical area than the existing charter school; and

(d) has a separate school number than the existing charter school.

(12) "Non-operating charter school" means a charter school that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as a charter school in a start-up period.

(13) "Operating charter school" means a charter school that has received minimum school program funds or federal funds and is providing educational services during a fiscal year.

(14) "Satellite school" means a charter school affiliated with an existing charter school physically located within the state of Utah that:

(a) has the same governing board as the existing charter school;

(b) has a different program of instruction or grades served from the existing charter school;

(c) is located at a different site or in a different geographical area than the existing charter school; and

(d) has a separate school number than the existing charter school.

(15) "School number" means a number assigned by the Superintendent in accordance with National Center for Education Statistics criteria that identifies a distinct school within an LEA.

(16) "State Charter School Board" means the board established in Section 53G-5-201.

(17) "Utah Consolidated Application" or "UCA" means the web-based grants management tool employed by the Superintendent through which LEAs submit plans and budgets for approval by the Superintendent or Board.

(18) "Utah eTranscript and Record Exchange" or "UTREx" has the same meaning as described in Subsection R277-484-2(11).

**KEY: education, charter schools**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205**

## Education, Administration R277-551

### Charter Schools - General Provisions

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43393

FILED: 11/15/2018

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (2018) directed the Board to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. This new rule, R277-551, contains general provisions related to the operation of charter schools, and includes language from repealed rule R277-470. (EDITOR'S

NOTE: R277-470 is repealed in DAR No. 43374 published in this December 1, 2018, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53F-2-702 and Subsection 53E-3-401(4) and Subsection 53G-5-205(5)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This new rule is not expected to have any fiscal impact on state government revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

♦ **LOCAL GOVERNMENTS:** This new rule is not expected to have any material impacts on local government revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

♦ **SMALL BUSINESSES:** This new rule is not expected to have any material fiscal impacts on small business revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is not expected to have any material fiscal impacts on persons other than small businesses, businesses, or local government entities revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule draw heavily from rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The

Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

<b>Net Fiscal Benefits:</b>	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**R277. Education, Administration.**

**R277-551. Charter Schools - General Provisions.**

**R277-551-1. Authority and Purpose.**

- (1) This rule is authorized under:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;
  - (c) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities; and
  - (d) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.
- (2) The purpose of this rule is to provide operational requirements for charter schools.

**R277-551-2. Alternate Methods for Determining the Economically Disadvantaged Status of a Charter School's Students.**

- (1) A charter LEA with a charter school that does not participate in the National School Lunch Program shall comply with the requirements of this Section R277-551-2 to identify the economically disadvantaged status of students in the school's daily UTREx submission.
- (2) A charter LEA described in Subsection (1):
  - (a) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or
  - (b) may use the Charter School Declaration of Household Income form provided by the Superintendent for this purpose.

(3) A school that does not use the form identified in Subsection (2)(b) shall maintain equivalent documentation in its records, which may be subject to review by the Superintendent.

**R277-551-3. Transportation.**

(1) A charter school may not receive to-and-from school transportation funds except as provided under Section 53F-5-211.

(2) A charter school that provides transportation to students shall comply with the inspection and safety requirements of Section 53-8-211.

(3) A school district may provide transportation for charter school students on a space-available basis on approved routes.

(4)(a) A school district may provide transportation or transportation information to charter school students and their parents who participate in transportation by the school district as guests.

(b) Charter schools or charter school students may forfeit with no recourse the privilege of transportation, as described in Subsection (4)(a), for violation of district policies.

**R277-551-4. Student Health, Safety, and Welfare Reporting Requirements.**

(1)(a) The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety or welfare of students consistent with Subsection 53G-5-503(4).

(b) The State Charter School Board shall share reports received on charter schools from other authorizers with the applicable authorizer.

(2) Individuals making reports about threats shall report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with:

(a) Section 62A-4a-403;

(b) Subsection 53G-9-203(3)(a); and

(c) Rule R277-401.

(4) A charter school shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(5) A charter school shall act promptly to investigate and take disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

(6) All charter schools shall be subject to accountability standards established by the Board and to monitoring and internal auditing by the Board.

**R277-551-5. Charter School Information for Students and Parents.**

(1) An authorizer shall ensure that each of the authorizer's charter schools has a website that contains the following information:

(a) the charter school s governance structure, including the name, qualification, and contact information of all charter school governing board members;

(b) the number of new students that will be admitted into the school;

(c) the school calendar, which shall include:

(i) the first and last days of school;

(ii) scheduled holidays;

(iii) scheduled professional development days; and

(iv) scheduled non-school days;

(d) timelines for acceptance of new students consistent with Section 53G-6-503;

(e) the requirement and availability of a charter school student application;

(f) the application timeline to be considered for enrollment in the charter school;

(g) procedures for transferring to or from a charter school;

(h) timelines for a transfer;

(i) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Subsection 53G-6-503(9);

(j) the charter school governing board s policies; and

(k) other items required by:

(i) the charter school s authorizer;

(ii) statute; and

(iii) Board rule.

(2) The fee described in Subsection 1(I) is subject to fee waiver in accordance with Rule R277-407.

(3) A charter school shall have an operative and readily accessible website containing the information described in Subsection (1) at least 180 days before the proposed opening day of school.

**KEY: education, charter schools**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205**

Education, Administration  
**R277-552**  
Charter School Timelines and Approval  
Processes

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43394

FILED: 11/15/2018

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers.

SUMMARY OF THE RULE OR CHANGE: H.B. 313 (2018) directed the Board to make rules to carry out the legislative

changes in relation to the oversight of charter schools and their authorizers. This new rule, R277-552, governs charter school approval processes and timelines, and includes language from repealed rule R277-482. (EDITOR'S NOTE: The repeal of Rule R277-482 is included in this December 1, 2018, Bulletin under DAR No. 43392.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53F-2-702 and Section 53G-5-304 and Section 53G-5-305 and Section 53G-5-306 and Subsection 53E-3-401(4) and Subsection 53G-6-504(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. The Board was funded for an full-time employee (FTE) in the 2018 session to absorb the costs. The State Charter School Board has staff that will be performing these activities and is funded through the Board.

◆ **LOCAL GOVERNMENTS:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and the Utah Center for Assistive Technology (UCAT) will be required to develop policies and practices and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

◆ **SMALL BUSINESSES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and UCAT will be required to develop policies and practices and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and UCAT will be required to develop policies and practices and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively

small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY:** Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$155,000	\$155,000	\$155,000
Local Government	\$250,000	\$250,000	250,000
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$405,000</b>	<b>405,000</b>	<b>405,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
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Small Businesses	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-552. Charter School Timelines and Approval Processes.**

**R277-552-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;
  - (c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;
  - (d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds; and

(d) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.

(2) The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

**R277-552-2. Charter School Authorization Process.**

(1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.

(2) An authorizer shall submit a process to the Board for approval of:

- (a) a new charter school;
- (b) a charter school expansion;
- (c) a replication school; or
- (d) a satellite school.

(3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months prior to accepting applications for a new charter school.

(4)(a) The Board shall approve or deny an authorizer's application process within 65 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(5) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

(7) An authorizer shall maintain the official charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

- (a) a plan for pre-operational and other trainings;
- (b) an evaluation of the school's governing board, including:
  - (i) a review of the resumes of and background information of proposed governing board members; and
  - (ii) a capacity interview of the proposed governing board;
  - (c) an evaluation of the school's financial viability, including:
    - (i) a market analysis;
    - (ii) anticipated enrollment; and
    - (iii) anticipated and break even budgets;
  - (d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and

(e) an evaluation of the school's proposed pre-operational plan, including implementation of:

- (i) required policies;
- (ii) student data systems;
- (iii) reporting; and
- (iv) financial management.

(9) An authorizer review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

**R277-552-3. Timelines - Charter School Starting Date and Facilities.**

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(2) Prior to receiving state start-up funds an authorizer shall certify in writing to the State Charter School Board that a charter school has:

- (a) completed all financial identifying documents;
- (b) completed background checks for each governing board member; and
- (c) executed a signed charter agreement, which includes academic goals.

(3) A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 prior to the school's first operational year that:

- (a) the charter school meets the requirements of Subsection (2);
- (b) the charter school's governing board has adopted all policies required by statute or board rule, including a draft special education policies and procedures manual;
- (c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is on track to be completed prior to occupancy;

(f)(i) the charter school has hired an executive director and a business administrator; or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including

meeting the compatibility requirements of Subsection R277-484-5(3); and

(i) the charter school has a functional accounting system.

(4) An authorizer shall:

(a) create a process to verify the requirements in Subsection (3);

(b) maintain documentation of Subsection (4)(a); and

(c) provide the documentation described in Subsection (4)(b) to the Superintendent upon request.

(5) A charter school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(6) A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(7) If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

**R277-552-4. Charter Amendment Requests.**

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

**R277-552-5. Charter School Expansion Requests.**

(1) A charter school may request approval for an expansion if:

(a) the charter school satisfies the requirements of federal and state law, regulations, rule, and the charter agreement; and

(b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or

(ii) the charter school governing board has submitted a formal amendment request to the charter school authorizer consistent with the charter school authorizer's requirements.

(2) If the charter school authorizer approves a charter school expansion, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(3) A charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

(4) When considering whether to approve a charter school's request for an expansion, an authorizer shall consider the following:

(a) the amount of time the charter school has operated successfully meeting the terms of its charter agreement;

(b) two years of academic performance data of students at the charter school, including whether the charter school is performing at or above;

(i) the academic goals established in the charter school's charter agreement; and

(ii) the average academic performance of other district and charter schools in the area, or for schools targeting specific populations, schools with similar demographics;

(c) the financial position of the charter school, as evidenced by the charter school's financial records, including the charter school's:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statement;

(d) whether the charter school has a waiting list for enrollment;

(e) adequacy of the charter school's facility;

(f) any student safety issues; and

(g) ability to meet state and federal reporting requirements, including whether the charter school has regularly met Board reporting deadlines.

(6) A charter school requesting an expansion shall provide the information described in Subsection (5) to the authorizer with the charter school's request for expansion.

**R277-552-6. Requests for a New Replication or Satellite School for an Approved Charter School.**

(1) A charter school and all of the charter school's replication or satellite schools are a single LEA for purposes of public school funding and reporting.

(2) An existing charter school may submit a request to the charter school's authorizer for a replication or satellite charter school if:

(a) the charter school satisfies requirements of federal and state law, regulations, and rule;

(b) the charter school has operated successfully for at least three years meeting the terms of its charter agreement;

(c) the students at the charter school are performing on standardized assessments at or above the academic goals in the charter agreement, or, if there are no such goals in the charter agreement, are performing at or above surrounding schools;

(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the replication or satellite charter school;

(e) the charter school provides any additional information or documentation requested by the charter school authorizer; and

(f) the charter school is in good standing with its authorizer.

(3) As part of the application process, the authorizer shall review the charter school's:

(a) educational services, assessment, and curriculum;

(b) governing board's capacity to manage multiple campuses; and

(c) the school's financial viability.

(4) A replication or satellite charter school that will receive School LAND Trust funds shall have a charter trust land council and satisfy all requirements for charter trust land councils consistent with Rule R277-477.

(5) A replication or satellite charter school may receive state funding if the authorizer approves the replication or satellite charter school by October 1 of the state fiscal year prior to the year the school intends to serve students.

(6) If a replication or satellite charter school does not open within 36 months of approval, the approval shall expire.

(7) A charter school authorizer that authorizes a replication or satellite charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion date.

**R277-552-7. Procedures and Timelines to Change Charter School Authorizers.**

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual project report (APR); and

(iii) audited financial statement;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) A new charter school authorizer shall review an application for transferring a charter school authorizer for acceptance within 60 days of submission of a complete application, including all required documentation.

(6) If an authorizer accepts the transfer of a new charter school, the new authorizer shall notify the Superintendent within 30 days.

**KEY: training, timelines, expansion, satellite**  
**Date of Enactment or Last Substantive Amendment: 2018**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205; 53F-2-702; 53G-6-503**

**Education, Administration**  
**R277-553**  
**Charter School Oversight, Monitoring**  
**and Appeals**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43401

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (208) directed the Board to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. This new rule, R277-553, governs charter school oversight by authorizers and includes language from repealed rule R277-481. (EDITOR'S NOTE: Rule R277-481 is being repealed in this December 1, 2018, Bulletin under DAR No. 43399.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53E-3-401(4) and Subsection 53G-5-205(5) and Subsection 53G-5-501(5)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. The Board was funded for a full-time employee (FTE) in the 2018 General Session to absorb the costs, total costs \$155,000. The State Charter School Board has staff that will be performing these activities and is funded through the Board.

◆ **LOCAL GOVERNMENTS:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and Utah Center for Assistive Technology (UCAT) will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than an FTE. Average costs of an FTE would be between \$80,000-

\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually. Iron School District, Jordan School District, Salt Lake School District, Logan City and UCAT are the other authorizers. We anticipate annual costs of \$250,000.

◆ **SMALL BUSINESSES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and Utah Center for Assistive Technology (UCAT) will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than an FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and Utah Center for Assistive Technology (UCAT) will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than an FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

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AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This rule change is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.  
 R277-553. Charter School Oversight, Monitoring and Appeals.  
 R277-553-1. Authority and Purpose.**

- (1) This rule is authorized under:  
 (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;  
 (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;  
 (c) Subsection 53G-5-205(5), which requires the Board to establish minimum standards that a charter school authorizer is required to apply when evaluating a charter school application and monitoring charter school compliance; and  
 (d) Subsection 53G--5-501(5), which directs the Board to adopt rules specifying the timeline for remedying deficiencies and ensuring the compliance of a charter school with its charter.  
 (2) The purpose of this rule is to establish minimum standards that an authorizer is required to apply when monitoring charter school compliance.

**R277-553-2. Authorizer Review of Charter Schools.**

- (1) An authorizer shall review and evaluate annually the performance of charter schools for which it is the authorizer, including requiring all charter schools to:  
 (a) comply with their charter agreements; and  
 (b) comply with statute and board rule.  
 (2) An authorizer shall:  
 (a) visit a charter school at least once during its first year of operation in order to ensure adherence to an implementation of the approved charter and to finalize a review process;  
 (b) visit a charter school as determined in the review process;  
 (c) provide written reports to a charter school after the visits that set forth:  
 (i) strengths;  
 (ii) deficiencies; and  
 (iii) proposed corrective actions;  
 (d) notify the Superintendent of a claim of fraud or misuse of public assets or funds by a charter school; and  
 (e) coordinate the investigation of claims identified in Subsection (d) with the Superintendent.

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	155,000	\$155,000	\$155,000
Local Government	\$250,000	250,000	250,000
Small Businesses	\$0	\$0	\$0
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<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts

(3) An authorizer shall annually review, and document matters specific to effective charter school operations, including:

- (a) financial performance;
- (b) academic performance;
- (c) enrollment; and
- (d) governing board performance.

(4) An authorizer shall conduct and document a comprehensive review of governing board performance and review the charter agreement at least once every five years.

(5) An authorizer shall coordinate with the Superintendent to regularly review its charter schools as described in Subsection 53G-5-205(2).

**R277-553-3. Remediation and Probation.**

(1)(a) An authorizer shall develop a written policy documenting the process and for remediation of any deficiencies identified through the processes outlined in Section R277-553-2.

(b) An authorizer shall submit a copy of their remediation policy to the Board for approval along with their policy for approving new charters under Section R277-552-3.

(c) Notwithstanding Subsection (b), each authorizer shall submit a remediation policy to the Board for approval by January 1, 2020.

(2) If a school fails to remedy deficiencies through the remediation process, an authorizer may place the school on probation for no longer than one calendar year.

(3) Upon placing a school on probation, an authorizer shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules, and regulations with which the school is not in compliance.

(4) The written plan required by Subsection (3) shall:

(a) set forth the terms, conditions, and timeline that the school shall follow in order to be removed from probation; and

(b) a plan for further remedial action if the school fails to comply with probationary terms.

(5) If a school complies with the terms of the written plan within the timeline prescribed, the authorizer shall remove the school from probation.

(6) A school may request a single extension of no more than six months from an authorizer to comply with the terms of the written plan.

(7) If a school fails to satisfy the terms of the written plan within the established timeline, the authorizer shall propose to terminate the school's charter.

(8) While a school is on probation, the school may seek technical assistance from the authorizer to remedy any deficiencies.

(9) An authorizer may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

(10) An authorizer shall notify the Superintendent in writing within 30 days of any probationary terms imposed under this Section R277-553-3.

(11) An authorizer shall comply with the notification requirements in Section 53G-5-504 if the authorizer approves a motion to terminate a charter.

**R277-553-4. Charter School Governing Board Compliance with Law.**

(1) A charter school governing board may amend the charter school's charter agreement by receiving approval from its authorizer consistent with Section 53G-5-303.

(2) A charter school governing board shall comply with the charter school's authorizer's processes and timelines for all reviews, amendments, expansion requests, and satellite applications.

(3) A charter school shall notify the Superintendent and charter school's authorizer of lawsuits filed against the charter school within 30 days of the school being served with the complaint.

**R277-553-5. Charter School Financial Practices and Training.**

(1)(a) A charter school shall hire or contract with a business administrator to perform the duties described in Section 53G-4-303.

(b) A charter school business administrator shall attend business meetings required by the Superintendent or the school's authorizer.

(2) A charter school board shall:

(a) regularly monitor the charter school's business administrator described under Subsection (1); and

(b) ensure the business administrator fulfills the duties outlined in Section 53G-4-303.

(3) The Board may impose corrective action against a charter school for failure to provide financial and statistical information required by law or Board rules in accordance with Rule R277-114.

(3) A charter school shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.

(4) A charter school may not receive necessarily existent small schools funding under Subsection 53F-2-304(2) and Rule R277-445.

**R277-553-6. Remedying Charter School Deficiencies.**

(1) Upon receiving credible information of charter school financial mismanagement or fraud, or a threat to the health, safety, or welfare of students, in coordination with the Superintendent an authorizer shall direct an independent review or monitoring, as appropriate.

(2) An authorizer may direct a charter school governing board or the charter school administration to take reasonable action to protect students or state or federal funds consistent with Section 53G-5-503.

(3) Upon receipt of findings documenting a threat to the health, welfare, or safety of a school under Subsection (1), an authorizer may:

(a) recommend that the Superintendent impose corrective action against the school in accordance with Rule R277-114;

(b) take immediate or subsequent corrective action with charter school governing board members or employees who are responsible for deficiencies consistent with Section 53G-5-501;

(c) identify a remediation team to work with the school;

or  
(d) immediately terminate the school's charter in accordance with Subsection 53G-5-503(5).

(4) Upon receipt of findings documenting financial mismanagement or fraud by a charter school, an authorizer shall coordinate appropriate corrective action with the Superintendent.

(5) An authorizer may exercise flexibility for good cause in making a recommendation regarding an identified deficiency.

**R277-553-7. Appeals to the Board.**

(1) An operating charter school may appeal an authorizer's decision to terminate the school's charter to the Board.

(2) Upon terminating a charter, an authorizer shall:

(a) provide written notice to the charter school;

(b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and

(c) post information about the appeals process on its website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(3) If a charter school appeals an authorizer's decision to terminate a charter, the charter school governing board chair shall submit a written appeal to the Superintendent within 14 calendar days of the authorizer's action.

(4)(a) Upon receipt of an appeal under this section, Board leadership may:

(i) set a hearing before a standing committee to make a recommendation to the Board for consideration at its next regularly scheduled meeting;

(ii) designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel to conduct a hearing and provide a recommendation to the Board for consideration at its next regularly scheduled meeting; or

(iii) set a hearing before the full Board.

(b) A hearing under Subsection (4)(a) shall be held no more than 45 days following receipt of the written appeal.

(5) The Board shall:

(a) uphold the authorizer's decision; or

(b) remand the matter to the authorizer with identified deficiencies in the authorizer's decision and suggested remedies.

(6) The recommendation of the chartering entity shall be in place pending the conclusion of the appeals process, unless the Superintendent in the Superintendent's sole discretion, determines that the authorizer's decision or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(7) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

**KEY: charter schools, oversight, monitoring, appeals**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53G**

**Education, Administration**

**R277-554**

**State Charter School Board Grants and Mentoring Program**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43395

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 directed the Board to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers. This new rule, R277-554, governs specific programs operated by the State Charter School Board, and includes language from repealed rule R277-470. (EDITOR'S NOTE: Rule R277-470 is being repealed in this December 1, 2018, Bulletin under DAR No. 43374.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53F-2-705 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule is not expected to have any fiscal impact on state government revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule already exist in rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **LOCAL GOVERNMENTS:** This new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule already exist in rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **SMALL BUSINESSES:** This new rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because it provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule already exist in rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is not expected to have any fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because it

provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. The provisions of this rule already exist in rules R277-480 through R277-482, which are being recommended for elimination with the "reorganization" of charter specific Board rules.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule has no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

**R277. Education, Administration.**

**R277-554. State Charter School Board Grants and Mentoring Program.**

**R277-554-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Title 53G, Chapter 5, Charter Schools, which allows the Board to make rules governing aspects of operations of charter schools; and

(d) Section 53F-2-705, which requires the Board to make rules regarding start-up and implementation grants and a mentoring program.

(2) The purpose of this rule is to establish rules for the State Charter School Board to operate:

(a) a start-up and implementation grant for charter schools; and

(b) a mentoring program for charter schools.

**R277-554-2. Charter School Start-up and Implementation Grants.**

(1) A charter school that desires to receive State Charter School Board start-up and implementation grant funds shall comply with the requirements of this Section R277-554-2.

(2) To receive a State Charter School Board start-up or implementation grant, a charter school may be eligible if the charter school:

(a) meets the requirements of Section 53G-5-404;

(b) has a finalized charter agreement with the school's authorizer;

(c) submits an application for the grant within six months of approval by the school's authorizer; and

(d) demonstrates a plan to use the funds within the next two full school years.

(3) New, replication, and satellite schools may be eligible for start-up and implementation grant funds.

(4) A charter school may not receive start-up and implementation grant funds for school expansion.

(5) Only schools that have not received state start-up or implementation grant funds in prior years are eligible.

(6) The State Charter School Board shall determine amounts and conditions for distribution of state start-up or implementation grant funds.

(7) Grant funds may only be used for allowable expenditures as established by the State Charter School Board annual application form.

(8) Grant recipients shall participate in monitoring activities and shall provide monitoring information to the Superintendent, as directed.

(9)(a) A charter school shall repay grant funds to the State Charter School Board if recipients change to non-charter status within ten years of receiving grant funds.

(b) The State Charter School Board may grant an exception to the requirements of Subsection (9)(a) for a school that converts status, due to either federal or state law requirements, for academic purposes.

**R277-554-3. Charter School Mentoring Program.**

(1) The State Charter School Board shall identify critical mentoring needs of charter schools and, through an appropriate procurement process, allocate mentoring funds to one or more qualified individuals or organizations to meet identified needs.

(2) Mentoring program participants shall provide information to the State Charter School Board as requested.

(3) A participating mentor shall submit an annual program report to the State Charter School Board.

(4) The State Charter School Board shall evaluate the mentoring program annually.

**KEY: charter schools, startup, implementation, mentoring**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205**

Education, Administration  
**R277-555**  
 Corrective Action Against Charter  
 School Authorizers

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43396

FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In the 2018 Legislative Session, the Legislature passed H.B. 313. H.B. 313 (2018) made significant amendments to the process charter school authorizers should follow in approving and providing oversight to charter schools. H.B. 313 (2018) also directed the Utah State Board of Education (Board) to make rules to carry out the legislative changes in relation to oversight of charter schools and their authorizers.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 313 (2018) directed the Board to make rules to carry out the legislative changes in relation to the oversight of charter schools and their authorizers. This new rule, R277-555, governs the process for Board Corrective Action against Charter School Authorizers.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53E-3-401(4) and Subsection 53G-5-205(6)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. The Board was funded for a full-time employee (FTE) in the 2018 session to absorb the costs, total costs \$155,000. The State Charter School Board has staff that will be performing these activities and is funded through the Board.

♦ **LOCAL GOVERNMENTS:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and Utah Center for Assistive Technology

(UCAT) will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually. Iron School District, Jordan School District, Salt Lake City School Districts, Logan City and UCAT are the other authorizers. We anticipate annual costs of \$250,000.

♦ **SMALL BUSINESSES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and UCAT will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is expected to have a fiscal impact on charter school authorizers and the Board. The Board anticipates the activities created by this group of charter school rules will require ongoing monitoring. We anticipate that other charter school authorizers such as school districts and UCAT will be required to develop policies and practices, and monitor the schools they authorize. The percentage of charter schools not authorized by the State Charter School Board is relatively small, around 10 of the total 120 active schools. We anticipate that monitoring activities would cost less than a FTE. Average costs of an FTE would be between \$80,000-\$120,000, thus we anticipate costs to an authorizer to be around \$50,000 annually.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually. The

Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$155,000	\$155,000	\$155,000
Local Government	\$250,000	\$250,000	\$250,000
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$405,000</b>	<b>\$405,000</b>	<b>\$405,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Net Fiscal Benefits:	\$0	\$0	\$0
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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). This new rule is anticipated to cost state government \$155,000 annually and other authorizers approximately \$250,000 annually.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-555. Corrective Action Against Charter School Authorizers.**

**R277-555-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Title 53G, Chapter 5, Charter Schools, which allows the Board to make rules governing aspects of operations of charter schools; and
  - (d) Subsection 53G-5-205(6), which authorizes the Board to establish reasonable consequences for a charter school authorizer that fails to comply with state statute or board rule.
- (2) The purpose of this rule is to establish procedures for review and consequences for non-compliance by a charter school authorizer.

**R277-555-2. Authorizer Accountability.**

- (1) The Superintendent may initiate corrective action as described in this rule if an authorizer:
  - (a) fails to develop and implement a process meeting minimum standards for authorizing charter schools as described in Rule R277-552;
  - (b) fails to develop and implement a process meeting minimum standards for charter school oversight monitoring as described in Rule R277-553; or
  - (c) fails to comply with statute or Board rule.
- (2) For each authorizer subject to corrective action, the Superintendent shall design and implement a consistent monitoring plan.
- (3) The Superintendent shall clearly outline in a corrective action plan:

- (a) all areas of noncompliance;
  - (b) steps required to satisfy the corrective action plan;
- and
- (c) a reasonable time frame for an authorizer to correct identified issues.
- (4) In addition to the requirements of Subsection (3), a corrective action plan may include provision and a timeline for:
- (a) referral for monitoring by a Board section;
  - (b) referral for monitoring to the Board's internal audit department, with approval of the Board's Audit Committee;
  - (c) periodic meetings between a recipient administrator or governing board member and the Superintendent or a member of the Superintendency;
  - (d) planned appearances before the Board to provide status updates; and
  - (e) training for the authorizer's staff.
- (5) The Superintendent may employ escalating restrictive conditions in a corrective action plan based on:
- (a) the severity of the violation; or
  - (b) repeated violations by an authorizer.
- (6) The Superintendent may include penalties for non-compliance with a corrective action plan in accordance with Subsection 53E-3-401(8).
- (7) The Superintendent shall give notice and a copy of the corrective action plan in writing to:
- (a) the authorizer's administrators; and
  - (b) the authorizer's governing board.
- (8) The Superintendent shall notify an authorizer of changes to a corrective action plan.
- (9) The Superintendent shall report to the Board monthly about the status of noncompliant authorizers.

**R277-555-3. Authorizer Appeals.**

- (1) An authorizer may file an appeal to the Board of any adverse decision of the Superintendent resulting from a corrective action plan or penalty.
- (2) An appeal must be made in writing and within 30 days of the date of the Superintendent's action.
- (3) The Board may:
  - (a) review the appeal as a full board; or
  - (b) refer the matter to a Board standing or audit committee to make a recommendation to the Board for action.

**KEY: charter schools, corrective action**

**Date of Enactment or Last Substantive Amendment: 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205**

Education, Administration  
**R277-600**  
 Student Transportation Standards and  
 Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43375

FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** S.B. 232 (2018 General Session), School Transportation Amendments, requires the Utah State Board of Education (Board) to provide a reimbursement for student transportation costs incurred by certain district schools and charter schools that meet certain eligibility criteria.

**SUMMARY OF THE RULE OR CHANGE:** The additions to Section R277-600-12, Rural School Transportation Reimbursement Program, outline how the Board will measure the eligibility criteria and distribute the \$500,000 ongoing appropriation.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53F-2-402 and Section 53F-2-403 and Subsection 53E-3-401(4) and Subsection 53E-3-501(1)(d)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. Section R277-600-12 was eliminated because the statute authorizing Grants for Unsafe Routes was eliminated in the 2018 session and funds were reappropriated. Section R277-600-12 was revised to enact the guidelines for the management of the rural school transportation reimbursement program that was enacted in the 2018 general session. This program was funded by a specific appropriation of \$500,000 to be distributed to eligible local education agencies.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. Section R277-600-12 was eliminated because the statute authorizing Grants for Unsafe Routes was eliminated in the 2018 session and funds were reappropriated. Section R277-600-12 was revised to enact the guidelines for the management of the rural school transportation reimbursement program that was enacted in the 2018 general session. This program was funded by a specific appropriation of \$500,000 to be distributed to eligible local education agencies.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. Section R277-600-12 was eliminated because the statute authorizing Grants for Unsafe Routes was eliminated in the 2018 session and funds were reappropriated. Section R277-600-12 was

revised to enact the guidelines for the management of the rural school transportation reimbursement program that was enacted in the 2018 general session. This program was funded by a specific appropriation of \$500,000 to be distributed to eligible local education agencies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any fiscal impact on persons' other than small businesses, businesses, or local government entities revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. Section R277-600-12 was eliminated because the statute authorizing Grants for Unsafe Routes was eliminated in the 2018 session and funds were reappropriated. Section R277-600-12 was revised to enact the guidelines for the management of the rural school transportation reimbursement program that was enacted in the 2018 general session. This program was funded by a specific appropriation of \$500,000 to be distributed to eligible local education agencies.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected person.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
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**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**R277. Education, Administration.**

**R277-600. Student Transportation Standards and Procedures.**

**R277-600-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public schools in the Board;
  - (b) Subsection 53E-3-501(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;
  - (c) Sections 53F-2-402 and 53F-2-403, which provide for distribution of funds for transportation of public school students and disability standards for student bus riders;
  - (d) Section 53F-2-412, which directs the Board to make rules to implement unsafe route grants; and
  - (e) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

**R277-600-2. Definitions.**

- (1) "ADA" means average daily attendance.
- (2) "ADM" means average daily membership.
- (3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.
- (4)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.
- (b) All approved costs are adjusted by the Superintendent consistent with a Board-approved formula per the annual legislative transportation appropriation.
- (5) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.
- (6) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents.
- (7) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.
- (8) "Local school board" means a local school district board of education.
- (9) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.
- (10) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53F-2-403(5).
- (11) "Out-of-pocket expense" means gasoline, oil, and tire expenses.
- (12) "Unsafe route" has the same meaning as defined in Subsection 53F-2-412(1).

**R277-600-3. General Provisions.**

(1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.

(b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

(2) Allowable transportation costs are divided into two categories:

(a) A Category costs include expenditures for regular bus routes established by the school district, and approved by the state.

(b) B Category costs include other methods of transporting students to and from school.

(3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.

(4) The Superintendent shall approve B Category costs on a line-by-line basis after:

(a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and

(b) accounting for legislative appropriation variations.

(5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which shall specify the methods used to calculate allowable transportation costs.

(6) The Superintendent shall develop uniform forms for the administration of the transportation program.

(7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.

(b) An LEA may maintain records and financial worksheets during the fiscal year for audit purposes.

**R277-600-4. Eligibility.**

(1) The Superintendent shall only disburse state transportation funds for transporting eligible students.

(2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53F-2-403(1) and (2), to the school attended by assignment of the local school board.

(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.

(4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.

(5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.

(6) The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for

use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

**R277-600-5. Student with Disabilities Transportation.**

(1)(a) A student with a disability shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.

(b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

(2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

**R277-600-6. Bus Route Approval.**

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

(2) The Superintendent may approve exceptions for good cause shown.

(3) A bus route shall:

(a) traverse the most direct public route;

(b) be reasonably cost-effective in comparison to other feasible alternatives;

(c) provide adequate safety for students;

(d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(e) include an economically appropriate number of students.

(4)(a) The minimum number of general education students required to establish a bus route is ten.

(b) The minimum number of students with disabilities required to establish a bus route is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

(5) A school district shall designate safe areas for bus stops.

(6)(a) A student is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A student with a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

(7)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

(8) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

(a) the route promotes efficient transportation for both districts;

(b) the route serves a group or community of students and families rather than a single student or a single family;

(c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

(9) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

(10)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

(i) elementary double sessions;

(ii) year-round school; and

(iii) attendance across school district boundaries.

(11)(a) A school district may use the State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(i) the local school board has a policy that includes approval of trips at the appropriate administrative level;

(ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(iii) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and

(iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

(i) the routes are necessary;

(ii) the routes are more cost-effective; or

(iii) the routes provide greater safety for students than in-state routes.

**R277-600-7. Alternative Transportation.**

(1) The Superintendent shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than \$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances.

(7) If a student eligible for reimbursement under this Section R277-600-7 or the student's parent is unable to provide private transportation, with prior approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation.

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) A student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent who maintains a separate home during the school year for the convenience of the family.

(ii) A parent's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed one percent of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

(a) eligible student counts;

(b) bus route mileage;

(c) bus route minutes; and

(d) service to students with disabilities and bus inventory data.

#### **R277-600-8. Other Reimbursable Expenses.**

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

(i) 10 minute pre-trip inspection;

(ii) actual driving time;

(iii) 10 minute post-trip inspection and bus cleanup; and

(iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance);

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses and travel for supervisors to workshops or national conventions;

(8) supplies and materials for vehicles, the school district transportation office and the garage;

(9) training expenses to complete bus driver instruction and certification required by the Board; and

(10) other related costs approved by the Superintendent, which may include additional bus driver training.

#### **R277-600-9. Non-reimbursable Expenses.**

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

(i) federal, state, county, or municipal entities;

(ii) entities insured by State Risk Management;

(iii) non-government entities; or

(iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

(A) cost per mile;

(B) cost per minute; and

(C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral;

and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

#### **R277-600-10. Board Local Levy.**

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53F-2-602.

(2) The revenue from the Board Local Levy may be used for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

- (i) volume, type, and speed of vehicular traffic;
  - (ii) age and condition of students traversing the area;
  - (iii) condition of the roadway, sidewalks and applicable means of access in the area; and
  - (iv) environmental conditions.
- (c) A local school board may designate hazardous conditions.

(4) Guarantee Transportation Levy

(a) The Superintendent shall distribute funds appropriated under Subsection 53F-2-403(7) according to each school district's proportional share of its qualifying state contribution.

(b) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53F-2-602.

**R277-600-11. Exceptions.**

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to these rules from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and
- (e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school bus on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

**[R277-600-12. Grants for Unsafe Routes.**

~~(1) The Board shall solicit proposals and award grants for unsafe routes as provided in Section 53F-2-412.~~

~~(2) Subject to Board approval, the Pupil Transportation Advisory Committee shall:~~

- ~~(a) develop an application and instructions regarding the process for applying for a grant and make the application available to all school districts in the state; and~~

~~(b) develop a scoring rubric to be used in ranking applications received for purposes of funding prioritization and distribute the rubric to all school districts in the state.~~

~~(3) The Pupil Transportation Advisory Committee may recommend modifications to the application and rubric developed under Subsection (2) as needed to address evolving risks and appropriations.~~

~~(4) The Superintendent shall use the following process to calculate grant awards:~~

~~(a)(i) multiply the miles traveled for the unsafe route or sub-route by the allowance per mile;~~

~~(ii) multiply the minutes required for the unsafe route or sub-route by the allowance per minute;~~

~~(iii) the allowances per mile and minute used shall be the same allowances described in Subsection 53F-2-403(3) for the respective fiscal year for each district; or~~

~~(b) Follow an alternative funding method recommended by the Pupil Transportation Advisory Committee and approved by the Board based on grant applications received from school districts.~~

~~(5) A school district may identify an alternative solution that addresses unsafe routes or other health or safety conditions and is more cost-effective than creating a new route or sub-route.~~

~~(6) A school district may use grant funds under this Section R277-600-12 to pay the costs of transporting students or for other related expenditures intended to reduce the hazards that exist along the unsafe route, as approved by the Board.~~

~~(7) A recipient of grant funds under this Section R277-600-12 shall maintain sufficient records to substantiate expenditure of grant funds and provide documentation to the Board upon request.~~

**[R277-600-12. Rural School Transportation Reimbursement Program.**

(1) The Superintendent shall annually determine which LEAs are eligible for rural school transportation reimbursement using the criteria described in Subsection 53F-5-211(1)(a).

(2) The Superintendent shall measure eligibility based on:

- (a) the most recent October 1 UTREx submission; and
- (b) the prior year's transportation data submitted in accordance with Section R277-484-3.

(3) By November 1 annually, the Superintendent shall notify an LEA that the LEA may seek reimbursement.

(4) An LEA eligible for reimbursement shall:

- (a) provide evidence to the Superintendent in the first year of the LEA's eligibility that the LEA has provided transportation to and from the school for the past five years;

(b) submit to the Superintendent in the first year of the LEA's eligibility the LEA's current year pupil transportation Schedule A1 by December 30; and

(c) in subsequent years of eligibility, submit all transportation reports in accordance with Section R277-484-3.

(5) Submission of the pupil transportation Schedule A1 shall constitute an annual application and request for reimbursement by an LEA with an eligible school.

(6)(a) The Superintendent shall calculate and process reimbursements to LEAs once a year.

(b) The Superintendent shall determine allowable costs eligible for reimbursement taking into account:

- (i) eligible routes; and
- (ii) eligible miles and minutes as reported on the pupil transportation Schedule A1.
- (c) The Superintendent shall reimburse an LEA based on the LEA's percentage of total unreimbursed eligible costs submitted.
- (d) If the annual appropriation is insufficient to fund all submitted eligible cost payments, the Superintendent shall prorate the reimbursement up to the amount of the appropriation.
- (7) An LEA shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:
  - (a) a school's eligibility in accordance with Subsection (1); and
  - (b) allowability of an LEA's submitted costs.

**KEY: school buses, school transportation**  
**Date of Enactment or Last Substantive Amendment:** [November 7, 2016]2019  
**Notice of Continuation:** September 15, 2016  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-501(1)(d); 53E-3-401(4); 53F-2-412; 53F-2-403[; 53E-3-401(4)]

**Education, Administration**  
**R277-922**  
**Digital Teaching and Learning Grant**  
**Program**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 43398  
 FILED: 11/15/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** R277-922 is being updated to eliminate redundancies and align the programmatic requirements with the Master Plan for Digital Teaching and Learning.

**SUMMARY OF THE RULE OR CHANGE:** The formatted language in R277-922-8, LEA Plan Requirements, is updated to align with the Master Plan for Digital Teaching and Learning.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53F-2-510 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule is being updated to eliminate redundancies and align the

programmatic requirements with the Master Plan for Digital Teaching and Learning.  
 ♦ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impacts on local governments' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule is being updated to eliminate redundancies and align the programmatic requirements with the Master Plan for Digital Teaching and Learning.  
 ♦ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impacts on small businesses' revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule is being updated to eliminate redundancies and align the programmatic requirements with the Master Plan for Digital Teaching and Learning.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any fiscal impacts on persons other than small businesses, businesses, or local government entities revenues or expenditures because they provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies. This rule is being updated to eliminate redundancies and align the programmatic requirements with the Master Plan for Digital Teaching and Learning.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected person.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses. The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy**

**Appendix 2: Regulatory Impact to Non-Small Businesses**

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no large businesses with a NAICS code 611110). These rule changes have no fiscal impact on local education agencies and will not have a fiscal impact on large or small businesses.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**R277. Education, Administration.**

**R277-922. Digital Teaching and Learning Grant Program.**

**R277-922-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Section 53F-2-510, Digital Teaching and Learning Grant Program, which requires the Board to:
    - (i) establish a qualifying grant program; and
    - (ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.
- (2) The purpose of this rule is to:
  - (a) establish an application and grant review committee and process;
  - (b) give direction to LEAs participating in the Digital Teaching and Learning Program.

**R277-922-2. Definitions.**

- (1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:
  - (a) established by the Board as required in Section 53F-2-510; and
  - (b) required to perform the duties described in R277-922-5.
- (2) "LEA plan" has the same meaning as that term is defined in Section 53F-2-510.
- (3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.
- (4) "Program" has the same meaning as that term is defined in Section 53F-2-510.
- (5) "Participating LEA" means an LEA that:
  - (a) has an LEA plan approved by the Board; and
  - (b) receives a grant under the program.

**R277-922-3. Incorporation of Utah's Master Plan by Reference.**

- (1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:
  - (a) the application process for an LEA to receive a grant under the program; and
  - (b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) <https://www.uen.org/digital-learning/taskforce.shtml>;

and

(b) the Utah State Board of Education, 250 East 500 South, Salt Lake City, Utah 84111.

#### **R277-922-4. LEA Planning Grants.**

(1) An LEA may apply for a planning grant in lieu of preparing an LEA plan and receiving a Digital Teaching and Learning Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount of \$5,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete the readiness assessment required in Section 53F-2-510.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-922-8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2) to the program.

#### **R277-922-5. Digital Teaching and Learning Advisory Committee Duties.**

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-8;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory

committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

#### **R277-922-6. Board Approval or Denial of LEA Plans.**

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

#### **R277-922-7. Pre-LEA Plan Submission Requirements.**

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

(a) have an LEA representative participate in a pre-grant submission training conducted by the Superintendent;

(b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

(i) a representative group of school leadership from schools participating in the program;

(ii) the school district superintendent or charter school executive director;

(iii) the LEA's technology director; and

(iv) the LEA's curriculum director; and

(c) complete the readiness assessment required in Section 53F-2-510.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

(a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

(b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

#### **R277-922-8. LEA Plan Requirements.**

(1) An LEA shall develop a ~~a~~ five-year LEA plan in cooperation with educators, paraeducators, and parents,

(2) An LEA plan shall include:

(a) an LEA's results on the readiness assessment required in Section 53F-2-510;

(b) a statement of purpose that describes the learning ~~objectives, goals, measurable~~ outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

(i) a 5% increase ~~[o]in an LEA's growth or proficiency on the statewide accountability metrics~~ [each school's performance on SAGE using a baseline of the school's 2015-16 SAGE proficiency scores] by the end of the ~~[third]~~ [fifth] year of the LEA's implementation of the program; or

(ii) a school level outcome:

(A) selected by the LEA;

(B) included in the LEA's plan; and

(C) approved by the advisory committee;

(c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified ~~[by]in an LEA's five-year plan;~~ that may include:

~~— student achievement on statewide assessments;~~

~~— cost savings and improved efficiency relating to instructional materials, facilities, and maintenance;~~

~~(iii) attendance;~~  
~~(iv) discipline incidents;~~  
~~(v) parental involvement;~~  
~~(vi) citizen involvement;~~  
~~(vii) graduation rates;~~  
~~(viii) student enrollment in higher education;~~  
~~(ix) dropout rates;~~  
~~(x) student technology proficiency for college and career readiness;~~  
~~(xi) teacher satisfaction and engagement; or~~  
~~(xii) other school level outcomes approved by the advisory committee or the Board;]~~

(d) an implementation process structured to yield an LEA's school level outcomes;

(e) a plan for infrastructure ~~[acquisition]~~needs and refreshment cycle;

~~[(f) a process for procurement and distribution of the goods and services an LEA intends to use as part of an LEA's implementation of the program;]~~

~~[(g)]~~(f) a description of necessary high quality digital primary instructional materials, as defined in Section R277-469-2, in relation to the outcomes provided for in Subsection R277-922-8(b)(i) including:

~~(i) providing special education students with appropriate software;~~

~~(ii) the recommended usage requirements of the software provider; and~~

~~(iii) the best practices recommended by the software or hardware provider;~~

~~[(h)]~~(g) a detailed plan for student engagement in personalized learning;

~~[(i)]~~(h) technical support standards for implementation and maintenance of the program that[:

~~(i) include support for hardware and Internet access; and~~

~~(ii)] removes technical support burdens from the classroom teacher;~~

~~[(j)]~~(i) proposed security policies, including security audits, student data privacy as referenced in R277-487, and remediation of identified lapses;

~~[(k) an inventory of an LEA's current technology resources, including software, and a description of how an LEA will integrate those resources into the LEA's implementation of the program;]~~

~~[(l)]~~(j) a disclosure by an LEA of the LEA's current technology expenditures;

~~[(m)]~~(k) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

~~[(n)]~~(l) a description of how an LEA will[:

~~(i)] provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching;[ and~~

~~(ii) provide special education students with appropriate software;]~~

~~[(o)]~~(m) a plan for digital citizenship curricula and implementation;[

~~(p) a plan for how an LEA will ensure that schools use software programs with fidelity in accordance with:~~

~~(i) the recommended usage requirements of the software provider; and~~

~~(ii) the best practices recommended by the software or hardware provider;]~~ and

~~[(q)]~~(n) a plan for how an LEA will monitor student and teacher usage of the program technology.

~~[(2)(a) An LEA shall include the LEA's proposed implementation of the program over multiple years in the LEA plan.~~

~~(b) An LEA must demonstrate the financial ability to fully fund the LEA plan using both grant and non-grant funds.]~~

~~[(3)]~~(2) An LEA's approved LEA plan is valid for [three]five years, and may be required to be reapproved by the advisory committee and the Board after [three]five years of implementation.

~~[(4)]~~(3) An LEA is not required to implement the program in kindergarten through grade 4.

#### **R277-922-9. Distribution of Grant Money to Participating LEAs.**

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the Superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis, based on the October 1 headcount in the prior year.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution

formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

**R277-922-10. Prohibited Uses of Grant Money.**

A participating LEA may not use grant money:

- (1) to fund nontechnology programs;
- (2) to purchase mobile telephones;
- (3) to fund voice or data plans for mobile telephones; or
- (4) to pay indirect costs charged by the LEA.

**R277-922-11. Participating LEA Reporting Requirements.**

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

- (1) review how the participating LEA:
  - (a) redirected funds through the participating LEA's implementation of the LEA plan; and
  - (b) made progress toward implementation; and
- (2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

**R277-922-12. Evaluation of LEA Program Implementation.**

(1) An evaluation conducted by the independent evaluator described in Section 53F-2-510 shall include a review of:

- (a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;
- (b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

- (a) shall:
  - (i) provide assistance to the participating LEA; and
  - (ii) recommend changes to the LEA's LEA plan; or
- (b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

**KEY: digital teaching and learning, grant programs**  
**Date of Enactment or Last Substantive Amendment: [~~October 11, 2016~~2018**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-510**

**Environmental Quality, Air Quality**  
**R307-101-2**  
**Definitions**

**NOTICE OF PROPOSED RULE**  
**(Amendment)**

DAR FILE NO.: 43372  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to remove the definition of "facility" to match the removal of the definition from Section 19-2-102.

**SUMMARY OF THE RULE OR CHANGE:** The definition of "facility" has been deleted.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact on state government revenues or expenditures because the removal of the definition of "facility" will not change how any rule in R307 is interpreted or applied.
- ◆ **LOCAL GOVERNMENTS:** This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the removal of the definition of "facility" will not change how any rule in R307 is interpreted or applied.
- ◆ **SMALL BUSINESSES:** This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because the removal of the definition of "facility" will not change how any rule in R307 is interpreted or applied.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule change is not expected to have any fiscal impact on other persons' revenues or expenditures because the removal of the definition of "facility" will not change how any rule in R307 is interpreted or applied.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule change is not expected to have any impact on compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that there will be no additional fiscal impact on businesses, because the removal of the definition of "facility" from Section R307-101-2 will not affect how any rule in Title R307 will be interpreted or applied. All costs to businesses will remain the same, regardless of this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2019**

**AUTHORIZED BY: Bryce Bird, Director**

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, because the removal of the definition of "facility" will not change how any rule in R307 is interpreted or applied.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R307. Environmental Quality, Air Quality.**

**R307-101. General Requirements.**

**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 pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are 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).

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

"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 that portion of the atmosphere, external to buildings, to which the general public has access. (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 found in 42 U.S.C. Chapter 85.

"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.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"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.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM2.5" 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 pollutant 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 pollutant or an effluent which contains or may contain an air pollutant; 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 pollutant 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 pollutant 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 PM2.5" 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 December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(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.

(1) Specifically, Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to PM2.5 in any PM2.5 nonattainment area, except where the Administrator of the EPA has approved a demonstration satisfying 40 CFR 51.1006(a)(3) which has, for a particular PM2.5 nonattainment area, determined otherwise.

(2) The following subparagraphs denote specific nonattainment areas (as defined in the July 1, 2017 version of 40 CFR 81.345), within which certain pollutants identified in paragraph (1) are exempted from the definition of PM2.5 precursor for the purposes of 40 CFR 51.165

(a) In the Logan UT-ID PM2.5 nonattainment area - Ammonia is exempted.

"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 PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"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-NOx 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 pollutant 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.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon, or pound/pound):

$$\text{Grams of VOC per Liter of Material} = W_s - W_w - W_{es} / V_m$$

Where:

$W_s$  = weight of volatile organic compounds

$W_w$  = weight of water

Wes = weight of exempt compounds  
 Vm = volume of material

"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.

**KEY: air pollution, definitions**

**Date of Enactment or Last Substantive Amendment:** [~~August 2~~], 201[8]9

**Notice of Continuation:** May 8, 2014

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1) (a)

## Environmental Quality, Drinking Water **R309-100-9** Variances

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43378  
 FILED: 11/14/2018

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments add in missing federal rule language and add in a reference to the Code of Federal Regulations.

**SUMMARY OF THE RULE OR CHANGE:** These amendments add clarifying language to make the Utah rule as stringent as the variance requirements in the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.
- ◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.
- ◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2.

These amendments create no new requirements for small businesses.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures; these minor changes are to add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

- DIRECT QUESTIONS REGARDING THIS RULE TO:**
- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)
  - ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)
  - ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R309. Environmental Quality, Drinking Water.**  
**R309-100. Administration: Drinking Water Program.**  
**R309-100-9. 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 as listed in Title 40 CFR

Part 141, as published on July 1, 2018 (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.

(7) Variances or exemptions from certain provisions of these regulations may be granted pursuant to Sections 1415 and 1416 of the Federal Safe Drinking Water Act and Subpart K of Part 142 (for small system variances) by the entity with primary enforcement responsibility, except that variances or exemptions from the MCLs for total coliforms and E. coli and variances from any of the treatment technique requirements of Subpart H of Part 141 may not be granted.

(a) As provided in 40 CFR 142.304(a), small system variances are not available for rules addressing microbial contaminants, which would include Subparts H, P, S, T, W, and Y of Part 141.

**KEY: drinking water, environmental protection, administrative procedures**

**Date of Enactment or Last Substantive Amendment: [November 8, 2017] 2019**

**Notice of Continuation: March 13, 2015**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Environmental Quality, Drinking Water**  
**R309-105-4**  
**General**

**NOTICE OF PROPOSED RULE**  
**(Amendment)**

**DAR FILE NO.: 43379**

**FILED: 11/14/2018**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment moves language from Rule R309-105 to Rule R309-200.

**SUMMARY OF THE RULE OR CHANGE:** This change moves language to make the Utah rule match the requirements in the Code of Federal Regulations. This is a

federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee this proposed rule amendment.

◆ LOCAL GOVERNMENTS: 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. This amendment creates no new requirements for local governments.

◆ SMALL BUSINESSES: 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. This amendment creates no new requirements for small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 1. There is no expected direct fiscal impact for persons other than small businesses, businesses or local government entities revenues or expenditures. 2. This amendment creates no new requirements for persons other than small businesses, businesses or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is not expected to have any fiscal impact on businesses' revenues or expenditures; the minor change is to move language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

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 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)
- ◆ Rachael Cassidy by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which

has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

### **R309. Environmental Quality, Drinking Water.**

#### **R309-105. Administration: General Responsibilities of Public Water Systems.**

##### **R309-105-4. General.**

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

~~[(2) For compliance monitoring required by R309-200 through 215, public water systems must use a laboratory certified by the Utah Public Health Department in accordance with R444-14-4. The Federal Safe Drinking Water Act requires each analyte to be analyzed by a specific method. These methods are described in the July 1, 1992 through 2015, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act).]~~

**KEY: drinking water, watershed management**

**Date of Enactment or Last Substantive Amendment: [November 8, 2017]2019**

**Notice of Continuation: March 13, 2015**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

## **Environmental Quality, Drinking Water**

### **R309-110-4**

#### **Definitions**

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43380

FILED: 11/14/2018

#### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment removes unnecessary language in this rule.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes unnecessary language to make the Utah rule match the requirements in the Code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

#### **ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee this proposed rule amendment.

♦ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. This amendment creates no new requirements for local governments.

♦ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. This amendment creates no new requirements for small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons' other than small businesses, businesses or local government entities revenues or expenditures. 2. This amendment creates no new requirements for persons other than small businesses, businesses or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

#### **COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**

This rule change is not expected to have any fiscal impact on businesses' revenues or expenditures; the minor change is to remove language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

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

ENVIRONMENTAL QUALITY

DRINKING WATER

THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Office of Administrative Rules.

#### **DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)

♦ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)

♦ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

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AUTHORIZED BY: Alan Matheson, Executive Director

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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R309. Environmental Quality, Drinking Water.**

**R309-110. Administration: Definitions.**

**R309-110-4. Definitions.**

As used in R309:

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

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

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

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

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

~~["Clean compliance history" means a record of no MCL violations; and no coliform treatment technique trigger exceedances or treatment technique violations.~~

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

"CT<sub>reqd</sub>" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses.

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

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

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

"Level 1 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

"Level 2 assessment" means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the State, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any State directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. The system must comply with any expedited actions or additional actions required by the State in the case of an E. coli MCL violation.

"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 of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction pursuant to R309-105-6 and R309-500-6.

"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<sub>99.9</sub>").

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

"Project Costs" include the cost of acquiring and constructing any drinking water project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way; engineering or architectural fees, legal fees, fiscal agent's and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

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

- (1) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;
- (2) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and
- (3) the public supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

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

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

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

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

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

"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 defect" means a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

"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.

"Seasonal system" means a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season. "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  $\text{mJ}/\text{cm}^2$  or  $\text{J}/\text{m}^2$ . 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  $\text{mJ}/\text{cm}^2$  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  $\text{mJ}/\text{cm}^2$  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  $\text{cm}^{-1}$ .

"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**

**Date of Enactment or Last Substantive Amendment:** [~~November 8, 2017~~]**2019**

**Notice of Continuation:** **March 13, 2015**

**Authorizing, and Implemented or Interpreted Law:** **19-4-104**

**Environmental Quality, Drinking Water  
R309-200  
Monitoring and Water Quality: Drinking  
Water Standards**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 43381

FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE**

CHANGE: These amendments add in missing federal rule language and add in a reference to the Code of Federal Regulations.

SUMMARY OF THE RULE OR CHANGE: These amendments add clarifying language to make the Utah rule as stringent as the Code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee these proposed rule amendments.

◆ LOCAL GOVERNMENTS: 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.

◆ SMALL BUSINESSES: 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. These amendments create no new requirements for small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: 1. There is no expected direct fiscal impact for persons' other than small businesses, businesses or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes are not expected to have any fiscal impacts on businesses' revenues or expenditures; the minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

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

ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)
- ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts

for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

**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.~~ Utah Division of Drinking Water adopts by reference the analytical methods incorporated in 40 CFR Parts 141, 142, and 143 as published on July 1, 2018.

~~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)](4) 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)	0.00000003 mg/L

Note 1: The MCL for this contaminant is under further review, however, this contaminant shall be monitored in accordance with R309-205-6(1).

(b) Volatile organic contaminants - The maximum contaminant levels for organic contaminants listed in Table 200-3 apply to community and non-transient non-community water systems.

TABLE 200-3  
VOLATILE ORGANIC CONTAMINANTS

Contaminant	Maximum Contaminant Level
1. Vinyl chloride	0.002 mg/L
2. Benzene	0.005 mg/L
3. Carbon tetrachloride	0.005 mg/L
4. 1,2-Dichloroethane	0.005 mg/L
5. Trichloroethylene	0.005 mg/L
6. para-Dichlorobenzene	0.075 mg/L
7. 1,1-Dichloroethylene	0.007 mg/L
8. 1,1,1-Trichloroethane	0.2 mg/L
9. cis-1,2-Dichloroethylene	0.07 mg/L
10. 1,2-Dichloropropane	0.005 mg/L
11. Ethylbenzene	0.7 mg/L
12. Monochlorobenzene	0.1 mg/L
13. o-Dichlorobenzene	0.6 mg/L
14. Styrene	0.1 mg/L

15. Tetrachloroethylene	0.005 mg/L
16. Toluene	1 mg/L
17. trans-1,2-Dichloroethylene	0.1 mg/L
18. Xylenes (total)	10 mg/L
19. Dichloromethane	0.005 mg/L
20. 1,2,4-Trichlorobenzene	0.07 mg/L
21. 1,1,2-Trichloroethane	0.005 mg/L

(c) Disinfection Byproducts and Disinfectant Residuals:

(i) Community and Non-transient non-community water systems. Surface Water systems serving 10,000 or more persons shall comply with this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water shall comply with this section beginning January 1, 2004.

(A) Compliance with the disinfection byproduct MCLs listed in Table 200-4 shall be determined by the procedures listed in R309-210-8(6) until the date specified by system size listed in R309-210-10(1)(c) at which time compliance shall be determined utilizing LRAA as specified in R309-210-10(1)(d).

(ii) Transient non-community water systems. Surface water systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant shall comply with the chlorine dioxide MRDL beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant shall comply with the chlorine dioxide MRDL beginning January 1, 2004.

(iii) The maximum contaminant levels (MCLs) for disinfection byproducts are listed in Table 200-4.

TABLE 200-4  
DISINFECTION BYPRODUCTS

DISINFECTION BYPRODUCT	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(iv) The maximum residual disinfectant levels (MRDLs) are listed in Table 200-5.

TABLE 200-5  
MAXIMUM RESIDUAL DISINFECTANT LEVELS

DISINFECTANT RESIDUAL	MRDL (mg/L)
Chlorine	4.0 (as Cl <sub>2</sub> )
Chloramines	4.0 (as Cl <sub>2</sub> )
Chlorine dioxide	0.8 (as ClO <sub>2</sub> )

(v) Control of Disinfectant Residuals. Notwithstanding the MRDLs listed in Table 200-5, systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

(vi) A system that is installing GAC or membrane technology to comply with this section may apply to the 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 that collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(ii) For a system that collects fewer than 40 samples per month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) A system is in compliance with the MCL for *E. coli* for samples taken under the provisions of R309-211 unless any of the conditions identified in paragraphs (b)(i) through (b)(iv) of this section occur. For purposes of the public notification requirements in R309-220, violation of the MCL may pose an acute risk to health.

(i) The system has an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(ii) The system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(iii) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.

(iv) The system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(c) A public water system must determine compliance with the MCL for *E. coli* in paragraph (b) of this section for each month in which it is required to monitor for total coliforms.

#### (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~~]R309-200-4(3) 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 R309-211.

**R309-200-6. Secondary Drinking Water Standards for Community, Non-Transient Non-Community and Transient Non-Community Water.**

The Secondary Maximum Contaminant Levels for public water systems deals with substances which affect the aesthetic quality of drinking water. They are presented here as recommended limits or ranges and are not grounds for rejection. The taste of water may be unpleasant and the usefulness of the water may be impaired if these standards are significantly exceeded.

TABLE 200-7  
SECONDARY INORGANIC CONTAMINANTS

Contaminant	Level
Aluminum	0.05 to 0.2 mg/L
Chloride	250 mg/L
Color	15 Color Units
Copper	1 mg/L
Corrosivity	Non-corrosive
Fluoride	2.0 mg/L (see Note below)
Foaming Agents	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Odor	3 Threshold Odor Number
pH	6.5-8.5
Silver	0.1 mg/L
Sulfate	250 mg/L (see Note below)
TDS	500 mg/L (see Note below)
Zinc	5 mg/L

Note: Maximum allowable Fluoride, TDS and Sulfate levels are given in the Primary Drinking Water Standards, R309-200-5(1). They are listed as secondary standards because

levels in excess of these recommended levels will likely cause consumer complaint.

**R309-200-7. Treatment Techniques and Unregulated Contaminants.**

(1) The Board has determined that the minimum level of treatment as described in R309-525 and R309-530 herein or its equivalent is required for surface water sources and ground water contaminated by surface sources.

(2) For all public water systems which use surface water or ground water under the direct influence of surface water, R309-200, 215, 505, 510, 520, 525 and 530 establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) at least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer;

(b) at least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to re-contamination by surface water runoff and a point downstream before or at the first customer.

(c) At least 99 percent (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(d) Compliance with the profiling and benchmark requirements under the provisions of R309-215-14.

(3) No MCLs are established herein for unregulated contaminants; viruses, protozoans and other chemical and biological substances. Some unregulated contaminants shall be monitored for in accordance with 40 CFR 141.40.

**R309-200-8. Approved Laboratories.**

(1) For the purpose of determining compliance, samples may be considered only if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory. However, measurements for pH, temperature, turbidity and disinfectant residual, daily chlorite, TOC, UV254, DOC and SUVA may, under the direction of the direct responsible charge operator, be performed by any water supplier or their representative.

(2) All samples shall be marked either: routine, repeat, check or investigative before submission of such samples to a certified lab. Routine, repeat, and check samples shall be considered compliance purposes samples.

(3) All public water systems shall either: contract with a certified laboratory to have the laboratory send all compliance purposes sample results, with the exception of Lead/Copper data, to the Division of Drinking Water, or shall inform the Division of Drinking Water that they intend to forward all compliance purposes samples to the Division. Each public water system shall furnish the Division of Drinking Water a copy of the contract with their certified laboratory or inform the Division in writing of the public water system's intent to forward the data to the Division.

(4) All sample results can be sent either electronically or in hard copy form.

**KEY: drinking water, quality standards, regulated contaminants**  
**Date of Enactment or Last Substantive Amendment: May 1, 2016**  
**Notice of Continuation: March 13, 2015**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Environmental Quality, Drinking Water**  
**R309-210-8**  
**Disinfection Byproducts - Stage 1**  
**Requirements**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 43382  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments add in missing federal rule language.

**SUMMARY OF THE RULE OR CHANGE:** These amendments add clarifying language to make the Utah rule as stringent as the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.
- ◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.
- ◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. These amendments create no new requirements for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)
- ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

\*\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R309. Environmental Quality, Drinking Water.**  
**R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.**  
**R309-210-8. Disinfection Byproducts - Stage 1 Requirements.**

(1) General requirements. The requirements in this subsection establish criteria under which community and non-transient non-community water systems that add a chemical disinfectant to the water in any part of the drinking water treatment process, shall modify their practices to meet MCLs and MRDLs in R309-200-5(3)(c) and meet treatment technique requirements in R309-215-12 and 13. The requirements of this sub-section also establish criteria under which transient non-community water systems that use chlorine dioxide shall modify their practices to meet MRDLs for chlorine dioxide in R309-200-5(3)(c).

(a) Compliance dates.

(i) Community and Non-transient non-community water systems. Surface water systems serving 10,000 or more persons must comply with this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning January 1, 2004.

(ii) Transient non-community water systems. Surface water systems serving 10,000 or more persons and using chlorine dioxide as

a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2002. Surface water systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this section beginning January 1, 2004.

(b) Systems must take all samples during normal operating conditions.

(c) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with approval from the 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 0.015mg/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~~ non-transient ~~noncommunity~~ non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and

at the same time as total coliforms are sampled, as specified in R309-211. Systems that use surface water may use the results of residual disinfectant concentration sampling conducted in R309-215-10(4), in lieu of taking separate samples. ~~[The Director may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(1) of this section, may be measured in lieu of residual disinfectant concentration.]~~

(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.

**KEY: drinking water, distribution system monitoring, compliance determinations**

**Date of Enactment or Last Substantive Amendment:** ~~[May 1, 2016]~~ **2018**

**Notice of Continuation:** March 13, 2015

**Authorizing, and Implemented or Interpreted Law:** 19-4-104

**Environmental Quality, Drinking Water**  
**R309-211**  
**Monitoring and Water Quality:**  
**Distribution System -- Total Coliform**  
**Requirements**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 43383  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments add in missing federal rule language.

**SUMMARY OF THE RULE OR CHANGE:** These amendments add clarifying language to make the Utah rule as stringent as the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.
- ◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.
- ◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. These amendments create no new requirements for small businesses.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

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

ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)
- ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>			
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

**R309. Environmental Quality, Drinking Water.**  
**R309-211. Monitoring and Water Quality: Distribution System -- Total Coliform Requirements.**  
**R309-211-1. Purpose.**

The purpose of this rule is to outline the total coliform monitoring, MCL, and treatment technique requirements for public water systems. This rule applies to all public drinking water systems as specified herein.

**R309-211-2. 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.

**R309-211-3. Definitions.**

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

**R309-211-4. General Monitoring Requirements for All Public Water Systems.**

(1) Sample siting plans.  
 (a) Systems must develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system. These plans are subject to Director review and revision. Systems must collect total coliform samples according to the written sample siting plan. Monitoring required by R309-211-5, 6 and 7 may take place at a customer's premise, dedicated sampling station, or other designated compliance sampling location. Routine and repeat sample sites and any sampling points necessary to meet the requirements of R309-215-16 must be reflected in the sampling plan.

(b) Systems must collect samples at regular time intervals throughout the month, except that systems that use only ground water and serve 4,900 or fewer people may collect all required samples on a single day if they are taken from different sites.

(c) Systems must take at least the minimum number of required samples even if the system has had an E. coli MCL violation or has exceeded the coliform treatment technique triggers in R309-211-8(1).

(d) A system may conduct more compliance monitoring than is required by this rule to investigate potential problems in the distribution system and use monitoring as a tool to assist in uncovering problems. A system may take more than the minimum number of required routine samples and must include the results in calculating whether the coliform treatment technique trigger in R309-211-8(1)(a) (i) and (ii) has been exceeded only if the samples are taken in accordance with the existing sample siting plan and are representative of water throughout the distribution system.

(e) Systems must identify repeat monitoring locations in the sample siting plan. Unless the provisions of paragraphs (1)(e)(i) or (1)(e)(ii) of this section are met, the system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system, the system must still take all required repeat samples. However, the Director may allow an alternative sampling location in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. Except as provided for in paragraph (1)(e)(ii) of this section, systems required to conduct triggered source water monitoring under R309-215-16(2) must take ground water source sample(s) in addition to repeat samples required under ~~this~~ this rule.

(i) Systems may propose repeat monitoring locations to the Director that the system believes to be representative of a pathway for contamination of the distribution system. A system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure (SOP) in its sample siting plan. The system must design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The Director may modify the SOP or require alternative monitoring locations as needed.

(ii) Ground water systems serving 1,000 or fewer people may propose repeat sampling locations to the Director that differentiate potential source water and distribution system contamination (e.g., by sampling at entry points to the distribution system). A ground water system with a single well required to conduct triggered source water monitoring may, with written Director approval, take one of its repeat samples at the monitoring location required for triggered source water monitoring under R309-215-16(2)(a) if the system demonstrates to the Director's satisfaction that the sample siting plan remains representative of water quality in the distribution system. If approved by the Director, the system may use that sample result to meet the monitoring requirements in both R309-215-16(2)(a) and this section.

(A) If a repeat sample taken at the monitoring location required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with R309-215-16(2)(a)(iii). If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring, the system may reduce the number of additional source water samples required under R309-215-16(2)(a)(iii) by the number of repeat samples taken at that location that were not *E. coli*-positive.

(B) If a system takes more than one repeat sample at the monitoring location required for triggered source water monitoring under R309-215-16(2)(a), and more than one repeat sample is *E. coli*-positive, the system has violated the *E. coli* MCL and must also comply with R309-215-16(3)(a)(i).

(C) If all repeat samples taken at the monitoring location required for triggered source water monitoring are *E. coli*-negative and a repeat sample taken at a monitoring location other than the one required for triggered source water monitoring is *E. coli*-positive, the system has violated the *E. coli* MCL, but is not required to comply with R309-215-16(2)(a)(iii).

(f) The Director may review, revise, and approve, as appropriate, repeat sampling proposed by systems under paragraphs (1)(e)(i) and (ii) of this section. The system must demonstrate that the sample siting plan remains representative of the water quality in the distribution system. The Director may determine that monitoring at the entry point to the distribution system (especially for undisinfected ground water systems) is effective to differentiate between potential source water and distribution system problems.

(2) Special purpose samples. Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether the coliform treatment technique trigger has been exceeded. Repeat samples taken pursuant to R309-211-7 are not considered special purpose samples, and must be used to determine whether the coliform treatment technique trigger has been exceeded.

(3) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this paragraph (3) of this section

does not count toward meeting the minimum monitoring requirements of this subpart.

(a) The Director may invalidate a total coliform-positive sample only if the conditions of paragraph (3)(a)(i), (ii), or (iii) of this section are met.

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(ii) The Director, on the basis of the results of repeat samples collected as required under R309-211-7(1), determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The Director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a location other than the original tap are total coliform-negative (e.g., a Director cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the system has only one service connection).

(iii) The Director has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under R309-211-7(1), and use them to determine whether a coliform treatment technique trigger in R309-211-8 has been exceeded. To invalidate a total coliform-positive sample under this paragraph, the decision and supporting rationale must be documented in writing, and approved and signed by the supervisor of the Director who recommended the decision. The Director must make this document available to EPA and the public. The written documentation must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The Director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(b) A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The Director may waive the 24-hour time limit on a case-by-case basis. Alternatively, the Director may implement criteria for waiving the 24-hour sampling time limit to use in lieu of case-by-case extensions.

(4) A public water system that uses inadequately treated surface water or inadequately treated ground water under the direct influence of surface water (R309-200 and R309-215) shall collect and analyze for total coliforms at least one sample each day the turbidity level of the source water, measured as specified in R309-200-4(3), 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.

**R309-211-5. Routine Monitoring Requirements for Water Systems Serving 1,000 or Fewer People.**

(1) General.

(a) The provisions of this section apply to water systems serving 1,000 or fewer people.

(b) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and E. coli analytical requirements in R309-211-7.

(c) Once all monitoring required by this section and R309-211-7 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in R309-211-8 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by R309-211-8.

(2) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is one sample/month.

(3) Seasonal systems.

(a) All seasonal systems must demonstrate completion of a Director-approved start-up procedure, which may include a requirement for startup sampling prior to serving water to the public.

(b) A seasonal system must monitor every month that it is in operation.

(c) The Director may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating.

~~[(4) Additional routine monitoring the month following a total coliform-positive sample. Systems must collect at least three routine samples during the next month, except that the Director may waive this requirement if the conditions of paragraph 5(4)(a), (b), or (c) of this section are met. Systems may either collect samples at regular time intervals throughout the month or may collect all required routine samples on a single day if samples are taken from different sites. Systems must use the results of additional routine samples in coliform treatment technique trigger calculations under R309-211-8(1).]~~

~~(a) The Director may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the Director, or an agent approved by the Director, performs a site visit before the end of the next month in which the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the Director to determine whether additional monitoring and/or any corrective action is needed. The Director cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the Director to perform sanitary surveys.~~

~~(b) The Director may waive the requirement to collect three routine samples the next month in which the system provides water to the public if the Director has determined why the sample was total coliform-positive and has established that the system has corrected the problem or will correct the problem before the end of the next month in which the system serves water to the public. In this case, the Director must document this decision to waive the following month's~~

~~additional monitoring requirement in writing, have it approved and signed by the supervisor of the Director who recommends such a decision, and make this document available to the EPA and public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem.~~

~~(c) The Director may not waive the requirement to collect three additional routine samples the next month in which the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. If the Director determines that the system has corrected the contamination problem before the system takes the set of repeat samples required in R309-211-7, and all repeat samples were total coliform-negative, the Director may waive the requirement for additional routine monitoring the next month.]~~

**R309-211-6. Routine Monitoring Requirements for Public Water Systems Serving More Than 1,000 People.**

(1) General.

(a) The provisions of this section apply to public water systems serving more than 1,000 persons.

(b) Following any total coliform-positive sample taken under the provisions of this section, systems must comply with the repeat monitoring requirements and E. coli analytical requirements in R309-211-7.

(c) Once all monitoring required by this section and R309-211-7 for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in R309-211-8 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by R309-211-8.

(d) Seasonal systems.

(i) Beginning April 1, 2016, all seasonal systems must demonstrate completion of a Director-approved start-up procedure, which may include a requirement for start-up sampling prior to serving water to the public.

(ii) The Director may exempt any seasonal system from some or all of the requirements for seasonal systems if the entire distribution system remains pressurized during the entire period that the system is not operating.

(2) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:

TABLE 211-1

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

**R309-211-7. Repeat Monitoring and E. coli Requirements.**

(1) Repeat monitoring.

(a) If a sample taken under R309-211-5 though R309-211-6 is total coliform-positive, the system must collect a set of repeat samples within 24 hours of being notified of the positive result. The system must collect no fewer than three repeat samples for each total coliform-positive sample found. The Director may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. Alternatively, the Director may implement criteria for the system to use in lieu of case-by-case extensions. In the case of an extension, the Director must specify how much time the system has to collect the repeat samples. The Director cannot waive the requirement for a system to collect repeat samples in paragraphs (1)(a) through (1)(c) of this section.

(b) The system must 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 over a three-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.

(c) The system must collect an additional set of repeat samples in the manner specified in paragraphs (1)(a) through (1)(c) of this section if one or more repeat samples in the current set of repeat samples is total coliform-positive. The system must collect the additional set of repeat samples within 24 hours of being notified of the positive result, unless the Director extends the limit as provided in paragraph (1)(a) of this section. The system must continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or the system determines that a coliform treatment technique trigger specified in R309-211-8(1) has been exceeded as a result of a repeat sample being total coliform-positive and notifies the Director. If a trigger identified in R309-211-8 is exceeded as a result of a routine sample being total coliform-positive, systems are required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.

(d) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(e) Results of all routine and repeat samples taken under R309-211-5 through R309-211-7 not invalidated by the Director must be used to determine whether a coliform treatment technique trigger specified in R309-211-8 has been exceeded.

(2) Escherichia coli (E. coli) testing.

(a) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if E. coli are present. If E. coli are present, the system must notify the Director by the end of the day when the system is notified of the test result, unless the system is notified of the result after the Director office is closed and the Director does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Director before the end of the next business day.

(b) The Director has the discretion to allow a system, on a case-by-case basis, to forgo E. coli testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is E. coli-positive. Accordingly, the system must notify the Director as specified in paragraph (2)(a) of this section and the provisions of R309-200-5(6)(b) apply.

**R309-211-8. Coliform Treatment Technique Triggers and Assessment Requirements for Protection Against Potential Fecal Contamination.**

(1) Treatment technique triggers. Systems must conduct assessments in accordance with paragraph (2) of this section after exceeding treatment technique triggers in paragraphs (1)(a) and (1)(b) of this section.

(a) Level 1 treatment technique triggers.

(i) For systems taking 40 or more samples per month, the system exceeds 5.0% total coliform-positive samples for the month.

(ii) For systems taking fewer than 40 samples per month, the system has two or more total coliform-positive samples in the same month.

(iii) The system fails to take every required repeat sample after any single total coliform-positive sample.

(b) Level 2 treatment technique triggers.

(i) An E. coli MCL violation, as specified in R309-211-9(1).

(ii) A second Level 1 trigger as defined in paragraph (1)(a) of this section, within a rolling 12-month period, unless the Director has determined a likely reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem.

(2) Requirements for assessments.

(a) Systems must ensure that Level 1 and 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 2 assessments must be conducted by parties approved by the Director.

(b) When conducting assessments, systems must ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small ground water systems); and existing water quality monitoring data. The system must conduct the assessment

consistent with any Director directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

(c) Level 1 Assessments. A system must conduct a Level 1 assessment consistent with Director requirements if the system exceeds one of the treatment technique triggers in paragraph (1)(a) of this section.

(i) The system must complete a Level 1 assessment as soon as practical after any trigger in paragraph (1)(a) of this section. In the completed assessment form, the system must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified. The system must submit the completed Level 1 assessment form to the Director within 30 days after the system learns that it has exceeded a trigger.

(ii) If the Director reviews the completed Level 1 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Director must consult with the system. If the Director requires revisions after consultation, the system must submit a revised assessment form to the Director on an agreed-upon schedule not to exceed 30 days from the date of the consultation.

(iii) Upon completion and submission of the assessment form by the system, the Director must determine if the system has identified a likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to the Director for correcting the problem.

(d) Level 2 Assessments. A system must ensure that a Level 2 assessment consistent with Director requirements is conducted if the system exceeds one of the treatment technique triggers in paragraph (1)(b) of this section. The system must comply with any expedited actions or additional actions required by the Director in the case of an E. coli MCL violation.

(i) The system must ensure that a Level 2 assessment is completed by the Director or by a party approved by the Director as soon as practical after any trigger in paragraph (1)(b) of this section. The system must submit a completed Level 2 assessment form to the Director within 30 days after the system learns that it has exceeded a trigger. The assessment form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment form may also note that no sanitary defects were identified.

(ii) The system may conduct Level 2 assessments if the system has staff or management with the certification or qualifications specified by the Director unless otherwise directed by the Director.

(iii) If the Director reviews the completed Level 2 assessment and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Director must consult with the system. If the Director requires revisions after consultation, the system must submit a revised assessment form to the Director on an agreed-upon schedule not to exceed 30 days.

(iv) Upon completion and submission of the assessment form by the system, the Director must determine if the system has identified a likely cause for the Level 2 trigger and determine whether the system has corrected the problem, or has included a schedule acceptable to the Director for correcting the problem.

(3) Corrective Action. Systems must correct sanitary defects found through either Level 1 or 2 assessments conducted under

paragraph (2) of this section. For corrections not completed by the time of submission of the assessment form, the system must complete the corrective action(s) in compliance with a timetable approved by the Director in consultation with the system. The system must notify the Director when each scheduled corrective action is completed.

(4) Consultation. At any time during the assessment or corrective action phase, either the water system or the Director may request a consultation with the other party to determine the appropriate actions to be taken. The system may consult with the Director on all relevant information that may impact on its ability to comply with a requirement of this subpart, including the method of accomplishment, an appropriate timeframe, and other relevant information.

#### **R309-211-9. Violations.**

(1) E. coli MCL Violation. A system is in violation of the MCL for E. coli when any of the conditions identified in paragraphs (1)(a) through (1)(d) of this section occur.

(a) The system has an E. coli-positive repeat sample following a total coliform-positive routine sample.

(b) The system has a total coliform-positive repeat sample following an E. coli-positive routine sample.

(c) The system fails to take all required repeat samples following an E. coli-positive routine sample.

(d) The system fails to test for E. coli when any repeat sample tests positive for total coliform.

(2) Treatment technique violation.

(a) A treatment technique violation occurs when a system exceeds a treatment technique trigger specified in R309-211-8(1) and then fails to conduct the required assessment or corrective actions within the timeframe specified in R309-211-8(2) and (3).

(b) A treatment technique violation occurs when a seasonal system fails to complete a Director-approved start-up procedure prior to serving water to the public.

(3) Monitoring violations.

(a) Failure to take every required routine or additional routine sample in a compliance period is a monitoring violation.

(b) Failure to analyze for E. coli following a total coliform-positive routine sample is a monitoring violation.

(4) Reporting violations.

(a) Failure to submit a monitoring report or completed assessment form after a system properly conducts monitoring or assessment in a timely manner is a reporting violation.

(b) Failure to notify the Director following an E. coli-positive sample as required by R309-211-7(2)(a) in a timely manner is a reporting violation.

(c) Failure to submit certification of completion of Director-approved start-up procedure by a seasonal system is a reporting violation.

#### **R309-211-10. Invalidation of a Total Coliform Sample.**

The invalidation of a total coliform sample result can be made only by the Administrator in accordance with Section 141.21(c) (1)(i), (ii), or (iii) or by the certified laboratory in accordance with R309-211-4(3), with the Administrator acting as the Director.

#### **R309-211-11. Reporting and Recordkeeping.**

(1) Reporting.

(a) E. coli.

(i) A system must notify the Director by the end of the day when the system learns of an E. coli MCL violation, unless the system learns of the violation after the Director's office is closed and the Director does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Director before the end of the next business day, and notify the public in accordance with R309-220.

(ii) A system must notify the Director by the end of the day when the system is notified of an E. coli-positive routine sample, unless the system is notified of the result after the Director's office is closed and the Director does not have either an after-hours phone line or an alternative notification procedure, in which case the system must notify the Director before the end of the next business day.

(b) A system that has violated the treatment technique for coliforms in R309-211-8 must 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.

(c) A system required to conduct an assessment under the provisions of R309-211-8 of this part must submit the assessment report within 30 days. The system must notify the Director in accordance with R309-211-8(3) when each scheduled corrective action is completed for corrections not completed by the time of submission of the assessment form.

(d) A system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the Director within 10 days after the system discovers the violation, and notify the public in accordance with R309-220.

(e) A seasonal system must certify, prior to serving water to the public, that it has complied with the Director-approved start-up procedure.

(2) Recordkeeping.

(a) The system must maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or other available summary documentation of the sanitary defects and corrective actions taken under R309-211-8 for Director review. This record must be maintained by the system for a period not less than five years after completion of the assessment or corrective action.

(b) The system must maintain a record of any repeat sample taken that meets Director's criteria for an extension of the 24-hour period for collecting repeat samples as provided for under R309-211-7(1)(a).

**KEY: drinking water, distribution system monitoring, total coliform, compliance determinations**

**Date of Enactment or Last Substantive Amendment: [~~May 1, 2016~~2018]**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Environmental Quality, Drinking Water  
R309-215-10  
Residual Disinfectant**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 43384  
FILED: 11/14/2018**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments add in missing federal rule language.

**SUMMARY OF THE RULE OR CHANGE:** These amendments add clarifying language to make the Utah rule as stringent as the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.

◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.

◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. These amendments create no new requirements for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
ENVIRONMENTAL QUALITY  
DRINKING WATER

THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at jyee@utah.gov
- ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov
- ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at rcassady@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Alan Matheson, Executive Director**

<b>Net Fiscal Benefits:</b>	\$0	\$0	\$0
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\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**R309. Environmental Quality, Drinking Water.**

**R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.**

**R309-215-10. Residual Disinfectant.**

Treatment plant management shall continuously monitor disinfectant residuals and report the following to the Division within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

(1) For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies listed in Table 215.2 below:

TABLE 215-2

RESIDUAL GRAB SAMPLE FREQUENCY	Samples/day
System size by population	
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 R309-211 and R309-210-8(3)(a)(i):

(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.

(4) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as the total coliforms are sampled as specified in R309-211. The State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the Director determines that such points are more representative of treated (disinfected) water quality within the distributions system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC), as specified in paragraph R309-200-4(3), may be measured in lieu of residual disinfectant concentration.

**KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations**

**Date of Enactment or Last Substantive Amendment: ~~May 4, 2016~~ 2018**

**Notice of Continuation: March 13, 2015**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

## Environmental Quality, Drinking Water R309-215-16 Groundwater Rule

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43385  
FILED: 11/14/2018

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments update rule references.

**SUMMARY OF THE RULE OR CHANGE:** These amendments add clarifying language to make the Utah rule as stringent as the code of Federal Regulations. This is a

federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.

◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. These amendments create no new requirements for local governments.

◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. These amendments create no new requirements for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. These amendments create no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ENVIRONMENTAL QUALITY  
DRINKING WATER  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at [jyee@utah.gov](mailto:jyee@utah.gov)

◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at [pfauver@utah.gov](mailto:pfauver@utah.gov)

◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at [rcassady@utah.gov](mailto:rcassady@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Alan Matheson, Executive Director

has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on non-small businesses revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which

**R309. Environmental Quality, Drinking Water.**  
**R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.**

**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 R309-211 is total coliform-positive and the sample is not invalidated under R309-211-10.

(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 R309-211, 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 R309-211- 4(1) and that the system intends to use for representative sampling under this paragraph.

(C) A ground water system serving 1,000 or fewer people may use a repeat sample collected from a ground water source to meet both the requirements of [~~R309-211-7(1)~~]R309-211 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) and approves the use of a single sample for meeting both the triggered source water monitoring requirements in this paragraph (a) and the repeat monitoring requirements in R309-211-7. 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 (c) 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 R309-211 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 R309-211-5 and 6 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 [(e)](b) 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 (2)(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 R309-211-5 and 6 is caused by a distribution system deficiency; or

(B) The total coliform-positive sample collected under R309-211-5 and 6 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 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 R309-211-10. 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**  
**Date of Enactment or Last Substantive Amendment: [~~May 1, 2016~~2018**  
**Notice of Continuation: March 13, 2015**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Environmental Quality, Drinking Water**  
**R309-220-4**  
**General Public Notification**  
**Requirements**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 43386  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment adds in a reference to the Code of Federal Regulations.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds clarifying language to make the Utah rule as stringent as the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.  
 ♦ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. This amendment creates no new requirements for local governments.  
 ♦ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. This amendment creates no new requirements for small businesses.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. This amendment creates no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule changes are not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at jyee@utah.gov  
 ♦ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov  
 ♦ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at rcassady@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Alan Matheson, Executive Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 This rule changes is not expected to have any fiscal impact on non-small businesses' revenues or expenditures, this minor change adds clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

\*\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R309. Environmental Quality, Drinking Water.**  
**R309-220. Monitoring and Water Quality: Public Notification Requirements.**  
**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.

(4) Utah Division of Drinking Water adopts 40 CFR, Part 141, Subpart Q, Appendix A and B as published on July 1, 2018.

**KEY: drinking water, public notification, health effects**  
**Date of Enactment or Last Substantive Amendment:** ~~May 1, 2016~~ **2018**  
**Notice of Continuation:** March 13, 2015  
**Authorizing, and Implemented or Interpreted Law:** 19-4-104

**Environmental Quality, Drinking Water**  
**R309-225-4**  
**General Requirements**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 43387  
 FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment adds in a reference to the Code of Federal Regulations.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds a reference to the Code of Federal Regulations to make the Utah rule as stringent as the code of Federal Regulations. This is a federal rule Utah is required to adopt per the primacy agreement with the Environmental Protection Agency (EPA).

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** 1. There is no expected fiscal impact to state revenues or expenditures. 2. There are no additional state employees or resources needed to oversee proposed rule amendment.
- ◆ **LOCAL GOVERNMENTS:** 1. There is no expected direct fiscal impact to local governments' revenues or expenditures. 2. This amendment creates no new requirements for local governments.
- ◆ **SMALL BUSINESSES:** 1. There is no expected direct fiscal impact to small businesses' revenues or expenditures. 2. This amendment creates no new requirements for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** 1. There is no expected direct fiscal impact for persons other than small businesses, businesses, or local government entities revenues or expenditures. 2. This amendment creates no new requirements for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs for affected persons, water systems, are not expected to change because no additional requirements are being added to this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change is not expected to have any fiscal impact on businesses' revenues or expenditures, these minor changes add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which have been implemented since April 1, 2016. This is a federal rule Utah is required to adopt per the primacy agreement with the EPA and has no additional requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Jennifer Yee by phone at 801-536-4216, by FAX at 801-536-4211, or by Internet E-mail at jyee@utah.gov  
 ◆ Patti Fauver by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov  
 ◆ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at rcassady@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON:** 01/09/2019

**AUTHORIZED BY:** Alan Matheson, Executive Director

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 This rule change is not expected to have any fiscal impact on non-small businesses revenues or expenditures, this minor change is to add clarifying language missed during the Revised Total Coliform Rule adoption in 2016, which has been implemented from April 1, 2016 on. This is a federal rule Utah is required to adopt per the primacy agreement with US EPA and has no additional requirements.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

\*\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R309. Environmental Quality, Drinking Water.**  
**R309-225. Monitoring and Water Quality: Consumer Confidence Reports.**  
**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.

(3) Utah Division of Drinking Water adopts 40 CFR, Part 141, Subpart O, Appendix A as published on July 1, 2018.

**KEY: drinking water, consumer confidence report, water quality**  
**Date of Enactment or Last Substantive Amendment: ~~May 1, 2016~~2018**  
**Notice of Continuation: March 13, 2015**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104**

**Health, Family Health and Preparedness, Children With Special Health Care Needs**  
**R398-5**

**Birth Defects Reporting**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 43359  
 FILED: 11/06/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of these changes is to update wording to more accurately establish the CCHD reporting requirements, and to update and add reportable birth defect diagnosis codes including Zika Virus, Cytomegalovirus, hearing loss, and neonatal withdrawal symptoms.

**SUMMARY OF THE RULE OR CHANGE:** These changes update this rule to more accurately establish the CCHD reporting requirements. They also update and add reportable birth defect diagnosis codes including ICD9 and ICD10.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 26-10-1(2) and Subsections 26-1-30(5), (6), (7), (9), (18), (22)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These changes may have a minimal cost to the state if reprinting of rule is needed.
- ◆ **LOCAL GOVERNMENTS:** No cost to local governments as the reporting requirements have been standard practice for the past several years.
- ◆ **SMALL BUSINESSES:** No cost to small businesses as the reporting requirements have been standard practice for the past several years.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost to businesses, individuals, local governments, and persons that are not small businesses as the reporting requirements have been standard practice for the past several years.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No cost to businesses, individuals, local governments, and

persons that are not small businesses as the reporting requirements have been standard practice for the past several years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being updated to more accurately establish the CCHD reporting requirements, and add requirements to report birth defect diagnosis codes including Zika Virus, Cytomegalovirus, hearing loss, and neonatal withdrawal symptoms. There are no costs to businesses because the reporting requirements have been standard practice for the past several years.

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

HEALTH  
 FAMILY HEALTH AND PREPAREDNESS,  
 CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
 44 N MARIO CAPECCHI DR  
 SALT LAKE CITY, UT 84113  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Joyce McStotts by phone at 801-584-8239, by FAX at 801-584-8488, or by Internet E-mail at jmcstotts@utah.gov, or by mail at PO Box 144720, Salt Lake City, UT 84114-4720

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes may have a minimal impact on state revenues and expenditures if reprinting of the rule is needed. These rule changes are not expected to have any fiscal impact on local, small businesses, or non-small businesses revenues and expenditures because the reporting requirements remain the same. These rule changes update terminology, create consistency within CCHD reporting, diagnosis codes and reporting timelines. These rule changes are not expected to have any fiscal impact on hospitals, clinics, alternate birthing facility, midwives, or primary care providers as this has been the standard of practice for the past several years. These rule changes will update terminology to be consistent with reporting requirements, create consistency with word usage, update diagnosis codes, and update reporting timelines.

The head of department of health, Dr. Joseph Miner, has reviewed and approved this fiscal analysis.

\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.**

**R398-5. Birth Defects and Critical Congenital Heart Disease Reporting.**

**[R398-5-1. Purpose and Authority.**

— This rule establishes reporting requirements for birth defects and stillbirths in Utah and for related test results. Sections 26-1-30(5), (6), (7), (9), (18), (22), 26-10-1(2), 26-10-2, and 26-10-6(1)(d) authorize this rule.]

**R398-5-1. Authority and Purpose.**

(1) This rule is authorized by sections 26-1-30(5), (6), (7), (9), (18), (22), 26-10-1(2), 26-10-2, and 26-10-6(1)(d).

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

(2) This rule establishes reporting requirements for birth defects, critical congenital heart disease, and stillbirths in Utah and for related test results.

**R398-5-2. Definitions.**

As used in this rule:

(2)(1) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, from 740.0 to 759.9[;], 760.72, [and] from 768.0 to 768.9[;], and 779.5 or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: A92.5, E03, E25, from E70 to E90, from D55 to D58, H90.0 to H90.8, H90.A, H91.0 to H91.9, J96.00 to J96.91, P09, P35.1, P35.4, P96.1 to P96.2 and from Q00[-] to Q99.

(+)(2) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(3) "CCHD" means Critical Congenital Heart Disease.

(5)(4) "Clinic" means physician-owned or operated clinic [that] which regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

(5) "Critical Congenital Heart Disease (CCHD) Screening" is a non-invasive test using pulse oximetry measuring how much oxygen is in the blood and can help to identify newborns affected with CCHD. Screening should begin after 24 hours of age or shortly before discharge if the baby is less than 24 hours of age.

(6) "Department" means the Utah Department of Health, Utah Birth Defect Network and Critical Congenital Heart Disease programs.

(3)(7) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service providing maternity or nursery services or both.

(9) "SpO2" stands for peripheral capillary oxygen saturation, an estimate of the amount of oxygen in the blood.

(4)(10) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

**R398-5-3. ~~Reporting by Hospitals and Birthing Centers.~~ Birth Defects Reporting.**

Each hospital, clinic, institution, or birthing center [that] which admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

(1) if live born, child's name;

(a) last name;

(b) first name;

(2) child's date of birth (or date of delivery);

(3) child's medical record number;

(9)(4) child's [sex]gender; [and]

(3)(5) mother's name;

(a) last name;

(b) first name;

(c) maiden name;

(4)(6) mother's date of birth;

(7) mother's medical record number;

(5)(8) delivery [hospital]institution;

(6)(9) ICD - 9 - CM or ICD - 10 birth defect[s] codes [and hypoxia/hypoxemia diagnoses];

[~~(7) pulse oximetry results for all initial and repeat screenings, including limb location;~~]

(8)(10) mother's state of residency at delivery; and

(10)(11) mother's zip code of residency at delivery.

**R398-5-4. Birth Defects Reporting by Laboratories.**

Each laboratory operating in the state [that] which identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, child's name [and date of birth];

(a) last name;

(b) first name;

(2) child's date of birth;

(2)(3) mother's name;

(a) last name;

(b) first name;

(c) maiden name;

(3)(4) mother's date of birth;

(4)(5) date the sample is accepted by the laboratory;

(5)(6) test conducted;

(6)(7) test result; and

(7)(8) mother's state of residency at delivery.

**R398-5-5. Critical Congenital Heart Disease (CCHD) Screening Reporting.**

CCHD Screening results shall report or cause to report to the department within 40 days of discharge the following:

(1) newborn's name;

(a) last name;

(b) first name;

(2) newborn's date of birth;

(3) newborn's gender;

(4) newborn's gestational age;

(5) newborn's birth weight;

(6) newborn's medical record number;

(7) newborn's newborn screening kit number;

(8) newborn's delivery institution;

(9) newborn's discharge unit (if applicable);

(10) newborn's CCHD Screening result for each attempt;

(a) date;

(b) time;

(c) probe location;

(d) SpO2 result; and

(e) outcome of attempt.

(11) Newborn's first echocardiogram (if indicated);

(a) date; and

(b) time.

(12) mother's name;

(a) last name;

- \_\_\_\_\_ (b) first name;
- \_\_\_\_\_ (c) maiden name;
- \_\_\_\_\_ (13) mother's date of birth; and
- \_\_\_\_\_ (14) mother's medical record number.

**R398-5-[5]6. Record Abstraction.**

Hospitals, birthing centers, institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of ~~[that]~~this and other pregnancies ~~[by that]~~of the mother. Hospitals, birthing centers, institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

**R398-5-[6]7. Liability.**

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

**R398-5-[7]8. Penalties.**

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$1,000 upon an administrative finding of a first violation and up to \$3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court.

**KEY: birth defects, birth defect reporting**

**Date of Enactment or Last Substantive Amendment: [~~July 31, 2012~~2018]**

**Notice of Continuation: September 2, 2014**

**Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(c), (d), (e), (g), (p), (t); 26-10-1(2); 26-10-2; 26-25-1**

Human Services, Administration,  
Administrative Services, Licensing

**R501-7**

Child Placing Adoption Agencies

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43356

FILED: 11/02/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of these amendments are to clarify definitions used within child placing adoption agencies. They also more clearly outlines the fee structures and refunding process.

**SUMMARY OF THE RULE OR CHANGE:** These amendments will clarify definitions, particularly surrounding recovery and confinement by a physician. They also more clearly outline the fee structures and refunding process that is in accordance with Section 78B-6-140.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-2-106

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Due to these amendments being clarifying in nature there are no anticipate fiscal costs or cost savings.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated fiscal impact to local governments as these rule changes deal largely with Child Placing Adoption Agencies.
- ◆ **SMALL BUSINESSES:** There is no anticipated fiscal impact to small businesses; these changes in the reimbursement process are not anticipated to cause any extra cost to any party involved.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** One of the amended items is the reimbursement process, but the language change is purely clarifying in nature and is not anticipated to impact any persons involved inside or outside of the Child Placing Adoption Agencies processes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Due to the nature of these amendments it is not anticipated that there be any compliance costs for those involved.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that these proposed changes will not result in a fiscal impact to small or non-small businesses.

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

HUMAN SERVICES  
ADMINISTRATION, ADMINISTRATIVE SERVICES,  
LICENSING  
195 N 1950 W 1ST FLR  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at [jweinman@utah.gov](mailto:jweinman@utah.gov)
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at [jshaw@utah.gov](mailto:jshaw@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Ann Williamson, Executive Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

These rule changes are not expected to have any fiscal impact on any parties that are impacted by this rule. These amendments clarify definitions, particularly surrounding recovery and confinement by a physician. They also more clearly outline the fee structures and refunding process that is in accordance with Section 78B-6-140.

The head of the department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

**R501. Human Services, Administration, Administrative Services, Licensing.**

**R501-7. Child Placing Adoption Agencies.**

**R501-7-1. Authority and Purpose.**

- (1) This rule is authorized under Section 62A-2-106.
- (2) This rule establishes standards for licensing agencies to provide child placing adoption services.

**R501-7-2. Definitions.**

- (1) "Adoption" is defined in Section 78B-6-103.
- (2) "Adoptive Parent" also means potential adoptive parent(s).
- (3) "Child Placing" is defined in 62A-2-101.
- (4) "Child Placing Adoption Agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing for the purpose of finding a person to adopt a child or placing a child in a home for adoption.
- (5) "Adoption Related Expenses" are defined in 76-7-203.
- (6) "Adoption Services" is defined in 62A-4a-101(2).
- (7) "Adoption Related Counseling" includes clinical counseling and psycho educational counseling that is specific to adoption and includes the counseling provided to pre-existing parent(s) as required by circumstances and 78B-6-119.
- (8) "Agency" means a child placing adoption agency.
- (9) "Allowable Adoptive Parent Information" is the information shared with birth parents regarding the adoptive parent(s). It may include non-identifying information as follows:  
~~[(a) non-identifying information as follows:]~~  
 [(b)a] demographics, such as age, nationality, religious affiliation;  
 [(e)b] health status;  
 [(d)c] physical characteristics;  
 [(e)d] educational achievement and profession;  
 [(f)e] family characteristics, including marital history and length, sexual orientation, and any other children;  
 [(g)f] support system;  
 [(h)g] discipline preferences;  
 [(i)h] reason for adopting;  
 [(j)i] non-identifying information transparently disclosed by the Agency in advance; and  
 [(k)j] any other identifying or non-identifying information agreed upon via a signed release of information by the adoptive parent.
- (10) "Allowable Child/Pre-existing Parent Information" is the information shared with adoptive parent(s). It includes:
  - (a) Genetic and Social History as defined in 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:
    - (i) birth family's medical, genetic, social, and mental health history;
    - (ii) information pertaining to changes in caregivers; and
    - (iii) a description of the child's race, cultural and ethnic background.
  - (b) Health History as defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in [6]8B-6-103 inclusive of:
    - (i) Pre-natal, labor and delivery records for mother and infant;

(ii) medical records including the child's physical health, immunizations, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems; and

(iii) non-identifying information transparently disclosed by the Agency in advance.

(c) Any other identifying or non-identifying information agreed upon via a signed release of information by the birth parent.

(11) "Client" a client of a child placing adoption agency is a pre-existing parent(s), adoptive parent(s) who have consented to, or been ordered by the court to receive adoption services and child(ren) placed or to be placed. For purposes of background screening in accordance with 62A-2-101 only, the adoptive parent(s) are also defined as "Associated with the Licensee".

(12) "Confinement" means the time period when a woman is hospitalized or medically restricted by her physician due to her pregnancy and childbirth. Confinement includes the standard 6 week recovery time from uncomplicated childbirth unless otherwise noted by the woman's physician. Individualized medical documentation is required to justify any confinement period longer than 6 weeks.

(13) "Directly Affected Person" is defined in 76-7-203.

(14) "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

(15) "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

(16) "Genetic and Social History" is defined in Section 78B-6-103.

(17) "Health History" is defined in Section 78B-6-103.

(18) "High Needs Child" is as defined in 62A-4a-601.

(19) "Home Study" is equivalent to a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to be considered for adoptive placement.

(20) "Infant" for purposes of adoption means a child up to six months in age at placement.

(21) "Intercountry Adoption" is when an individual or couple becomes the legal and permanent parents of a child who is a habitual resident of another country and is governed by the laws of both countries.

(22) "Legal Risk Placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

(23) "Match" means the identification of a specific potential adoptive child with a specific potential adoptive family.

(24) "Mental Health Therapist" is defined in Section 58-60-102.

(25) "Office" means the DHS Office of Licensing.

(26) "Pre-existing Parent" is defined in 78B-6-103.

(27) "Recovery" means the standard 6 weeks of time it takes for women to fully recover from normal childbirth. Agencies are responsible for maintaining accurate documentation of each woman's recovery time frame.

(2[7]8) "Special Needs Child" means there is known evidence that:

(a) the child is 5 years of age or older;

(b) the child is under the age of 18 with a physical, emotional or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(2[8]9) "Unmarried Biological Father" is defined in Section 78B-6-103(17).

### **R501-7-3. Legal Requirements.**

(1) In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-11, R501-2-1 through R501-2-5, R501-2-8 through R501-2-14, R501-14; R501-22, Title 58, Chapter 60; Title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6; 78B-13; 78B-15; and all other applicable local, State and Federal laws.

(2) Child placing adoption agencies that do not arrange housing for birth mothers are exempt from R501-2-5, 10, 11, ~~and~~ 12, and 22.

(3) A child placing adoption agency shall:

(a) be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction or applicable law places legal responsibility with another party, in accordance with Section 78B-6-134;

(b) comply with the Indian Child Welfare Act;

(c) obtain a child placing foster license and comply with R501-12 if providing foster care;

(d) obtain a residential support license and comply with R501-22 if providing residential support services to pre-existing parent(s);

(e) comply with the Interstate Compact on the Placement of Children, in accordance with Section 62A-4a-701 et seq; and

(f) ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

(4) The Division of Child and Family Services shall additionally comply with R512-40 for recruitment, home study and approval; R512-41 for qualifying and adoptive family and adoptive placement; R512-302 for responsibilities pertaining to out of home caregivers and any other section of 62A-4a and R512 that governs the provision of adoptive services to child welfare clients served by the Division of Child and Family Services.

(a) The aforementioned child welfare statute and rule shall supersede this rule when in conflict for child welfare clients served by the Division of Child and Family Services.

### **R501-7-4. Administrative Ethics and Responsibilities.**

(1) Child placing adoption agencies shall:

(a) identify and strictly adhere to accurate accounting practices, including all fee requirements of this rule;

(b) always act in the best interest of a child;

(i) best interest determinations are made by considering a number of factors related to the child's circumstances including age and developmental needs and the parent or caregiver's circumstances and capacity to parent the child to adulthood and shall consider the pre-existing parent(s)' wishes when parental rights are voluntarily relinquished;

(c) provide services and adhere to ethical practices that support and comply with all client rights and responsibilities;

(d) develop and comply with processes that are free from fraud, duress or undue influence and avoid and mitigate conflicts of interest in order to preserve the protections of clients to include:

(i) not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

(ii) not accepting or soliciting donations from an adoptive family that is under consideration for placement of a child or pending finalization of an adoption;

(A) ~~[-]~~generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule;

(iii) not coercing or incentivizing pre-existing parent(s) to make a plan of adoption or to relinquish their parental rights;

(iv) not permitting its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the pre-existing parent(s) and the adoptive parent(s) unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

(v) inform clients that they are free to select independent attorneys and other non-child placing adoption services;

(A) client bears the responsibility to select a competent provider and their choice may affect costs incurred;

(vi) not referring any individual to services in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing potential conflicts of interest and informing said individuals that they are free to select independent adoption service providers; and

(vii) require members of the governing body to disclose, in writing, to the chairperson of the governing body and the Office of Licensing, any direct or indirect financial interest in the agency;

(e) manage and share information while still preserving confidentiality when required. This includes:

(i) documenting information shared with potential adoptive parent(s) regarding unknown pre-existing parent(s), Indian Child Welfare Act, and any known information that could potentially disrupt an adoptive placement;

(ii) respond to requests for information from clients and former clients within 30 days and document all requests for information or actual sharing of information to/from birth families, adoptees, adoptive families, and others;

(iii) provide non-identifying information in client files that can allowably be shared, and shall comply with previous releases and established policies;

(iv) the agency shall refer clients to the Mutual-Consent Voluntary Adoption Registry through Department of Health Vital Records if adult adoptees or birth family members want to reunite; and

(v) in more urgent circumstances that could have serious implication to any client or prior client, the agency will utilize prior contact and emergency contact information, as well as engage in simple social media and search engine inquiries to locate and communicate with former clients;

(vi) agencies may engage in a fee based more extensive service to search if desired;

(vii) the agency may share information with third party search providers only if consent has been given by the affected party;

(viii) not misrepresent or withhold any facts or allowable adoptive parent(s) or child/pre-existing parent(s) information relating to its services, involved individuals, or the applicable law;

(f) accept and utilize third party assessments, evaluations, references, home studies or pre-placement evaluations only if received directly from the document's author;

(g) preserve the confidentiality and content of client files;

(h) with respect to adoption services an agency shall refer to or utilize only agencies, entities or individuals that are authorized to provide the service by the laws of this state or the jurisdiction in which that agency, entity or individual performs the service;

(i) provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

(i) dissolving or ceasing to provide child placing services; or

(ii) implementing significant changes in adoption services provided, such as adding or eliminating intercountry adoption.

(j) Provide copies of all documents signed by clients directly to those clients upon request.

(2) In addition to policy and procedure requirements outlined in R501-2, agencies shall develop and adhere to the following adoption-related policies and procedures:

(a) a process regarding how to transfer a relinquishment to another agency in compliance with 78B-6-124 (7);

(b) a process to identify a high needs child as defined in 62A-4a-601, and once identified comply with 62A-4a-609 including disclosure and training to adoptive parent(s);

(c) a process for the temporary placement of children awaiting adoptive placement for over 30-days;

(d) a process and standards for the evaluation and approval or denial of an adoptive home study or pre-placement evaluation;

(e) process and standards for the evaluation and approval or denial of applications from prospective adoptive parent(s);

(f) a written plan for contact, file maintenance, and record retrieval in the event that the agency ceases to provide child placement adoption services;

(i) this plan may involve a secondary licensed or file retention entity;

(g) a process for identifying the pre-existing parent(s)' utilization of alternative payment sources including any public assistance that may defray adoptive parent(s) costs;

(h) policy identifying what is allowable child/pre-existing parent(s) information to be shared with potential adoptive parent(s), including the development of releases of information as needed;

(i) policy identifying what is allowable adoptive parent(s) information to be shared with pre-existing parent(s) including the development of releases of information as needed;

(j) process for refunds to include a process for refunding to adoptive parents monies they paid in excess of actual expenses or disclosed agency fees, ~~over-paid fixed costs for birth parent expenses and/or the utilization of over-paid estimated costs toward other birth parent expenses~~; and

(k) written policy to be provided to the adoptive parent(s) outlining how the match is determined, its relationship to any fees, and how it is managed by the agency.

#### **R501-7-5. Staffing Requirements.**

(1) A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

(2) If an Executive Director is serving as a social work supervisor, they shall not supervise more than four staff and volunteers who provide adoption services to clients.

(3) Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time paid professional experience in a licensed child placing adoption agency.

(4) A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

(5) An executive director shall have at least one year of full time paid experience in a licensed child placing adoption agency.

(6) All staff that provide services shall ~~receive~~~~be trained~~ a minimum of 20 hours of pre-service training, prior to independently providing direct client services, and 12 hours annual in-service training.

(a) Training content shall include:

(i) agency policy and procedures;

(ii) adoption ethics, laws, and rules;

(iii) the provision of professional and trauma informed adoption practices; and

(iv) any evaluations they will be performing.

(b) Staff will be supervised for adherence to training topics.

#### **R501-7-6. Fees and Disclosures.**

(1) All fees, costs and expenses whether actual or estimated must be itemized in accordance with this Rule and Utah Code Ann. 78B-6-140.

~~(1)~~<sup>(2)</sup> A child placing adoption agency may charge adoptive parent(s) agency fees which include[s] administrative and professional services provided on behalf of the adoptive parent(s), including but not limited to:

(a) agency overhead;

(b) personnel;

(c) background screenings for adoptive parent(s) and staff;

(d) training;

(e) insurance;

(f) legal services for the agency;

(g) advertising/recruiting;

(h) post-placement visit;

(i) agency staff support throughout pregnancy, birth, placement and post placement;

(j) home studies, if completed by the agency; and

(k) home study updates, if completed by the agency;

(l) copies of purchased home studies and updates are to be provided to the subjects of these documents upon request.

~~(2)~~<sup>(3)</sup> An agency fee may be charged as a flat fee or~~must~~ be itemized ~~to~~<sup>and both must</sup> clarify what is included or specifically excluded.

~~(3)~~<sup>(4)</sup> Any fee billed inclusive of an agency fee shall not be billed additionally outside of that agency fee.

~~(4)~~<sup>(5)</sup> An agency may charge and accept payment from the prospective adoptive parent(s) only for reasonable, ~~and~~ actual, estimated or outstanding adoption related expenses of the pre-existing parent(s) which are itemized outside of any agency fee. ~~for service except as described in Section 5 below.~~ These expenses are limited to the following:

(a) additional counseling;

(b) adoption related legal fees to utilize an independent attorney for the adoption;

(c) maternity expenses limited to pregnancy related clothing, pre-natal vitamins, other non-medical pregnancy related needs;

(d) medical and hospital expenses limited to pregnancy and childbirth related medical expenses for the mother/child; and

(e) temporary living expenses limited to the duration of the pregnancy and confinement of the pre-existing parent(s) or directly affected person and include only:

(i) food;

(ii) transportation including bus passes, gasoline, car maintenance, car payments, and taxi/ride share services;

(iii) housing;

(iv) utilities and telephone;

(v) reasonable and minimal incidentals;

(vi) sufficient apparel for the weather and circumstances;

(vii) daily living household supplies;

(viii) travel between the mother's or father's home and the location where the child will be born or placed;

(f) any other expense not explicitly outlined in this rule shall be reasonably related to the adoption, incurred for a reasonable amount and not paid for the purpose of inducing a birth parent to place the child for adoption. If such fees are charged or paid, the agency shall notify the Office of Licensing.

~~(5)~~<sup>(6)</sup> An agency may charge an adoptive or potential adoptive parent(s) for either the actual adoption related expenses in regard to the pre-existing parent(s) and directly affected individuals or a flat fee~~fixed amount~~ estimate of adoption related expenses. Regardless of the fee structure, fees and expenses must be itemized in accordance with this Rule and Utah Code Ann. 78B-6-140.

(a) the agency must disclose whether their adoption related expenses charged are actual or estimated and share the agency policy on refunds or re-appropriation prior to charging adoptive parent(s).

(b) If the agency charges a flat fee for adoption related expenses, the amount must be stated in the disclosure outlined in (7) of this section and the policies related to refunds, increases or decreases in those fees must be outlined in the disclosure.~~(the actual adoption expenses they must still be capped at the maximum amount outlined in the disclosure. Any over-collected actual expenses must be reimbursed.)~~

(c) If the agency charges a fixed amount for adoption related expenses, it must be outlined in the disclosure and capped at that amount. It shall be disclosed whether or not the flat adoption related expenses are or are not refundable in the disclosure.

(d) Over collection of adoption related expenses that are not refunded is only permissible with estimated adoption related expenses if:

(i) any overage will be used to support the adoption related expenses of another adoption of the adoptive parent(s) that paid the expenses originally or refunded to the adoptive parent(s) upon their request;

~~(ii) adoptive parent(s) are informed in advance that their payments could contribute to the support of other pre-existing parent(s); and~~

~~(ii)~~<sup>(i)</sup> any over-collected adoption related expenses ~~are never to be~~<sup>shall not be</sup> used for the benefit of the agency or anyone associated with the licensee or as a payment to a pre-existing parent.

~~[(s), and may only be used for other documented pre-existing parent(s) adoption related expenses.]~~

~~([6]7) A child placing adoption agency shall provide a written disclosure statement of all agency fees, flat fees and [fixed or estimated] adoption related expenses that prospective adoptive parent(s) may incur before the agency accepts any payments, or enters into any agreement with the prospective adoptive parent(s).~~

~~(a) The written disclosure shall identify and itemize:~~

- ~~(i) each fee and the services associated with each fee; and  
(ii) each adoption-related expense.~~

~~(b) If providing only estimated expenses[~~a fee range, additionally~~] provide the average cost for each itemized fee and each adoption-related expense for the preceding two fiscal years, and the maximum amount that may be charged for each fee and adoption related expense.~~

~~(c) The written disclosure shall identify any fee that is non-refundable.~~

~~(d) If the agency is charging a flat fee, the disclosure shall contain full acknowledgment by prospective adoptive parents of this fee structure and refund ability of any portion of the flat fee.~~

~~([d]e) The written disclosure shall be signed and dated by the prospective adoptive parent(s) and an agency representative and maintained in the adoptive parent(s) file.~~

~~([7]8) An agency shall not charge prospective adoptive parent(s) for any fees or adoption related expenses that the client obtained independently or were paid for by another entity, including any public assistance.~~

~~([8]9) An agency shall not charge adoptive parent(s) for any fee that was not included in the written disclosure without providing written agreement and justification approved by the prospective adoptive parent(s), and either the Office of Licensing or the Court.~~

~~([9]10) An agency shall not directly or indirectly offer, give, or attempt to give money or another thing of value in order to induce or influence pre-existing parent(s) in the adoption process.~~

~~([10]1) The agency shall retain documentation for any adoption related expense exceeding twenty five dollars, which may include receipts, lease agreements, signed fund transfers to pre-existing parent(s) in reasonable amounts in order to cover basic daily needs such as food and household supplies, and any other pertinent documentation.~~

~~([11]2) An agency shall not charge the adoptive parent(s) for the temporary living expenses of any person other than the pre-existing parent(s) or directly affected persons.~~

~~([12]3) An agency shall not charge the adoptive parent(s) for any expenses that are post-confinement, with the exception of post-placement counseling if agreed upon.~~

~~([13]4) A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parent(s) or the child placing adoption agency during her pregnancy unless they are first convicted of fraud.~~

~~([14]5) Child placing adoption agencies that provide or pay for pre-existing parent(s)' transportation to the State of Utah shall also ensure that the pre-existing parent(s)' return transportation to their home state is provided, regardless of whether the pre-existing parent(s) decides to relinquish parental rights.~~

~~([15]6) The agency shall create an affidavit of itemized accounting of the actual fees and adoption related expenses paid by the adoptive parent(s).~~

(a) The agency shall utilize an affidavit form provided by the Office of Licensing or a form inclusive of the Office's form content.

(b) The affidavit shall be executed as follows:

(i) a copy shall be signed by the adoptive parent(s);

(ii) all adoption related expenses shall be itemized and include a declaration that Section 76-7-203 has not been violated;

(A) itemized expenses in the affidavit shall align with those verified by pre-existing parents in R501-7-11(3)(n);

(iii) the affidavit shall include a declaration of all gifts, property, or other items that have been or will be provided to the pre-existing parent(s), including the source of the gifts, property or other items;

(iv) the affidavit shall include a declaration of the state of the residence of the pre-existing parent(s) and the prospective adoptive parent(s);

(v) the affidavit shall include a declaration of all public funds used for any medical or hospital costs in connection with the pregnancy, delivery of the child, or care of the child; and

(vi) the affidavit shall include the signature of an agency representative with adequate knowledge to verify the contents of the affidavit are accurate and complete.

#### **R501-7-7. Services to Pre-existing Parents.**

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to pre-existing parent(s), including disclosing all allowable adoptive parent(s) information to the birth family, except as governed by R512-41-11 for the Division of Child and Family Services.

(2) Child placing adoption agencies other than the Division of Child and Family Services shall:

(a) offer pre-existing parent(s) all available allowable adoptive parent(s) information unless waived in full or part by the pre-existing parent(s) as early in the matching process or consent to adopt process as reasonable;

(b) per 78B-6-119, accept voluntary relinquishments only after offering a minimum of three sessions of adoption related counseling to any person who is considering relinquishing a child for adoption prior to accepting the consent or relinquishment. This counseling shall include at a minimum:

(i) parental rights prior to relinquishments;

(ii) alternative options for the child and pre-existing parent(s); and

(iii) adoption issues including grief/loss;

(c) provide complete and accurate information to the pre-existing parent(s) regarding their decision to consent to adopt or relinquish;

(d) meet in-person, via video, or via telephone with the pre-existing parent(s) to review the designated adoption orientation form provided by the Office;

(i) pre-existing parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(ii) a pre-existing parent(s) under the age of 18 shall meet privately with the adoption worker unless they waive the option to meet privately;

(e) ensure the written consent to relinquishment includes language acknowledging that the pre-existing parent(s) was afforded adoption related counseling, and that the relinquishment is completely

voluntary, permanent and irrevocable under Utah Law once signed[ ~~under Utah Law~~];

(i) a child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125 or the laws of the state governing the relinquishment.

(3) If an agency arranges housing for pre-existing parents, assure that such housing complies with the following minimum standards:

(a) housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

(b) if the housing meets the definition of Residential Support (R501-22) the agency shall obtain a Residential Support license through the Office of Licensing;

(c) housing is clean, well-maintained and adequately furnished;

(d) birth mothers shall not share bedrooms with other birth mothers;

(e) laundry equipment and supplies shall be available; and

(f) adequate nutritious food, or resources to obtain food, is available.

(7) The agency shall be responsible to encourage and facilitate prenatal and medical care of the birth mother.

(8) A child placing agency shall inform pre-existing parent(s) of their information that will be shared with adoptive parent(s) including their detailed health history and a genetic and social history in accordance with Section 78B-6-143.

(9) A child placing adoption agency shall inform pre-existing parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(10) A child placing adoption agency shall assist the birth and adoptive parent(s) in creating a post-placement contact agreement, including:

(a) whether the birth parent wants to disclose their identity to the adoptee or the adoptive family;

(b) contact about or from the child or parents, directly or indirectly, in the future and how that will occur;

(c) that such agreements are non-binding except in certain public child welfare cases; and

(d) Contact agreements shall be updated only when initiated by the previous clients and maintained in case file records.

#### **R501-7-8. Services to Children.**

(1) Assessment.

(a) A needs assessment for the child shall be completed to obtain information and identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family and promote appropriate placement for the child.

(b) The needs of the child will be determined through this assessment and shall evaluate for high needs or special needs as defined in this chapter.

(c) A report(s) regarding all assessment information shall be given to the adoptive parent(s) prior to placement.

(d) If the child is an infant that is not defined as special needs or high need, information shall be obtained from the pre-existing parent(s) and any legal guardian to include all allowable child/pre-existing parent(s) information as defined in this chapter. This information should include:

(i) If the child is older than six months the same information from Section 2 above, shall be obtained from the birth or legal parent;

(ii) additional information shall be obtained using an interdisciplinary approach which may include input from: caseworkers, therapists, pediatricians, teachers, previous caregivers, foster parents, nurses, psychologists, and other consultants.

(e) The assessment shall additionally include:

(i) information pertaining to changes in caregivers including foster care, separation experiences and description of the child's behaviors;

(ii) all evaluations regarding a child's development including; physical, social, emotional, mental health and cognitive;

(iii) the child's educational records, and any special educational needs;

(iv) talents and interests; and

(v) if the child is identified as having special needs or is a high needs child as defined in 62A-4a-601, specific training for prospective adoptive parent(s) is statutorily mandated.

(2) Recruitment of adoptive families.

(a) Child placing adoption agencies shall recruit adoptive families that are able to meet the needs of children the agency serves.

(b) If the family states they would be open to a child with special needs or high needs, they will complete training specific to identified needs and in compliance with 62A-4a-609-2.

(3) Matching.

(a) The selection of the adoptive family and the adoptive family's decision to adopt a specific child shall be based on the following:

(i) the child's assessment;

(ii) adoptive family's ability to meet the identified and potential needs of the child;

(iii) the wishes of the pre-existing parent(s) who voluntarily relinquish their rights, the adoptive parent(s), and when applicable, the child, shall be considered.

(4) Placement.

(a) A child placing adoption agency shall attempt to place siblings together when appropriate for the children's needs and pre-existing parent(s) wishes.

(b) A child shall be placed with the adoptive family at the earliest time possible after being freed for placement or adoption.

(c) A child placing adoption agency shall have an individualized written adoptive placement and transition plan that includes the child's current caregivers, the adoptive parent(s), and the child, to facilitate the child's transition into the adoptive family and ensures the family's ability to meet the child's needs.

(i) The transition plan shall consider and include as applicable:

(A) the child's stated preferences;

(B) the child's identified religion;

(C) identification of services the family and child may need based on assessment information;

(D) statement of who is responsible for identifying services and who is responsible for paying for such services;

(E) time frames for transition that consider and accommodate the identified and potential needs of the child in preparing the child for placement; and

(F) developmentally appropriate counseling with the child to address to mitigate transition related emotional trauma.

(d) If a child placing adoption agency other than DCFS assumes custody of a child and the child is not able to be directly placed in an adoptive placement:

(i) the agency may temporarily place the child in a currently home studied adoptive home for up to 30 days; or

(ii) if the child needs temporary care for more than 30 days, the agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

(e) A private child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

(f) If a child is not placed within 30 days after relinquishment or after determination of availability for adoption by the court, the agency shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges

(5) Post Placement Service.

(a) The child placing agency shall monitor and support each placement until the adoption is final.

(b) An agency social worker shall contact the adoptive family within 2 weeks of the placement to offer support. This does not count towards the pre-finalization visit.

(c) Prior to finalization, a minimum of one in-home supervisory visit with both parents and child present shall be made by an agency social worker:

(i) to assess that the child and family are adjusting and child is receiving necessary care, nurturance, medical care, and services as needed.

(d) The agency shall monitor who has legal and physical responsibility for the child at all times.

(6) Disruption.

(a) If a disruption occurs, a child placing agency shall provide for the care of the child.

(i) The placement shall:

(A) be in a currently home studied adoptive home for no longer than 30 days unless it is the identified subsequent adoptive placement;

(B) be in a licensed or certified foster home governed by Rule R501-12; or

(C) be approved by a judge.

#### **R501-7-9. Services to Adoptive Parents.**

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to adoptive parent(s), including disclosing all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(2) A child placing adoption agency other than the Division of Child and Family Services shall:

(a) provide the adoptive parent(s) orientation form to potential adoptive parent(s) who shall sign and initial the form and shall be offered the opportunity to ask clarifying questions prior to match or payment of any fees in excess of \$500.00;

(i) adoptive parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(b) provide prospective adoptive parent(s) with a written description of their services, fees, policies and procedures;

(c) explain the adoption process and the pre-existing parent(s)' rights, including the status of any putative father, to the prospective adoptive parent(s);

(i) a copy of the Office provided pre-existing parent(s) adoptive orientation form shall be provided to adoptive parent(s) for information purposes with an acknowledgement that they have discussed and received this information;

(d) provide training as outlined in 62A-4a-609 in regards to high needs child, as required;

(e) per 62A-4a-607 the agency shall inform each prospective adoptive parent(s) that the state has children available for adoption and that adoption from the Division of Child and Family Services incurs no agency fees and adoption assistance may be available when adopting children in the custody of the state;

(f) inform adoptive parent(s) that when a child has a disability, the child may be eligible for SSI benefits and/or federal adoption assistance. The Agency shall refer the potential adoptive parent(s) to coordinate with the Division of People with Disabilities for further disability resources and with Division of Child and Family Services to apply for potential federal adoption assistance; and

(g) a child placing adoption agency shall inform prospective adoptive parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(3) A home study completed by an adoption service provider as outlined in 78B-6-128-2(C) for each adoptive family shall include:

(a) a recommendation to the court regarding the suitability of the prospective adoptive parent(s) or placement of a child;

(b) a description of in-person interviews with the prospective adoptive parent(s), prospective adoptive parent(s)', children, and other individuals living in the home;

(c) criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, and Sections 53-10-108(4) and 78B-6-128;

(i) agencies must separately obtain the child abuse registry report through the Division of Child and Family Services in Utah and any out of state comparable entities in order to show compliance with 78B-6-128;

(d) written descriptions from at least two non-related and one related references regarding the character and suitability of the prospective adoptive parent(s) for parenting an adoptive child;

(e) a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within two years prior to the date of the application;

(f) description of inspections of the home, to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained; and

(g) description of documented income for each adoptive applicant and a written plan for adoptive applicants who work outside the home addressing how they shall provide security and responsible child care to meet individual child needs.

(4) The adoptive applicants shall be informed, in writing, and within ten business days after the decision is made, as to the acceptance or the reasons for the denial of their home study.

(a) The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, upon order of the court in accordance with Section 78B-6-128.

(5) A child placing adoption agency shall select applicants who:

(a) are able to provide the continuity of a caring relationship;

(b) are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

(c) understand the needs of a child at various developmental stages.

(6) The agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parent(s). This disclosure shall also be clearly stated in writing on the adoptive parent(s)' application for services forms.

(7) The agency shall verify that an applicant's income is sufficient to provide for a child's needs.

(8) The agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

(9) Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

(10) Matching.

(a) Disclose all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(b) Ensure known special needs are disclosed and referrals and information are provided as necessary to prepare the family to meet the long term needs of the child.

(c) A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parent(s) have first given their written consent, indicating that they have been fully informed of the specific risks involved.

(d) Develop the capacities of the parents to meet the ongoing needs of the child according to the child's needs and the transition plan.

(e) Matches may only occur once sufficient non-identifying information sharing has occurred to allow for informed decision making by both parties.

(11) Placement.

(a) A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, to include:

(i) providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups; and

(ii) monitoring the child's adjustment and development.

(b) The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other challenges, and whether the adoptive parent(s) are faced with unanticipated problems.

(c) The first contact after placement shall take place within two weeks of placement.

(d) A minimum of one face-to-face supervisory home visit after the initial two week contact shall take place before finalization.

(12) Disruption.

(a) The agency may remove the child [for]from the adoptive placement due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parent(s); the separation or divorce of the adoptive parent(s); the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

(b) If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parent(s) shall be entitled to appeal the removal decision.

(i) The agency shall provide the adoptive parent(s) written notice of their right to appeal and the procedure for appeal.

(13) Finalization.

(a) A child placing adoption agency shall provide assistance in finalizing the adoption.

#### **R501-7-10. Intercountry Adoptions.**

(1) All intercountry adoptions are considered high needs per 62A-4a-601 and require compliance with 62A-4a-609.

(2) In addition to complying with all other rules, laws and statutes regarding adoption, a child placing adoption agency that is a primary provider of inter-country placement services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and including:

(a) the agency is Hague accredited by a Department of State approved accrediting body;

(b) the child is legally freed for adoption in the country of origin;

(c) the agency verifies and maintains documentation and agreements regarding the credentials and qualifications of all associates working in their behalf in foreign countries; and

(d) information was provided to the adopting parents about naturalization and US citizenship proceedings.

(3) A child placing adoption agency that provides intercountry adoption services shall:

(a) comply with all fee requirements from R501-7-6;

(b) establish additional policies and procedures to be provided to the adoptive parent applicant(s) regarding:

(i) agency and adoptive parent(s) responsibilities regarding intercountry adoption;

(ii) post adopt responsibilities;

(iii) identification and disclosure of medical risks in intercountry adoption;

(iv) service planning; and

(v) establish an official and recorded method of fund transfers to avoid the use of direct cash transactions to pay for adoption services in other countries;

(c) additionally include in the written agency fee disclosure required in R501-7-6 the following:

(i) itemization of all services and total cost of providing adoption in the child's country of origin and disclosure of whether the fees are paid directly or through the agency to include:

(A) foreign country/legal fees;

(B) cost of documents required by the agency and by the foreign government as well as costs of apostille or authentication of these documents;

(C) required fees paid to USCIS;

(D) estimated costs of travel to the foreign country;

(E) translation of documents provided to the foreign adoption officials;

(F) costs of child care;

(G) parent education costs;

(H) adopted child passport;

(I) USCIS-required medical exam costs;

(J) immunization expenses; and

(K) any other miscellaneous fees that may apply;

(ii) itemization of any mandatory payments to child welfare programs in the country of origin including:

(A) any fixed contributions amounts;

(B) intended use of payments; and

(C) manner in which the transaction will be recorded and accounted for;

(d) provide all applicants with written policies governing refunds;

(e) notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program;

(f) verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries; and

(g) in addition to adoptive parent(s) and child file content requirements in R501-7-11, intercountry adoption files shall also include:

(i) signed agency agreements and/or contracts;

(ii) USCIS approval to proceed with a foreign adoption;

(iii) copies of adoption documents required by the adoption officials in the foreign country;

(iv) copies of all child information provided by the foreign country;

(v) post-adoption reports required by the foreign country; and

(vi) copy of the adoption finalization from the foreign country.

**R501-7-11. Administrative Documentation.**

(1) Provisions of this section do not apply to the Division of Child and Family Services as they governed by their own rules, statutes, and documentation requirements that are more restrictive and extensive than those outlined here, including 78A-6-306 Shelter Hearing, 307 Placement, 310 Adjudication hearing, 312 Reunification services, 314 Permanency hearing and 316 Termination of parental rights.

(2) Adoptive Parent(s) Files shall cross-reference all related files and shall contain:

(a) signed and dated application for service including agency disclosure of religion and marital status polices on the application;

(b) signed and dated adoptive parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(c) proof that the content of the pre-existing parent(s) adoption orientation form was provided to adoptive parent(s);

(d) proof of compliance with 62A-4a-607 regarding the availability of children in state custody for adoption;

(e) itemized written fee disclosure statement as described in Section R501-7-6 signed and dated by prospective adoptive parent(s) and agency representative prior to entering any agreements as outlined in;

(f) proof of identification or documented due diligence to determine identity;

(g) copies of marriage certificates, divorce papers, custody and visitation orders, proof of US citizenship;

(h) proof that all allowable child/pre-existing parent(s) information was shared with adoptive parent(s);

(i) voluntary consent agreement acknowledging conflict of interests per R501-7-4 (A);

(j) documentation and itemization of all reasonable and actual adoption-related expenses that exceed \$25.00 charged to the adoptive parent(s) as outlined in R501-7-6 to include:

(i) written agreement and justification for any expenses charged to the prospective adoptive parent(s) outside the fee disclosure statement;

(ii) affidavit signed by adoptive parent(s) and agency representative outlining itemized actual expenditures made on behalf of the pre-existing parent(s) as outlined in fees disclosures section R501-7-6;

(k) record of all payments received and disbursements made;

(l) home study/pre placement evaluation as outlined in R501-7-9 and 78B-6-128;

(i) and including a child abuse registry report obtained from all applicable child welfare agencies per R501-7-9(3)(c)(i);

(m) case notes describing all services provided;

(n) physician report for each prospective adoptive parent;

(o) background clearances for prospective adoptive parent(s) and all adults over age 18 residing in the home;

(p) proof of ability to provide health care for an adopted child;

(q) 4 letters of reference;

(r) documentation of all requests for information or sharing of information to include:

(i) post adopt information exchange with pre-existing parent(s); and

(ii) post adopt contact terms with pre-existing parent(s);

(s) transition plan for child transition to adoptive placement;

(t) written consent to legal risk placement if applicable;

(u) documentation of the initial agency contact with the adoptive family within 2 weeks of placement;

(v) documentation of one in-home face-to-face supervisory visit prior to finalization post two week visit;

(w) original or certified copy of the order of adoption;

(x) referral to Mutual Consent Registry;

(y) signed declaration of each potential birth father to be filed with the court per 78B-6-110.5; and

(z) any other documentation required in order to show compliance with this Rule.

(3) Pre-existing parent(s) files shall cross reference all related files and shall contain:

(a) signed and dated application for service to include declaration of birth mother's husband or any alleged father's relationship to the child in accordance with 78B-6-110.5;

(b) proof of identification or documented due diligence to determine identity;

(c) signed and dated pre-existing parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(d) declaration, certificate or written statement of putative registry search and disclosure of search results from each state

identified by the birth mother in compliance with 78B-6-110.5 Sections 1 and 2; and any communications with potential birth fathers;

(e) documentation of any requests for information or sharing of information;

(f) genetic and social history, and health history;

(g) case notes describing services provided including pre relinquishment counseling;

(h) original or certified copies of relinquishment transfer or decree of termination of birth mother and birth father rights per 78B-6-125 (or the state governing relinquishment);

(i) proof that non-identifying information was provided re: the adoptive parent(s);

(j) proof of compliance with 78B-6-143 and 78B-6-144;

(k) copies of marriage certificates, divorce papers, custody and visitation orders, if any;

(l) certified copies of death certificates, if any, of pre-existing parent(s);

(m) pre-existing parent(s) written agreements or refusals of:

(i) waiver of confidentiality;

(ii) authorization of release of information;

(iii) future third party searcher;

(iv) post adopt information exchange with adoptive parent(s);

(v) post adopt contact terms;

(n) verification that all itemized goods and services billed to the adoptive parent(s) were actually provided to and signed upon receipt to the pre-existing parent(s);

(o) documentation of other alternative payment sources, including public assistance;

(p) referral to Mutual Consent Registry; and

(q) any other documentation required in order to show compliance with this rule.

(4) Child Files shall cross reference all related files and shall contain:

(a) needs assessments, evaluations, family background study of current and historical physical, psychological, genetic and developmental health information as required in R501-7-8 A and B;

(b) individualized assessment determining which adoptive family was selected and why as a means to meet all of the identified wishes and needs of all involved;

(c) case notes describing all services provided and referred;

(d) copies of any DHS licenses for children placed in outside agency foster care;

(e) transition plan for child to adoptive placement; and

(f) any other documentation required in order to show compliance with this rule.

(5) File maintenance.

(a) In the event that any records required in this Rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

(b) All case files shall be retained for a minimum of 100 years from the date the case is closed.

(c) If not continuing to operate and incapable of maintaining their own files for 100 years, the agency shall notify the Office of Licensing and post publicly where the records shall be stored;

(i) it is permissible for a closed child placing adoption agency to transfer closed adoptive files to another licensed child placing for maintenance as long as the chain of control is clear and

transparent to the Office and prior clients[;] and there is good reason to believe that the files will be maintained according to law.

(ii) the agency has a written plan involving a secondary entity for contact and file maintenance in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

(iii) enable record retrieval by individuals with a right to access them.

(d) All adoption records shall be confidential and shall be maintained in a secure location when not in active use;

(i) adoption records shall be accessible only by authorized agency employees or agents;

(ii) no information shall be shared with any person without the appropriate consent forms, except as required by law.

(e) Records regarding the adoptive parents, with the exception of reference letters, are not sealed and information in adoption files can be provided to adoptive parent(s) upon request.

(f) A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received the number of children, pre-existing parent(s), and adoptive parent(s) served, and the number of adoptions and disruptions, and the number of children in agency custody.

#### **R501-7-12. Compliance.**

(1) A licensee that is in operation on the effective date of this Rule shall be given 60 days to achieve compliance with this Rule.

#### **KEY: licensing, human services, child placing**

**Date of Enactment or Last Substantive Amendment: [~~May 2,~~ 2018**

**Notice of Continuation: October 18, 2012**

**Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.**

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## Human Services, Child and Family Services **R512-305** Out-of-Home Services, Transition to Adult Living Services

### **NOTICE OF PROPOSED RULE (Amendment)**

DAR FILE NO.: 43358

FILED: 11/06/2018

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended in response to a change in the Family First Prevention Services Act, which was signed into law on February 9, 2018 as part of the Bipartisan Budget Act. This law allows the Division of Child and Family Services to increase the age limit to access John H. Chafee Foster Care Independence Program (CHAFEE) aftercare funding from 21 to 23 years old.

**SUMMARY OF THE RULE OR CHANGE:** Youth who qualify for CHAFEE aftercare funding may now access the funds until they attain the age of 23. Prior to the change in federal law, funds were only available for eligible youth until the age of 21.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-102 and Section 62A-4a-105

**MATERIALS INCORPORATED BY REFERENCE:**

- ◆ Adds 42 USC 677—John H. Chafee Foster Care Program for Successful Transition to Adulthood , published by U.S. Code Online via GPO Access, 02/09/2018

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The change in federal law increased the number of years a youth could qualify for CHAFEE aftercare funds, but did not increase the dollar amount available for an individual each fiscal year. The change also did not increase the amount of federal funds available for this service. These proposed rule amendments are not expected to have any fiscal impacts on state government revenues or expenditures.
- ◆ **LOCAL GOVERNMENTS:** There is little or no impact to local governments due to these rule amendments.
- ◆ **SMALL BUSINESSES:** There is little or no impact to small businesses due to these rule amendments.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is little or no impact to other persons due to these rule amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons associated with implementing these rule amendments because these changes are not fiscal in nature.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These rule amendments will not result in a fiscal impact to businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 HUMAN SERVICES  
 CHILD AND FAMILY SERVICES  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Diane Moore, Director**

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 These rule changes are not expected to have any fiscal impact on any parties' revenues or expenditures. This rule is only being amended in response to a change in Federal law; these changes did increase the number of years a

youth could qualify for CHAFEE aftercare funds, but did not increase the dollar amount available for an individual each fiscal year. They also did not increase the amount of Federal funds available for this service.

The head of the department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

## **R512. Human Services, Child and Family Services.**

### **R512-305. Out-of-Home Services, Transition to Adult Living Services.**

#### **R512-305-1. Purpose and Authority.**

(1) The purpose of Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out-of-home services in accordance with Rule R512-300 to gain skills to transition to adulthood and to provide support to youth upon leaving the Division of Child and Family Services (Child and Family Services) custody. TAL is a continuum of services that begins while youth are in care and continues ~~[through post-discharge with the Young Adult Resource Network (YARN)]~~ while they transition out of care. Youth receiving In-Home Services may also receive some TAL services.

(2) TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (~~[September 2, 2015]~~ February 9, 2018), incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

#### **R512-305-2. Scope of Services.**

(1) Qualification for and duration of services:

(a) TAL services are required for all youth receiving out-of-home services, age 14 years or older, until Child and Family Services custody is terminated regardless of permanency goal, as specified in Rule R512-300.

(b) ~~[The YARN provides services]~~ TAL provides aftercare services for youth if they are no longer in Child and Family Services custody and are not yet ~~[21]~~ 23 years of age, and the youth:

(i) Ages out of out-of-home care, or

(ii) ~~[While in out-of-home care, after the age of 14 years, received at least 12 consecutive months of TAL services and the court terminated reunification.]~~ Is adopted from foster care at age 16 years or older.

(2) Service description:

(a) TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping youth achieve five fundamental aspects of adult life, including work, career planning, and education; housing and money management; home life and daily living; self-care and health education; and communication, social relationships, family, and marriage.

(b) ~~[YARN]~~ Aftercare services consist[s] of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills training. It may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.

(3) Availability:

(a) TAL services ~~[and YARN]~~ are available in all geographic regions of the state.

(b) TAL services ~~[and YARN]~~ are available on the same basis to Native American youth who are or were formerly in Tribal custody within the boundaries of the state.

### **R512-305-3. Transition to Adult Living Services for a Youth in Child and Family Services Custody.**

(1) The caseworker, with the assistance of the youth and Child and Family Team, ensures completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.

(2) Based upon the empirically validated life skills assessment, a TAL plan is developed that identifies the youth's strengths, needs, and specific services.

(3) The youth, with the assistance of the Child and Family Team, determines the TAL plan. Youth aged 14 years or older are required to have a TAL plan, with youth taking the lead in setting goals and facilitating the Child and Family Team with staff guidance. Youth 14 years and older must be given the opportunity to have at least two individuals of their own choosing as members of the Child and Family Team.

(4) TAL services do not substitute for active efforts to address the youth's permanency goal.

~~[(4)]~~(5) The TAL plan includes a continuum of training and services to be completed by the youth and designated team members in such settings as at the foster home, with a therapist, at school, or through other community-based resources and programs.

~~[(5)]~~(6) Basic Life Skills training shall be offered to ~~[each youth who attains age 17 years]~~ all foster youth age 14 years and older. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).

~~[(6)]~~(7) Each youth who completes Basic Life Skills training may receive a completion payment.

### **R512-305-4. Transition to Adult Living Placement for a Youth in Child and Family Services Custody.**

(1) A TAL placement may be used as an alternative to out-of-home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living arrangements for youth in this situation include living with kin; living with former out-of-home caregivers while paying rent; living in the community with roommates; living alone; living in a group facility, YWCA, boarding house, or dorm; or living with an adult who has passed a background check or the placement was assessed and approved by the region director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following Practice Guidelines are met:

(a) A TAL placement may be used as an out-of-home care placement.

(b) A youth must be at least 16 years of age to be in a TAL placement.

(c) The Child and Family Team is responsible to determine if a recommendation for a TAL placement for a youth is appropriate.

(d) The region director or designee is authorized to approve a TAL placement.

(e) The caseworker and youth shall complete a contract outlining responsibilities and expectations while in the TAL placement.

(f) The caseworker shall visit with and monitor progress of the youth at least twice monthly or at an interval determined by the Child and Family Team.

(g) The youth may receive a TAL stipend while in the TAL placement.

(h) If the TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.

**R512-305-5. Child and Family Services Responsibility to a Youth Leaving Out-of-Home Care.**

(1) ~~[The YARN]~~ Aftercare services provide[s] support to youth who leave out-of-home care, as specified in R512-305-2.

(2) A youth may access services by contacting a Child and Family Services office and being referred to a regional TAL coordinator.

(3) Services may include additional Basic Life Skills training, information and referral, mentoring, computer access for resources, and follow-up support. Funds may also assist eligible youth in the four areas listed below:

- (a) Education, Training, and Career Exploration.
- (b) Physical, Mental Health, and Emotional Support.
- (c) Transportation.
- (d) Housing Support.
- (4) Funds used for room and board are subject to federal limits.

**KEY: social services, child welfare, out-of-home care, Transition to Adult Living**

**Date of Enactment or Last Substantive Amendment: [January 21, 2016]2018**

**Notice of Continuation: May 16, 2013**

**Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105**

**Human Services, Substance Abuse  
and Mental Health  
R523-19  
Community Mental Health Crisis and  
Suicide Prevention Training Grant  
Standards**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43355

FILED: 11/02/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by H.B. 370, passed during the 2018 General Session.

**SUMMARY OF THE RULE OR CHANGE:** a) Descriptions of allowable activities that would qualify for a funding grant is provided. b) A process for receiving applications to receive a grant is established. c) A maximum grant amount is established.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-115

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department of Human Services' Division of Substance Abuse and Mental Illness (DHS/DSAMH) was allocated \$250,000 by the 2018 state legislature to award grants to communities for the purpose of conducting mental health crisis response training. All of this funding will be awarded.

◆ **LOCAL GOVERNMENTS:** Local mental health authorities are qualifying entities that are able to apply for a grant. The limit is set at \$50,000 per community. DHS/DSAMH will distribute \$200,000 to local authorities and anticipate that each grantee will receive the full \$50,000 grant, making this funding available to four local authorities.

◆ **SMALL BUSINESSES:** Small businesses that provide communities with individual and family services are entities that qualify to apply for a grant. DHS/DSAMH anticipates distribution of \$50,000 to these agencies. There is no way of knowing how much will be requested or the number of proposals that will be submitted, so there is no way of knowing how many small businesses will receive this portion of the funds.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or benefits in this rule associated with other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with this new rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will result in a positive fiscal impact to businesses.

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

HUMAN SERVICES  
SUBSTANCE ABUSE AND MENTAL HEALTH  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at [jshaw@utah.gov](mailto:jshaw@utah.gov)
- ◆ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at [tdunford@utah.gov](mailto:tdunford@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Doug Thomas, Director

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$250,000	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$250,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$200,000	\$0	\$0
Small Businesses	\$50,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$250,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$250,000</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 DHS/DSAMH does not intend to make this funding available for non-small businesses. The amount being offered would not be enticing for to non-small businesses that provide communities with individual and family services, and the intent is to grant as many communities as possible with these funds which lowers the amount available.

\*\*"Non-small business" means a business employing 50 or more persons; "small business" means a business employing fewer than 50 persons.

**R523. Human Services, Substance Abuse and Mental Health.**  
**R523-19. Community Mental Health Crisis and Suicide Prevention Training Grant Standards.**  
**R523-19-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance use disorder and mental health services as granted by Section 62A-15-115.

**R523-19-2. Purpose.**

(1) This rule is designed to create requirements and process for qualifying for a grant and for the community to apply for a grant.

**R523-19-3. Intent.**

(1) To create requirements and a process for communities to qualify for a grant that will allow them to provide specific training on mental health crises and suicide prevention.

**R523-19-4. Activities Qualifying for the Community Mental Health Crisis and Suicide Prevention Training Grant.**

(1) The following are activities that are allowable under these grants:

(a) Evidence/research-based strategies surrounding suicide prevention, specifically suicide prevention skill-based trainings;

(b) Community outreach and mobilization activities including partnership recruitment for participation in local coalitions;

(c) Activities aimed at increasing partnerships to link individuals into supportive services including health and behavioral healthcare services; and

(d) Evidence-based suicide prevention strategies and trainings targeted at high-risk populations.

**R523-19-5. Grant Application Process.**

(1) Individual and family services community organizations and Local Mental Health Authorities wishing to apply for funds to initiate a Community Mental Health Crisis and Suicide Prevention Training Program, shall respond to a Request for Proposal process that shall be developed by the Division of Substance Abuse and Mental Health.

(2) Individual grants shall not exceed \$50,000.

(3) Grants shall be available to all interested organizations until all available funds are awarded.

**KEY: community mental health crisis and suicide prevention training grant, crisis training grant, suicide prevention training grant, community crisis training grant**

**Date of Enactment or Last Substantive Amendment: 2018**  
**Authorizing, and Implemented or Interpreted Law: 62A-15-115**

**Tax Commission, Property Tax**  
**R884-24P-27**  
**Standards for Assessment Level and**  
**Uniformity of Performance Pursuant to**  
**Utah Code Ann. Sections 59-2-704 and**  
**59-2-704.5**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 43371  
FILED: 11/14/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These changes are made pursuant to recommendations from a 2018 legislative audit.

**SUMMARY OF THE RULE OR CHANGE:** The permissible measure of central tendency is reduced from within ten percent to within five percent of the legal level of assessment for county-wide residential property in counties of the first through fourth class.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-704 and Section 59-2-704.5

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These proposed amendments are not expected to have any fiscal impact on state government revenues or expenditures because they do not change the amount of revenue generated statewide.
- ◆ **LOCAL GOVERNMENTS:** These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because the property tax rate will adjust to compensate the local governments according to previous year collections plus new growth.
- ◆ **SMALL BUSINESSES:** These proposed amendments are expected to have a marginal fiscal impact on small businesses revenues or expenditures. As calculated in the 2018 legislative audit, there will be a \$1.4 million shift in individual county contributions to the Uniform School Fund. As a result of these changes in the required level of assessment, small businesses in counties that were under the required level of assessment will experience marginal increases in property tax while small businesses in counties that were at or over the required level of assessment may experience no change or marginal decreases in property tax.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments are expected to have marginal fiscal impact on the revenues or expenditures of other persons. As calculated in the 2018 legislative audit, there will be a \$1.4 million shift in individual county contributions to the Uniform School Fund. As a result of these changes in the required level of assessment, persons in counties that were under the required level of assessment will experience marginal increases in property tax while persons in counties that were at or over the required level of assessment may experience no change or marginal decreases in property tax. Residential values in certain counties that were outside of the required level of assessment of 95% to 105% of fair market value may result in higher or lower individual residential tax assessments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments are not expected to impose

compliance costs on those impacted because the statistical studies and assessments are already being conducted. This only narrows the variance standard imposed within those assessments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed amendments could impact the revenues or expenditures of businesses owning residential real property in counties of the first through fourth class. Businesses in counties under the required level of assessment may experience marginal increases in property tax while businesses in counties over the required level of assessment may experience no change or marginal decreases in property tax.

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

TAX COMMISSION  
PROPERTY TAX  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Jennifer Franklin by phone at 801-297-3901, or by Internet E-mail at [jenniferfranklin@utah.gov](mailto:jenniferfranklin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019

THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019

AUTHORIZED BY: Rebecca Rockwell, Commissioner

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

The impacts of these rule changes on non-small businesses are inestimable. In the aggregate, these proposed amendments are expected to have marginal fiscal impact on non-small businesses' revenues or expenditures. As calculated in the 2018 legislative audit, there will be a 1.4 million shift in individual county contributions to the Uniform School Fund. As a result of these changes in the required level of assessment, non-small businesses in counties that were under the required level of assessment will experience marginal increases in property tax while small businesses in counties that were at or over the required level of assessment may experience no change or marginal decreases in property tax.

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.**

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures[-];

(i) ~~[The]~~For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) [10]5 percent of the legal level of assessment for county-wide residential property[-]; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which

may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in ~~Subsection~~ Subsections (2)(b) and (c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

**KEY: taxation, personal property, property tax, appraisals**

**Date of Enactment or Last Substantive Amendment: November 30, 2017**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: Art XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703**

## Workforce Services, Unemployment Insurance **R994-403-109b** Profiled Claimants

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43365

FILED: 11/08/2018

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this proposed rule change is to adjust the requirements for certain recipients of unemployment insurance benefits to participate in reemployment services as a condition of continuing to receive benefits.

**SUMMARY OF THE RULE OR CHANGE:** The Department of Workforce Services (Department) administers the state's unemployment insurance program pursuant to Sections 35A-1-202 and 35A-4-101 et seq. As a condition of receiving federal funding provided by the United States Department of Labor (USDOL) to operate the program, USDOL requires the state, pursuant to 42 USC Sec. 506, to provide reemployment services to certain recipients of unemployment insurance benefits, and to abide by evidence-based standards in helping such recipients achieve reemployment. On August 20, 2018, USDOL issued an Unemployment Insurance Program Letter (UIPL) reiterating to all state-level workforce agencies, including the Department, the need to ensure that these recipients—known as "profiled claimants"—are receiving and accepting the reemployment services offered to them as a condition of receiving unemployment insurance benefits. Following a review of its processes, the Department has determined that some profiled claimants have attempted to evade the requirement to receive reemployment services; specifically, some claimants have engaged in the practice of scheduling a meeting with an employment counselor, failed to attend the meeting, and then rescheduled the meeting multiple times. This has had the effect of allowing the claimant to receive unemployment insurance benefits despite not receiving the required reemployment services. This proposed rule amendment solves this problem by requiring a profiled claimant who fails to participate in the required reemployment services to forego receiving benefits until the required services have been received. The Department has specific authority to make rules requiring good-faith efforts by unemployment insurance recipients to secure employment under Section 35A-4-403.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 USC Sec. 506 and Section 35A-4-403

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This proposed rule change is not expected to cause any costs or savings to the state budget because this proposed rule change simply creates a more effective enforcement mechanism for ensuring profiled claimants receive the required reemployment services. Nothing in this proposed rule change affects or limits a claimant's substantive eligibility for unemployment insurance benefits or limits the duration for which those benefits may be received.

◆ **LOCAL GOVERNMENTS:** This proposed rule change is not expected to cause any costs or savings to local governments because the unemployment insurance program is a state-level program that does not rely on local governments for its funding, administration, or enforcement.

◆ **SMALL BUSINESSES:** This proposed rule change is not expected to cause any costs or savings to small businesses because nothing in this proposed rule change will affect the amount of unemployment taxes paid by any business or otherwise affect the substantive eligibility for, or payment of, unemployment insurance benefits to any claimant. The Department has considered whether this proposed rule change will have a measurable negative fiscal impact on

small businesses and has determined that this proposed rule change will not have a negative fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule change is not expected to cause any costs or savings to persons other than small businesses, businesses, or local government entities because this proposed rule change simply creates a more effective enforcement mechanism for an existing requirement for profiled claimants who seek unemployment insurance benefits. Nothing in this proposed rule change affects or limits a claimant's substantive eligibility for unemployment insurance benefits or limits the duration for which those benefits may be received.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This proposed rule change is not expect to cause any compliance costs for affected persons because this proposed rule change does not create any new eligibility or administrative requirements for profiled claimants or any other affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact to businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 WORKFORCE SERVICES  
 UNEMPLOYMENT INSURANCE  
 140 E 300 S  
 SALT LAKE CITY, UT 84111-2333  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Amanda McPeck by phone at 801-517-4709, or by Internet E-mail at ampeck@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/02/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 01/09/2019**

**AUTHORIZED BY: Jon Pierpont, Executive Director**

**Appendix 1: Regulatory Impact Summary Table\***

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 After a thorough analysis, it was determined that this

proposed rule change will not result in a fiscal impact to non-small businesses.

**R994. Workforce Services, Unemployment Insurance.  
 R994-403. Claim for Benefits.  
 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~~]participates in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

**KEY: filing deadlines, registration, student eligibility, unemployment compensation**

**Date of Enactment or Last Substantive Amendment: [~~May 30, 2017~~2018]**

**Notice of Continuation: March 29, 2018**

**Authorizing, and Implemented or Interpreted Law: 35A-4-403(1)**

**End of the Notices of Proposed Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

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## Commerce, Occupational and Professional Licensing

### **R156-46a**

## Hearing Instrument Specialist Licensing Act Rule

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43364

FILED: 11/08/2018

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 46a provides for the licensure and regulation of hearing instrument specialists and hearing instrument interns. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-46a-201(3)(a) provides that the Hearing Instrument Specialist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 46a with respect to hearing instrument specialists and hearing instrument interns.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in January 2014, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 46a, with respect to hearing instrument specialists and hearing instrument interns. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [janajohansen@utah.gov](mailto:janajohansen@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/08/2018

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## Education, Administration

### **R277-704**

#### Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43357  
FILED: 11/05/2018

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53E-3-505 directs the Board of Education (Board) to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels, and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts. Section 53E-3-401(4) permits the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-704 continues to be necessary because it provides funds appropriated by the Legislature to develop and integrate financial and economic literacy concepts effectively into the core curriculum in various programs and at various grade levels; to begin the development of a financial and economic literacy student passport; to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility; to provide curriculum resources and assessments for financial and economic literacy; to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12; to provide simple and consistent messaging to students that becomes part of the core curriculum that reinforces the importance of financial and economic literacy for students and parents; and to help students and parents to locate and use school and community resources to improve financial and economic literacy among students and families.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at [angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

EFFECTIVE: 11/05/2018

## Environmental Quality, Air Quality

### **R307-101**

#### General Requirements

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43367  
FILED: 11/13/2018

#### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources." Rule R307-101 includes definitions used throughout all the rules contained in R307 that are written under Section 19-2-104. Without these definitions, the remaining rules would be unenforceable.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: R307-101 has been amended nine times since the last five-year review, five of those amendments were the annual update to the incorporation by reference (DAR 33493, DAR 39352, DAR 40423, DAR 41355, and DAR 42433). DAR 39994 updated this rules reference to the new PM10 Maintenance Plan. DAR 39751 updated this rule to reflect changes to definitions made in H.B. 229, passed during the 2015 General Session. DAR 41814 and DAR 42676 were amendments to definitions. DAR 42676 received one comment and it was addressed in the final adoption. No other comments were received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R307-101-2 includes all the definitions that apply throughout all the rules contained in R307. Without them, the remaining rules would be unenforceable, so this rule should be continued. Section R307-101-3 incorporates by reference the most current version of the Code of Federal Regulations cited in many of the Air Quality Rules. In addition, R307-101 is also a component of Utah's State Implementation Plan, which has been federally approved.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 11/13/2018

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**Environmental Quality, Air Quality**  
**R307-150**  
**Emission Inventories**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43368  
FILED: 11/13/2018

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(c) allows the Air Quality Board to make rules "...requiring persons engaged in operations which result in air pollution to ...file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant." Rule R307-150 implements that statute by specifying the sources that must submit information, the information that must be submitted, and the due date for submissions. Rule R307-150 meets the requirements of the federal Consolidated Emissions Reporting Rule, 40 CFR 51.30(e) (67 FR 39602).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: R307-150 has been amended two times since its last five-year review in 2014. DAR 39749 changed any use of the term "contaminant" to "pollutant." DAR 42107 implemented the permit-by-rule and received four comments that were addressed during the adoption of those amendments. No other comments have been received for this rule since the the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The state of Utah is required under the federal Consolidated Emissions Reporting Rule (CERR), 40 CFR 51.30(e), to submit inventories of emissions from a variety of sources to the Federal Environmental Protection Agency on a schedule specified in the federal rule. Rule R307-150 specifies the kinds of sources that must submit inventory information to the state in order for the state to meet its responsibilities under the CERR. In addition, the inventory information is required in order to determine the fees paid by sources subject to 40 CFR, Part 70, and Rule R307-415, the Operating Permit Program, and for determining where emission reductions can be achieved if needed for Utah to remain in attainment of the federal health standards for air quality. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 11/13/2018

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**Environmental Quality, Air Quality**  
**R307-405**  
**Permits: Major Sources in Attainment  
or Unclassified Areas (PSD)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43369  
FILED: 11/13/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that "Notice shall be given to the director by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged." Rule R307-405 implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. Subsection 19-2-104(3)(q) states that the Air Quality Board may meet the requirements of federal laws. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: R307-405 has been amended one time since the last five-year review. DAR No. 39846 amended this rule to align it with federal regulations that withdrew five Title V sources that were identified as greenhouse gas sources. No comments were received for these amendments, and no other comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-405 is required by Section 19-2-108. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan, which is incorporated by reference under R307-110. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166. Without this plan, Environmental Protection Agency would be required to impose a federal implementation plan.

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

ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 11/13/2018

**Environmental Quality, Air Quality  
 R307-840  
 Lead-Based Paint Program Purpose,  
 Applicability, and Definitions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 43370  
 FILED: 11/13/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-840 is one of three Air Quality rules that implements Subsection 19-2-104(1)(i) which authorizes the Air Quality Board to make rules to "implement the lead-based paint requirements for training, certification, and performance of 15 USC Sec. 2601 et seq., Toxic Substances Control Act, Subchapter IV--Lead Exposure Reduction, Sections 402 and 404."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-840 has not been amended since the last five-year review. No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without Rule R307-840, Utah would not have authority to implement the federal requirements; implementation would be carried out by the Environmental Protection Agency. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY  
 AIR QUALITY ROOM FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Thomas Gunter by phone at 801-536-4419, or by Internet E-mail at thomasgunter@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 11/13/2018

**Health, Children's Health Insurance Program  
R382-3**

**Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43376  
FILED: 11/14/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-40-103 requires the Department of Health (Department) to implement the Children's Health Insurance Program through administrative rules. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind these rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements provisions that govern accountable care organization performance measures, which reduce non-emergency services in emergency departments.

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

HEALTH  
CHILDREN'S HEALTH INSURANCE PROGRAM  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143109, Salt Lake City, UT 84114-3109

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/14/2018

**Health, Health Care Financing, Coverage and Reimbursement Policy  
R414-1B**

**Payment for Limited Abortion Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43390  
FILED: 11/15/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health (Department) the authority to adopt, amend, or rescind rules, and Section 76-7-331 prohibits the use of public funds for certain abortion services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it prohibits the unauthorized use of public funds for certain abortion services by Medicaid providers.

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

HEALTH  
HEALTH CARE FINANCING, COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/15/2018

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/15/2018

Health, Health Care Financing, Coverage and Reimbursement Policy  
**R414-11**  
Podiatric Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 43391  
FILED: 11/15/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind these rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements podiatric services as described in the Medicaid provider manual and in the Medicaid State Plan.

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

HEALTH  
HEALTH CARE FINANCING, COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

Health, Health Care Financing, Coverage and Reimbursement Policy  
**R414-14**  
Home Health Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 43361  
FILED: 11/07/2018

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules, and Section 26-1-5 grants the Department the authority to adopt, amend, or rescind these rules. Additionally, 42 CFR 440.70 governs the services allowed under the Home Health Services program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements home health care for Medicaid members through its definitions, eligibility requirements, service coverage criteria, and provider reimbursement.

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

HEALTH  
HEALTH CARE FINANCING, COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W

SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

AUTHORIZED BY: Joseph Miner, MD, Executive Director

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2018

EFFECTIVE: 11/14/2018

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-54  
Speech-Language Pathology Services**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-90  
Diabetes Self-Management Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43377  
FILED: 11/14/2018

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43389  
FILED: 11/15/2018

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind these rules.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules, and Section 26-1-5 grants the Department the authority to adopt, amend, or rescind these rules. Additionally, 42 CFR 440.130 authorizes preventive services for Medicaid members.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements speech-language pathology services as described in the Medicaid provider manual and in the Medicaid State Plan.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it allows Medicaid members to successfully manage and control diabetes through the Diabetes Self-Management Training program.

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

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

HEALTH  
HEALTH CARE FINANCING, COVERAGE AND  
REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W

HEALTH  
HEALTH CARE FINANCING, COVERAGE AND  
REIMBURSEMENT POLICY  
CANNON HEALTH BLDG

288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

HEALTH CARE FINANCING, COVERAGE AND  
REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov, or by mail at PO Box 143102, Salt Lake City, UT 84114-3102

AUTHORIZED BY: Joseph Miner, MD, Executive Director

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/15/2018

EFFECTIVE: 11/15/2018

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-401  
Nursing Care Facility Assessment**

**Health, Disease Control and  
Prevention, Laboratory Services  
R438-13**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43388  
FILED: 11/15/2018

**Rules for the Certification of Institutions  
to Obtain Impounded Animals in the  
State of Utah**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules. Additionally, Section 26-1-30 requires the Department to adopt rules for the enforcement and administration of the nursing facility assessment, and Title 26, Chapter 35a requires the Department to impose an assessment on nursing care facilities to ensure patient care and quality services.

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43360  
FILED: 11/07/2018

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule outlines the proper use and housing for experimental animals received from a shelter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments that support or oppose this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements the nursing facility assessment, which fosters quality and cost-effective services for Medicaid members who reside in nursing facilities.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There are still animals used in experimental research therefore this rule continues to be necessary.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HEALTH  
DISEASE CONTROL AND PREVENTION,  
LABORATORY SERVICES

4431 S 2700 W  
TAYLORSVILLE, UT 84119  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov, or by mail at PO Box 142109, Salt Lake City, UT 84114-2109

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2018

## Public Safety, Peace Officer Standards and Training **R728-503**

Utah Minimum Standards for All  
Emergency Pursuit Policies to be  
Adopted by Public Agencies that  
Operate Authorized Emergency Pursuit  
Vehicles

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43366  
FILED: 11/12/2018

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 41-6a-212(6), and establishes minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received pertaining to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized by Subsection 41-6a-212(6), which requires the Department of Public Safety to establish minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SAFETY  
PEACE OFFICER STANDARDS AND TRAINING  
410 W 9800 S  
SANDY, UT 84070  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov  
♦ Scott Stephenson by phone at 801-256-2322, by FAX at 801-256-0600, or by Internet E-mail at sstephen@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 11/12/2018

## School and Institutional Trust Lands, Administration **R850-61** Native American Grave Protection and Repatriation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43362  
FILED: 11/08/2018

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) authorize the Director of the School and Institutional Trust Lands Administration (Agency) to prescribe the management of cultural resources on trust lands. Subsection 53C-1-201(5)(b) directs that the Agency provide policies for the ownership and control of Native American remains, as defined in Section 9-9-402, that are discovered or excavated on School and Institutional Trust Lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the Agency concerning this rule since the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As the Agency continues to develop uses for the lands and resources granted to the various trusts, proper

handling of cultural resources located on those trust lands is of great importance. The continued need for this rule, which outlines the manner by which the Agency handles the ownership and control of Native American remains and artifacts discovered on trust lands, continues to be of great importance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCHOOL AND INSTITUTIONAL TRUST LANDS  
 ADMINISTRATION ROOM 500  
 675 E 500 S  
 SALT LAKE CITY, UT 84102-2818  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 11/08/2018

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**School and Institutional Trust Lands,  
 Administration  
 R850-110  
 Motor Vehicle Travel Designations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 43363  
 FILED: 11/08/2018

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53C-1-302(1)(a)(ii)

and 53C-2-301(1)(g) authorize the Director of the School and Institutional Trust Lands Administration (Agency) to establish rules consistent with general policies prescribed by the Board of Trustees, and regulate the unauthorized use or occupation of trust lands. Subsection 41-22-10.1(2) authorizes the Agency to designate trails, streets, or highways as open to off-highway vehicle use.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received concerning this rule since the previous five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Off-highway vehicle usage is a rapidly increasing recreational past-time. This rule is crucial to the effective management of this usage on trust lands in order to protect the environment and the value of these lands. This rule contains the guidelines establishing routes, usage, signage, types of vehicles, route widths, and restrictions therefore this rule continues to be necessary.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCHOOL AND INSTITUTIONAL TRUST LANDS  
 ADMINISTRATION ROOM 500  
 675 E 500 S  
 SALT LAKE CITY, UT 84102-2818  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 11/08/2018

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal & Reenact  
REP = Repeal

### Commerce

Occupational and Professional Licensing  
No. 43188 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing  
Published: 10/01/2018  
Effective: 11/08/2018

### Education

Administration  
No. 43190 (AMD): R277-106. Utah Professional Practices Advisory Commission Appointment Process  
Published: 10/01/2018  
Effective: 11/07/2018

No. 43202 (AMD): R277-474. School Instruction and Human Sexuality  
Published: 10/01/2018  
Effective: 11/07/2018

No. 43193 (REP): R277-510. Educator Licensing - Highly Qualified Assignment  
Published: 10/01/2018  
Effective: 11/07/2018

No. 43201 (AMD): R277-527. International Guest Teachers  
Published: 10/01/2018  
Effective: 11/07/2018

No. 43191 (AMD): R277-708. Enhancement for At-Risk Students  
Published: 10/01/2018  
Effective: 11/07/2018

### Environmental Quality

Waste Management and Radiation Control, Waste Management  
No. 43207 (AMD): R315-301-7. Self-Inspection of Solid Waste Management Facility  
Published: 10/01/2018  
Effective: 11/09/2018

### Health

Disease Control and Prevention, Environmental Services  
No. 43182 (NEW): R392-800. General Sanitation in Public Places  
Published: 10/01/2018  
Effective: 11/14/2018

Family Health and Preparedness, Emergency Medical Services  
No. 43203 (AMD): R426-5. Emergency Medical Services Training and Certification Standards  
Published: 10/01/2018  
Effective: 11/07/2018

Disease Control and Prevention, Laboratory Services  
No. 43185 (AMD): R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah  
Published: 10/01/2018  
Effective: 11/07/2018

Human Services  
Substance Abuse and Mental Health  
No. 43213 (NEW): R523-17. Behavioral Health Crisis Response Systems Standards  
Published: 10/01/2018  
Effective: 11/15/2018

No. 43214 (NEW): R523-18. Mobile Crisis Outreach Teams Certification Standards  
Published: 10/01/2018  
Effective: 11/15/2018

NOTICES OF RULE EFFECTIVE DATES

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Insurance

Title and Escrow Commission

No. 43187 (AMD): R592-10-5. Office Report

Published: 10/01/2018

Effective: 11/09/2018

Judicial Performance Evaluation Commission

Administration

No. 43181 (AMD): R597-3. Judicial Performance

Evaluations

Published: 10/01/2018

Effective: 11/07/2018

Tax Commission

Auditing

No. 43199 (AMD): R865-9I-2. Determination of Utah

Resident Individual Status Pursuant to Utah Code Ann.

Sections 59-10-103 and 59-10-136

Published: 10/01/2018

Effective: 11/13/2018

No. 43198 (AMD): R865-19S-32. Leases and Rentals

Pursuant to Utah Code Ann. Section 59-12-103

Published: 10/01/2018

Effective: 11/13/2018

Property Tax

No. 43200 (AMD): R884-24P-33. 2018 Personal Property

Valuation Guides and Schedules Pursuant to Utah Code Ann.

Section 59-2-301

Published: 10/01/2018

Effective: 11/13/2018

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2018 through November 15, 2018. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Administration</u>					
R13-1	Public Petitions for Declaratory Orders	43059	5YR	07/05/2018	2018-15/99
R13-3	Americans with Disabilities Act Grievance Procedures	42634	AMD	04/23/2018	2018-6/4
<u>Facilities Construction and Management</u>					
R23-5	Contingency Funds	42347	AMD	01/23/2018	2017-24/8
R23-9	Cooperation with Local Government Planning	42348	AMD	01/23/2018	2017-24/9
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	42846	AMD	06/26/2018	2018-10/6
R23-30	State Facility Energy Efficiency Fund	43069	5YR	07/11/2018	2018-15/99
<u>Finance</u>					
R25-5	Payment of Meeting Compensation (Per Diem) to Boards	42570	5YR	02/08/2018	2018-5/141
R25-6	Relocation Reimbursement	42571	5YR	02/08/2018	2018-5/141
R25-7	Travel-Related Reimbursements for State Employees	42572	5YR	02/08/2018	2018-5/142
R25-7	Travel-Related Reimbursements for State Employees	42854	AMD	06/21/2018	2018-10/9
R25-7	Travel-Related Reimbursements for State Employees	43095	AMD	09/21/2018	2018-16/6
R25-7-6	Reimbursement for Meals	43008	NSC	07/03/2018	Not Printed
R25-8	Overtime Meal Allowance	42573	5YR	02/08/2018	2018-5/142
<u>Inspector General of Medicaid Services (Office of)</u>					
R30-1	Office of Inspector General of Medicaid Services	42658	REP	06/01/2018	2018-7/6
R30-1	Office Procedures	42694	NEW	06/01/2018	2018-7/10
R30-2	Adjudicative Procedures	42695	NEW	06/01/2018	2018-7/14
R30-3	Declaratory Orders	42696	NEW	06/01/2018	2018-7/17
<u>Purchasing and General Services</u>					
R33-7	Request for Proposals	42932	AMD	07/26/2018	2018-12/6
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	42934	EMR	07/01/2018	2018-12/39
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43236	EMR	10/29/2018	2018-21/137

AGRICULTURE AND FOOD

Administration

R51-5	Rural Rehabilitation Loans	42559	NEW	05/02/2018	2018-5/4
R51-6	Agricultural Advisory Board Electronic Meeting	42472	NEW	03/23/2018	2018-3/4

Conservation Commission

R64-2	Conservation Commission Electronic Meetings	42944	5YR	06/01/2018	2018-12/43
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Plant Industry

R68-5	Grain Inspection	42530	5YR	01/30/2018	2018-4/95
R68-5	Grain Inspection	42531	NSC	02/27/2018	Not Printed
R68-9	Utah Noxious Weed Act	42943	5YR	06/01/2018	2018-12/43
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	42721	5YR	03/26/2018	2018-8/145
R68-16	Quarantine Pertaining to Pine Shoot Beetle, Tomicus piniperda	42930	5YR	05/23/2018	2018-12/44
R68-20	Utah Organic Standards	42872	AMD	07/09/2018	2018-11/6
R68-24	Industrial Hemp Research Pilot Program for Growers	43145	NEW	10/31/2018	2018-17/6
R68-25	Industrial Hemp Research Pilot Program for Processors	43146	NEW	10/31/2018	2018-17/9
R68-26	Industrial Hemp Product Registration and Labeling	43147	NEW	10/31/2018	2018-17/14

Regulatory Services

R70-940	Standards and Testing of Motor Fuel	42422	R&R	02/22/2018	2018-2/6
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ALCOHOLIC BEVERAGE CONTROL

Administration

R81-4C	Limited Restaurant Licenses	43057	5YR	07/03/2018	2018-15/100
R81-4D	On-Premise Banquet License	43058	5YR	07/03/2018	2018-15/101
R81-7-5	Additional Consideration for Event Permits	43349	NSC	11/13/2018	Not Printed
R81-10	Off-Premise Beer Retailers	42931	5YR	05/23/2018	2018-12/44

ATTORNEY GENERAL

Administration

R105-2	Records Access and Management	42367	AMD	02/07/2018	2018-1/2
R105-2	Records Access and Management	43075	AMD	09/07/2018	2018-15/52

CAREER SERVICE REVIEW OFFICE

Administration

R137-1	Grievance Procedure Rules	42844	AMD	09/28/2018	2018-10/15
R137-1	Grievance Procedure Rules	42844	CPR	09/28/2018	2018-12/36
R137-2	Government Records Access and Management Act	42779	5YR	04/09/2018	2018-9/69

COMMERCE

Administration

R151-4	Department of Commerce Administrative Procedures Act Rule	43148	AMD	10/11/2018	2018-17/17
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Consumer Protection

R152-1	Utah Division of Consumer Protection Buyer Beware List	42827	NSC	04/26/2018	Not Printed
R152-1a	Internet Content Provider Ratings Methods	42828	NSC	04/26/2018	Not Printed
R152-1a-1	Authority and Purpose	43196	NSC	09/27/2018	Not Printed
R152-6	Utah Administrative Procedures Act Rules	42830	NSC	04/26/2018	Not Printed
R152-11	Utah Consumer Sales Practices Act	42831	NSC	04/26/2018	Not Printed
R152-15	Business Opportunity Disclosure Act Rules	42832	NSC	04/26/2018	Not Printed
R152-20	New Motor Vehicle Warranties	42833	NSC	04/26/2018	Not Printed
R152-21	Credit Services Organizations Act Rules	42834	NSC	04/26/2018	Not Printed
R152-21	Credit Services Organizations Act Rule	43280	5YR	10/16/2018	2018-22/169

RULES INDEX

R152-22	Charitable Solicitations Act	42835	NSC	04/26/2018	Not Printed
R152-23	Utah Health Spa Services	42836	NSC	04/26/2018	Not Printed
R152-26	Telephone Fraud Prevention Act	42837	NSC	04/26/2018	Not Printed
R152-32a	Pawnshop and Secondhand Merchandise Transaction Information Act Rules	42838	NSC	04/26/2018	Not Printed
R152-32a	Pawnshop and Secondhand Merchandise Transaction Information Act Rule	42929	5YR	05/17/2018	2018-12/45
R152-34	Postsecondary Proprietary School Act Rules	42839	NSC	04/26/2018	Not Printed
R152-34a	Utah Postsecondary School State Authorization Act Rules	42840	NSC	04/26/2018	Not Printed
R152-39	Child Protection Registry Rules	42841	NSC	04/26/2018	Not Printed
R152-42	Uniform Debt-Management Services Act Rules	42842	NSC	04/26/2018	Not Printed
R152-49	Immigration Consultants Registration Act Rules	42843	NSC	04/26/2018	Not Printed
<u>Corporations and Commercial Code</u>					
R154-100	Utah Administrative Procedures Act Rules	43184	5YR	09/11/2018	2018-19/97
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	42582	AMD	04/09/2018	2018-5/7
R156-1	General Rule of the Division of Occupational and Professional Licensing	43188	AMD	11/08/2018	2018-19/4
R156-5a	Podiatric Physician Licensing Act Rule	42869	5YR	05/01/2018	2018-10/155
R156-9	Funeral Service Licensing Act Rule	43092	AMD	09/10/2018	2018-15/53
R156-11a	Cosmetology and Associated Professions Licensing Act Rule	42778	AMD	06/07/2018	2018-9/4
R156-24b-102	Definitions	42623	NSC	03/14/2018	Not Printed
R156-31b	Nurse Practice Act Rule	42448	5YR	01/08/2018	2018-3/69
R156-37c	Utah Controlled Substance Precursor Act Rule	42848	5YR	04/24/2018	2018-10/155
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	43015	AMD	08/21/2018	2018-14/6
R156-42a	Occupational Therapy Practice Act Rule	43017	AMD	08/23/2018	2018-14/9
R156-42a	Occupational Therapy Practice Act Rule	43247	5YR	10/09/2018	2018-21/141
R156-44a	Nurse Midwife Practice Act Rule	43171	5YR	08/28/2018	2018-18/33
R156-46a	Hearing Instrument Specialist Licensing Act Rule	43364	5YR	11/08/2018	Not Printed
R156-46b-401	In General	42428	NSC	01/18/2018	Not Printed
R156-47b-102	Definitions	43150	AMD	10/11/2018	2018-17/22
R156-55b-102	Definitions	42429	NSC	01/18/2018	Not Printed
R156-61	Psychologist Licensing Act Rule	43216	5YR	09/18/2018	2018-20/31
R156-63a	Security Personnel Licensing Act Contract Security Rule	42925	5YR	05/15/2018	2018-11/55
R156-63b	Security Personnel Licensing Act Armored Car Rule	42924	5YR	05/15/2018	2018-11/56
R156-67	Utah Medical Practice Act Rule	43137	AMD	10/09/2018	2018-17/24
R156-68	Utah Osteopathic Medical Practice Act Rule	42447	5YR	01/08/2018	2018-3/70
R156-68	Utah Osteopathic Medical Practice Act Rule	43142	AMD	10/09/2018	2018-17/28
R156-70a	Physician Assistant Practice Act Rule	42807	AMD	06/21/2018	2018-10/24
R156-71	Naturopathic Physician Practice Act Rule	42785	AMD	06/07/2018	2018-9/8
R156-72	Acupuncture Licensing Act Rule	42338	AMD	01/23/2018	2017-24/11
R156-74	Certified Court Reporters Licensing Act Rule	42847	5YR	04/24/2018	2018-10/156
R156-78-502	Unprofessional Conduct	42243	AMD	01/02/2018	2017-22/28
<u>Real Estate</u>					
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	42809	AMD	07/13/2018	2018-10/27
R162-2e	Appraisal Management Company Administrative Rules	43165	AMD	11/05/2018	2018-18/6
R162-2f	Real Estate Licensing and Practices Rules	43012	AMD	08/21/2018	2018-14/12
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	43011	AMD	09/04/2018	2018-14/16

CORRECTIONS

Administration

R251-103	Undercover Roles of Offenders	43186	5YR	09/12/2018	2018-19/97
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R251-105	Applicant Qualifications for Employment with Department of Corrections	43217	5YR	09/19/2018	2018-20/32
R251-114	Offender Long-Term Health Care - Notice	42637	5YR	03/07/2018	2018-7/161
EDUCATION					
<u>Administration</u>					
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R277-101	Public Participation in Utah State Board of Education Meetings	42750	NSC	04/12/2018	Not Printed
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**ABBREVIATIONS**

AMD = Amendment (Proposed Rule)  
 CPR = Change in Proposed Rule  
 EMR = 120-Day (Emergency) Rule  
 EXD = Expired Rule  
 EXP = Expedited Rule  
 EXT = Five-Year Review Extension  
 GEX = Governor's Extension  
 LNR = Legislative Nonreauthorization  
 NEW = New Rule (Proposed Rule)  
 NSC = Nonsubstantive Rule Change  
 R&R = Repeal and Reenact (Proposed Rule)  
 REP = Repeal (Proposed Rule)  
 5YR = Five-Year Notice of Review and Statement of Continuation

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<u>accountability</u> Education, Administration	42755	R277-109	NSC	04/12/2018	Not Printed
<u>accreditation</u> Education, Administration	42885 43050	R277-410 R277-505	NSC NSC	05/17/2018 07/06/2018	Not Printed Not Printed
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<u>ADAP</u> Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health	42328	R388-805	AMD	02/01/2018	2017-23/28
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	42115	R307-510	NEW	03/05/2018	2017-19/81
	42115	R307-510	CPR	03/05/2018	2018-3/65
	42858	R307-510	NSC	05/14/2018	Not Printed
	42551	R307-801	EXT	01/31/2018	2018-4/115
	42669	R307-801	5YR	03/08/2018	2018-7/179
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	42675	R307-403	CPR	08/02/2018	2018-13/126
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	42854	R25-7	AMD	06/21/2018	2018-10/9
	43095	R25-7	AMD	09/21/2018	2018-16/6
	43008	R25-7-6	NSC	07/03/2018	Not Printed
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<u>Alaskan Natives</u>					
Education, Administration	43115	R277-923	NSC	08/01/2018	Not Printed
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Alcoholic Beverage Control, Administration	43057	R81-4C	5YR	07/03/2018	2018-15/100
	43058	R81-4D	5YR	07/03/2018	2018-15/101
	43349	R81-7-5	NSC	11/13/2018	Not Printed
	42931	R81-10	5YR	05/23/2018	2018-12/44
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Education, Administration	43289	R277-716	NSC	10/25/2018	Not Printed
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Education, Administration	43297	R277-503	NSC	10/25/2018	Not Printed
<u>amendments</u>					
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	42968	R657-53	AMD	08/09/2018	2018-13/86
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Health, Family Health and Preparedness, Primary Care and Rural Health	42334	R434-150	NEW	04/14/2018	2017-24/18

	42671	R434-150	NSC	04/14/2018	Not Printed
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	42965	R657-3	AMD	08/09/2018	2018-13/69
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	43185	R438-13	AMD	11/07/2018	2018-19/62
	43360	R438-13	5YR	11/07/2018	Not Printed
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	42992	R277-481	AMD	08/07/2018	2018-13/16
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	42488	R414-308-3	EMR	01/19/2018	2018-4/87
	42628	R414-308-3	AMD	05/08/2018	2018-6/17
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	43200	R884-24P-33	AMD	11/13/2018	2018-19/87
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	42108	R307-401	CPR	03/05/2018	2018-3/49
	42574	R307-401	NSC	03/05/2018	Not Printed
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	42481	R277-490	AMD	03/14/2018	2018-3/13
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	42669	R307-801	5YR	03/08/2018	2018-7/179

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	42669	R307-801	5YR	03/08/2018	2018-7/179

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	42850	R746-8	AMD	06/21/2018	2018-10/118
	42425	R746-343	REP	02/21/2018	2018-2/28

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	42857	R277-113	NEW	06/22/2018	2018-10/28

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UTech Board of Trustees, Administration	43093	R945-1	NEW	09/07/2018	2018-15/92
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	42317	R501-7	CPR	05/02/2018	2018-6/34
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	42776	R277-215	NSC	04/13/2018	Not Printed	
	42777	R277-216	NSC	04/13/2018	Not Printed	
	43034	R277-498	NSC	07/06/2018	Not Printed	
	43300	R277-510	NSC	10/25/2018	Not Printed	
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	42324	R277-515	AMD	01/09/2018	2017-23/11	
	43305	R277-515	NSC	10/25/2018	Not Printed	
	43310	R277-520	NSC	10/25/2018	Not Printed	
	43315	R277-528	NSC	10/25/2018	Not Printed	
	43316	R277-530	NSC	10/25/2018	Not Printed	
	42439	R277-530-3	NSC	01/25/2018	Not Printed	
	43317	R277-531	NSC	10/25/2018	Not Printed	
	42806	R277-533	AMD	06/07/2018	2018-9/23	
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	43051	R277-506	NSC	07/06/2018	Not Printed
	42762	R277-508	5YR	04/02/2018	2018-8/145
	42698	R277-508	AMD	05/08/2018	2018-7/24
	43299	R277-508	NSC	10/25/2018	Not Printed
	42325	R277-519	AMD	01/09/2018	2017-23/16
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Governor, Economic Development	43152	R357-22	NEW	10/11/2018	2018-17/52
<u>Rural Rehabilitation Loans</u>					
Agriculture and Food, Administration	42559	R51-5	NEW	05/02/2018	2018-5/4
<u>RV parks</u>					
Health, Disease Control and Prevention, Environmental Services	43076	R392-301	R&R	09/10/2018	2018-15/84
<u>Ryan White Part B Program</u>					
Health, Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health	42328	R388-805	AMD	02/01/2018	2017-23/28
<u>safety</u>					
Education, Administration	42878	R277-400	NSC	05/17/2018	Not Printed
Labor Commission, Boiler, Elevator and Coal Mine Safety	42565	R616-2-3	AMD	04/09/2018	2018-5/49
	42566	R616-3-3	AMD	04/09/2018	2018-5/51
	43164	R616-3-4	AMD	10/22/2018	2018-18/23
Labor Commission, Occupational Safety and Health	43121	R614-1-4	AMD	10/15/2018	2018-16/22
Public Service Commission, Administration	42331	R746-409-1	AMD	01/09/2018	2017-23/75
Regents (Board Of), University of Utah, Administration	42617	R805-1	5YR	02/22/2018	2018-6/50
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Education, Administration	42878	R277-400	NSC	05/17/2018	Not Printed
	43138	R277-400	AMD	10/16/2018	2018-17/32
<u>safety regulations</u>					
Transportation, Motor Carrier	42336	R909-19	AMD	01/24/2018	2017-24/60
<u>Sage Grouse</u>					
Natural Resources, Administration	42309	R634-3	CPR	03/26/2018	2018-4/71
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Natural Resources, Administration	42309	R634-3	NEW	03/26/2018	2017-23/67
<u>salary</u>					
Education, Administration	42804	R277-523	NEW	06/07/2018	2018-9/21
<u>salary adjustments</u>					
Education, Administration	42756	R277-110	NSC	04/12/2018	Not Printed
<u>sales tax</u>					
Tax Commission, Auditing	43198	R865-19S-32	AMD	11/13/2018	2018-19/85
<u>salons</u>					
Health, Disease Control and Prevention, Environmental Services	42491	R392-700	5YR	01/19/2018	2018-4/97
<u>sanitation</u>					
Health, Disease Control and Prevention, Environmental Services	42684	R392-100	AMD	05/18/2018	2018-7/93
	42685	R392-102	NEW	05/18/2018	2018-7/97
	42491	R392-700	5YR	01/19/2018	2018-4/97
<u>satellite</u>					
Education, Administration	42610	R277-482	AMD	04/09/2018	2018-5/22
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Transportation, Program Development	43160	R926-13	AMD	10/23/2018	2018-18/27

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	43062	R277-602	NSC	07/26/2018	Not Printed
	43140	R277-602	AMD	10/16/2018	2018-17/42
	43153	R277-703	NSC	08/31/2018	Not Printed
UTech Board of Trustees, Administration	43093	R945-1	NEW	09/07/2018	2018-15/92
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Education, Administration	43060	R277-600	NSC	07/26/2018	Not Printed
	43061	R277-601	NSC	07/26/2018	Not Printed
<u>school certification</u>					
Commerce, Real Estate	43011	R162-2g	AMD	09/04/2018	2018-14/16
<u>school community councils</u>					
Education, Administration	42800	R277-477	AMD	06/07/2018	2018-9/13
	42323	R277-491-4	AMD	01/09/2018	2017-23/9
<u>school counselors</u>					
Education, Administration	42923	R277-461	NEW	07/09/2018	2018-11/25
<u>school employees</u>					
Education, Administration	43306	R277-516	NSC	10/25/2018	Not Printed
<u>school enrollment</u>					
Education, Administration	42889	R277-419	NSC	05/17/2018	Not Printed
	43132	R277-419-2	AMD	10/16/2018	2018-17/38
	42899	R277-445	NSC	05/17/2018	Not Printed
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Education, Administration	42999	R277-497	AMD	08/07/2018	2018-13/24
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	43112	R277-920	NSC	08/01/2018	Not Printed
<u>school leaders</u>					
Education, Administration	42327	R277-920	AMD	01/09/2018	2017-23/19
	43112	R277-920	NSC	08/01/2018	Not Printed
<u>school nurses</u>					
Education, Administration	42480	R277-415	NEW	03/14/2018	2018-3/11
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	42915	R277-107	AMD	07/09/2018	2018-11/12
	42762	R277-508	5YR	04/02/2018	2018-8/145
	42698	R277-508	AMD	05/08/2018	2018-7/24
	43299	R277-508	NSC	10/25/2018	Not Printed
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Education, Administration	43284	R277-711	NSC	10/25/2018	Not Printed
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	42951	R384-201	5YR	06/07/2018	2018-13/141
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	42884	R277-409	NSC	05/17/2018	Not Printed
	43021	R277-474	NSC	07/06/2018	Not Printed
	43202	R277-474	AMD	11/07/2018	2018-19/18
	42800	R277-477	AMD	06/07/2018	2018-9/13
	42958	R277-617	5YR	06/07/2018	2018-13/140
	42994	R277-617	AMD	08/07/2018	2018-13/30
	42620	R277-719	5YR	02/26/2018	2018-6/48
	42614	R277-719	AMD	04/09/2018	2018-5/39
Environmental Quality, Air Quality	42551	R307-801	EXT	01/31/2018	2018-4/115
	42669	R307-801	5YR	03/08/2018	2018-7/179
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	43084	R277-492	5YR	07/13/2018	2018-15/102
	42998	R277-492	AMD	08/07/2018	2018-13/20
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	42630	R495-885	AMD	07/18/2018	2018-6/23
	42630	R495-885	CPR	07/18/2018	2018-11/50
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UTech Board of Trustees, Administration	43093	R945-1	NEW	09/07/2018	2018-15/92
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	42671	R434-150	NSC	04/14/2018	Not Printed	
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	43119	R277-752	NSC	08/01/2018	Not Printed
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	42993	R277-525	AMD	08/07/2018	2018-13/28
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	42439	R277-530-3	NSC	01/25/2018	Not Printed
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	43026	R277-485	NSC	07/06/2018	Not Printed
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