

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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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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# 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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## **Prohibiting Unlawful Workplace Harassment, Discrimination, and Retaliation and Ordering a Mandatory Supervisor Training Program, Utah Exec. Order No. 2019-1**

### **EXECUTIVE ORDER**

Prohibiting Unlawful Workplace Harassment, Discrimination, and Retaliation and Ordering a Mandatory Supervisor Training Program

**WHEREAS**, the State of Utah does not tolerate unlawful workplace harassment, discrimination, or retaliation and is committed to providing an inclusive, respectful, and civil work environment for state employees and all citizens who interact with state government;

**WHEREAS**, a respectful workplace reduces stress, interpersonal conflict, and absenteeism and increases job satisfaction, productivity, knowledge sharing, understanding, and employee retention;

**WHEREAS**, unlawful harassment and discrimination based on a protected class undermine the very integrity of the workplace, damage or destroy morale, and offend social and legal standards of acceptable behavior; and

**WHEREAS**, training supervisors and managers on how to prevent, recognize, and respond to objectionable conduct that--left unchecked--could rise to the level of prohibited conduct promotes a respectful workplace free from unlawful harassment, discrimination, and retaliation.

**NOW, THEREFORE, I, GARY R. HERBERT**, Governor of the State of Utah, by the authority vested in me by the Constitution and laws of this State do hereby order the following:

#### **1. Application**

a. This executive order applies to all departments; provided, however, that Section 4 of this executive order applies only to those departments that are subject to the rulemaking authority of the Department of Human Resource Management. This order does not apply to any employee of the Legislature or Judiciary.

#### **2. Definitions.** For purposes of this executive order, the following terms shall have the following meanings.

a. "Department" means a department of the Executive Branch and includes the State Tax Commission, National Guard, Board of Pardons and Parole, and an institution of higher education; provided, however, that Section 4 of this executive order applies only to those departments that are subject to the rulemaking authority of the Department of Human Resource Management.

b. "Department employee" means an individual employed by a department.

c. "Department supervisor" means a department employee who manages the work-related activities of one or more department employees.

d. "Director" means the head of a department or an equivalent position by any title.

e. "Department of Human Resource Management" means the Utah Department of Human Resource Management created in Title 67, Chapter 19, Section 5.

f. "Supervisor Training" means the Leading with Respect training program or any subsequent training program prepared by the Department of Human Resource Management for department supervisors.

### 3. General Prohibition

a. Unlawful harassment, discrimination, and retaliation are hereby prohibited in any and every department workplace.

b. All departments shall: (i) inform all department employees of this executive order forbidding unlawful harassment, discrimination, and retaliation in every department workplace; (ii) inform department employees of their rights; (iii) ensure access to a complaint system for individuals within their departments consistent with Equal Employment Opportunity Commission guidelines; (iv) ensure that department employees receive training on the prevention of workplace harassment; and (v) ensure that department supervisors receive training regarding their responsibility in identifying unlawful harassment, discrimination, and retaliation, and appropriately dealing with complaints and solving related problems.

### 4. Specific Requirements

#### a. Department of Human Resource Management

i. **Rules and Policies.** The Department of Human Resource Management shall issue rules and policies to ensure implementation of this order.

ii. **Employee Training.** The Department of Human Resource Management shall continue to issue rules and policies that require mandatory unlawful harassment awareness and prevention training for all department employees and continue to provide departments with appropriate education programs on the prevention of workplace harassment for all department employees, including additional training for department supervisors.

iii. **Supervisor Training.** The Department of Human Resource Management shall issue rules and policies that require mandatory training for department supervisors on the prevention of workplace harassment. Department supervisors shall complete one course of supervisor training--the Leading with Respect program or any subsequent supervisor training program prepared by the Department of Human Resource Management--before December 31, 2019, and then as determined in rule by the Department of Human Resource Management.

iv. **Continued Guidance.** The Department of Human Resource Management shall continue to provide guidance on department policy statements and complaint procedures.

b. **Departments.** The director of each department shall: (i) inform all department employees of this order in their respective departments; (ii) inform department employees of their rights; (iii) ensure access to a complaint system for individuals within their departments consistent with rules issued by the Department of Human Resource Management and the Equal Employment Opportunity Commission guidelines; (iv) ensure that all department supervisors complete required supervisor training; and (v) ensure that all department employees complete required workplace harassment and abusive conduct prevention training provided by the Department of Human Resource Management.

**IN WITNESS WHEREOF**, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol Complex in Salt Lake City, Utah, this 5th day of February 2019.

(State Seal)

**Gary R. Herbert**  
**Governor**

Attest:

**Spencer J. Cox**  
**Lieutenant Governor**

2019/001/EO

**End of the Executive Documents Section**





## 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 February 02, 2019, 12:00 a.m., and February 15, 2019, 11:59 p.m. are included in this, the March 01, 2019, 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 April 1, 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 June 29, 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

**Capitol Preservation Board (State),  
Administration  
R131-13  
Health Reform -- Health Insurance  
Coverage in State Contracts --  
Implementation**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 43517  
FILED: 02/12/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to comply with the provisions of Section 63C-9-403.

**SUMMARY OF THE RULE OR CHANGE:** The changes in this rule outline the requirements of contractors and subcontractors, that do work for the state of Utah, to carry health insurance for their employees.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63C-9-403 and Subsection 63C-9-301(3)(a)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of these rule changes. The changes to this rule provide no fiscal impact as they only incorporate the changes in statute, which are already in effect.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments. The changes to this rule do not affect local governments.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings as a result of these rule changes. The changes to this rule provide no fiscal impact as they only incorporate the changes in statute, which are already in effect.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings as a result of these rule changes. The changes to this rule provide no fiscal impact as they only incorporate the changes in statute, which are already in effect.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs as a result of these rule changes. The changes to this rule provide no fiscal impact as they only incorporate the changes in statute, which are already in effect.

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

There are no anticipated fiscal impacts on businesses as a result of these rule changes. The changes to this rule only incorporate the changes in statute, which are already in effect.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
CAPITOL PRESERVATION BOARD (STATE)  
ADMINISTRATION  
ROOM E110 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114-2110  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Dana Jones by phone at 801-538-3074, or by Internet E-mail at danajones@utah.gov  
◆ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

AUTHORIZED BY: Allyson Gamble, 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 above. Inestimable impacts for Non-Small Businesses are described below.

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

There are no anticipated regulatory or fiscal impact that this rule will have on non-small businesses. This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

**R131. Capitol Preservation Board (State), Administration.**

**R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.**

**R131-13-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

**R131-13-2. Authority.**

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

**R131-13-3. De[fnitions]monstration of Compliance.**

(1) [Except as otherwise stated in this rule, terms used in this rule are defined in Section]At such time as a contractor becomes subject to the requirements of section 63C-9-403, the contractor shall obtain and submit to the Executive Director a written Statement of Compliance in the form published on the website of the Utah Division of Facilities Construction and Management ("DFCM Website").

(2) [In addition:]At such time as a subcontractor of a contractor becomes subject to the requirements of section 63C-9-403, the contractor shall obtain from the subcontractor a written Statement of Compliance in the form published on the DFCM Website.

[ (a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(d) "State" means the state of Utah.]

**R131-13-4. [Applicability of Rule]Compliance Subject to Audit.**

(1) Except as provided in Subsection R131-13-4(2) or R131-13-4(3) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, on behalf of the Board, on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract; and

(b) applies to a subcontractor if the subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.

(2) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R131-13 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

**R131-13-5. Contractor and Subcontractors to Comply with Section 63C-9-403.**

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

(2) If a subcontractor of the contractor is subject to Section 63C-9-403(2) or Rule R131-13-4, the contractor shall:

(a) Place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(b) certify to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

**R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.**

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this Rule R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or

suit that would suspend, disrupt or terminate the design or construction.

**R131-13-7. Requirements and Procedures a Contractor Must Follow.**

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403:

(1) ~~Demonstrating Compliance with Health Insurance Requirements.~~ A Contractor (including Design Professional) shall demonstrate compliance with Section 63C-9-403(5) (a) or (b) at the time of execution of each initial contract described in Section 63C-9-403(2).

(a) ~~The~~A contractor's or subcontractor's compliance with section 63C-9-403 is subject to an audit by the [Department ( )/Capitol Preservation Board ( )] or the Office of the Legislative Auditor General. [

(b) A Contractor (including Design Professional) subject to Section 63C-9-403(2) shall demonstrate to the executive director that the Contractor has and will maintain an offer of qualified health insurance coverage for the Contractor's employees and employees' dependents:

(c) Such demonstration shall be a certification on the form provided by the executive director. The form shall also require compliance with R131-13-5(2) regarding subcontractors.

(d) The actuarially equivalent determination required for the qualified health insurance coverage is met by the Contractor if the Contractor provides the executive director with a written statement of actuarial equivalency attached to the certification, which is not more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. The Contractor is responsible for collecting the statements as required by law from any of the subcontractors at any tier that must do so.

(2) For purposes of this Rule R131-13-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 63C-9-403(1)(e) that is provided by the department of Health, in accordance with Subsection 26-40-115(2).

(3) The health insurance must be available upon the first day of the calendar month following sixty days from the date of hire.

(4) Any contract subject to this Rule R131-13 shall contain a provision requiring compliance with this Rule R131-13 from the time of execution and throughout the duration of the contract.]

**R131-13-5. Penalties.**

(5) ~~Hearing and Penalties:~~

(a) ~~Hearing.~~ Any hearing for any penalty under this Rule R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) ~~Penalties that may be imposed by the Board or Executive Director.~~]The penalties that may be imposed [by the Board or executive director] if a contractor[, consultant,] or subcontractor [or subconsultant, at any tier,] intentionally violates the provisions of [Subsections (2) through (9) of] 63C-9-403 may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the [S]state upon the first violation[, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract];

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the [S]state upon the second violation[, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract];

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who were[as] not offered qualified health insurance coverage during the duration of the contract.

(c) (i) ~~In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of Section 63C-9-403 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.~~

(ii) An employer has an affirmative defense to a cause of action under Rule R131-13-7(5)(e)(i) as provided in Subsection 63C-9-403(7)(a)(ii). An employee has a private right of action only against the employee's employer to enforce the provisions of Subsection 63C-9-403(7).]

**R131-13-8]6. Benchmark available on DFCM Website[Not Create any Contractual Relationship with any Subcontractor or Subconsultant].**

The commercially equivalent benchmark for the qualified health insurance coverage that is provided by the Department of Health in accordance with Utah Code section 26-40-115(2) is available on the DFCM Website.[Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.]

**KEY: health insurance, contractors, contracts**

**Date of Enactment or Last Substantive Amendment: [November 21, 2016]2019**

**Notice of Continuation: May 1, 2014**

**Authorizing, and Implemented or Interpreted Law: 63C-9-403; 63C-9-301(3)(a)**

Commerce, Occupational and  
Professional Licensing  
**R156-15A**  
State Construction Code Administration  
and Adoption of Approved State  
Construction Code Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43522

FILED: 02/14/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These proposed amendments conform this rule to changes enacted by H.B. 250 (2018), Building Permit and Impact Fees Amendments. These amendments also clarify and update certain provisions, as recommended by the Division of Occupational and Professional Licensing (Division) in collaboration with the Uniform Building Code Commission Education Advisory Committee, and the Utah Land Use and Eminent Domain Advisory Board.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-15A-102, these proposed amendments add the following definitions: "Advisory Board" or "LUEDAB" means the Land Use and Eminent Domain Advisory Board created in Section 13-43-202; and "Ombudsman" means the Office of Property Rights Ombudsman created in Section 13-43-201. In Section R156-15A-201, this proposed amendment updates the reference to the "education fund" because the Education Advisory Committee will now review and make recommendations for two education funds per Subsections 15A-1-209(5)(c)(i) and (ii). In Section R156-15A-210, this proposed amendment updates a citation. In Section R156-15A-230, these proposed amendments allocate funds in accordance with Subsection 15A-1-209(5). The 85% remitted to the Division shall now be deposited into three separate funding accounts: 30% to the Division's "Building Code Inspector Training Fund", 10% to the Division's "Building Code Construction-Related Training Fund", and 60% to the Ombudsman's "Land Use Fund". The Building Code Inspector Training Fund and Building Code Construction-Related Training Fund (as well as the monies from the Factory Built Housing Fees Account under Subsection 58-56-17.5(2)(c)) shall be held, administered, and distributed in accordance with the procedures, standards, and policies set forth in Section R156-15A-231 as amended. The Land Use Fund shall be held, administered, and distributed in accordance with the procedures, standards, and policies established in new Section R156-15A-232. In Section R156-15A-231, these proposed amendments establish and clarify the procedures, standards, and policies for administration of the new Building Code Inspector Training Fund and Building Code Construction-Related Training Fund (and of the existing Factory Built Housing Fees Account). This section retains most of the procedures/standards/policies that applied to the old building code training fund, but to ensure compliance with H.B. 250 (2018) there is further clarification of the appropriate funding expenditure categories for each fund. Section R156-15A-232 is a proposed new section that establishes the procedures, standards, and policies for administration of the Office of the Property Rights Ombudsman's new Land Use Fund in accordance with statutory changes made in H.B. 250

(2018). This proposed new section sets forth the requirements for utilizing the land use funds, the grant application process, and establishes eligible expenses for the reimbursement policy. In Section R156-15A-301, the Division proposes deleting this obsolete section "Factory Built Housing Dispute Resolution" in its entirety. Statutory changes made by H.B. 51 (2013) removed the requirement to provide a dispute resolution program by rule, and the Division now only refers disputes to HUD (the federal Department of Housing and Urban Development).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 15A-1-205 and Subsection 15A-1-204(6) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These proposed amendments will apply to the state agencies charged with administering the funding accounts/education funds described in these proposed amendments. However, these proposed amendments are not expected to impact state government revenues or expenditures over and above the fiscal impact of H.B. 250 (2018) and H.B. 51 (2013), because these amendments only update this rule to implement the current statutory requirements. In particular, these amendments merely delete obsolete provisions, and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule. No other fiscal impact to the state is expected, beyond a minimal cost to the Division of approximately \$75 to print and distribute this rule once the proposed amendments are made effective.
- ◆ **LOCAL GOVERNMENTS:** These proposed amendments are not expected to impact local governments' revenues or expenditures over and above the fiscal impact of H.B. 250 (2018) and H.B. 51 (2013), because these amendments only update this rule to implement the current statutory requirements. In particular, these amendments merely delete obsolete provisions, and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.
- ◆ **SMALL BUSINESSES:** These proposed amendments will apply to any small-business providers who will seek grant money from any of the funds described in these amendments. This may include providers in this industry (NAICS 813910) who will offer code training for licensed inspectors, who will offer code training for construction-related licensees, and who will offer land use training. The Division estimates that there are approximately 38 small businesses who may offer code trainings, and approximately 15 who may offer land use trainings. Nevertheless, these proposed amendments are not expected to impact any small businesses revenues or expenditures because these amendments only update this rule to implement current statutory requirements. In particular, these amendments merely delete obsolete provisions in accordance with H.B. 51

(2013), and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These proposed amendments will apply to individual providers who will seek grant money from any of the funding accounts described in these amendments. This may include individual providers offering code training for licensed inspectors, individual providers offering code training for construction-related licensees, and individual providers offering land use training. These proposed amendments will also indirectly apply to Utah's approximately 670 licensed building inspectors seeking code training, and to Utah's approximately 53,000 construction-related licensees seeking code training. These proposed amendments will also indirectly apply to individuals using the land use education and training funds administered by the Office of the Property Rights Ombudsman. However, these proposed amendments are not expected to have an impact on these other persons over and above the fiscal impact of H.B. 250 (2018) and H.B. 51 (2013), because these amendments only update this rule to implement current statutory requirements. In particular, these amendments merely delete obsolete provisions, and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments are not expected to impose compliance costs upon any affected persons over and above the fiscal impact of H.B. 250 (2018) and H.B. 51 (2013), because these amendments only update this rule to implement current statutory requirements. These amendments delete obsolete provisions, and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These proposed amendments conform this rule to changes enacted by H.B. 250 (2018), Building Permit and Impact Fees Amendments. These amendments also clarify and update certain provisions, as recommended by the Division in collaboration with the Uniform Building Code Commission Education Advisory Committee and the Utah Land Use and Eminent Domain Advisory Board. In Section R156-15A-102, these amendments add definitions for the terms "Advisory Board" or "LUEDAB" and for the term "Ombudsman". In Section R156-15A-201, this amendment updates the reference to the "education fund" because the Education Advisory Committee will now review and make recommendations for two education funds per Subsections 15A-1-209(5)(c)(i) and (ii). In Section R156-15A-230, these amendments allocate funds in accordance with Subsection

15A-1-209(5). The 85% remitted to the Division shall now be deposited into three separate funding accounts: 30% to the Division's "Building Code Inspector Training Fund", 10% to the Division's "Building Code Construction-Related Training Fund" and 60% to the Ombudsman's "Land Use Fund". The Building Code Inspector Training Fund and the Building Code Construction-Related Training Fund (as well as the monies from the Factory Built Housing Fee Account under Subsection 58-56-17.5(2)(c)) shall be held, administered, and distributed in accordance with the procedures, standards, and policies set forth in Section R156-15A-231, as amended. The Land Use Fund shall be held, administered, and distributed in accordance with the procedures, standards, and policies established in new Section R156-15A-232. In Section R156-15A-231, these amendments establish and clarify the procedures, standards, and policies for administration of the new Building Code Inspector Training Fund and the Building Code Construction-Related Training Fund (and of the existing Factory Built Housing Fees Account). This section retains most of the procedures, standards, and policies that applied to the old building code training fund. To ensure compliance with H.B. 250 (2018), there is further clarification of the appropriate funding expenditure categories for each fund. Section R156-15A-232 is a new section that establishes the procedures, standards, and policies for administration of the Office of the Property Rights Ombudsman's new Land Use Fund in accordance with statutory changes made in H.B. 250 (2018). This new section sets forth the requirements for utilizing the land use funds, the grant application process and establishes eligible expenses for the reimbursement policy. In Section R156-15A-301, the Division proposes deleting in its entirety this obsolete section regarding "Factory Built Housing Dispute Resolution". Statutory changes made by H.B. 51 (2013) removed the requirement to provide a dispute resolution program, and the Division now only refers disputes to HUD. **Small Businesses:** These proposed amendments will apply to any small-business providers who will seek grant money from any of the funds described in these amendments. This may include providers in this industry (NAICS 813910) who will offer code training for licensed inspectors, who will offer code training for construction-related licensees and who will offer land use training. Nevertheless, these proposed amendments are not expected to impact any small business revenues or expenditures because the amendments only update this rule to implement current statutory requirements. In particular, the amendments merely delete obsolete provisions in accordance with H.B. 51 (2013), and reallocate collected fees into new and updated education funds, as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule. **Non-Small Businesses:** These proposed amendments will apply to any non-small business providers, such as trade schools (NAICS 611519), who may seek grant money from any of the education funds to offer code training for licensed inspectors, construction-related licensees, or land use training. Based upon input from those in this industry, the Division estimates that there are no non-small businesses participating in any funds, and that none will participate in the future. Nonetheless, these proposed amendments are not

expected to impact any non-small business revenues or expenditures because these amendments only update this rule to implement current statutory requirements. In particular, these amendments merely delete obsolete provisions in accordance with H.B. 51 (2013), and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.

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:

◆ Robyn Barkdull by phone at 801-530-6727, by FAX at 801-530-6511, or by Internet E-mail at rbarkdull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 03/19/2019 01:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

AUTHORIZED BY: Mark Steinagel, 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	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 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 above. Inestimable impacts for Non-Small Businesses are described below.

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

These proposed amendments will apply to any non-small business providers such as trade schools (NAICS 611519) who may seek grant money from any of the education funds to offer code training for licensed inspectors/construction-related licensees, or land use training. Based upon input from those in this industry, the Division estimates that there are no non-small businesses currently participating in any funds, and that none will participate in the future. Nonetheless, these proposed amendments are not expected to impact any non-small business revenues or expenditures because the amendments only update the rule to implement current statutory requirements. In particular, the amendments merely delete obsolete provisions in accordance with H.B. 51 (2013), and reallocate collected fees into new and updated education funds as mandated by H.B. 250 (2018), with procedures, standards, and policies based upon those that already existed in this rule.

Agency sign off: The head of the Department of Commerce, Francine A. Giani, has reviewed and approved this fiscal analysis.

**R156. Commerce, Occupational and Professional Licensing.  
 R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.**

**R156-15A-102. Definitions.**

In addition to the definitions in Title 15A, as used in Title 15A or this rule:

(1) "Advisory Board" or "LUEDAB" mean the Land Use and Eminent Domain Advisory Board created under Section 13-43-202.

(2) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(3) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), fees assessed by a state agency or state political subdivision for the issuance of permits for construction, alteration, remodeling, repair, and installation, including building, electrical, mechanical and plumbing components.

(4) "Ombudsman" means the Office of the Property Rights Ombudsman created under Section 13-43-201.

(5) "Permit number", as used in Section 15A-1-209, means the standardized building permit number described below in Sections R156-15A-220 and R156-15A-221.

(6) "Refuses to establish a method of appeal" means, with respect to Subsection 15A-1-207(3)(b), that:

(a) a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or

(b) that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

**R156-15A-201. Advisory Peer Committees Created - Membership - Duties.**

(1) There is created in accordance with Subsections 58-1-203(1)(f) and 15A-1-203(10)(d), the following advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of ten members, which shall include a factory built housing ~~dealer~~ representative, a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board, or as directed by the Uniform Building Code Commission, or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act as chair and another to act as vice chair. The chair and vice chair shall serve for one-year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Subsection 15A-1-203(10)(d). The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) reviewing codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) reviewing requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission; and

(c) submitting recommendations concerning the reviews made under Subsection (a) and (b).

(4) The duties and responsibilities of the Education Advisory Committee shall include:

(a) reviewing and making recommendations regarding funding requests that are submitted; and

(b) reviewing and making recommendations regarding budget, revenue and expenses of the education funds established pursuant to Subsection 15A-1-209(5)(c)(i) and (ii).

**R156-15A-210. Compliance with Codes - Appeals.**

If the Commission is required to act as an appeals board in accordance with the provisions of Subsection 15A-1-207(3)(b), the following shall regulate the convening and conduct of the appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appellant may petition the Commission to act as the appeals board.

(2) The appellant shall file the request to convene the Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Sections R151-4-~~201~~202 and R151-4-203. A request by other means shall not be considered and shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the appellant requests, but does not receive a timely final written decision, the appellant shall submit an affidavit to this effect in lieu of including a copy of the final written decision with the request.

(4) The request shall be filed with the Division no later than 30 days following the issuance of the compliance agency's disputed written decision.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the appeal. If it is determined that a conflict does exist, the member shall be excused from participating in the proceeding.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require Commission approval.

**R156-15A-230. Building Code Training Fund Fees and Factory Built Housing Fees.**

(1) In accordance with Subsection 15A-1-209(5)(a), on April 30, July 31, October 31 and January 31 of each year, each state agency and each state political subdivision that assesses a building permit fee shall;



~~\_\_\_\_\_ (a) file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and [shah]~~

~~\_\_\_\_\_ (b) remit [80%]85% of the amount of the surcharge collected to the Division.~~

~~\_\_\_\_\_ (2) In accordance with Subsection 15A-1-209(5)(c), the Division shall allocate and deposit the monies received under Subsection 15A-1-209(5)(a)(ii) into the following three separate funding accounts:~~

~~\_\_\_\_\_ (a) 30% to the Division's Building Code Inspector Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to building inspectors;~~

~~\_\_\_\_\_ (b) 10% to the Division's Building Code Construction-Related Training Fund, to be held, administered, and distributed pursuant to Section R156-15A-231 to provide education regarding codes and code amendments to individuals licensed in construction trades or related professions; and~~

~~\_\_\_\_\_ (c) 60% to the Ombudsman's Land Use Fund, to be held, administered, and distributed pursuant to Section R156-15A-232 to provide education and training regarding:~~

~~\_\_\_\_\_ (i) the drafting and application of land use laws and regulations; and~~

~~\_\_\_\_\_ (ii) land use dispute resolution.~~

~~\_\_\_\_\_ (3) In accordance with Subsection 58-56-17.5(2)(c), the Division shall hold, administer, and distribute a portion of the monies in the Factory Built Housing Fees Account pursuant to Section R156-15A-231 to provide education for factory built housing.~~

**R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account.**

~~In accordance with Subsections 15A-1-209(5)(c) and 58-56-17.5(2)(c), and Section R156-15A-230, the [Division shall use monies received under Subsection 15A-1-209(5)(a) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. In accordance with Subsection 58-56-17.5(2)(c), the Division shall use a portion of the monies received under Subsection 58-56-17.5(1) to provide education for factory built housing. The ]following procedures, standards, and policies are established to apply to the administration of the Building Code Inspector Training Fund, the Building Code Construction-Related Training Fund, and the Factory Built Housing Fees Account[these separate funds]:~~

~~(1) The Division shall not approve or deny education grant requests from [the Building Code Training Fund or from the Factory Built Housing Fees Account]any separate fund or account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.~~

~~(2) Appropriate funding expenditure categories include:~~

~~(a) for the Building Code Inspector Training Fund or the Factory Built Housing Fees Account, grants in the form of reimbursement funding to the following organizations that administer code-related[~~code related~~] training or factory built housing educational events, seminars, or classes:~~

~~(i) schools, colleges, universities, departments of universities, or other institutions of learning;~~

~~(ii) construction trade associations;~~

~~\_\_\_\_\_ (iii) professional associations or organizations; and~~

~~\_\_\_\_\_ ([#]iv) governmental agencies;~~

~~\_\_\_\_\_ (b) for the Building Code Construction-Related Training Fund, grants in the form of reimbursement funding to the following organizations that administer code-related training events, seminars, or classes:[~~

~~\_\_\_\_\_ (i) construction trade associations; or~~

~~\_\_\_\_\_ (ii) professional associations;~~

~~\_\_\_\_\_ ([#]c) costs or expenses incurred as a result of [educational]code events, seminars, or classes directly administered by the Division;~~

~~\_\_\_\_\_ ([#]d) expenses incurred for the salary, benefits, or other compensation and related expenses resulting from the employment of a Board Secretary;~~

~~\_\_\_\_\_ ([#]e) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and~~

~~\_\_\_\_\_ ([#]f) other related expenses as determined by the Division.~~

~~(3) The following procedure shall be used for submission, review, and payment of funding grants:~~

~~(a) A funding grant applicant shall submit a completed ["Application for Building Code Training Funds Grant" or a "Factory Built Housing Education Grant Application" a minimum of]application on forms provided for that purpose by the Division, at least 15 days prior to the meeting at which the request is to be considered, and prior to the training event[~~on forms provided for that purpose by the Division~~]. Applications received less than 15 days prior to a meeting may be denied.~~

~~(b) Payment of approved funding grants [will]shall be made as reimbursement after:~~

~~\_\_\_\_\_ (i) the approved event, class, or seminar has been held; and~~

~~\_\_\_\_\_ (ii) [and]the required receipts, invoices, and supporting documentation, including proof of payment[;] if requested by the Division or Committee, have been submitted to the Division.~~

~~(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.~~

~~(d)(i) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice [must]shall be given to the Division of such an extenuating circumstance.~~

~~\_\_\_\_\_ (ii) Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.~~

~~(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:~~

~~(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including [~~but not limited to~~]:~~

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) whether the grant applicant agrees to charge a cost for the training event, class, or seminar which is uniform across all categories of attendees;

(c) the prior record of the program sponsor in providing codes training, including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(d) costs of the facility, including:

(i) the location of a facility or venue, or the type of event, seminar, or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed ~~[educational]~~ event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(e) the estimated cost for instructor fees, including:

(i) a reimbursement rate not to exceed \$150 per instruction hour without further review and approval by the Committee;

(ii) the experience or expertise of the instructor in the proposed training area;

(iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar, or class;

(v) travel expenses; and

(vi) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar ~~[educational]~~ events, seminars, or classes;

(f) the estimated cost of advertising materials, brochures, registration, and agenda materials, including:

(i) printing costs that may include creative or design expenses;

(ii) whether printed materials comply with Subsection (4) (b); and

(iii) delivery or mailing costs;

(g) other reasonable and comparable cost alternatives for each proposed expense item;

(h) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and

(i) a total reimbursement rate of the lesser of \$10 per student hour or the cost of all approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee, based upon the criteria in Subsection (4), may reimburse the following items in addition to the lesser of \$10 per student hour or the cost of all approved actual expenditures:

(a) text books, code books, or code update books;

(b) cost of one Division licensee mailing list per provider per two-year renewal period;

(c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians, or elevator mechanics; and

(d) reasonable cost of advertising materials, brochures, registration and agency materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) delivery or mailing costs.

(6) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or ~~[code-related]~~ code-related training or factory built housing education, and education or activities in other areas.

(b) Only the prorated portions of a joint function that apply to the purposes of a separate fund ~~[are code and code-related or factory built housing education]~~ are eligible for a funding grant from that fund.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the ~~[code and code-amendment or factory built housing education]~~ purposes of the separate fund; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures, and agenda or training materials for a Building Code Training funded ~~[educational]~~ event, seminar, or class shall include a statement that acknowledges that partial funding of the ~~[training]~~ program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(8) Advertising materials, brochures, and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable ~~[with the exception of]~~ except for the costs described in Subsection (5)(d).

**R156-15A-232. Administration of the Office of the Property Rights Ombudsman's Land Use Fund.**

In accordance with Subsection 15A-1-209(5)(c)(iii) and Section R156-15A-230, the following procedures, standards, and policies are established for the administration of the Ombudsman's Land Use Fund:

(1)(a) The Ombudsman shall use the Land Use Fund to pay its expenses, including personnel salaries, course development costs, travel, and other related expenses as agreed upon by the Ombudsman and the Department of Commerce, that are incurred as a result of:

(i) administering the Land Use Fund;

(ii) conducting training activities under Subsection 13-43-203(1)(g); and

(iii) creating, compiling, and updating model land use ordinances.

(b) Expenses paid to the Ombudsman under this Subsection (1) shall first be approved by:

(i) the Advisory Board; and

(ii) the Department's executive director.

(2) The Ombudsman shall use the Land Use Fund to provide grants to providers of land use training programs, as follows:

(a) Eligibility Criteria.

(i) To be eligible to receive funds, the provider's program shall primarily provide training on Utah land use law, and in particular the drafting and application of land use laws and regulations.

(ii) Program training may take the form of live or prerecorded seminars or lectures, continuing education programs, video production, or development and distribution of training materials and written information.

(iii) The following factors shall apply to the consideration of whether to approve, approve with conditions, or deny a grant request:

(A) previous experience in providing training;

(B) cost estimates, including cost-per-attendee estimates;

(C) how well the education fits in with the land use education and training objectives of Subsection 13-43-203(1)(i);

(D) whether the training addresses current Utah land use law, issues, and best practices;

(E) how well the text relates to the course objectives;

(F) the target audience - for example, whether the education is targeted for land use officials such as commissioners, council members, etc.;

(G) the expected number of students, hours of instruction, and the ratio of students per dollar spent;

(H) the location or region of the state targeted by the education;

(I) the percentage of training costs paid for by the student;

(J) any other considerations deemed important by the Advisory Board, the Ombudsman, and the Department; and

(K) available funds.

(b) Reimbursement Criteria.

(i) Funds may be expended only as reimbursement for expenditures incurred in providing land use training.

(ii) Reimbursement for instructor fees shall be limited to \$150 per hour per instructor and to \$3,000 total for all instructors per day, including travel and meals. Any excess instructor fees, including honoraria for keynote speakers, shall require further justification, review, and approval. Instructor fees may not be paid to State or local government employees if the instructor is also being paid wages for the same time period.

(iii) Reimbursement for instructor meals, mileage, and lodging may not exceed current State of Utah rates for mileage and daily travel per diem.

(iv) Reimbursement for other expenses such as workbooks, study guides, textbooks used in the education course, meeting rooms or facilities, audio/visual equipment rental costs, if

needed, printing costs, advertising and publication costs, and mailing, postage and handling costs, shall be approved as needed.

(v) Programs that charge a fee to attendees are eligible for reimbursement on a net cost basis after subtracting collected student fees and sponsorships. Any items that do not qualify for State funding shall be paid for by the participant or sponsor of the program.

(vi) The Ombudsman, Land Use Fund manager, and the Department may in their joint discretion grant approval based upon a total per student reimbursement rather than an actual cost reimbursement.

(c) Procedures for the submission, review, and payment of funding grants shall be as follows:

(i) A funding grant applicant shall submit a completed Request for Land Use Training Funds application to the Ombudsman on a form provided for that purpose by the Ombudsman. The application shall require a description of the proposed land use training program, including program objectives, instructors, target audience, and budget, and may encompass other criteria including that set forth in Subsection (2)(a).

(ii) The Ombudsman shall submit the completed Request for Land Use Training Funds application to the Advisory Board for selection or proposal by the Advisory Board. The submission, selection, or proposal may be done in person or by electronic means in accordance with Title 63G.

(iii) A Request for Land Use Training Funds application selected or proposed by the Advisory Board shall then be reviewed by the Ombudsman's director, the Land Use Fund's manager, and the Department's executive director, or their designees. They may jointly approve the application, approve the application with conditions, or deny the application.

(iv) To apply for reimbursement based on an approved Request for Land Use Training Funds application, the approved program shall submit one or more completed Request for Reimbursement forms to the Ombudsman as follows:

(A) The Request for Reimbursement shall be on a form provided by the Ombudsman for that purpose, and shall include receipts, invoices, and supporting documentation of expenditures, including proof of payment if requested by the Ombudsman or the Department of Commerce.

(B) The complete Request for Reimbursement shall be submitted within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice shall be given to the Ombudsman of such an extenuating circumstance. Failure to submit a complete Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Ombudsman.

(v) A Request for Reimbursement accepted by the Ombudsman for review shall then be reviewed by the Ombudsman director, the Land Use Fund manager, and the Department executive director or their designees, and may be approved, approved with conditions, or denied.

(vi) Reimbursement funds may be paid only:

(A) for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value; and

(B) pursuant to a Request for Reimbursement form that has been signed as approved by the Ombudsman director, the Land

Use Fund manager, and the Department executive director, or their designees.

**~~[R156-15A-301. Factory Built Housing Dispute Resolution.~~**

~~In accordance with Subsection 15A-1-306(1)(f)(i), the dispute resolution program is defined and clarified as follows:~~

~~(1) Persons with manufactured housing disputes may file a complaint with the Division.~~

~~(2) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:~~

~~(a) negotiate an informal resolution with the parties involved;~~

~~(b) take any informal or formal action allowed by any applicable statute, including but not limited to:~~

~~(A) pursuing disciplinary proceedings under Section 58-1-401;~~

~~(B) assessing civil penalties under Subsection 15A-1-306(2); and~~

~~(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.~~

~~(3) In addition, persons with manufactured housing disputes may pursue a civil remedy.]~~

**KEY:** contractors, building codes, building inspections, licensing

**Date of Enactment or Last Substantive Amendment:** ~~[September 26, 2016]~~2019

**Notice of Continuation:** June 20, 2016

**Authorizing, and Implemented or Interpreted Law:** 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205

Education, Administration  
**R277-100**  
Definitions for Utah State Board of  
Education (Board) Rules

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 43510  
FILED: 02/08/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of these rule changes is to add new definitions in Rule R277-100, which will apply to newly proposed reporting requirements in proposed Rule R277-483, as well as apply consistent definitions for application throughout Utah State Board of Education (Board) rules.

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-100 is amended with new definitions. These include: Alternative School, Comprehensive dropout and intervention program, ESSA, Preschool, Program, and School as well as apply consistent definitions for application throughout this rule.

**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:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because these amendments are providing the addition of new definitions in Rule R277-100, which will apply to newly proposed reporting requirements in Rule R277-483, as well as apply consistent definitions for application throughout Board rule. These definitions include: Alternative School, Comprehensive dropout and intervention program, ESSA, Preschool, Program, and School.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because these amendments are providing the addition of new definitions in Rule R277-100, which will apply to newly proposed reporting requirements in Rule R277-483, as well as apply consistent definitions for application throughout Board rule. These definitions include: Alternative School, Comprehensive dropout and intervention program, ESSA, Preschool, Program, and School.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because these amendments are providing the addition of new definitions in Rule R277-100, which will apply to newly proposed reporting requirements in Rule R277-483, as well as apply consistent definitions for application throughout Board rule. These definitions include: Alternative School, Comprehensive dropout and intervention program, ESSA, Preschool, Program, and School.

◆ **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 these amendments are providing the addition of new definitions in Rule R277-100, which will apply to newly proposed reporting requirements in Rule R277-483, as well as apply consistent definitions for application throughout Board rule. These definitions include: Alternative School, Comprehensive dropout and intervention program, ESSA, Preschool, Program, and School.

**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 non-small 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 non-small 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 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

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 non-small 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 non-small 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.**

**R277-100. Definitions for Utah State Board of Education (Board) Rules.**

**R277-100-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; and
  - (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.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

**R277-100-2. Definitions.**

- (1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.
- (2) "Agency" means:
  - (a) an entity governed by the Board;
  - (b) an LEA; or
  - (c) a grant sub-recipient.
- (3) "Board" means the State Board of Education.
- (4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and Board rule.
- (5) "Comprehensive dropout intervention and prevention program" means a program that:
  - (a) addresses needs of students who are not succeeding in a traditional school environment;
  - (b) provides targeted instruction that increases student credit-earning rates toward graduation; and

(c) partners with community entities to provide a continuum of services with the focus of preparing students for life after high school.

([5]6) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

([6]7) "Dual enrollment student" means a student who:

(a) is enrolled simultaneously in:

- (i) a private school or home school; and
- (ii) a public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which the LEA provides instruction.

([7]8) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Board rule.

(9) "ESSA" or the "Every Student Succeeds Act" means the Congressional act, which reauthorized the Elementary and Secondary Education Act of 1965, which is found at 20 U.S.C. 6301, et seq.

([8]10)(a) "Evaluate" or "review" means to observe and assess a program receiving state or federal funds with an objective of making recommendations, if appropriate, for necessary changes or improvement.

(b) An "evaluation" or "review" may include providing training and technical assistance on program-related matters and performing on-site reviews of program operations.

([9]11)(a) "External audit" means an appraisal activity established under the direction of an individual or entity outside of the subject agency to examine and evaluate the adequacy and effectiveness of:

- (i) agency control systems;
- (ii) compliance;
- (iii) performance; and
- (iv) financial position.

(b) An external audit is conducted in accordance with current professional and industry technical standards, as applicable, for external audits.

(1[0]2)(a) "Home school student" means a student who:

(a) attends a home school pursuant to Section 53G-6-204;

and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(1[+]3) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(1[2]4) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(1[3]5)(a) "Internal audit" means an independent appraisal activity established within an agency as a control system to examine and objectively evaluate the adequacy and effectiveness of other internal control systems within the agency.

(b) An "internal audit" is conducted in accordance with the current:

(i) International Standards for the Professional Practice of Internal Auditing; or

(ii) Government Auditing Standards, issued by the Comptroller General of the United States.

(1[4]8)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(1[5]9)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

([+6]20)(a) "Monitor" or "oversee" means to formally supervise, inspect, or examine the compliance, performance, or finances of a program receiving state or federal education funding.

(b) A monitoring or oversight program may include:

(i) review of financial and performance reports required of the subject program;

(ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;

(iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and

(iv) any function performed in an evaluation or review.

([+7]21) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

([+8]22) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(23) "Preschool" means a school in which all the students enrolled are pre-kindergarten.

([+9]24)(a) "Private school student" means a student who:

(a) attends a private school; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(25) "Program" means an instructional environment that does not meet the criteria to be classified a school, as described in Subsection (26).

(2[0]6) "Public school student" means a student who:

(a) attends an LEA governed public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding.

(27) "School" means an instructional environment that:

(a) is governed by an LEA board;

(b) has an assigned administrator;

(c) has enrolled students that generate average daily membership hours during the school year;

(d) has assigned instructional staff;

(e) provides instruction in the Utah core standards;

(f) has one or more grade groups in the range from kindergarten through grade 12; and

(g) is not a program for students enrolled in another public school.

(2[+]8) "Split enrollment student" means a student who is:

(a) regularly enrolled at two schools within two LEAs at the same time;

(b) eligible for graduation and other services at both schools; and

(c) subject to the split enrollment provisions of R277-419, counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

(2[2]9) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

([2]30) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

([24]31) "USDB" means the Utah Schools for the Deaf and the Blind.

**KEY: Board of Education, rules, definitions**

**Date of Enactment or Last Substantive Amendment: 2019**

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

Education, Administration  
**R277-117**  
 Utah State Board of Education  
 Protected Documents

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 43511

FILED: 02/08/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) Rule R277-117 is being repealed because this rule no longer serves a purpose under the new procurement structure of the Board.

SUMMARY OF THE RULE OR CHANGE: Rule R277-122 fulfills the purpose of Rule R277-117 under the new

procurement code and structure, therefore, Rule R277-117 is being repealed in its entirety. Rule R277-122 is created to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53E-3-501(1)(c)(iii) and Subsection 53E-3-501(1)(c)(iv)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule repeal is not expected to have any fiscal impact on state government revenues or expenditures because this rule no longer serves a purpose under the new procurement structure of the Board. Rule R277-122 fulfills the purpose of this rule under the new procurement code and structure.

◆ LOCAL GOVERNMENTS: This rule repeal is not expected to have any material impact on local governments' revenues or expenditures because this rule no longer serves a purpose under the new procurement structure of the Board. Rule R277-122 fulfills the purpose of this rule under the new procurement code and structure.

◆ SMALL BUSINESSES: This rule repeal is not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule no longer serves a purpose under the new procurement structure of the Board. Rule R277-122 fulfills the purpose of this rule under the new procurement code and structure.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule repeal is not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because this rule no longer serves a purpose under the new procurement structure of the Board. Rule R277-122 fulfills the purpose of this rule under the new procurement code and structure.

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 non-small 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 non-small 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 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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 non-small 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 non-small 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.**

~~R277-117. Utah State Board of Education Protected Documents.~~

~~R277-117-1. Definitions.~~

- ~~A. "Board" means the Utah State Board of Education.~~
- ~~B. "Request for proposal or RFP" means an official application or offer for services provided to the Board/USOE in response to an advertised opportunity to provide goods or services.~~
- ~~C. "RFP-like document" means a grant application or a proposal of any kind offered in response to a Board request for applicants to provide goods or services to public education.~~
- ~~D. "USOE" means the Utah State Office of Education.~~

~~R277-117-2. Authority and Purpose.~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Subsection 53E-3-501(1)(c)(iii), which requires the Board to set minimum standards for alternative and pilot programs, Subsection 53E-3-501(1)(c)(iv) which requires the Board to set minimum standards for curriculum and instruction requirements, Subsection 53E-3-501(c)(i), which requires the Board to set minimum standards for school productivity and cost effectiveness measures, Subsection 63G-2-305(6) which allows the Board to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity consistent with other provisions of Section 63G-2-305 and Section 63G-2-309, and by Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purposes of this rule:~~

~~(1) is to maintain fairness, objectivity, efficiency and timeliness, as the Board fulfills constitutional and statutory directives to and responsibilities for Utah public schools and public school programs.~~

~~(2) to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.~~



~~**R277-117-3. Board Procedures in Preparing and Releasing RFP and RFP-like Proposals or Grants:**~~

~~A. The Board or USOE staff acting for the Board shall act consistent with Section 63G-6a-101 et seq. in advertising and soliciting services for Utah public schools unless the Board is specifically exempt from the procurement process in which case the Board shall continue to protect the integrity of a competitive process with the provisions of this rule.~~

~~B. The Board shall develop RFPs or RFP-like requests using the plain language of state statute(s) or federal regulation(s) that directs the Board to seek competitive or non-competitive applications or proposals for services that are funded through a public education appropriation to the Board.~~

~~C. The USOE, acting for the Board, shall use legislative intent to develop RFPs or RFP-like requests only when legislative intent is specifically written in state law, is passed by the State Legislature and is specific to the RFP in development.~~

~~D. The Board may request written information from legislators or legislative staff to explain the intent of individual bill sponsors; all written information received under R277-117-3 shall be public information.~~

~~E. Board members or USOE staff may seek at the Board's or staff's sole discretion, additional information and expertise to facilitate the development of an RFP. All information gathered under this provision shall be public information, including the source of the information, unless the records are specifically protected under Section 63G-2-305.~~

~~F. The Board may allow for public comment at Board meetings or Board committee meetings to discuss the legislative intent for RFPs.~~

~~**R277-117-4. Confidentiality of RFP and RFP-like Proposals or Grants Prior to Release by the USOE:**~~

~~A. The RFP or RFP-like proposal shall be a protected document under Subsection 63G-2-305(22) until the proposal is released by the USOE or a commercial distributor of an RFP specifically commissioned by the USOE.~~

~~B. USOE staff shall stamp or mark all draft RFP documents DRAFT until the final version of an RFP or RFP-like document is officially released for public review and response.~~

~~C. If an RFP process for which the Board is responsible is compromised, as determined by a vote of the Board if necessary, the proposal shall be void and the USOE shall begin a new RFP process.~~

~~D. A USOE employee who intentionally violates the provisions of this rule may be subject to employment discipline up to and including termination.~~

~~**KEY: RFPs, grants, confidentiality**~~

~~**Date of Enactment or Last Substantive Amendment: April 7, 2014**~~

~~**Notice of Continuation: February 13, 2014**~~

~~**Authorizing, and Implemented or Interpreted Law: 53E-3-501(1)(c)(iii); 53E-3-501(1)(c)(iv); 53E-3-501(c)(i); 53E-3-401(4)]**~~

Education, Administration  
**R277-400**  
 School Facility Emergency and Safety

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 43512  
 FILED: 02/11/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** State Board of Education (Board) Rule R277-400 is being amended to incorporate stakeholder feedback including suggestions made by the Board's School Safety Advisory Committee.

**SUMMARY OF THE RULE OR CHANGE:** In Section R277-400-5, the following language is added: "A school official may release a student who is 15 years old or older without such notification if authorized by the LEA or school and the school official".

**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:** These rule changes are not expected to have any fiscal impact on state government revenues or expenditures because they establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies, and incorporate stakeholder feedback including suggestions made by the Board's School Safety Advisory Committee. Requirements already exists for LEAs.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because they establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies, and incorporate stakeholder feedback including suggestions made by the Board's School Safety Advisory Committee. Requirements already exists for LEAs.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because they establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies, and incorporate stakeholder feedback including suggestions made by the Board's School Safety Advisory Committee. Requirements already exists for LEAs.

◆ 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 establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and LEAs in the event of school emergencies, and incorporate stakeholder feedback including suggestions made by the Board's School Safety Advisory Committee. Requirements already exists for LEAs.

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 non-small 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 non-small 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 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

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 non-small 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 non-small 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.**

**R277-400. School Facility Emergency and Safety.**

**R277-400-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; and

(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.

(2) The purpose of this rule is to:

(a) establish general criteria for emergency preparedness and emergency response plans; and

(b) direct an LEA[s] to;

(i) develop prevention, intervention, and response measures; and

(ii) prepare staff and students to respond promptly and appropriately to school emergencies.

#### **R277-400-2. Definitions.**

(1) "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance that could reasonably endanger the safety of school children or disrupt the operation of the school.

(2) "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.

(3) "Emergency Response Plan" means a plan developed by an LEA or a school to prepare and protect students and staff in the event of school violence emergencies.

(4) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(5) "Plan(s)" means an LEA's or a school's emergency preparedness and emergency response plan.

#### **R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.**

(1) By July 1 of each year, ~~each~~ an LEA shall certify to the Superintendent that the LEA's emergency preparedness and emergency response plan has been:

(a) practiced at the school level; and

(b) presented to and reviewed by its teachers, administrators, students and guardians~~their parents~~, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).

(2) An LEA shall reference the LEA's Emergency Response plan [A] as [a] part of an LEA's annual application for state or federal Safe and Drug Free School funds.~~[the LEA shall reference its Emergency Response plan.]~~

(3)(a) An LEA's plans shall be designed to meet individual school needs and features.

(b) An LEA may direct schools within the LEA to develop and implement individual plans.

(4)(a) An LEA shall appoint a committee to prepare or modify plans ~~or modify existing plans~~ to satisfy this Rule R277-400 and Section 53G-4-402(18).

(b) The committee shall consist of appropriate school and community representatives, which may include:

(i) school and LEA administrators;

(ii) teachers;

(iii) parents;

(iv) community and municipal governmental officers; and

(v) fire and law enforcement personnel.

(c) The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.

(5) An LEA shall review plans ~~required this rule~~ at least once every three years.

(6) The Superintendent shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

#### **R277-400-4. Notice and Preparation.**

(1) Each school shall file a copy of plans required by this Rule R277-400 with the LEA superintendent or charter school director.

(2) At the beginning of each school year, an LEA or school shall ~~send or~~ provide ~~online~~ a written notice to parents and staff of sections of an LEA's and school's plans~~, which~~ that are applicable to that school.

(3)~~(a)~~ A school shall designate an Emergency Preparedness/Emergency Response week each year before~~prior to~~ April 30 ~~of each school year~~ which shall have activities that may include:~~[-]~~

~~[-]~~ (a) An LEA shall offer appropriate activities, such as

~~[-]~~ (a) community, student~~[-]~~ and teacher awareness;~~[- or]~~

~~[-]~~ (b) emergency preparedness or response training; ~~or~~;

~~[-]~~ (c) ~~[including those]~~ other activities as outlined in Sections R277-400-7 and 8~~, during the week~~.

(4) A school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

#### **R277-400-5. Plan Content--Educational Services and Student Supervision and Building Access.**

(1) An LEA's or a school's plan shall ~~contain measures that assure that~~ include:

~~[-]~~ (a) procedures to ensure ~~[school children receive]~~ reasonably adequate educational services and supervision are provided ~~for~~ ~~[during school hours]~~ during an emergency ~~[and for education services]~~ including an extended emergency situation~~[-]~~;

~~(2)(b)~~ ~~[An LEA plan shall include]~~ evacuation procedures that ~~assure~~ provide reasonable care and supervision of ~~[children]~~ a student until the student is released to a responsible party. ~~[until responsibility has been affirmatively assumed by another responsible party.]~~

~~(a)~~ (i) An LEA or school shall not release ~~[children]~~ a student who is under 15 years old ~~[younger than ninth grade age at other than regularly scheduled release times]~~ unless a parent or other responsible person has been notified and assumed responsibility for the ~~[children]~~ student.

~~(b)~~ (ii) ~~[An LEA or school may release an older student without such notification if a school official determines that]~~ A school official may release a student who is 15 years old or older without such notification if authorized by the LEA or school and the school official determines:

~~[-]~~ (A) the student is reasonably responsible; and

~~[-]~~ (B) notification is not practicable.

~~(3)(a)~~ ~~[An LEA plan]~~ (c) (i) as determined by a local board or governing authority~~[the LEA board]~~, procedures regarding ~~[shall address]~~ access to public school buildings by:

~~[(i)](A)~~ students;  
~~[(ii)](B)~~ community members;  
~~[(iii)](C)~~ lessees;  
~~[(iv)](D)~~ invitees; and  
~~[(v)](E)~~ others.  
~~[(b)](ii)~~ ~~[An LEA access plan]~~ procedures regarding access:  
~~[(i)](A)~~ may include restricted access for some individuals;  
~~[(ii)](B)~~ shall address building access during identified time periods; and  
~~[(iii)](C)~~ shall address possession and use of school keys by designated administrators and employees.  
~~[(4)](d)~~ ~~[An LEA's or school's plan shall identify]~~ resources and materials available for emergency training for an LEA's employees.

**R277-400-6. Emergency Preparedness Training for School Occupants.**

(1) An LEA's or a school's ~~[emergency preparedness and emergency response]~~ plan shall provide procedures for a student to contain measures which assure that school children receive age appropriate emergency preparedness training including:

~~[(2)]~~ LEAs shall provide school children with training appropriate to their ages in (a) rescue techniques~~;~~;

~~\_\_\_\_\_~~ (b) first aid~~;~~;

~~\_\_\_\_\_~~ (c) safety measures appropriate for specific emergencies~~;~~;

~~\_\_\_\_\_~~ (d) other emergency skills.  
~~[(3)](2)~~ During each school year, an elementary school[s] shall conduct emergency drills at least once each month during school time.

~~[(4)](3)~~ An LEA[s] shall alternate one of the following practices or drills with required fire drills:

- (a) shelter in place;
- (b) earthquake;
- (c) lock down or lock out for violence;
- (d) bomb threat;
- (e) civil disturbance;
- (f) flood;
- (g) hazardous materials spill;
- (h) utility failure;
- (i) wind or other types of severe weather;
- (j) parent and student reunification;
- (k) shelter and mass care for natural and technological hazards; or

(l) an emergency drill appropriate for the particular school location.

~~[(5)](4)~~(a) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes.

(b) An LEA or a school may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

~~[(6)](5)~~ ~~[All schools]~~ Each school shall have one fire drill in the first 10 days of the regular school year and one fire drill every other month during the school year.

~~[(7)]~~ ~~Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.~~

~~\_\_\_\_\_~~ ~~[(8)](6)~~ A secondary school shall conduct all drills ~~[F]~~ in accordance with Section 15A-5-202.5~~[-, a secondary school (grades 7-12) shall have:~~

~~\_\_\_\_\_~~ (a) at least one fire drill every two months throughout the school year; and

~~\_\_\_\_\_~~ (b) one fire drill in the first 10 days of after the beginning of classes~~;~~]

~~[(9)](7)~~ ~~[When required by the local fire chief, (an)]~~ An LEA shall notify the local fire department prior to each fire drill if notice is required by the local fire chief.

~~[(10)](8)~~ When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.

~~[(11)](9)~~ Schools that include both elementary and secondary grades in the school shall comply~~[-, at a minimum,]~~ with the elementary emergency drill requirements.

~~[(12)](10)~~ In cooperation with the LEA's local law enforcement agency, an LEA shall:

(a) establish a parent and student reunification plan for each school within the LEA;

(b) as part of the LEA's registration and enrollment process, annually provide parents a summary of parental expectations and notification procedures related to the LEA's parent and student reunification plan; and

(c) require each school within the LEA to publish the information described in Subsection (12)(b) on the school's website.

**R277-400-7. Emergency Response Review and Coordination.**

(1) For purposes of emergency response review and coordination ~~[A]~~ an LEA shall:

~~\_\_\_\_\_~~ (a) provide an annual training for LEA and school building staff ~~[on]~~ regarding an employee's~~[']~~ roles, responsibilities, and priorities in the emergency response plan.

~~[(2)]~~ ~~An LEA shall~~ (b) require a school[s] to conduct at least one annual drill for school emergencies in addition to the drills required under Section 15A-5-202.5 and R277-400-6 by~~[-, which shall be held no later than]~~ October 1~~[- annually].~~

~~[(3)]~~ ~~An LEA shall~~ (c) require a school[s] to review existing security measures and procedures within the~~['r]~~ school[s] and make necessary adjustments as funding permits~~[as needs demonstrate and funds are available].~~

~~[(4)]~~ ~~An LEA shall~~ (d) develop standards and protections ~~[to the extent practicable]~~ for participants and attendees at school-related activities, ~~[with special attention to those]~~ especially school-related activities off school property.

~~[(5)](2)~~ An LEA or school shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

**R277-400-8. Prevention and Intervention.**

(1) An LEA shall provide a school[s], ~~as part of their regular curriculum,~~ comprehensive violence prevention and intervention strategies as part of a school's regular curriculum including~~[-, such as]~~

~~\_\_\_\_\_~~ (a) resource lessons and materials on anger management~~;~~;

~~\_\_\_\_\_~~ (b) conflict resolution~~;~~;

~~\_\_\_\_\_~~ (c) respect for diversity and other cultures.

(2) As part of a violence prevention and intervention strategy in subsection (1), a school may provide age-appropriate

instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

(3) An LEA shall also develop ~~[to the extent resources permit]~~ student assistance programs ~~[such as]~~ including:

- ~~(a) care teams[;];~~
- ~~(b) school intervention programs[;]; and~~
- ~~(c) interagency case management teams.~~

(4) In developing student assistance programs, an LEA ~~[should]~~ may coordinate with ~~[and seek support from]~~ other state agencies and the Superintendent.

#### **R277-400-9. Cooperation With Governmental Entities.**

(1) As appropriate, an LEA may enter into cooperative agreements with other governmental entities to ~~[assure]~~ establish proper coordination and support during emergencies.

(2)(a) An LEA shall cooperate with other governmental entities ~~[as reasonably feasible]~~ to provide emergency relief services.

(b) An LEA's or a school's plans ~~[required by this rule]~~ shall contain procedures for assessing and providing ~~the following for public emergency needs~~:

- ~~(a) school facilities[;];~~
- ~~(b) equipment[;]; and~~
- ~~(c) personnel [to meet public emergency needs].~~

(3) A plan ~~[developed under this rule]~~ shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(a) The ~~[s]~~Superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance; and

(b) A local governing board, through its superintendent or director, is the chief officer for an LEA emergencies.

#### **R277-400-10. Fiscal Accountability.**

(1) An LEA or a school plan ~~[required under this rule]~~ shall address procedures for recording an LEA's funds expected for:

- ~~(a) emergencies[;]; [for]~~
- ~~(b) assessing and repairing damage[;]; and [for]~~
- ~~(c) seeking reimbursement for emergency expenditures.~~

#### **R277-400-11. School Carbon Monoxide Detection.**

(1) A new educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections ~~[908.7.2.4]~~ 915 through ~~[908.7.2.6]~~ 915.4.5

(2) An existing educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

(3) Where required, an LEA shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC ~~[908.7.2.4]~~ 915.1.

(4) An LEA shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

(5) An LEA shall install each carbon monoxide detection system in the locations specified in NFPA 720.

(6) A combination carbon monoxide<sup>[f]</sup> smoke detector is an acceptable alternative to a carbon monoxide detection system if the

combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

(7)(a) Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source.

(b) If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power.

(c) The wiring for a carbon monoxide detection system shall be permanent and without a disconnecting switch other than that required for over-current protection.

(8) An LEA shall maintain all carbon monoxide detection systems consistent with IFC ~~[908.7.2.5]~~ 915 and NFPA 720.

(9) Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section ~~[6.5.4.5]~~ 6.5.5.6.

(10) An LEA shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

(11) An LEA shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

**KEY: carbon monoxide detectors, emergency preparedness, disasters, safety education**

**Date of Enactment or Last Substantive Amendment: [~~October 16, 2018~~2019]**

**Notice of Continuation: February 13, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-4-402(1)(b)**

## Education, Administration **R277-407** School Fees

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43532  
FILED: 02/15/2019

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** As a result of legislative changes that required an update to Rule R277-407 and an audit from the Utah State Board of Education (Board) Internal Audit department, in Spring 2018, the Board created the School Fees Task Force to provide recommendations for changes to Board Rule R277-407.

**SUMMARY OF THE RULE OR CHANGE:** These rule amendments include: 1) clarified/updated definitions, including updating the definition of "fee" and subparts of that key definition; 2) clarification of existing legal requirements related to fees and fee waivers; 3) additional requirements related to an LEA governing board's fee schedule adoption requirements, including an annual April 1 deadline to adopt the schedule and a requirement that the board allow parents

and other members of the public to two opportunities to provide public comment during an LEA's board meeting; 4) a requirement for LEAs to establish maximum fee amounts per student and per activity; 5) a requirement to provide notice to parents of the LEAs fee and fee waiver policies and schedules, including a requirement to publish the information in a language other than English if 20% or more of the families enrolled in the LEA speak that language; 6) update fee waiver provisions; 7) beginning with the 2020-21 school year, prohibit LEAs from using revenue collected from fees to offset the costs attributed to fee waivers; 8) a requirement that an LEA may allow a student to perform community service in lieu of a fee, but not require it; 9) establish standards for community service in LEAs; 10) provisions to prohibit required individual fundraising but allowing required group fundraising and voluntary individual fundraising; 11) beginning with the 2020-21 school year, prohibit an LEA from charging a fee for textbooks or remediation, except for a textbook fee for concurrent enrollment or AP courses, which are fee waivable; 12) a requirement for an LEA to establish a spend plan for the revenue collected from each fee charged; 13) a requirement for the Superintendent/staff to provide ongoing training regarding Utah Code and Board rule provisions related to school fees; and 14) a new monitoring/corrective action/appeal process for LEAs compliance with the Board rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53G-7-503(2) and Subsection 53G-7-504

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes are not expected to have any material fiscal impact on state government revenues or expenditures because all regulatory functions are already funded and impact to revenues is at the local level.

◆ **LOCAL GOVERNMENTS:** These rule changes are expected to have material impact on local governments' revenues or expenditures because this rule defines school fees, requirements to waive fees, and prohibits the charging of fees to parents and students for grades k-6, most textbooks and other items previously not considered fees. Estimated loss of local revenue ranges from \$10,800,000 to \$250,000,000.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because all regulatory functions are already funded and impact to revenues is at the local level.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are expected to have material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because the fees required to be paid or items that can be waived will increase and result in lower expenditures and cash outlay by parents.

**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 non-small businesses with a NAICS code 611110). These rule changes have a material fiscal impact on local education agencies and will not have a fiscal impact on non-small 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 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019**

**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	\$10,800,000 to \$250,000,000	\$10,800,000 to \$250,000,000
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>\$10,800,000 to \$250,000,000</b>	<b>\$10,800,000 to \$250,000,000</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	\$10,800,000 to \$250,000,000	\$10,800,000 to \$250,000,000
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$10,800,000 to \$250,000,000</b>	<b>\$10,800,000 to \$250,000,000</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 non-small businesses with a NAICS code 611110). These rule changes have no material fiscal impact on local education agencies and will not have a fiscal impact on non-small 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.**

**R277-407. School Fees.**

**[R277-407-1. 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) Article X, Section 2 of the Utah Constitution, which provides that:
    - (i) public elementary schools shall be free; and
    - (ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;
  - (c) 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
  - (d) Subsection 53G-7-503(2), which authorizes the Board to adopt rules regarding student fees.

(2) This rule also serves to comply with the Permanent Injunction issued in *Doc v. Utah State Board of Education*, Civil No. 920903376 (3rd District 1994).

- (3) The purpose of this rule is to:
  - (a) permit the orderly establishment of a system of reasonable fees;
  - (b) provide adequate notice to students and families of fees and fee waiver requirements; and
  - (c) prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

**R277-407-2. Definitions.**

(1)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) An admission fee, transportation charge, or similar payment to a third party is a fee if the charge is made in connection with an activity or function sponsored by or through a school.

(c) For purposes of this rule, a charge related to the National School Lunch Program is not a fee.

(2) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "Optional project" means a non-mandatory project chosen and retained by a student, for which the student covers the cost or provides the materials, in lieu of, or in addition to a mandatory classroom project otherwise available to the student which would require only school-supplied materials.

(4)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

(5)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

- (i) pencils;
- (ii) paper;
- (iii) notebooks;
- (iv) crayons;
- (v) scissors;
- (vi) basic clothing for healthy lifestyle classes; and
- (vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection (5)(b) for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

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

(7) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income

families with children under age 18 through the Utah Department of Workforce Services:

(8) "Textbook" means a book, workbook, or materials similar in function, which are required for participation in a course of instruction.

(9) "Waiver" means a release from the requirement of payment of a fee and from any provision in lieu of fee payment.

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

(1) No fee may be charged in kindergarten through sixth grades for:

(a) materials;

(b) textbooks;

(c) supplies; or

(d) any class or regular school day activity, including assemblies and field trips.

(2) A school may charge textbook fees in grades seven through twelve:

(3)(a) Notwithstanding Subsection (1), a school may charge fees to students in sixth grade if the student attends a school that includes any grades seven through twelve:

(b) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from sixth grade students and that the fees are subject to waiver:

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-6:

(5)(a) A school may require a student at any grade level to provide materials or pay for an optional project, but a school may not require a student to select an optional project as a condition for enrolling in or completing a course:

(b) A school shall base mandatory course projects on experiences that are free to all students:

(6)(a) A school shall provide student supplies for k-6 students:

(b) A school may require a student to replace student supplies provided by the school, which are lost, wasted, or damaged by the student through careless or irresponsible behavior:

(7)(a) An elementary school or teacher may provide to parents or guardians a suggested list of student supplies:

(b) A suggested list provided in accordance with Subsection (a) shall contain the express language in Subsection 53G-7-503(4)(e):

(8) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-6.

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

(1) A school may charge a fee, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity, which does not take place during the regular school day,

regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day:

(2) A fee related to an extracurricular activity may not exceed limits established by the LEA governing board:

(3) A school shall collect fees for school-sponsored activities consistent with LEA policies and state law:

**R277-407-5. General Provisions:**

(1) An LEA may not charge or assess a fee in connection with any class or school-sponsored or supported activity, including an extracurricular activity, unless the fee has been set and approved by the LEA's governing board and distributed in an approved fee schedule or notice in accordance with this rule:

(2)(a) An LEA governing board shall adopt a fee schedule and fee policies for the LEA at least once each year in a regularly scheduled public meeting:

(b) An LEA shall provide public notice in accordance with Title 52, Chapter 4, Open and Public Meetings Act and shall encourage public participation in the development of fee schedules and waiver policies:

(c) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203:

(3)(a) An LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends a school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies:

(b) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing a denial of a fee waiver, as soon as possible prior to the time when fees become due:

(4) An LEA shall include a copy of the schedules and waiver policies with registration materials provided to potential or continuing students:

(5)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees:

(b) A school may impose a reasonable charge to cover the cost of duplicating or mailing transcripts and other school records:

(c) A school may not charge for duplicating or mailing copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll:

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

(7)(a) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions are voluntary:

(b) A donation is a fee if a student is required to make a donation in order to participate in an activity:



**R277-407-6. Waivers.**

~~(1) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.~~

~~(2) An LEA shall waive textbook fees for eligible students in accordance with Subsection 53G-7-603(2).~~

~~(3) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.~~

~~(4) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.~~

~~(5) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.~~

~~(6) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.~~

~~(7)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.~~

~~(b) A school or LEA administrator shall verify fee waivers consistent with this rule.~~

~~(8) An LEA shall submit fee waiver compliance forms for each school consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994) that affirm compliance with the permanent injunction.~~

~~(9) An LEA shall adopt a policy for review of fee waiver requests which:~~

~~(a) gives parents the opportunity to review proposed alternatives to fee waivers;~~

~~(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and~~

~~(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.~~

~~(10) The granting of waivers and provisions in lieu of fee waivers in an LEA may not produce significant inequities through unequal impact on individual schools.~~

~~(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:~~

~~(a) exclude a student from school;~~

~~(b) refuse to issue a course grade; or~~

~~(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.~~

~~(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a):~~

~~(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.~~

~~(13) A school is not required to waive fees for class rings, letter jackets, school photos, or yearbooks, which are not required for participation in a class or activity.~~

~~(14) Expenditures for uniforms, costumes, clothing, or accessories, other than items of typical student dress, which are required for school attendance or participation in school activities, and expenditures for student travel as part of a school team, student~~

~~group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section.~~

**R277-407-7. Fee Waiver Eligibility.**

~~(1) A student is eligible for fee waiver if an LEA receives verification that:~~

~~(a) based on family income, the student qualifies for free school lunch under United States Department of Agriculture child nutrition program regulations;~~

~~(b) the student to whom the fee applies receives SSI;~~

~~(c) the family receives TANF funding;~~

~~(d) the student is in foster care through the Division of Child and Family Services; or~~

~~(e) the student is in state custody.~~

~~(2) In lieu of income verification, an LEA may require alternative verification under the following circumstances:~~

~~(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;~~

~~(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;~~

~~(c) If a student is in state custody or foster care, an LEA may rely on the youth in custody required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.~~

~~(3) A school may grant a fee waiver to a student, on a case-by-case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.~~

**R277-407-8. Fee Waiver Reporting Requirements.**

~~(1) An LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:~~

~~(a) a summary of:~~

~~(i) the number of students in the LEA given fee waivers;~~

~~(ii) the number of students who worked in lieu of a waiver; and~~

~~(iii) the total dollar value of student fees waived by the LEA;~~

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

~~(c) a copy of the LEA's fee schedule for students; and~~

~~(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.~~

~~(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.]~~

**R277-407-1. 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) Article X, Section 2 of the Utah Constitution, which provides that:~~

~~(i) public elementary schools shall be free; and~~

~~(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;~~

~~(c) 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;~~

(d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and

(e) Subsection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.

(2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(3) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would:

(i) exclude those unable to pay from participation in school-sponsored activities; or

(ii) create a burden on a student or family as to have a detrimental impact on participation.

**R277-407-2. Definitions.**

(1) "Co-curricular activity" means an activity, course, or program, outside of school hours, that also includes a required regular school day program or curriculum.

(2) "Extracurricular activity" means an activity or program for students, outside of the regular school day, that:

(a) is sponsored, recognized, or sanctioned by an LEA; and

(b) supplements or compliments, but is not part of, the LEA's required program or regular curriculum.

(3)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.

(b) "Fee" includes money or something of monetary value raised by a student or the student's family through fund-raising.

(4)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:

(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or

(ii) benefit a particular charity or for other charitable purposes.

(b) "Fundraiser," "fundraising," or "fundraising activity" may include:

(i) the sale of goods or services;

(ii) the solicitation of monetary contributions from individuals or businesses; or

(iii) other lawful means or methods that use students to generate funds.

(c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.

(5) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the mutual benefit of the group, team, or organization.

(6) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by each individual student to pay the individual student's fees.

(7)(a) "Instructional equipment" means equipment or supplies required for a student to use as part of a secondary course that become the property of the student upon exiting the course.

(b) "Instructional equipment" includes course related tools or instruments.

(8) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(9) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.

(10) "Non-waivable charge" means a cost, payment, or expenditure that:

(a) is a personal discretionary charge or purchase, including:

(i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;

(ii) a charge for college credit related to the successful completion of:

(A) a concurrent enrollment class; or

(B) an advanced placement examination; or

(iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;

(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:

(i) a school uniform as provided in Section 53G-7-801;

(ii) a school lunch; or

(iii) a charge for a replacement for damaged or lost school equipment or supplies.

(11)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:

(i) is authorized by an LEA or school, according to local education board policy; or

(ii) satisfies at least one of the following conditions:

(A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee;

(B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, fund-raising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

(12)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.

(13) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

(14) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

\_\_\_\_\_ (a) fully participate in school or in a school activity, class, or program;

\_\_\_\_\_ (b) successfully complete a school class for the highest grade; or

\_\_\_\_\_ (c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:

\_\_\_\_\_ (i) peer pressure, shaming, stigmatizing, bullying, or the like; or

\_\_\_\_\_ (ii) withholding or curtailing any privilege that is otherwise provided to any other student.

\_\_\_\_\_ (15)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

\_\_\_\_\_ (b) "Something of monetary value" includes:

\_\_\_\_\_ (i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;

\_\_\_\_\_ (ii) payments made to a third party that provide a part of a school activity, class, or program;

\_\_\_\_\_ (iii) classroom supplies or materials; and

\_\_\_\_\_ (iv) a fine, except for a student fine specifically approved by an LEA for:

\_\_\_\_\_ (A) failing to return school property;

\_\_\_\_\_ (B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or

\_\_\_\_\_ (C) improper use of school property, including a parking violation.

\_\_\_\_\_ (16)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

\_\_\_\_\_ (b) "Student supplies" include:

\_\_\_\_\_ (i) pencils;

\_\_\_\_\_ (ii) paper;

\_\_\_\_\_ (iii) notebooks;

\_\_\_\_\_ (iv) crayons;

\_\_\_\_\_ (v) scissors;

\_\_\_\_\_ (vi) basic clothing for healthy lifestyle classes; and

\_\_\_\_\_ (vii) similar personal or consumable items over which a student retains ownership.

\_\_\_\_\_ (c) "Student supplies" does not include items listed in Subsection (16)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint in order to create a uniform appearance not related to basic function.

\_\_\_\_\_ (17) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

\_\_\_\_\_ (18) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

\_\_\_\_\_ (19)(a) "Textbook" means instructional material necessary for participation in a course or program, regardless of the format of the material.

\_\_\_\_\_ (b) "Textbook" does not include instructional equipment.

\_\_\_\_\_ (20) "Waiver" means a full or partial release from the requirement of payment of a fee and from any provision in lieu of fee payment.

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

\_\_\_\_\_ (1) No fee may be charged in kindergarten through grade six for:

\_\_\_\_\_ (a) materials;

\_\_\_\_\_ (b) textbooks;

\_\_\_\_\_ (c) supplies, except for student supplies described in Subsection (6); or

\_\_\_\_\_ (d) any class or regular school day activity, including assemblies and field trips.

\_\_\_\_\_ (2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this R277-407.

\_\_\_\_\_ (b) All fees are subject to the fee waiver provisions of Section R277-407-8.

\_\_\_\_\_ (3)(a) Notwithstanding Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

\_\_\_\_\_ (b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

\_\_\_\_\_ (c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

\_\_\_\_\_ (4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-8.

\_\_\_\_\_ (5)(a) In project related courses, projects required for course completion shall be free to all students.

\_\_\_\_\_ (b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

\_\_\_\_\_ (c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

\_\_\_\_\_ (d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

\_\_\_\_\_ (6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(7) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-8.

(8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific color, style, fabric, or imprints, the cost of the special shoes or items of clothing are:

(a) considered a fee; and

(b) subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

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

(1) A school may charge a fee, subject to the provisions of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(3).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the provisions of this rule regardless of the time or season of the activity, class, or program.

**R277-407-5. Fee-Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.**

Fees for the following are waivable:

(1) an activity, class, or program that is:

(a) primarily intended to serve school-age children; and

(b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;

(2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or

(b) as a condition to participate in a school activity, class, program, or team, including a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be

reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

(a) travel for state or national educational experiences or competitions;

(b) debate camps or competitions; or

(c) music camps or competitions; and

(5) a concurrent enrollment, CTE, or AP course.

**R277-407-6. LEA Requirements to Establish a Fee Schedule – Maximum Fee Amounts – Notice to Parents.**

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or supported by a including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;

(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (3); and

(c) is included in an approved fee schedule or notice in accordance with this rule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this Section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection(2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e-mail, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3)(a) As part of an LEA's fee setting process, the LEA shall establish a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all courses, programs, and activities provided, sponsored, or supported by a school for the year.

(b) An LEA shall establish:

(i) a maximum fee amount per student for each activity; and

(ii) a maximum total aggregate fee amount per student per school year.

(c) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.

(4) As part of an LEA's fee setting process described in this Section, the LEA may review and consider the following per school:

(a) the school's cost to provide the activity, class, or program;

(b) the school's student enrollment;

(c) the median income of families:

(i) within the school's boundary; or

(ii) enrolled in the school;

(d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;

(e) the historical participation and school interest in certain activities;

(f) the prior year fee schedule;

(g) the amount of revenue collected from each fee in the prior year;

(h) fund-raising capacity;

(i) prior year community donors; and

(j) other resources available, including through donations and fundraising.

(5)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.

(6)(a) If an LEA charges a fee, the LEA shall:

(i) annually publish the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection (3), on each of the LEA's schools' websites;

(ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and

(iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

(i) the student or parent's first language is a language other than English; and

(ii) the LEA hasn't published the LEA's fee schedule and fee waiver policies in the parent's first language.

(7) A notice described in Subsection (6)(a) shall:

(a) be in a form approved by the Board; and

(b) include the following:

(i) for a school serving elementary students:

(A) School Fees Notice for Families of Children in Elementary School;

(B) Fee Waiver applications (Elementary School);

(C) Fee Waiver Decision and Appeals Form; and

(D) the Board's elementary school poster; and

(ii) for a school serving secondary students:

(A) School Fees Notice For Families of Students in a Secondary School;

(B) Fee Waiver Application (Secondary School);

(C) Application for Fee Waivers and Community Service (Secondary School);

(D) Community Service Assignments and Notice of Appeal Rights;

(E) Appeal of Community Service Assignment; and

(F) the Board's secondary school poster.

(8)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(9)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

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

#### **R277-407-7. Donations in Lieu of Fees.**

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) An LEA may not accept a donation that would create a significant inequity among the schools within the LEA.

#### **R277-407-8. Fee Waivers.**

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), beginning with the 2020-21 school year, an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

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

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(10) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive a non-waivable charge.

**R277-407-9. Service in Lieu of Fees -- Voluntary Requests for Installment Plans.**

(1) Subject to the provisions of Subsection (2), an LEA may allow a student to perform community service in lieu of a fee, but community service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform community service in lieu of a fee if:

(a) the LEA establishes a community service policy that ensures that a community service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

(b) the LEA's community service policy is consistent with state and federal laws, including:

(i) Section 53G-7-504; and

(ii) the Federal Fair Labor Standards Act, 29 U.S.C.201;

(c) the community service can be performed within a reasonable period of time; and

(d) the service is at least equal to the minimum wage for each hour of service.

(3)(a) A student who performs community service may not be treated differently than other students who pay a fee.

(b) The community service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's community service credit to:

(a) another school within the LEA; or

(b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5) (a) may not be instigated by the school but must be voluntarily requested by the student or parent.

(6) An LEA that charges fees shall adopt policies that include at least the following:

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

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 123g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

**R277-407-10. Individual and Group Fundraising Requirements.**

(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.

(2) An LEA's fundraising policy described in Subsection (1):

(a) may not authorize, establish, or allow for required individual fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for group fundraisers;

(d) shall prohibit denying a student membership in or participation on a team or group or in an activity based on the student's non-participation in a fundraiser; and

(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students.

**R277-407-11. Fee Waiver Eligibility.**

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) based on family income, the student qualifies for free school lunch under United States Department of Agriculture child nutrition program regulations;

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(d) An LEA may not subject a family to unreasonable demands for re-qualification.

(3) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(4) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

**R277-407-12. Fees for Textbooks and Remediation.**

(1) Beginning with the 2020-21 school year, an LEA may not charge a fee for:

(a) a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2); or

(b) a remediation course, if, as described in Subsection 53G-7-504(1)(b):

(i) the student or the student's parent is financially unable to pay the fee;

(ii) the fee for remediation would constitute an extreme financial hardship on the student or student's parent; or

(iii) the student has suffered a long-term illness, death in the family, or other major emergency.

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.

(b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

**R277-407-13. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.**

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall:

(a) establish a spend plan for the revenue collected from each fee charged; and

(b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.

(3)(a) Financial inequities or disproportional impact of fee waivers may not fall inequitably on any one school within an LEA.

(b) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

**R277-407-14. Fee Waiver Reporting Requirements.**

(1) An LEA shall attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:

(a) a summary of:

(i) the number of students in the LEA given fee waivers;

(ii) the number of students who worked in lieu of a waiver; and

(iii) the total dollar value of student fees waived by the LEA;

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

(c) a copy of the LEA's fee schedule for students; and

(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

**R277-407-15. Superintendent and LEA Policy and Training Requirements.**

(1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

(2) The Superintendent shall provide online training and resources for LEAs regarding:

(a) an LEA's fee approval process;

(b) LEA notification requirements;

(c) LEA requirements to establish maximum fees;

(d) fundraising practices;

(e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and

(f) community service or fundraising alternatives for students and families who qualify for fee waivers.

(3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.

(4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

**R277-407-16. Enforcement.**

(1) The Superintendent shall monitor LEA compliance with this rule:

(a) through the compliance reports provided in Section R277-407-14; and

(b) by such other means as the Superintendent may reasonably request at any time.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of noncompliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.

(4)(a) Within fifteen days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA that failed to respond to a first notice of non-compliance receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) seek an appeal as described in Subsection (8)(b).

(7) If an LEA that failed to respond to a first notice of non-compliance fails to comply with either of the options described in Subsection (6), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Prior to imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA thirty days' notice of any proposed action.

(b) The LEA may, within fifteen days after receipt of a notice described in Subsection (8)(a), request an appeal before the Board.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

**R277-407-17. Effective Date.**

(1) This rule will be effective beginning January 1, 2020.

**KEY: education, school fees**

**Date of Enactment or Last Substantive Amendment:** [~~September 21, 2017~~]**2019**

**Notice of Continuation:** July 19, 2017

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 2; Art X Sec 3; 53E-3-401(4); 53G-7-503; Doe v. Utah State Board of Education, Civil No. 920903376

Education, Administration  
**R277-483**  
LEA Reporting and Accounting  
Requirements

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 43515

FILED: 02/11/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new Utah State Board of Education (Board) rule is to establish reporting and accounting requirements for LEAs to enable the Board to comply with Every Student Succeeds Act (ESSA).

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-483 is being created to include provisions related to school level financial reporting requirements required by ESSA.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 53A-1-401 and Section 53E-5-202



**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new rule is expected to have fiscal impact on state government revenues or expenditures. The rule is being created to include provisions related to school level financial reporting requirements required by ESSA. The existing Utah Public Education Financial System (UPEFS) will need to be modified over the next year to accept school level reporting requirements, generate per pupil expenditures, and create school level expenditure reports. This activity is estimated to cost 7,990 man hours for the project manager, developers, data center/hosting team at a total cost of \$683,145. Existing FTEs will complete this work and current development projects on UPEFS will cease until this priority is completed.

◆ **LOCAL GOVERNMENTS:** This new rule is not expected to have any material impact on local governments' revenues or expenditures because our LEAs are required to do school level accounting and reporting currently. LEAs may have to change accounting practices, train staff, or modify their financial reporting transfers to put school level data in UPEFS, but the Board does not anticipate this being a significantly material ongoing cost.

◆ **SMALL BUSINESSES:** This new rule is not expected to have any material fiscal impact on small businesses' revenues or expenditures because it is being created to include provisions into rule related to school level financial reporting requirements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule is not expected to have any material fiscal impact on persons other than small businesses, businesses, or local government entities revenues or expenditures because it is being created to include provisions into rule related to school level financial reporting requirements.

**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 non-small businesses with a NAICS code 611110). This new rule has a fiscal impact on local education agencies but will not have a fiscal impact on non-small 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 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019**

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

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$227,715	\$455,430	\$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>\$227,715</b>	<b>\$455,430</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 non-small businesses with a NAICS code 611110). This new rule has a fiscal impact on local education agencies but will not have a fiscal impact on non-small 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.**

**R277-483. LEA Reporting and Accounting Requirements.**

**R277-483-1. 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) Section 53A-1-401, 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 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system; and
  - (d) the federal ESSA, which requires states to revise and redesign school accountability systems.
- (2) The purpose of this rule is to establish reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

**R277-483-2. Definitions.**

- (1) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (2) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

**R277-483-3. Reporting of School Level Expenditures.**

- (1) In accordance with ESSA, the Superintendent shall make public required expenditure reporting elements, including school level expenditures.
  - (a) The Superintendent shall calculate school level expenditures for all schools, by LEA.
  - (b) The Superintendent shall calculate expenditures for the prior fiscal year.
- (2) The Superintendent's school level report for each school shall include:
  - (a) average daily membership for the fiscal year covered by the report;
  - (b) an indicator if the school is:
    - (i) a Title I School; or
    - (ii) a Necessarily Existent Small School;
  - (c) grade levels served by each school;
  - (d) student demographics;
  - (e) expenditures recorded at the school level and central expenditures allocated to each school by:
    - (i) federal program expenditures; and

- (ii) state and local combined expenditures;
  - (f) calculated per pupil expenditures; and
  - (g) average teacher salary.
- (3) The Superintendent shall exclude the following expenditures from per pupil school expenditure calculations and present them in total for each LEA:
  - (a) capital acquisitions;
  - (b) debt service; and
  - (c) internal service funds.
- (4) The Superintendent may not report expenditure data for a school with an n-size of less than 10.

**R277-483-4. LEA Accounting Requirements.**

- (1) Each LEA shall:
  - (a) record expenditures in compliance with the Board approved chart of accounts;
  - (b) record expenditures using school location codes that can be mapped to official school location codes used in Board system of record;
  - (c) record expenditures using approved district and school codes in the Board system of record;
  - (d) submit expenditures using location codes in the UPEFS system; and
  - (e) perform program accounting.
- (2) Each LEA shall record and report the following expenditures for each school annually:
  - (a) salaries;
  - (b) benefits;
  - (c) supplies;
  - (d) contracted services; and
  - (e) equipment.
- (3) If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.
- (4)(a) An LEA shall record centralized administrative costs to the administrative location code.
  - (b) The Superintendent shall allocate such costs to each school based on school enrollment.
- (5)(a) An LEA shall report transportation costs by function at the LEA level.
  - (b) The Superintendent shall allocate transportation costs to individual school based on enrollment of each school.
- (6)(a) An LEA shall report child nutrition costs by function at the LEA level.
  - (b) The Superintendent shall allocate child nutrition costs to individual school based on enrollment of each school.
- (7) The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).
- (8) If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

**KEY: reporting, ESSA, accounting**

**Date of Enactment or Last Substantive Amendment: 2019  
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53A-1-401**

**Education, Administration**  
**R277-486**  
**Professional Staff Cost Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43516

FILED: 02/11/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Utah State Board of Education (Board) Rule R277-486 is up for continuation and is being amended for technical and formatting purposes.

**SUMMARY OF THE RULE OR CHANGE:** The changes in Board Rule R277-486 reflect amended language in the purpose of the rule, amended definitions, plus deleted and new language throughout the sections of this rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53F-2-305(2)

**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 this rule is required by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula. This rule is up for continuation and is being amended for technical and formatting purposes.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because this rule is required by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula. This rule is up for continuation and is being amended for technical and formatting purposes.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is required by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula. This rule is up for continuation and is being amended for technical and formatting purposes.

◆ **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 this rule is required by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula. This rule is up for continuation and is being amended for technical and formatting purposes.

**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 non-small 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 non-small 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 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019**

**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 non-small 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 non-small or small businesses.

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

**R277. Education, Administration.**

**R277-486. Professional Staff Cost Program.**

**R277-486-[2]1. Authority and Purpose.**

~~[A. This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.](1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision of 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 53F-2-305(2), which authorizes the Board to make a rule requiring a certain percentage of a LEA's professional staff to be licensed in the area the teacher teaches to receive full funding under the state statutory formula.~~

~~[B.](2) The purpose of this rule is to outline the eligibility requirements for an LEA to receive WPU's for professional staff including the acceptable experience and training an LEA's staff should have. [satisfy statutory or federal regulatory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.]~~

**R277-486-[1]2. Definitions.**

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

~~—B.](1) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators[. The file] that includes[ information such as]:~~

- ~~[(1)](a) personal directory information;~~
- ~~[(2)](b) educational background;~~
- ~~[(3)](c) endorsements;~~
- ~~[(4)](d) employment history;~~
- ~~[(5)](e) professional development information; and~~
- ~~[(6)](f) a record of any disciplinary action taken against the~~

educator.

~~[C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.~~

~~—](3)[D.] "FTE" means full time equivalent.~~

~~[E. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.~~

~~—](2)[F.] "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) [by successfully completing a three-year process that may include national content area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience].~~

[G. "USOE" means Utah State Office of Education.  
~~(3)(H)~~ "Weighted Pupil Unit (WPU)" means the same as that term is defined in Subsection 53F-2-102(7) ~~[unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each LEA].~~

**R277-486-3. Eligibility to Receive WPUs for Professional Staff.**

~~[A:]~~(1)(a) An LEA[s] shall only receive WPUs in accordance with the formula provided in Subsection 53F-2-305(1)(a):

~~(1)~~(i) ~~[only]~~ for [those] an educator[s] who holds at least a bachelor's degree; and

~~(2)~~(ii) ~~[only]~~ to the extent [that such] an educator[s are] is qualified to work in the area [to which] the[y] educator is [are] assigned consistent with R277-520.

~~(b)~~ [For example, an] A full time educator who is [employed full time but is] appropriately qualified in only 75% of [his] the educator's assignments would count as [for only] 0.75 FTEs in the calculation of an LEA's WPU[s].

~~(3)~~(c) ~~[In order to receive full (100%) funding, a]~~ An LEA shall have an appropriately qualified educator in every assignment to receive full funding.

~~[B:]~~ An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.]

~~[C:]~~(2) An LEA[s shall] may not receive WPUs for interns [in their second or subsequent years nor for] or paraprofessionals in any assignment.

**R277-486-4. Acceptable Experience.**

~~[A:]~~(1) Educator experience for purposes of this rule shall be measured in one-year increments.

~~[B:]~~(2) For purposes of the professional staff cost calculation, [A] an educator shall be credited by the Superintendent [USOE, for purposes of the professional staff cost calculation,] with one year of experience for every school year in which the educator is employed;

~~(a)~~ at least half-time (0.5 FTE) in a position that requires a Utah Educator License as described in R277-520; and [an instructional or administrative position]

~~(b)~~ in a [ny] public school in the State of Utah or in a [ny] regionally accredited:

~~(1)~~(i) public school outside of the State of Utah;

~~(2)~~(ii) private school; or

~~(3)~~(iii) institution of higher education; or

~~(4)~~(iv) regional service center.

~~[C:]~~(3) To obtain credit under Subsection [B(1) through (3)] (2), the LEA which employs the educator shall submit [to the USOE] acceptable documentation verifying such experience to the Superintendent, including documentation of the school's or institution's regional accreditation.

~~[D:]~~(4) [Employment] An educator who is employed in a prekindergarten position [shall not be acceptable] may not be counted for the [is] purposes of determining an LEA's professional staff WPUS, unless the educator is or was employed in a special education position in an accredited school.

~~[E:]~~(5) None of the following experiences are considered acceptable for purposes of determining an educator's experience under this rule:

~~(a)~~ [U]npaid volunteer service;[;]

~~(b)~~ paid consulting;[;]

~~(c)~~ employment in non-instructional or non-administrative positions in a school setting;[;] or

~~(d)~~ [and] a school internship [shall not be acceptable experience under this rule].

~~[F:]~~(6) The Superintendent may require an educator or LEA to provide [D] documentation of an educator's experience in a private school, [or] institution of higher education, or a regional service center [may be required by USOE staff] to determine relevance of experience.

**R277-486-5. Acceptable Training.**

Acceptable training under this rule may include:

~~[A:]~~(1) Any degree at the bachelor's level or above or credit beyond the current degree from a[;]

~~(1)~~ regionally accredited institution of higher education [; or  
~~(2)~~ postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education].

~~[B:]~~(2) Any professional development activity consistent with R277-500 and approved in writing by the Superintendent [USOE].

**R277-486-6. Mapping Degree Summary Data to Statutory Formula.**

~~[A:]~~(1) [To ensure consistency in applying data from CACTUS to the formula,] For purposes of inputting degree summary data, an LEA shall use the coding provided by the Superintendent [the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of] in correspondence with the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a) [shall be used]:

~~(1)~~ 03 = Bachelor's Degree;

~~(2)~~ 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;

~~(3)~~ 06 = Master's Degree;

~~(4)~~ 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;

~~(5)~~ 09 = Doctorate.]

~~[B:]~~(2) In addition to credit received for degree categories corresponding with the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a), [A] an LEA shall be credited for an individual with National Board certification at the doctorate level.

**R277-486-7. Data Sources.**

~~[A:]~~(1) For an LEA[s] that [were] was in operation in the prior year, data shall be used from the June [30] 29<sup>th</sup> update of CACTUS as required by Section R277-484-3[E].

~~[B:]~~(2) For an LEA[s] that [were] was not in operation in the prior year, data shall be used from the November 15<sup>th</sup> update of CACTUS as required by Section R277-484-3[M].

**KEY: professional staff**

**Date of Enactment or Last Substantive Amendment: [June 7, 2012] 2019**

**Notice of Continuation: March 14, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-2-305(2); 53E-3-401(4)**

**Education, Administration**  
**R277-495**  
**Required Policies for Electronic**  
**Devices in Public Schools**

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 43531  
 FILED: 02/15/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The reason for these amendments is to update and modernize the requirements for local education agencies (LEAs) electronic device use policies regarding both LEA-provided devices and personally owned devices.

**SUMMARY OF THE RULE OR CHANGE:** These rule amendments update definitions of an electronic device, require an LEA establish policies of appropriate uses and restrict uses of an electronic device under certain circumstances, modify required elements of a policy, require LEAs to ensure each school within the LEA provides training to staff and students regarding the electronic device use policy, and require LEAs to provide parental notice regarding the location of information regarding home network filtration services.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 47 CFR Part 54 and Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53G-8-202(2)(c)(i)

**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 these rule requirements already exist in rule. Changes to required policies for electronic devices in schools are updated and clarified.
- ◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because these rule requirements already exist in rule. Changes to required policies for electronic devices in schools was updated and clarified. This rule requires notification to parents and certification in the annual assurances document, but these are tasks that are performed once a year electronically.
- ◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because these rule requirements already exist in rule. Changes to required policies for electronic devices in schools are updated and clarified.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule change are not expected to have any material fiscal impact on persons other than small businesses,

businesses, or local government entities revenues or expenditures because these rule requirements already exist in rule. Changes to required policies for electronic devices in schools are updated and clarified.

**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 non-small 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 non-small 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 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019**

**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 non-small 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 non-small 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.**

**[R277-495. Required Policies for Electronic Devices in Public Schools.**

**R277-495-1. Definitions.**

- \_\_\_\_\_ A. "Board" means the Utah State Board of Education.
- \_\_\_\_\_ B. "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.
- \_\_\_\_\_ C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- \_\_\_\_\_ D. "LEA-owned electronic device" means any device that is used for audio, video, text communication or any other type of

computer or computer-like instrument that is owned, provided, issued or lent by the LEA to a student or employee.

\_\_\_\_\_ E. "Privately-owned electronic device" means any device that is used for audio, video, text communication or any other type of computer or computer-like instrument that is not owned or issued by the LEA to a student or employee.

\_\_\_\_\_ F. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.

\_\_\_\_\_ G. "Student," for purposes of this rule, means any individual enrolled as a student at the LEA regardless of the part-time nature of the enrollment or the age of the individual.

\_\_\_\_\_ H. "The Children's Internet Protection Act (CIPA)" means regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC. CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

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

\_\_\_\_\_ J. "Utah Education Network (UEN)" is a robust network that connects most Utah LEAs, schools, and higher education institutions to quality educational resources and services consistent with Section 53B-17-102.

**R277-495-2. Authority and Purpose.**

\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities, and Subsection 53G-8-202(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools, and 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with Internet access to certify they have Internet safety policies and technology protection measures in place in order to receive discounted internet access and services.

\_\_\_\_\_ B. The purpose of this rule is to direct all LEAs or public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices, both LEA-owned and privately-owned, while on public school premises and, for LEA-owned devices, wherever the devices are used.

**R277-495-3. Local Board and Charter School Responsibilities.**

\_\_\_\_\_ A. LEAs shall require all schools under their supervision to have a policy or policies for students, employees and, where appropriate, for invitees, governing the use of electronic devices on school premises and at school sponsored activities.

\_\_\_\_\_ B. LEAs shall review and approve policies regularly.

\_\_\_\_\_ C. LEAs shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

\_\_\_\_\_ D. LEAs shall provide copies of their policies or clear electronic links to policies at LEA offices, in schools and on the LEA website.

~~E. LEAs and schools within LEAs shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.~~

~~F. LEAs shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised Internet safety policy. LEAs shall retain documentation of the policy review and adoption actions.~~

**~~R277-495-4. Policy Requirements.~~**

~~A. Local policies shall address the following minimum components:~~

- ~~(1) definitions of devices covered by policy;~~
- ~~(2) prohibitions on the use of electronic devices in ways that bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violate local, state, or federal laws; and~~
- ~~(3) the prohibition of access by students, LEA employees and invitees to inappropriate matter on the Internet and World Wide Web while using LEA equipment, services or connectivity whether on school property or while using school-owned or issued devices;~~
- ~~(4) the safety and security of students when using electronic mail, chat rooms, and other forms of direct electronic communications (including instant messaging);~~
- ~~(5) unauthorized access, including hacking and other unlawful activities by LEA electronic device users; and~~
- ~~(6) unauthorized disclosure, use and dissemination of personal student information under the Family Educational Rights and Privacy Act, 34 CFR, Part 99.~~

~~B. Additional requirements for student policies - In addition to the provisions of R277-495-4A, policies for student use of electronic devices shall include:~~

- ~~(1) prohibitions against use of electronic devices during standardized assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;~~
- ~~(2) provisions that inform students that there may be administrative and criminal penalties for misuse of electronic devices and that local law enforcement officers may be notified if school employees believe that a student has misused an electronic device in violation of the law;~~
- ~~(3) provisions that inform students that violation of LEA acceptable use policies may result in confiscation of LEA-owned devices which may result in missed assignments, inability to participate in required assessments and possible loss of credit or academic grade consequences;~~
- ~~(4) provisions that inform students that they are personally responsible for devices assigned or provided to them by the LEA, both for loss or damage of devices and use of devices consistent with LEA directives;~~
- ~~(5) provisions that inform students and parents that use of electronic devices in violation of LEA or teacher instructional policies may result in the confiscation of personal devices for a designated period; and~~
- ~~(6) provisions that inform students that use of privately-owned electronic devices to bully or harass other students or employees and result in disruption at school or school-sponsored activities may justify administrative penalties, including expulsion from school and notification to law enforcement.~~

~~C. Additional requirements for employee policies - In addition to the provisions of R277-495-4A, policies for employee use of electronic devices shall include:~~

- ~~(1) notice that use of electronic devices to access inappropriate or pornographic images on school premises is illegal, may have both criminal and employment consequences, and where appropriate, shall be reported to law enforcement;~~
- ~~(2) notice that employees are responsible for LEA-issued devices at all times and misuse of devices may have employment consequences, regardless of the user; and~~
- ~~(3) notice that employees may use privately-owned electronic devices on school premises or at school sponsored activities when the employee has supervisory duties only as directed by the employing LEA; and~~
- ~~(4) required staff responsibilities in educating minors on appropriate online activities and in supervising such activities.~~

~~D. Local policies may also include the following:~~

- ~~(1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;~~
- ~~(2) procedures to report the misuse of electronic devices;~~
- ~~(3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;~~
- ~~(4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any; and~~
- ~~(5) strategies for use of technology that enhance instruction.~~

~~E. An LEA shall certify annually to the USOE and as required by the FCC, that the LEA has a CIPA-compliant Internet safety policy.~~

**~~R277-495-5. Board and USOE Responsibilities.~~**

~~A. The Board and USOE shall provide resources, upon request, for LEAs and public schools as they develop and update electronic device policies, including sources for successful policies, assistance with reviewing draft policies and amendments, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-613.~~

~~B. The Board and USOE shall develop or provide a model policy or a policy framework to assist LEAs and public schools in developing and implementing their policies.~~

~~C. The Board and USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.~~

~~D. The Board and USOE shall ensure that parents and school employees are involved in the development and implementation of policies.~~

~~E. The Board and USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.]~~



**R277-495. Electronic Devices in Public Schools.****R277-495-1. 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 53G-8-202(2)(c)(i), which directs the Superintendent to develop a conduct and discipline policy model for elementary and secondary public schools; and

(d) 47 CFR, Part 54, Children's Internet Protection Act, which requires schools and libraries that have computers with internet access to certify they have internet safety policies and technology protection measures in place to receive discounted internet access and services.

(2) The purpose of this rule is to direct all LEAs and public schools to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices including:

(a) both LEA-owned and privately-owned, while on public school premises or during participation in school activities; and

(b) for LEA-owned devices, wherever the LEA-owned devices are used.

**R277-495-2. Definitions.**

(1) "Acceptable use policy" means a document stipulating constraints and practices that a user shall accept prior to a user accessing an LEA's, or any school within an LEA's, network or the Internet.

(2) "Electronic device" means a device that is used for audio, video, or text communication or any other type of computer or computer-like instrument including:

(a) a smart phone;

(b) a smart or electronic watch;

(c) a tablet; or

(d) a virtual reality device.

(3) "Guest" means an individual:

(a) who is not a student, employee, or designated volunteer of a public school; and

(b) who is on school property or at the site of a school-sponsored activity or event.

(4) "Inappropriate matter" means pornographic or indecent material as defined in Subsection 76-10-1253(1)(a).

(5) "LEA" includes for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6) "LEA-owned electronic device" means a device that is used for audio, video, text communication, or other type of computer or computer-like instrument that is identified as being owned, provided, issued or lent by the LEA to a student or employee.

(7) "Policy" means an electronic device use policy as required by this rule that contains:

(a) permissible uses of an electronic device under certain circumstances; or

(b) restricted uses of an electronic devices under certain circumstances.

(8) "Privately-owned electronic device" means a device, including an electronic device that is used for audio, video, text

communication, or other type of computer or computer-like instrument that is not owned or issued by the LEA to a student, or employee.

(9) "Public school" means a school or public school program, grades kindergarten through 12, that is part of the Utah public school system, including a school with a distance learning program or alternative program.

(10) "Student," for purposes of this rule, means an individual enrolled as a student at an LEA regardless of the part-time nature of the enrollment or the age of the individual.

(11)(a) "The Children's Internet Protection Act (CIPA)" means federal regulations enacted by the Federal Communications Commission (FCC) and administrated by the Schools and Libraries Division of the FCC.

(b) CIPA and companion laws, the Neighborhood Children's Internet Protection Act (NCIPA) and the Protecting Children in the 21st Century Act, require recipients of federal technology funds to comply with certain Internet filtering and policy requirements.

(12) "Utah Education Telehealth Network or UETN" means the Utah Education and Telehealth Network created in Section 53B-17-105.

**R277-495-3. Requirement of Electronic Device Use Policy, Creation, and Access.**

(1) An LEA shall require all schools under the LEA's supervision to have a policy or policies for students, employees and, where appropriate, for guests, governing the use of electronic devices on school premises and at school sponsored activities.

(2) An LEA shall review and approve policies regularly.

(3) An LEA shall encourage schools to involve teachers, parents, students, school employees, school community councils, and community members in developing the local policies.

(4) An LEA shall provide copies of the LEA's policies or clear electronic links to policies at LEA offices, in schools and on the LEA's website in the same location as the LEA's data governance plan required in R277-487.

(5) An LEA and all schools within the LEA shall cooperate to ensure that all policies within a school or school district are consistent and accessible to parents and community members.

(6) An LEA shall provide reasonable public notice and at least one public hearing or meeting to address a proposed or revised acceptable use policy.

(7) An LEA shall retain documentation of the policy review and adoption actions.

**R277-495-4. LEA Electronic Device Policy Requirements.**

(1) An LEA's policy shall include at least the following:

(a) definitions of electronic devices covered by policy;

(b) prohibitions on the use of electronic devices in ways that:

(i) bully, humiliate, harass, or intimidate school-related individuals, including students, employees, and guests, consistent with R277-609 and R277-613; or

(ii) violate local, state, or federal laws;

(c) the prohibition of access by students, LEA employees and guests to inappropriate matter on the internet and world wide web while using LEA equipment, services, or connectivity whether on or off school property;

(e) directives on the safety and security of students when using social media and other forms of electronic communications;

(f) directives on unauthorized access, including hacking and other unlawful activities by a user of an LEA electronic device; and

(g) directives on unauthorized disclosure, use and dissemination of personal student information under R277-487 and the Family Educational Rights and Privacy Act (FERPA)34 CFR, Part 99.

(2) In addition to the requirements of Subsection (1), an LEA's policies for student use of electronic devices shall include directives regarding the following:

(a) the use of privately-owned electronic devices during standardized assessments;

(b) administrative penalties for misuse of electronic devices during school hours or at a school-sponsored;

(c) violations of an LEA's acceptable use policies that may result in confiscation of LEA-owned electronic devices or restricted access on the LEA's;

(d) a student's personal responsibility for devices assigned or provided to a student by the LEA, both for loss or damage of electronic devices and use of electronic devices consistent with the LEA's directives;

(e) use of electronic devices in violation of an LEA's or teacher's instructional policies may result in the confiscation of privately-owned electronic devices for a designated period; and

(f) uses of privately-owned electronic devices to bully or harass other students or employees during school hours or at school-sponsored activities that may result in the student being subject to LEA disciplinary action.

(3) In addition to the provisions of Subsections (1) and (2), directives for employee use of electronic devices shall include:

(a) notice that use of electronic devices to access inappropriate matter on LEA-owned electronic devices or privately-owned electronic devices on school property, at school-sponsored events or using school connectivity may have criminal, employment or student disciplinary consequences, and if appropriate, may be reported to law enforcement;

(b) notice that an employee is responsible for LEA-issued electronic devices at all times and misuse of an electronic device may have employment consequences, regardless of the user; and

(c) required staff responsibilities in educating minors on appropriate online activities, as required by Section 53G-7-1202, and in supervising such activities.

(4) An LEA's policies shall also include the following:

(a) prohibitions or restrictions on unauthorized use that would cause invasions of reasonable expectations of student and employee privacy;

(b) procedures to report the misuse of electronic devices; and

(c) potential disciplinary actions toward students or employees for violation of local policies regarding the use of electronic devices; and

(d) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any.

(5) An LEA shall certify annually through UETN, and as required by the FCC, that the LEA has a CIPA-compliant acceptable use policy.

#### **R277-495-5. Required School Level Training.**

(1) A school shall provide, within the first 45 days of each school year, a school-wide or in-classroom training to employees and students that covers:

(a) the contents of the school's policy;

(b) the importance of digital citizenship;

(c) the LEA's conduct and discipline related consequences as related to a violation of the school's policy;

(d) the LEA's general conduct and discipline policies as described in Section 53G-8-202; and

(e) the benefits of connecting to the Internet and utilizing the school's Internet filters, while on school premises.

(2) A school that adopts a permissible use policy shall:

(a) within the first 45 days of each school-year, provide school-wide or in-classroom training to employees and students that covers:

(i) the elements described in Subsections (1)(a) through (e); and

(ii) specific rules governing the permissible and restricted uses of personal electronic devices while in a classroom; and

(b) require that each educator who allows the use of a personal electronic device in the classroom clearly communicates to parents and students the conditions under which the use of a personal electronic device is allowed.

#### **R277-495-6. Resources and Required Assurances.**

(1) The Superintendent may provide resources, upon request, for an LEA regarding electronic device policies, including:

(a) sample acceptable use policies;

(b) general best practices for electronic device use as outlined in R277-922; and

(c) materials for digital citizenship as outlined in Section 53G-7-1202.

(2) An LEA shall post the LEA's electronic device use policy on the LEA's website and provide a link to the Board through the annual assurances document described in R277-108.

#### **R277-495-7. LEA Requirement to Notify Parents of Filtering Options.**

An LEA shall provide an annual notice to all parents of the location of information for in-home network filtering options as provided for in Section 76-10-1231.

**KEY: electronic devices, policy**

**Date of Enactment or Last Substantive Amendment: [~~April 7, 2014~~2019]**

**Notice of Continuation: December 7, 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-8-202(2)(c)(i)**

Education, Administration

## **R277-704**

Financial and Economic Literacy:  
Integration into Core Curriculum and  
Financial and Economic Literacy  
Student Passports

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43519

FILED: 02/13/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In response to a recent state audit on this program, these amendments seek to make several changes including aligning the standards review process with the core standards' process.

**SUMMARY OF THE RULE OR CHANGE:** Utah State Board of Education (Board) Rule R277-704 is amended with new language to the authority in Section R277-704-1, amended definitions in Section R277-704-2, and updated language in Sections R277-704-3 through R277-704-7, aligning the standards review process with the core standards' process. This rule is also amended to make technical and formatting changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X Section 3 and Section 53E-3-505 and Subsection 53E-3-401(4)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes are not expected to have any material fiscal impact on state government revenues or expenditures because they require the 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. In response to a recent state audit on this program, these amendments seek to make several changes including aligning the standards review process with the core standards' process. Estimated costs to implement work groups total \$500 which is not material to the Board. These amendments will also make technical and formatting changes.

◆ **LOCAL GOVERNMENTS:** These rule changes are not expected to have any material impact on local governments' revenues or expenditures because they require the 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. In response to a recent state audit on this program, these amendments seek to make several changes including aligning the standards review process with the core standards' process. These amendments will also make technical and formatting changes.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because they require the 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. In response to a recent state audit on this

program, these amendments seek to make several changes including aligning the standards review process with the core standards' process. Endorsement and licensure requirements are already in existence, costs will not change for individuals. These amendments will also make technical and formatting changes.

◆ **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 requires the 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. In response to a recent state audit on this program, these amendments seek to make several changes including aligning the standards review process with the core standards' process. These amendments will also make technical and formatting changes.

**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 non-small businesses with a NAICS code 611110). These rule changes have no material fiscal impact on local education agencies and will not have a fiscal impact on non-small 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 04/01/2019**

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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.

**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 non-small businesses with a NAICS code 611110). These rule changes have no material fiscal impact on local education agencies and will not have a fiscal impact on non-small or small businesses.

**R277. Education, Administration.**

**R277-704. Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports.**

**[R277-704-1. Definitions:**

- A. "Board" means the Utah State Board of Education.
- B. "End of course assessment" means an online end of course assessment for use by school districts and charter schools for students who take the general financial literacy course.
- C. "Endorsement" means the document required through the USOE licensing process for teachers who teach general financial literacy.
- D. "Financial and economic literacy project" means a program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.
- E. "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.
- F. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- G. "Professional development" for public school educators means the act of engaging in professional learning in order to improve student learning.
- H. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:
  - (1) all Board and LEA board graduation requirements;
  - (2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;
  - (3) evidence of parent, student, and school representative involvement annually; and
  - (4) attainment of approved workplace skill competencies.
- I. "USOE" means the Utah State Office of Education.

**R277-704-2. Authority and Purpose:**

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53E-3-505 which directs the 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, and by Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is:

~~\_\_\_\_\_ (1) to provide 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;~~

~~\_\_\_\_\_ (2) to begin the development of a financial and economic literacy student passport;~~

~~\_\_\_\_\_ (3) to provide for educator professional development using business and community expertise, allowing for maximum creativity and flexibility;~~

~~\_\_\_\_\_ (4) to provide curriculum resources and assessments for financial and economic literacy;~~

~~\_\_\_\_\_ (5) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12;~~

~~\_\_\_\_\_ (6) 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~~

~~\_\_\_\_\_ (7) to help students and parents to locate and use school and community resources to improve financial and economic literacy among students and families.~~

**R277-704-3. Financial and Economic Literacy Student Passport.**

~~\_\_\_\_\_ A. The Board and the USOE shall develop and promote a financial and economic literacy student passport model, which would include tracking of student progress toward a passport.~~

~~\_\_\_\_\_ B. Early efforts will focus on students in grades nine through 12.~~

~~\_\_\_\_\_ C. Development efforts will include parent and community participation.~~

~~\_\_\_\_\_ D. A major goal of the development and promotion of a financial and economic literacy student passport will be to inform and educate students and their parents throughout the public school experience of the importance of financial and economic literacy and its applicability to all areas of the public school curriculum.~~

~~\_\_\_\_\_ E. Public schools shall provide parents/guardians and students with the following:~~

~~\_\_\_\_\_ (1) during kindergarten enrollment, a financial and economic literacy passport and information about post-secondary education savings options; and~~

~~\_\_\_\_\_ (2) information and encouragement toward the financial and economic literacy student passport opportunity upon development as part of the SEOP/plan for college and career readiness process.~~

**R277-704-4. General Financial Literacy End of Course Assessment.**

~~\_\_\_\_\_ A. The USOE shall provide to LEAs an online end of course assessment for general financial literacy which shall:~~

~~\_\_\_\_\_ (1) be administered to every student who takes the general financial literacy course;~~

~~\_\_\_\_\_ (2) be aligned with general financial literacy revised core standards and objectives; and~~

~~\_\_\_\_\_ (3) be measured and analyzed at the school, district and state-wide levels.~~

**R277-704-5. General Financial Literacy Teacher Endorsement.**

~~\_\_\_\_\_ A. Any Board licensed educator who teaches general financial literacy shall have completed course work in:~~

~~\_\_\_\_\_ (1) financial planning;~~

~~\_\_\_\_\_ (2) credit and investing;~~

~~\_\_\_\_\_ (3) consumer economics;~~

~~\_\_\_\_\_ (4) personal budgeting; and~~

~~\_\_\_\_\_ (5) family economics.~~

~~\_\_\_\_\_ B. Educator course work can be part of or in addition to course work and programs of study required for licensure by the Board consistent with R277-502.~~

**R277-704-6. Financial and Economic Literacy Professional Development Opportunities.**

~~\_\_\_\_\_ A. The USOE shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.~~

~~\_\_\_\_\_ B. Professional development activities shall:~~

~~\_\_\_\_\_ (1) inform public school educators about financial and economic literacy;~~

~~\_\_\_\_\_ (2) encourage greater understanding of personal financial and economic responsibility;~~

~~\_\_\_\_\_ (3) provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses; and~~

~~\_\_\_\_\_ (4) work with the USOE to develop messaging or advertising to promote financial and economic literacy.]~~

**R277-704-1. 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;~~

~~\_\_\_\_\_ (c) Section 53E-3-505, which directs the 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.~~

~~\_\_\_\_\_ (2) The purpose of this rule is:~~

~~\_\_\_\_\_ (a) to provide 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;~~

~~\_\_\_\_\_ (b) to begin the development of a financial and economic literacy student passport;~~

~~\_\_\_\_\_ (c) to provide for educator professional development using business and community expertise;~~

~~\_\_\_\_\_ (d) to provide curriculum resources and assessments for financial and economic literacy;~~

~~\_\_\_\_\_ (e) to provide passport criteria and tracking capabilities for the financial and economic literacy passport for students grades K-12;~~

~~\_\_\_\_\_ (f) 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~~

~~\_\_\_\_\_ (g) to help students and parents to locate and use school and community resources to improve financial and economic literacy among students and families.~~

**R277-704-2. Definitions.**

(1) "Content Specialist" means the same as the term is defined in Subsection R277-520-1(1).

(2) "End of course assessment" means an online end of course assessment for students who take the general financial literacy course.

(3) "Endorsement" means the licensing document required by the board for teachers who teach general financial literacy.

(4) "Financial and economic literacy project" means a program or series of activities developed locally to implement financial and economic literacy education as described in Section 53E-3-505.

(5) "Financial and economic literacy student passport" means a collection of approved activities, assessments, or achievements completed during a given time period which indicate advancement in financial and economic understanding.

(6) "LEA" for purposes of this rule, includes the Utah Schools for the Deaf and the Blind.

(7) "Professional development" means the same as the term defined in Subsection R277-522-2(10).

**R277-704-3. Financial and Economic Literacy Student Passport.**

(1) The Superintendent shall develop and promote a financial and economic literacy student passport that includes tracking a student's progress.

(2) The Superintendent shall include parent and community participation on the development of the student passport described in Subsection (1).

(3) The first round of implementation of the financial and economic literacy student passport shall be for students in grades nine through 12.

(4) The Superintendent shall provide a financial and economic literacy student passport to support educators as they educate students and their parents of the importance of financial and economic literacy, including its applicability to other subject areas.

(5) An LEA shall provide parents and students with the following:

(a) a financial and economic literacy passport and information about post-secondary education savings options; and

(b) information about the financial and economic literacy student passport opportunity as part of the student's plan for college and career readiness.

**R277-704-4. General Financial Literacy End of Course Assessment.**

(1) The Superintendent shall provide an LEA with an end of course assessment for general financial literacy which shall be:

(a) administered to every student who takes the general financial literacy course;

(b) aligned with general financial literacy revised core standards and objectives; and

(c) measured and analyzed at the school, district, and state-wide levels.

**R277-704-5. General Financial Literacy Teacher Endorsement.**

(1) A Board licensed educator who teaches general financial literacy is required to have licensing, endorsements, and other credentials equal to other content specialists as described in Section R277-520-4.

(2) An educator's course work may be part of or in addition to course work and programs of study required for licensure by the Board consistent with R277-502.

**R277-704-6. Financial and Economic Literacy Professional Development Opportunities.**

(1) The Superintendent shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups.

(2) Professional development activities shall:

(a) provide information about financial and economic literacy including personal finance and economic responsibility;

(c) provide resources for teaching financial and economic literacy without promoting specific products or businesses; and

(d) work with the Superintendent to develop strategies for promoting financial and economic literacy.

**R277-704-7. Financial and Economic Literacy Taskforce.**

(1) The financial and economic literacy taskforce shall have the membership and general responsibilities outlined in Subsection 53E-3-505(3).

(2) In addition to the responsibilities outlined in Subsection 53E-3-505(3), the financial and economic literacy taskforce shall:

(a) analyze data provided by the Superintendent that includes:

(i) aggregated-school level proficiency results from the end of course assessment;

(ii) general enrollment data;

(iii) assessment of general financial literacy education quality; and

(iv) other relevant data to inform strategies for strengthening financial literacy proficiency; and

(b) serve as the writing committee for the financial literacy course standards described in Subsection 53E-4-204(1)(b), (3), and (4).

(3) The course standards described in Subsection (2)(b) are subject to the same approval requirements described in Subsection 53E-4-202(4).

**KEY: financial, economics, literacy**

**Date of Enactment or Last Substantive Amendment: [~~October 9, 2014~~2019]**

**Notice of Continuation: November 5, 2018**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53G-3-505; 53E-3-401(4)**

Environmental Quality, Waste  
Management and Radiation Control,  
Radiation  
**R313-28-31**  
General and Administrative  
Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43530

FILED: 02/15/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section R313-28-31 currently prohibits the exposure of individuals to x-rays except for healing arts purposes when the exposure has been specifically ordered and authorized by a licensed individual. In 2014, the Waste Management and Radiation Control, Radiation (Division) learned that jails and prisons were beginning to use low dose, whole body scanners for security purposes when two were registered in Utah. Since that time, an additional five units have been registered. While not a healing arts purpose, the Division considers this a legitimate use of x-ray equipment. Due to the prohibition in the rules, the Waste Management and Radiation Control Board must issue an exemption in accordance with Section R313-12-55 for each of these units. Because the Division considers this use to be legitimate and due to the increasing numbers of the units being registered, it has been determined that an exemption written into rule would be more efficient versus having the Waste Management and Radiation Control Board issue an exemption for each individual unit as they are registered.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R315-28-31(2)(f)(i) is being amended except the use of low dose, whole body scanners used for security purposes in correctional facilities from the prohibited uses of x-rays.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-3-104 and Section 19-6-104 and Section 19-6-107

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no cost or savings to the state due to this amendment because the amendment does not exempt these types of units from annual registration and periodic inspections. The seven units already registered currently pay the annual registration fee of \$35 per unit and inspection fees of \$75 per unit when inspected. New units will still be required to register and pay the annual registration fee, be inspected every five years, and pay the inspection fee. It is not possible to determine how many new units will be registered.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local governments due to this amendment because the amendment does not exempt these types of units from annual registration and periodic inspections. The seven units already registered currently pay the annual registration fee of \$35 per unit and inspection fees of \$75 per unit when inspected. New units will still be required to register and pay the annual registration fee, be inspected every five years, and pay the inspection fee. It is not possible to determine how many new units will be registered.

◆ **SMALL BUSINESSES:** There will be no cost or savings to small businesses due to this amendment because the amended rule applies only to low dose, whole body scanners used at correctional facilities and based on a review of available data the Division is not aware of any small businesses operating correctional facilities in Utah.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings to persons other than small businesses, businesses, or local government entities due to this amendment because the amended rule applies only to low dose, whole body scanners used at correctional facilities and based on a review of available data the Division is not aware of any persons other than small businesses, businesses, or local government entities operating correctional facilities in Utah.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There should be no additional compliance costs for affected persons because the amended rule simply allows for the use of low dose, whole body scanners for something other than the healing arts. It does not exempt facilities from the requirement to register x-ray units, or to have them inspected and pay the appropriate fees associated with these activities.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is not anticipated that adoption of this rule amendment will have any fiscal impact on businesses because the amendment affects correctional facilities only, and based on a review of available data the Department is not aware of any businesses that operate correctional facilities in Utah.

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

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, RADIATION  
SECOND FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-4880  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)  
◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at [tball@utah.gov](mailto:tball@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2019**

**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**

Based on a review of available data, the Department of Environmental Quality is not aware of any non-small businesses in Utah that operate correctional facilities that would be impacted by this rule amendment. Therefore, it is not believed that the amendment will have any impact on non-small businesses.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

**R313-28. Use of X-Rays in the Healing Arts.**

**R313-28-31. General and Administrative Requirements.**

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(a) X-ray equipment shall be FDA approved for use in the United States and shall be certified in accordance with 21 CFR 1010.2 and identified in accordance with 21 CFR 1010.3.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Director.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.



(f) Individuals shall be exposed to the useful beam for healing arts purposes only when the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes except for low dose, whole body scanners used for security purposes in correctional facilities; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-31(2)(c), shall list individual projections where mechanical holding devices can be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Director. When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or outdated, the Director shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

(a) model numbers of major components;

(b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and

(c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be

provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Hand-held medical x-ray systems. X-ray equipment designed to be hand-held shall comply with Section R313-28-31, excluding Subsection R313-28-31(5), and R313-28-52, excluding Subsections R313-28-52(8)(b)(i) and (ii).

(a) When operating hand-held equipment for which it is not possible for the operator to remain at least six feet from the x-ray machine during x-ray exposure, protective aprons of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso and gonads from backscatter radiation;

(b) In addition to the dose limits in R313-15-301, operators of hand-held x-ray equipment shall ensure that members of the public that may be exposed to scatter radiation or primary beam transmission from the hand-held device are not exposed above 2 milliroentgen per hour;

(i) Operators will ensure that members of the public likely to be exposed to greater than 2 milliroentgen per hour will be provided protective aprons of at least 0.5 millimeter lead equivalence or are moved to a distance such that the exposure rate to the individual is below 2 milliroentgen per hour; and

(c) In addition to the requirements of Subsection R313-28-350(1), each operator of hand-held x-ray equipment shall complete the training program supplied by the manufacturer prior to using the x-ray unit. Records of training shall be maintained on file for examination by an authorized representative of the Director.

(7) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

**KEY: dental, X-rays, mammography, beam limitation**

**Date of Enactment or Last Substantive Amendment: [2018]2019**

**Notice of Continuation: July 1, 2016**

**Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107**

**Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
R315-15-14  
DIYer Reimbursement**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 43529  
FILED: 02/14/2019**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** It has come to the attention of the Division of Waste Management and Radiation Control, Waste Management (Division) that several Do-It-Yourself (DIY) Used Oil Collection Centers (UOCC) were not receiving their reimbursements due to a conflict between the rule and agreements between the Division and Local Health Departments (LHD). Agreements between the Division and the LHDs require the LHDs to conduct semi-annual inspections of the DIYer UOCCs in their jurisdictions. During these inspections, the LHDs collect the used oil collection log sheets from the DIYer UOCCs. Because this was being done only twice a year, several of the DIYer UOCCs were not receiving their reimbursements because the time period for reimbursement in rule is quarterly. In order to correct this problem, the time period in this rule for reimbursements is being changed to semi-annually. The reimbursement rate for DIYer UOCCs has not increased since 1993. The Division has become aware that some DIYer UOCCs are not recycling their oil because the reimbursement rate is too low to make it worth the cost of transportation. Based on an analysis performed by the Division, it has been determined that \$0.16 per gallon in 1993 dollars is equivalent to \$0.25 per gallon in 2017 dollars and therefore, the Division is proposing to raise the rate to \$0.25 per gallon.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R315-15-14.1(a) is amended to state that the Director will pay a semi-annual recycling fee incentive instead of a quarterly fee incentive. Subsections R315-15-14.2(a) and (c) are amended to change from a quarterly to a semi-annual payment period, and provide an additional 30 days for submission of reports. Additionally, the requirement for DIYer UOCCs to submit receipts as part of their request for reimbursement was removed from this subsection. The amount of the recycling incentive payable to registered DIYer UOCCs is being raised from \$0.16 per gallon to \$0.25 per gallon in Subsection R315-15-14.1(b).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-704 and Section 19-6-717

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because the recycling incentive amount is being increased, the amount of money paid out of the Used Oil Collection Administration Restricted Account will increase. The highest volume of used oil that reimbursements were paid for was 474,205 gallons. This was reimbursed at the rate of \$0.16 per gallon for an annual total of \$75,873. The increase in the reimbursement rate to \$0.25 per gallon would result in an increase in the amount of money paid out of the fund by \$42,678 annually. Additionally, there are three state government entities that operate registered DIYer UOCCs and would be eligible for reimbursement at the new rate of \$0.25 per gallon. These three entities make up approximately 0.69% of the total number of registered DIYer UOCCs and could potentially receive a total of approximately \$295 between the three entities depending on how much used oil is collected. Amounts of used oil collected vary depending on many factors and it is not possible to determine if a DIYer UOCC will collect the same amount of used oil or more than was collected in the past.

◆ **LOCAL GOVERNMENTS:** There are 46 local government entities that operate registered DIYer UOCCs that would be eligible for reimbursement at the new rate of \$0.25 per gallon. These 46 entities make up approximately 10.6% of the total number of registered DIYer UOCCs and could potentially receive a total of approximately \$4,523 between them depending on how much used oil is collected. Amounts of used oil collected vary depending on many factors and it is not possible to determine if a DIYer UOCC will collect the same amount of used oil or more than was collected in the past.

◆ **SMALL BUSINESSES:** There are 350 small businesses that operate registered DIYer UOCCs that would be eligible for reimbursement at the new rate of \$0.25 per gallon. These 350 businesses make up approximately 80.6% of the total number of registered DIYer UOCCs and could potentially receive a total of approximately \$34,418 between them depending on how much used oil is collected. Amounts of used oil collected vary depending on many factors and it is not possible to determine if a DIYer UOCC will collect the same amount of used oil or more than was collected in the past.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is not anticipated that these rule changes will provide any direct or indirect cost or savings to persons other than small businesses, businesses, or local government entities because the Division is only aware of the registered DIYer UOCCs that will be directly impacted as stated above.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is not anticipated that compliance with these rule changes will result in any increased cost of compliance for any of the regulated entities. It is anticipated that there may be a slight decrease in costs due to the change from quarterly to semi-annual submittals of requests for reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will result in more money being paid out of the Used Oil Collection Administration Restricted Account, however, this is the purpose of the fund. The money paid out will benefit the companies and agencies that operate registered DIYer UOCCs by helping to pay for the recycling of the used oil they collect. Recycling of used oil benefits the citizens of Utah by conserving resources and ensuring that the used oil does not end up contaminating the environment and having a negative effect on human health.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)  
 ♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at [tball@utah.gov](mailto:tball@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2019

AUTHORIZED BY: Alan Matheson, Executive Director

Fiscal Benefits			
State Government	\$295	\$295	\$295
Local Government	\$4,523	\$4,523	\$4,523
Small Businesses	\$34,418	\$34,418	\$34,418
Non-Small Businesses	\$3,442	\$3,442	\$3,442
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$42,678</b>	<b>\$42,678</b>	<b>\$42,678</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 35 non-small businesses that operate registered Do-It-Yourself (DIY) Used Oil Collection Centers (UOCC) in Utah. For a complete listing of NAICS codes used in this analysis, please contact the agency. These businesses make up approximately 8.1% of the total number of registered DIYer UOCCs and could potentially receive a total of approximately \$3,442 annually between them depending on how much used oil is collected. Amounts of used oil collected vary depending on many factors and it is not possible to determine if a DIYer UOCC will collect the same amount of used oil or more than was collected in the past.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

Appendix 1: Regulatory Impact Summary Table\*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$42,678	\$42,678	\$42,678
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>\$42,678</b>	<b>\$42,678</b>	<b>\$42,678</b>

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-15. Standards for the Management of Used Oil.**

**R315-15-14. DIYer Reimbursement.**

**14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY**

(a) The Director shall pay a ~~quarterly~~ semi-annual recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor/refiner, burner, registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to ~~[\$0.46]~~ \$0.25 per gallon, subject to availability of funds and the priorities of Utah Code Annotated 19-6-720.

## 14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records [~~and receipts~~] of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during [~~the quarter~~] the semi-annual collection periods of January through June and July through December for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the [~~calendar quarter~~] semi-annual collection period [~~in which the DIYer oil was collected and for which reimbursement is requested~~].

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than [~~30~~] 60 days after the end of the [~~calendar quarter~~] semi-annual collection period for which reimbursement is requested will be paid during the next [~~quarterly~~] reimbursement period.

(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.

**KEY:** grants, registration, recycling, used oil

**Date of Enactment or Last Substantive Amendment:** [~~September 14, 2018~~] 2019

**Notice of Continuation:** March 10, 2016

**Authorizing, and Implemented or Interpreted Law:** 19-6-704; 19-6-720

Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
**R315-260**  
Hazardous Waste Management  
System

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43526

FILED: 02/14/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In May of 2015, the U.S. Department of Transportation (DOT) announced a national recall of airbag inflators manufactured by Takata due to a defect which has resulted in 15 deaths and at least 250 injuries in the U.S. as of August 2018. This recall affects 19 vehicle manufacturers with approximately 60,000,000 to 70,000,000 airbag inflators scheduled for recall. A Preservation Order issued by DOT in February 2015 required Takata to preserve all recalled airbag inflators. EPA issued a memorandum in June of 2017 stating that the recalled airbag inflators were not subject to hazardous waste regulations while being held under the Preservation Order. The EPA clarification states that the

recalled inflators would be considered a solid waste once the order was lifted. Airbag inflators meet both the ignitability and reactivity hazardous waste characteristics and therefore, would need to be managed as a hazardous waste. In April of 2018, the Preservation Order was amended requiring Takata to keep only a certain percentage of the inflators allowing the remainder to be disposed. The amended order no longer requires affected vehicle manufacturers to send their recalled airbag inflators to Takata thus allowing the manufacturers to dispose of the inflators on their own. DOT has determined that it is imperative that the recall of these airbag inflators be accelerated because the risk of serious injury or death increases over time because the inflators become more unstable as they age and are exposed to high absolute humidity. It is believed that these rule changes will assist in facilitating the recall acceleration by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met. These rule changes became effective at the federal level on 11/30/2018.

**SUMMARY OF THE RULE OR CHANGE:** The definitions of Airbag Waste, Airbag Waste Collection Facility, and Airbag Waste Handler were added to Subsection R315-260-10(c). Subsection numbering was redone to accommodate the new definitions and some typographical errors were corrected.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-104 and Section 19-6-105 and Section 19-6-106

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes will not affect the state budget because no state governmental agency is a vehicle manufacturer subject to provisions of the recall of Takata airbag inflators.

◆ **LOCAL GOVERNMENTS:** These rule changes will not affect any local government because no local governments are vehicle manufacturers subject to provisions of the recall of Takata airbag inflators.

◆ **SMALL BUSINESSES:** There are 385 car dealerships (NAICS 4411) in Utah that are small businesses that could be involved in removing and disposing of airbag inflators. These dealerships make up 80.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). Due to the exemptions provided by these rule changes, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$81.55 per year. Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that if there are any persons other than small businesses, businesses, or local governments that are involved in removing airbag inflators these persons would see a cost savings with the adoption of these rule changes. However, the data is not available and would be too costly to acquire in order to be able to make a determination as to who these persons are and what the fiscal impact could be, if any.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that there will be no additional compliance costs for affected persons due to the adoption of these rule changes because these changes exempt persons removing airbag inflators from having to comply with several provisions that already exist in rule thus reducing the cost of compliance.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is not anticipated that these rule changes will have a negative fiscal impact on any business involved in the removal of airbag inflators. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). It is believed that these rule changes will assist in accelerating the removal of these dangerous airbag inflators. This is accomplished by exempting those businesses involved in the removal of airbag inflators from several of the regulatory requirements which results in a cost savings to those businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)  
 ◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at [tball@utah.gov](mailto:tball@utah.gov)

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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	\$31,395	\$31,395	\$31,395
Non-Small Businesses	\$7,605	\$7,605	\$7,605
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</b>
<b>Net Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</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 75 car dealerships (NAICS 4411) in Utah that are non-small businesses. These dealerships make up 19.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage and shipping). Due to the

exemptions provided by this rule change, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$101.40 per year.

Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

### **R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

#### **R315-260. Hazardous Waste Management System.**

##### **R315-260-10. Definitions.**

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

(3) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(4) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(5) "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

(6) "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under Subsection R315-261-4(j), and accumulates the waste for more than ten days.

(7) "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under Rules R315-260 through 266, R315-268, R315-270, and R315-273.

(~~5~~)(8) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(~~6~~)(9) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(~~7~~)(10) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(~~8~~)(11) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(~~9~~)(12) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(~~10~~)(13) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

(~~11~~)(14) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(~~12~~)(15) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(~~13~~)(16) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

~~(14)~~(17) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through 216 is also subject to Section R315-262-211 when accumulating unwanted material or hazardous waste, or both.

~~(15)~~(18) "Certification" means a statement of professional opinion based upon knowledge and belief.

~~(16)~~(19) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

~~(17)~~(20) "Component" means either the tank or ancillary equipment of a tank system.

~~(18)~~(21) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

~~(19)~~(22) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

~~(20)~~(23) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

~~(21)~~(24) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

~~(22)~~(25) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

~~(23)~~(26) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of

engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~(24)~~(27) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

~~(25)~~(28) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

~~(26)~~(29) "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

~~(27)~~(30) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

~~(28)~~(31) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

~~(29)~~(32) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~(30)~~(33) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

~~(31)~~(34) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

~~(32)~~(35) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~(33)~~(36) "Division" means the Division of Waste Management and Radiation Control.

~~(34)~~(37) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

~~(35)~~(38) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

~~(36)~~(39) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

~~(37)~~(40) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

~~(38)~~(41) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

~~(39)~~(42) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

~~(40)~~(43) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

~~(41)~~(44) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21.

~~(42)~~(45) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction of the facility to be completed within a reasonable time.

~~(43)~~(46) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

~~(44)~~(47) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

~~(45)~~(48) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-~~1~~260-10(c)~~(43)~~(48)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

~~(46)~~(49) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

~~(47)~~(50) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.



~~(48)~~(51) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

~~(49)~~(52) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~(50)~~(53) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

~~(51)~~(54) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

~~(52)~~(55) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

~~(53)~~(56) "Ground water" means water below the land surface in a zone of saturation.

~~(54)~~(57) "Hazard class" means:

- (i) The DOT hazard class identified in 49 CFR 172; and
- (ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

~~(55)~~(58) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

~~(56)~~(59) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)~~(58)~~(59), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

~~(57)~~(60) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

~~(58)~~(61) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

~~(59)~~(62) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

~~(60)~~(63) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

~~(61)~~(64) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

~~(62)~~(65) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~(63)~~(66) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

~~(64)~~(67) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (i) Cement kilns;
- (ii) Lime kilns;
- (iii) Aggregate kilns;
- (iv) Phosphate kilns;
- (v) Coke ovens;
- (vi) Blast furnaces;
- (vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;
- (viii) Titanium dioxide chloride process oxidation reactors;
- (ix) Methane reforming furnaces;
- (x) Pulping liquor recovery furnaces;
- (xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

~~[(65)](68)~~ "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~[(66)](69)~~ "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

~~[(67)](70)~~ "Injection well" means a well into which fluids are injected. See also "underground injection".

~~[(68)](71)~~ "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

~~[(69)](72)~~ "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

~~[(70)](73)~~ "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

~~[(71)](74)~~ "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

~~[(72)](75)~~ "Lamp," also referred to as "universal waste lamp," is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

~~[(73)](76)~~ "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

~~[(74)](77)~~ "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

~~[(75)](78)~~ "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~[(76)](79)~~ "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

~~[(77)](80)~~ "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

(i) Greater than or equal to 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; or

(ii) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or

(iii) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(78)](81)~~ "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

~~[(79)](82)~~ "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

~~[(80)](83)~~ "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

~~[(81)](84)~~ "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

~~[(82)](85)~~ "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

~~[(83)](86)~~ "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

~~[(84)](87)~~ "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

~~[(85)](88)~~ "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

~~[(86)](89)~~ "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

~~[(87)](90)~~ "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

~~[(88)](91)~~ "Movement" means that hazardous waste transported to a facility in an individual vehicle.

~~[(89)](92)~~ "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

~~[(90)](93)~~ "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

~~[(91)](94)~~ "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

~~[(92)](95)~~ "Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

~~[(93)](96)~~ "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

~~[(94)](97)~~ "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~[(95)](98)~~ "Open burning" means the combustion of any material without the following characteristics:

- (i) Control of combustion air to maintain adequate temperature for efficient combustion,
- (ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

~~[(96)](99)~~ "Operator" means the person responsible for the overall operation of a facility.

~~[(97)](100)~~ "Owner" means the person who owns a facility or part of a facility.

~~[(98)](101)~~ "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

~~[(99)](102)~~ "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-[5-]101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

~~[(+00)](103)~~ "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

~~[(+01)](104)~~ "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

~~[(+02)](105)~~ "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

~~[(+03)](106)~~ "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

~~[(+04)](107)~~ "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

~~[(+05)](108)~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (i) Is a new animal drug under FFDC section 201(w), or
- (ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (iii) Is an animal feed under FFDC section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)[~~(+05)](108)~~(i) or (ii).

~~[(+06)](109)~~ "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

~~[(+07)](110)~~ "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~[(+08)](111)~~ "POHC's" means principle organic hazardous constituents.

~~[(109)]~~(112) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

~~[(110)]~~(113) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

~~[(111)]~~(114) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~[(112)]~~(115) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

~~[(113)]~~(116) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

~~[(114)]~~(117) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

~~[(115)]~~(118) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

~~[(116)]~~(119) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

~~[(117)]~~(120)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely

involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

~~[(118)]~~(121) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

~~[(119)]~~(122) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~[(120)]~~(123) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~[(121)]~~(124) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~[(122)]~~(125) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~[(123)]~~(126) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

~~[(124)]~~(127) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~[(125)]~~(128) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

~~[(126)]~~(129) "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U-listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

~~[(127)]~~(130) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

~~[(128)]~~(131) "Sorb" means to either adsorb or absorb, or both.

~~(129)~~(132) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

~~(130)~~(133) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

~~(131)~~(134) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

~~(132)~~(135) "State" means the state of Utah.

~~(133)~~(136) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~(134)~~(137) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

~~(135)~~(138) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

~~(136)~~(139) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

~~(137)~~(140) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

~~(138)~~(141) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

~~(139)~~(142) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

~~(140)~~(143) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

~~(141)~~(144) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly

connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

~~(142)~~(145) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

~~(143)~~(146) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

~~(144)~~(147) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

~~(145)~~(148) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(146)~~(149)(i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,

(B) What pretreatment, if any, is required,

(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

~~(147)~~(150) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~(148)~~(151) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~(149)~~(152) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

~~(150)~~(153) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

~~(151)~~(154) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

~~(152)~~(155) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S.

Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

~~(153)~~(156) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

- (i) Batteries as described in Section R315-273-2;
- (ii) Pesticides as described in Section R315-273-3;
- (iii) Mercury-containing equipment as described in Section R315-273-4;
- (iv) Lamps as described in Section R315-273-5;
- (v) Antifreeze as described in Subsection R315-273-6(a);

and

- (vi) Aerosol cans as described in Subsection R315-273-6(b).

~~(154)~~(157) Universal waste handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

~~(155)~~(158) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

~~(156)~~(159) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~(157)~~(160) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~(158)~~(161) Used oil is defined in Subsection 19-6-703(19).

~~(159)~~(162) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and

incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

~~(160)~~(163) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(ii) 1 kilogram (2.2 lbs) of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

~~(161)~~(164) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~(162)~~(165) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

~~(163)~~(166) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

~~(164)~~(167) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~(165)~~(168) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

~~(166)~~(169) "Well injection": See "underground injection"

~~(167)~~(170) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~(168)~~(171) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

**KEY: hazardous waste**

**Date of Enactment or Last Substantive Amendment: [September 14, 2018]2019**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106**

**Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
R315-261  
General Requirements — Identification  
and Listing of Hazardous Waste**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43527

FILED: 02/14/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In May of 2015, the U.S. Department of Transportation (DOT) announced a national recall of airbag inflators manufactured by Takata due to a defect which has resulted in 15 deaths and at least 250 injuries in the U.S. as of August 2018. This recall affects 19 vehicle manufactures with approximately 60,000,000 to 70,000,000 airbag inflators scheduled for recall. A Preservation Order issued by DOT in February 2015 required Takata to preserve all recalled airbag inflators. EPA issued a memorandum in June of 2017 stating that the recalled airbag inflators were not subject to hazardous waste regulations while being held under the Preservation Order. The EPA clarification states that the recalled inflators would be considered a solid waste once the order was lifted. Airbag inflators meet both the ignitability and reactivity hazardous waste characteristics and therefore, would need to be managed as a hazardous waste. In April of 2018, the Preservation Order was amended requiring Takata to keep only a certain percentage of the inflators allowing the remainder to be disposed. The amended order no longer requires affected vehicle manufacturers to send their recalled airbag inflators to Takata thus allowing the manufacturers to dispose of the inflators on their own. DOT has determined that it is imperative that the recall of these airbag inflators be accelerated because the risk of serious injury or death increases over time because the inflators become more unstable as they age and are exposed to high absolute humidity. It is believed that these rule changes will assist in facilitating the recall acceleration by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met. These rule changes became effective at the federal level on 11/30/2018.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R315-261-4(j) was added. This subsection contains the conditions for exemption from being regulated as a hazardous waste for airbag waste.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-104 and Section 19-6-105 and Section 19-6-106

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These rule changes will not affect the state budget because no state governmental agency is a vehicle manufacturer subject to provisions of the recall of Takata airbag inflators.

♦ **LOCAL GOVERNMENTS:** These rule changes will not affect any local government because no local governments are vehicle manufacturers subject to provisions of the recall of Takata airbag inflators.

♦ **SMALL BUSINESSES:** There are 385 car dealerships (NAICS 4411) in Utah that are small businesses that could be involved in removing and disposing of airbag inflators. These dealerships make up 80.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). Due to the exemptions provided by these rule changes, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$81.55 per year. Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that if there are any persons other than small businesses, businesses, or local governments that are involved in removing airbag inflators, these persons would see a cost savings with the adoption of these rule changes. However, the data is not available and would be too costly to acquire in order to be able to make a determination as to who these persons are and what the fiscal impact could be, if any.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that there will be no additional compliance costs for affected persons due to the adoption of these rule changes because these changes exempt persons removing airbag inflators from having to comply with several provisions that already exist in rule thus reducing the cost of compliance.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** It is not anticipated that these rule changes will have a negative fiscal impact on any business involved in the removal of airbag inflators. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training,

storage, and shipping). It is believed that these rule changes will assist in accelerating the removal of these dangerous airbag inflators. This is accomplished by exempting those businesses involved in the removal of airbag inflators from several of the regulatory requirements which results in a cost savings to those businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov  
 ♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2019

AUTHORIZED BY: Alan Matheson, Executive Director

Small Businesses	\$31,395	\$31,395	\$31,395
Non-Small Businesses	\$7,605	\$7,605	\$7,605
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</b>
<b>Net Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</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 75 car dealerships (NAICS 4411) in Utah that are non-small businesses. These dealerships make up 19.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). Due to the exemptions provided by these rule changes, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$101.40 per year.

Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

The head of the Department of Environmental Quality, Alan Matheson, 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

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-261. General Requirements – Identification and Listing of Hazardous Waste.**

**R315-261-4. Exclusions.**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.



(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it

may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17) (iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination.

This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an

engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

- (I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and
  - (II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and
  - (III) Prevent run-on into the containment system.
- (C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers' facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

- (I) Name of the transporter and date of the shipment;
- (II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and
- (III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20),

are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

- (i) The fertilizers meet the following contaminant limits:
- (A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1% of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

- (A) The dates and times product samples were taken, and the dates the samples were analyzed;
- (B) The names and qualifications of the person(s) taking the samples;
- (C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and

the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all three factors in Subsection R315-260-43(a) and how the factor in Subsection R315-260-43(b) was considered. Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(I) Does the available information indicate that the reclamation process is legitimate pursuant to Section R315-260-43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources including the reclamation facility and audit reports about the reclamation process.

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per Subsection R315-261-4(a)(24)(vi)(F)? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per Section R315-260-42, including the requirement in Subsection R315-260-42(a)(5) to notify the Director whether the reclaimer or intermediate facility has financial assurance.

(III) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has not been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary

material generator has had a formal enforcement action taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(IV) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(V) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

(I) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to (insert name(s) of reclamation facility and any intermediate facility), reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(E) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(F) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has

similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(vii) In addition, all persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of Subsection R315-261-4(a)(24)(i)-(v), excepting Subsection R315-261-4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities, and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification shall be submitted at least sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number, UN/NA, for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported, for example mode of transportation vehicle including air, highway, rail and water, and types of containers including drums, boxes and tanks;

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there, for purposes of this section, the terms "EPA Acknowledgement of Consent", "country of import" and

"country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in Section R315-261-4 refer to hazardous secondary materials, rather than hazardous waste:

(ii) Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system.

(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-4(a)(25)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-4(a)(25)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under Subsection R315-261-4(a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to Subsection R315-261-4(a)(25)(i) within thirty days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent shall accompany the shipment. The shipment shall conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator shall re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with Subsection R315-261-4(a)(25)(iii) and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a)(25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system. Such reports shall include the following information:

(A) Name, mailing and site address, and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number, where applicable, for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under Subsection R315-261-4(a)(25) shall provide notification as required by Section R315-260-42.

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical

manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxic Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;



(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and

chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet

finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;
- (H) Calcium sulfate wastewater treatment plant sludge from

primary copper processing;

- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast

furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning

systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes.

When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) **Treatability Study Samples.** Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with

non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability

study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) **Samples Undergoing Treatability Studies at Laboratories and Testing Facilities.** Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute

hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R315-261-4(e) exemption.

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that

has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-

injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

(i) Reserved

(j)(1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under Rules R315-262 through 268, R315-270 or R315-124, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste -- Do Not Reuse;"

(iii) The airbag waste is sent directly to either

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in Section R315-260-10;

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste, i.e., airbag modules or airbag inflators, in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste, i.e., airbag modules and airbag inflators, received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records, e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of Rule R315-262.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under Subsection R315-261-2(g).

**KEY: hazardous waste**

**Date of Enactment or Last Substantive Amendment: [September 14, 2018]2019**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106**

Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
**R315-262**  
Hazardous Waste Generator  
Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43528

FILED: 02/14/2019

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In May of 2015, the U.S. Department of Transportation (DOT) announced a national recall of airbag inflators manufactured by Takata due to a defect which has resulted in 15 deaths and at least 250 injuries in the U.S. as of August 2018. This recall affects 19 vehicle manufactures with approximately 60,000,000 to 70,000,000 airbag inflators scheduled for recall. A Preservation Order issued by DOT in February 2015 required Takata to preserve all recalled airbag inflators. EPA issued a memorandum in June of 2017 stating that the recalled airbag inflators were not subject to hazardous waste regulations while being held under the Preservation Order. The EPA clarification states that the recalled inflators would be considered a solid waste once the order was lifted. Airbag inflators meet both the ignitability and reactivity hazardous waste characteristics and therefore, would need to be managed as a hazardous waste. In April of 2018, the Preservation Order was amended requiring Takata to keep only a certain percentage of the inflators allowing the remainder to be disposed. The amended order no longer requires affected vehicle manufacturers to send their recalled airbag inflators to Takata thus allowing the manufacturers to dispose of the inflators on their own. DOT has determined that it is imperative that the recall of these airbag inflators be accelerated because the risk of serious injury or death increases over time because the inflators become more unstable as they age and are exposed to high absolute humidity. It is believed that these rule changes will assist in facilitating the recall acceleration by exempting the collection

of airbag waste from hazardous waste requirements so long as certain conditions are met. These rule changes became effective at the federal level on 11/30/2018.

SUMMARY OF THE RULE OR CHANGE: Subsection R315-262-14(a)(5)(xi) was added. This added subsection provides the option for a very small quantity generator deliver airbag waste to an airbag collection facility or a designated facility subject to the requirements of Subsection R315-261-4(j).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-104 and Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: These rule changes will not affect the state budget because no state governmental agency is a vehicle manufacturer subject to provisions of the recall of Takata airbag inflators.

◆ LOCAL GOVERNMENTS: These rule changes will not affect any local government because no local governments are vehicle manufacturers subject to provisions of the recall of Takata airbag inflators.

◆ SMALL BUSINESSES: There are 385 car dealerships (NAICS 4411) in Utah that are small businesses that could be involved in removing and disposing of airbag inflators. These dealerships make up 80.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). Due to the exemptions provided by these rule changes, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$81.55 per year. Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that if there are any persons other than small businesses, businesses, or local governments that are involved in removing airbag inflators these persons would see a cost savings with the adoption of these rule changes. However, the data is not available and would be too costly to acquire in order to be able to make a determination as to who these persons are and what the fiscal impact could be, if any.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that there will be no additional compliance costs for affected persons due to the adoption of these rule changes because these changes exempt persons removing airbag inflators from having to comply with several provisions that already exist in rule thus reducing the cost of compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that these rule changes will have a negative fiscal impact on any business involved in the removal of airbag inflators. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). It is believed that these rule changes will assist in accelerating the removal of these dangerous airbag inflators. This is accomplished by exempting those businesses involved in the removal of airbag inflators from several of the regulatory requirements which results in a cost savings to those businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov  
 ♦ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2019

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	\$31,395	\$31,395	\$31,395
Non-Small Businesses	\$7,605	\$7,605	\$7,605
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</b>
<b>Net Fiscal Benefits:</b>	<b>\$39,000</b>	<b>\$39,000</b>	<b>\$39,000</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 75 car dealerships (NAICS 4411) in Utah that are non-small businesses. These dealerships make up 19.5% of the dealerships in Utah. Most car dealerships are currently very small quantity generators of hazardous waste. With the removal of the DOT Preservation Order protections, a dealership would be required to manage the removed airbag inflators as hazardous waste which could result in dealerships becoming small quantity generators of hazardous waste. These dealerships would in turn incur the costs associated with being small quantity generators (e.g. packaging and labeling, recordkeeping, personnel training, storage, and shipping). Due to the exemptions provided by these rule changes, dealerships will not incur these costs and therefore, could see a cost savings of approximately \$101.40 per year.

Data to assist in making this determination was obtained from the EPA document entitled "Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule" dated October 2018.

The head of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-262. Hazardous Waste Generator Requirements.**

**R315-262-14. General – Conditions For Exemption for a Very Small Quantity Generator.**

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in Section R315-262-14, hazardous waste generated by the very small quantity generator is not subject to the requirements of Rules R315-124, 262 (except Sections R315-262-



10 through R315-262-14) through R315-268, and R315-270, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in Section R315-260-10;

(2) The very small quantity generator complies with Subsections R315-262-11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e), all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in Subsection R315-262-14(a)(3); and

(ii) The conditions for exemption in Subsections R315-262-17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in Subsection R315-262-14(a)(4);

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in Subsections R315-262-16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Subsections R315-262-14(a)(3) and (4) shall either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-265 and 270;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through R315-320;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in Rules R315-301 through R315-320 or 40 CFR 257.5 through 257.30;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in Section R315-260-10. "Control," for the purposes of Subsection R315-262-14(a)(5)(viii), means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste" and

(2) An indication of the hazards of the contents, examples include, but are not limited to:

(I) the applicable hazardous waste characteristic(s), i.e., ignitable, corrosive, reactive, toxic;

(II) hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E, labeling, or subpart F, placarding;

(III) a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or

(IV) a chemical hazard label consistent with the National Fire Protection Association code 704.

(ix) Reserved

(x) Reserved

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of Subsection R315-261-4(j).

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Sections R315-262-230 through 233 in lieu of Sections R315-262-15, 16, and 17.

**KEY: hazardous waste, generators**

**Date of Enactment or Last Substantive Amendment: [~~August 31, 2017~~2019]**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106**

**Human Services, Child and Family  
Services  
R512-43  
Adoption Assistance**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 43518  
FILED: 02/12/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended to better define when a request for a change in adoption subsidy can be made.

**SUMMARY OF THE RULE OR CHANGE:** Families who qualify for adoption assistance can make a request for a change to the amount of adoption subsidy they receive twice per year, unless they have an open case with the Division of Child and Family Services (Division). In that case, a request can be submitted as needed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-4a-102 and Section 62A-4a-106 and Sections 62A-4a-901 through 62A-4a-907

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These rule changes will allow a small population of clients to be eligible for adoption subsidies paid by the Division. These clients are those who have already been granted custody and guardianship and then wish to adopt. Due to the nature of going through court to get an adoption and it being so rigorous, it is anticipated that this impact will only concern a small population of clients. Currently, many of these clients would be receiving subsidies from the Department of Workforce Services (DWS) under the Specified Relative Grant but then upon meeting specific conditions and criteria and adopting the child, it is anticipated that they would then receive an adoption subsidy instead of the specified relative grant. It is estimated that the Division will see an impact of less than \$50,000 of state general funds annual due to the increased adoption subsidy costs to expand to allow this new population to receive adoption subsidies.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments due to these rule changes.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses due to these rule changes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The small group of people affected by these rule changes that would change from a monthly grant from DWS' Specified Relative Grant with the child's Medicaid to a similar monthly amount in a subsidy from Adoption Assistance with the child's Medicaid. With this transition the Department of Human Services (Department) does not anticipate a cost savings to the people that have or will be utilizing these funds.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The small group of people affected by these rule changes that would change from a monthly grant from DWS' Specified Relative Grant with the child's Medicaid to a similar monthly amount in a subsidy from Adoption Assistance with the child's Medicaid. With this transition the Department does not anticipate any compliance costs to those that have or will be utilizing these funds.

**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 rule 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  
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 04/01/2019**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019**

**AUTHORIZED BY: Diane Moore, Director**

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

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$10,000	\$50,000	\$50,000
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>\$10,000</b>	<b>\$50,000</b>	<b>\$50,000</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>-\$10,000</b>	<b>-\$50,000</b>	<b>-\$50,000</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**

There is no expected impact to non-small businesses as a result of these rule changes.

It is estimated that individuals would not see fiscal benefits because they would have already received the specified relative grant through the Department of Workforce Services, which is often just as much or more than the Division of Child and Family Services adoption subsidies. The adoption subsidies would merely replace the specified relative grants that the relative would receive.

The head of the department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

**R512. Human Services, Child and Family Services.**

**R512-43. Adoption Assistance.**

**R512-43-1. Purpose and Authority.**

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) disability benefits by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40 (October 1, 2009), and 45 CFR 1356.41 (October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

**R512-43-2. Definitions.**

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means (a) the date an Intent to Adopt a Specific Child is signed with Child and Family Services, or (b) the adoption finalization court date.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E

agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care, even if Child and Family Services no longer has an open case at the time adoption proceedings are initiated, as long as the child continues to reside with and is being adopted by the relative granted custody by the court as a result of the protective custody episode.

(4) A child or youth who was taken into protective custody and placed with a relative and ~~[(a) If]~~ the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

~~[(b)]~~(a) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

~~[(4)]~~(5) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

~~[(5)]~~(6) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

~~[(6)]~~(7) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

**R512-43-3. General Requirements for Adoption Assistance.**

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-12-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

#### **R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.**

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

#### **R512-43-5. Monthly Subsidy.**

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI disability benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term care and treatment needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the Child and Family Services worker may initiate a request for a change in the amount of subsidy [at any time] up to two times per fiscal year, when needs or resources change.

(i) If the adoptive family is receiving post adoption services and has an open Child and Family Services case, a change in the amount of subsidy may be initiated at any time during the open case to address service needs.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and the Child and Family Services worker. Prior to subsidy negotiation, the adoptive parents must have reviewed the child's case file information and discussed in depth with the Child and Family Services worker what will be needed after the child leaves state's custody.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-12.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the Child and Family Services worker and adoptive family identify the child's level of need.

(b) The Child and Family Services worker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The Child and Family Services worker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical disability condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a mental health diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild cognitive disability, autism, or fetal alcohol spectrum disorder with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe cognitive disability, autism, or fetal alcohol spectrum disorder; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as a need for ongoing self contained or special education services.

(d) The regional adoption assistance committee must approve the level of need identified for the child.

(e) A child's need level may be increased in severity by one level if the adoption assistance committee determines that the child's permanency may be compromised due to financial barriers to the child's adoption and if at least one of the following circumstances apply:

(i) The child has been in state custody for longer than 24 months.

(ii) The child is nine years of age or older.

(iii) The child is part of a sibling group of three or more children being placed together for the purposes of adoption.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need.

(c) A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date.

(d) A family may choose to receive a lesser amount than would be allowable for the level of need at a given point in time.

(e) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) A family may choose to receive a lesser amount than would be allowable for the child's level of need at a given point in time.

(g) Monthly subsidy payments for a child's needs categorized as Level Two range from 20 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(h) Monthly subsidy payments for a child's needs categorized as Level Three range from 50 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(i) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI for a disability by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) A child in foster care who meets the age criteria defined by the federal fiscal year qualifies for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iii) A child in foster care who has been in foster care for any previous 60 consecutive months may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(iv) A child in foster care who is a sibling of another child in foster care who qualifies under the enhanced age criteria and is being adopted into the same family may qualify for Title IV-E adoption assistance if other enhanced eligibility criteria is met.

(v) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(vi) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(vii) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(viii) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special

food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

#### **R512-43-6. State Medical Assistance.**

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI disability benefits, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

#### **R512-43-7. Supplemental Adoption Assistance.**

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the

request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

**R512-43-8. Regional Adoption Assistance Committee.**

(1) Each region shall establish at least one regional adoption assistance committee.

(2) The regional adoption assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

- (a) Chairperson;
- (b) Clinical consultant or casework supervisor;
- (c) Regional budget officer or fiscal representative;
- (d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;
- (e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

- (a) Verification that a child qualifies for adoption assistance,
- (b) Approval for reimbursement of allowable, reasonable non-recurring costs,
- (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, amendments, and renewals,
- (d) Approval of supplemental adoption assistance up to \$3,000,
- (e) Extension of adoption assistance up to age 21 for a qualifying child,
- (f) Renewal of adoption assistance, and
- (g) Documentation of committee decisions.

**R512-43-9. Adoption Assistance Review.**

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

**R512-43-10. Adoption Monthly Subsidy Suspension.**

(1) Monthly subsidy payments may be temporarily suspended in situations in which a payment is sent to a parent's home address and cannot be delivered or a direct deposit payment notice is returned to the office of Child and Family Services as unable to deliver. The monthly subsidy may be suspended until the parent contacts Child and Family Services to establish an address for the parent.

(a) After one year of suspended monthly subsidies, the monthly subsidy payment will be terminated.

(b) If the parent contacts Child and Family Services after termination of the monthly subsidy, Child and Family Services will repay up to one year of monthly subsidy payments at the amount determined in the Adoption Assistance Agreement.

**R512-43-11. Termination of Adoption Assistance.**

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

(a) The terms of the adoption assistance agreement are concluded.

(b) The adoptive parents request termination.

(c) The month following the child's 18th birthday, unless approval has been given by the adoption assistance committee to continue until the month following the child's 21st birthday due to mental or physical disability.

(d) The child dies.

(e) The adoptive parents die.

(f) The adoptive parents' legal responsibility for the child ceases.

(g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-5 shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

**R512-43-12. Fair Hearings.**

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

(a) The adoption assistance application is denied;

(b) The adoption assistance application is not acted upon with reasonable promptness;

(c) Adoption assistance or supplemental adoption assistance is reduced, suspended, terminated, or changed without the concurrence of the adoptive parents;

(d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;

(e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-5 applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

(i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.

(ii) A denial of assistance was based upon a means test of the adoptive family.

(iii) An erroneous state determination was utilized to find a child ineligible for assistance.

(iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.

(b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-5 applies. The state may provide corroborating facts to the family or the fair hearing officer.

**R512-43-13. Interstate Adoption Assistance.**

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI disability benefits shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

**KEY: adoption, child welfare, foster care**

**Date of Enactment or Last Substantive Amendment: [2018]2019**

**Notice of Continuation: January 25, 2016**

**Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-106; 62A-4a-901 through 62-4a-907**

**Human Services, Substance Abuse  
and Mental Health**

**R523-2-9**

**Distribution of Fee-On-Fine (DUI)  
Funds**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43505

FILED: 02/07/2019

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These rule changes are made to update the funding formula citation, to give further guidance to the local authorities on how the funds are to be expended, and where to document their plans for these funds.

**SUMMARY OF THE RULE OR CHANGE:** The local authority funding formula citation has been updated. Legislative intent for the purposing of DUI funds is emphasized. Local authorities are required to submit their plans for DUI funds in their annual area plans. Local authorities are required to submit a report to the Division of Substance Abuse and Mental Health (Division) within 60 days of the end of each fiscal year. The Division will monitor the expenditure of DUI funds during the annual site visit.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-15-503

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** These rule changes will not have a fiscal impact on the state budget. There are several minor changes made that add clarifying language that is used in the correlating statute (Sections 62A-15-503 and 62A-15-103). Ultimately, the additions in this rule clarify the process of how the Division, along with the Local Authority Area Plans, are reviewing, reporting, and monitoring these funds. These changes being clarifying in nature will have only a negligible impact on Division workloads.

♦ **LOCAL GOVERNMENTS:** These amendments are mostly clarifying in nature and do not require any additional actions from local governments than already exist. There should be no cost savings or increases at the local government level.

♦ **SMALL BUSINESSES:** These rule changes will not have a fiscal impact on small businesses; these changes are clarifying in nature regarding the distribution of fee-on-fine (DUI) funds. The added language regarding the reviewing, reporting, and monitoring of these funds will not impact small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes will not have an impact on any persons, as these amendments purely add language that pertains to the Division and local government. These amendments are clarifying in nature, thus they do not fiscally impact any party.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs are associated with these rule changes other than those that already exist from initial establishment of this 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 these proposed rule changes 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  
 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  
 ♦ Thomas Dunford by phone at 801-538-4181, by FAX at 801-538-4696, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/01/2019

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2019

AUTHORIZED BY: Doug Thomas, Director

\*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**  
 The purpose of these amendments are to update the funding formula citation and give further clarification on how these funds are utilized; therefore, there are no estimable or inestimable costs or benefits to non-small businesses.

**R523. Human Services, Substance Abuse and Mental Health.  
 R523-2. Local Mental Health Authorities and Local Substance Abuse Authorities.**

**R523-2-9. Distribution of Fee-On-Fine (DUI) Funds.**

(1) The Fee-On-Fine funds collected by the court system under the criminal surcharge law and remitted to the State Treasurer will be allocated to the LSAA's based upon each county's percent of the total state population as determined at the time of the funding formula as described in Section R523-[4-4]2-7. The Division shall authorize quarterly releases of these funds to the county commission of each county for which they are allocated unless notified in writing by the LSAA's governing board to send the funds to the local service provider.

(2) Utah Code 62A-15-503 states these funds "shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives."

(3) Each county's proposed use of the funds shall be identified in the Local authority area plan submitted to the Division each year as described in Utah Code 62A-15-103(2)(c)(xi).

(4) Each county's actual expenditures shall be documented in an expenditure report submitted by the local authority within 60 days of the end of the State fiscal year that describes the actual use of the funds from this account.

(5) The Division shall review and monitor funds from this project during the annual site visit.

**KEY: funding formula, bed allocations, Local Mental Health Authority, Local Substance Abuse Authority**  
**Date of Enactment or Last Substantive Amendment: [December 22, 2015]2019**  
**Authorizing, and Implemented or Interpreted Law: 17-43-301(4)(a)(x); 17-50-501; 17-50-502; 62A-15-103; 62A-15-105; 62A-15-108; 62A-15-201 et seq.; 62A-15-602(9); 62A-15-610(2)(a); 62A-15-611; 62A-15-612; 62A-15-902; 76-8-311.1; 76-8-311.3; 76-10-523.5**

**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>

**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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## Education, Administration

### **R277-400**

#### School Facility Emergency and Safety

##### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43507

FILED: 02/08/2019

##### **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 53E-3-401(4), which allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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 R277-400 continues to be necessary because it establishes general criteria for emergency preparedness and emergency response plans; and directs local education agencies (LEAs) to develop prevention, intervention, and response measures; and prepare staff and students to respond promptly and appropriately to school emergencies. Therefore, this rule should be continued.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the 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: 02/08/2019

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## Education, Administration

### **R277-486**

#### Professional Staff Cost Program

##### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43508

FILED: 02/08/2019

##### **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 Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Utah State Board

of Education (Board), by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a local education agency's (LEA) professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, and by Subsection 53E-3-401(4), which allows 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: This rule continues to be necessary because this rule is to satisfy statutory or federal regulatory percentages of licensed staff, and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative, and other types of professional employment in public schools. Therefore, this rule should be continued.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the 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: 02/08/2019

**Education, Administration  
R277-528**

**Use of Public Education Job  
Enhancement Program (PEJEP) Funds**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43509  
FILED: 02/08/2019

**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 Article X, Section 3, of the Utah Constitution, which places general control and supervision of the public schools under the Utah State of Board of Education (Board); Subsection 53F-2-514(3)(c)(ii), which requires the Board to make a rule that provides for repayment of a portion of the initial payment by the teacher if the teacher fails to complete the Program with exceptions; Subsection 53F-2-514(5)(b), which directs the Board to develop criteria for Public Education Job Enhancement Program (PEJEP) awards; and Subsection 53E-3-401(4) which allows 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 R277-528 continues to be necessary because it provides standards and procedures for ongoing participation in PEJEP. Therefore, this rule should be continued.

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

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the 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: 02/08/2019

**Health, Disease Control and  
Prevention, Environmental Services**

**R392-303**

**Public Geothermal Pools and Bathing  
Places**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43502  
FILED: 02/05/2019

**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 R392-303 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the Department of Health (Department) rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the Department to create rules to protect the public health or to prevent disease and illness. Subsection 26-1-30(23)(t) specifically charges the Department with creating rules for minimum sanitary standards for the operation and maintenance of swimming pools, public baths, and bathing beaches. This requirement is mirrored in Subsection 26-15-2(2).

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 sought comments from the local health departments in Utah and the facilities operating under this rule. The Department received no comments in opposition to a continuation of Rule R392-303. Comments were received in support of continuation from Wasatch County Health Department, Bear River Health Department, and Central Utah Health Department.

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 recommends the continuation of Rule R392-303. This rule provides standards for the sanitary operation of a geothermal pool or bathing place, in accordance with statute.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
ENVIRONMENTAL SERVICES  
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:  
♦ Sam LeFevre by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at [slefevre@utah.gov](mailto:slefevre@utah.gov)

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 02/05/2019

Insurance, Administration  
**R590-170**  
Fiduciary and Trust Account  
Obligations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43514  
FILED: 02/11/2019

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to adopt rules to implement the Insurance Code, Title 31A. Sections 31A-23a-406 and 31A-23a-409 do not have specific rulemaking authority; they deal with the title business and how funds received by a title agent should be maintained, which is covered under Section R590-170-5. Sections 31A-23a-410 and 31A-23a-411.1 refer to the insurer's liability when an agent or agency does not forward the premium for a policy to the insurer. Subsection 31A-23a-412(2)(b)(iii)(C) authorizes the Insurance Commissioner to require certain records to be kept regarding an insurance licensee's business; Section R590-170-7 specifies accounting records that are to be maintained by the licensee. Subsection 31A-25-305(1) authorizes the Insurance Commissioner to adopt rules that will protect the integrity of a fiduciary account. The purpose of this rule is to set minimum standards that are to be followed for fiduciary and trust account obligations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Insurance Department (Department) has received no written comments regarding this rule during the past five years.

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 sets the minimum standards to be followed by licensees who hold an insurer's or insured's funds in a fiduciary capacity. It is critical that these minimum standards be maintained intact by continuing this rule to protect the funds of the payee held in trust by the licensee. Trust violations continue to occur. The Department needs the standards set by this rule to regulate the marketplace. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 02/11/2019

## Insurance, Administration

### **R590-220**

## Submission of Accident and Health Insurance Filings

### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 43520

FILED: 02/13/2019

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-2-201.1 authorizes the Insurance Commissioner to write rules regarding rates, forms, binders, and reports. Subsection 31A-2-202(2) authorizes the Insurance Commissioner to perform the duties imposed by Title 31A. Subsection 31A-22-605(4) authorizes the Insurance Commissioner to write rules regarding the contents of policy provisions and minimum benefit standards; the content and format of the outline of provisions; the method of identifying policies and contracts; and rating practices. Subsection 31A-22-620(3)(f) authorizes the Insurance Commissioner to adopt rules to prohibit policy provisions that would be unjust, unfair, or unfairly discriminatory under a Medicare Supplement policy or certificate. Subsection 31A-30-106(1) sets standards for health benefit plans for individuals in individual and small employer groups; and Subsection 31A-30-106(4) requires carriers that offer health benefit plans to individuals to maintain, at the carrier's principal place of business, a

description of their rating practices and renewal underwriting practices. Subsection 31A-30-106.1(13) requires small employer carriers to maintain, at their principal place of business, a complete and detailed description of its rating practices and renewal underwriting practices; Subsection 31A-30-106.1(14) authorizes the Insurance Commissioner to write rules regarding rates and rating practices used by small employer carriers and rates charged for health benefit plans, as well as case characteristics used by small employer and individual carriers.

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 of Insurance (Department) amended this rule in 2015, and received industry comment from one insurer at that time. The comment requested the ability to include a range of deductibles under Subsection R590-220-6(f), the ability to sign documents electronically, and asks about an outdated reference in the rule. All comments were accepted and included in the final submitted version of the amended 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 important in requiring that the Department receive policy rate and form information from insurers. Such information is necessary to make sure there is no unfair discrimination in the coverage that health insurers provide and the rates they charge. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 02/13/2019

## Insurance, Administration

### **R590-225**

## Submission of Property and Casualty Rate and Form Filings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43521  
FILED: 02/13/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-2-201.1 authorizes the Insurance Commissioner to write rules with specific requirements for filing forms, rates, binders, and reports to the Department of Insurance (Department). Subsection 31A-2-202(2) authorizes the Insurance Commissioner to prescribe forms to gather information or to use the National Association of Insurance Commissioners' annual statement forms to gather basic financial data and market regulation analysis. Section 31A-19a-203 allows the Insurance Commissioner to write rules to prescribe procedures for submitting rate filings electronically.

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 amended this rule in 2017, and received one industry comment at that time. The comment asked if the Department planned to issue a form or example for what an actuarial certification would look like. The Department answered the comment stating that the format of the certification is up to the carrier.

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 important as it gives detailed instructions on how a filer must file rates, rules, binders, and forms as required by Utah statute. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 02/13/2019

Insurance, Administration  
**R590-252**

**Use of Senior-Specific Certifications  
and Professional Designations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 43513  
FILED: 02/11/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-23a-402(8)(a) authorizes the Insurance Commissioner to define, by rule, unfair methods of competition, and unfair or deceptive acts or practices in the business of insurance. Section R590-252-5 lists specific prohibitions against the use of senior-specific certifications or professional designations in the sale of insurance to seniors. Section R590-252-6 specifies penalties for violation of 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 Insurance Department (Department) has received no written comments regarding this rule during the past five years.

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 sets forth standards to protect consumers from misleading and deceptive marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product. Seniors are often the focus of unfair methods of competition and deceptive acts or practices in the sale of insurance. This rule helps the Department regulate against these practices. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 02/11/2019

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jennifer Yim by phone at 801-538-1652, or by Internet E-mail at jyim@utah.gov

AUTHORIZED BY: David Roth, Chair

EFFECTIVE: 02/05/2019

Judicial Performance Evaluation  
Commission, Administration  
**R597-1**  
General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43501  
FILED: 02/05/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to ensure that: 1) voters have information about the judges standing for retention election; 2) judges have notice of the standards against which they will be evaluated; and 3) the commission has the time necessary to fully develop the program mandated by Section 78A-12-101 et seq.

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 during and since the last five-year review of this rule from interested persons supporting or opposing the 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 program is mandated by Section 78A-12-101 et seq., and this rule addresses the necessary general provisions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.

Judicial Performance Evaluation  
Commission, Administration  
**R597-3**  
Judicial Performance Evaluations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43500  
FILED: 02/05/2019

**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 78A-12-203 states that the "commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of this rule from interested persons supporting or opposing the 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 addresses the necessary process and policies for the Judicial Performance Evaluations, as authorized by Section 78A-12-203. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Office of Administrative Rules.



## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jennifer Yim by phone at 801-538-1652, or by Internet E-mail at jyim@utah.gov

AUTHORIZED BY: David Roth, Chair

EFFECTIVE: 02/05/2019

**Natural Resources, Wildlife Resources**  
**R657-67**  
**Utah Hunter Mentoring Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 43498  
 FILED: 02/04/2019

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under the authority of Sections 23-14-1, 23-14-3, 23-14-18, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources (Division) has not received any written comments regarding this rule. Any comments received in opposition to this rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and the administrative record for this rule at the Division.

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 creates a hunting mentor program that will increase hunting opportunities for Utah families and provides the procedures under which a minor child may share the permit of another to take protected wildlife, including all big game general season permits, big game limited entry permits, once-in-a-lifetime permits, all antlerless big game permits, bear, and cougar. Therefore, this rule should be continued.

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

## WILDLIFE RESOURCES

1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Office of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Mike Fowlks, Director

EFFECTIVE: 02/04/2019

**Public Safety, Administration**  
**R698-4**  
**Certification of the Law Enforcement  
 Agency of a Private College or  
 University**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 43523  
 FILED: 02/14/2019

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-13-103(1)(b)(xii) provides that the members of a law enforcement agency of a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the Commissioner of the Department of Public Safety (Department) in accordance with rules of the Department. The purpose of this rule is to establish the criteria the law enforcement agency of a private college or university must meet in order to be certified.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments 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: This rule is authorized under Subsection 53-13-103(1)(b)(xii), and is needed to establish the criteria that must be met in order for a law enforcement agency of a private college or university to be certified. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 1ST FLR  
SALT LAKE CITY, UT 84119-5994  
or at the 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

AUTHORIZED BY: Jess Anderson, Commissioner

EFFECTIVE: 02/14/2019

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**Regents (Board of), University of Utah,  
Administration  
R805-6  
University of Utah Shooting Range  
Access and Use Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 43499  
FILED: 02/04/2019

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under

Section 47-3-303. This statute requires institutions of higher education with shooting ranges to "implement procedures for use of the range by the public." It specifies that the rules must include provisions requiring the indoor shooting range to be available on a reservation basis.

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 during the specified time period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The University of Utah needs this rule to comply with the statutory requirements for shooting ranges at institutions of higher education. Therefore, this rule should be continued.

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

REGENTS (BOARD OF)  
UNIVERSITY OF UTAH, ADMINISTRATION  
ROOM 309 PARK BLDG  
201 S PRESIDENTS CIR  
SALT LAKE CITY, UT 84112-9009  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Christopher Stout by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at christopher.stout@legal.utah.edu

AUTHORIZED BY: John Nixon, Chief Administrative Officer

EFFECTIVE: 02/04/2019

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

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Money Management Council,  
Administration

**R628-19**

Requirements for the Use of  
Investment Advisers by Public  
Treasurers

**FIVE-YEAR REVIEW EXTENSION**

DAR FILE NO.: 43503

FILED: 02/05/2019

**EXTENSION REASON AND NEW DEADLINE:** The Council has had several pressing issues in front of them for the last few months and has not had time to review this rule in their monthly meeting. These issues are taken care of and they will be able to review them in February but not before the filing deadline expires. Council will meet on 02/21/2019 and will review this rule. Staff will file the five-year review after that date. The new deadline is 06/10/2019.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at [apedroza@utah.gov](mailto:apedroza@utah.gov)

**AUTHORIZED BY:** Douglas DeFries, Chair

**EFFECTIVE:** 02/05/2019

Money Management Council,  
Administration

**R628-20**

Foreign Deposits for Higher Education  
Institutions

**FIVE-YEAR REVIEW EXTENSION**

DAR FILE NO.: 43504

FILED: 02/05/2019

**EXTENSION REASON AND NEW DEADLINE:** The Council has had several pressing issues in front of them for the last few months and has not had time to review this rule in their monthly meeting. These issues are now taken care of and they will be able to review this rule in February but not before the filing deadline expires. Council will meet on 02/21/2019 and will review this rule. Staff will file the five-year review after that date. The new deadline is 06/18/2019.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at [apedroza@utah.gov](mailto:apedroza@utah.gov)

**AUTHORIZED BY:** Douglas DeFries, Chair

**EFFECTIVE:** 02/05/2019

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**End of the Notices of Five-Year Review Extensions 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

### Environmental Quality

Air Quality  
No. 43372 (AMD): R307-101-2. Definitions  
Published: 12/01/2018  
Effective: 02/07/2019

### Corrections

Administration  
No. 43218 (AMD): R251-105. Applicant Qualifications for Employment with Department of Corrections  
Published: 10/15/2018  
Effective: 02/11/2019

### Governor

Energy Development (Office of)  
No. 43223 (AMD): R362-4. High Cost Infrastructure Development Tax Credit Act  
Published: 10/15/2018  
Effective: 02/05/2019

### Education

Administration  
No. 43441 (AMD): R277-122. Board of Education  
Procurement  
Published: 01/01/2019  
Effective: 02/07/2019

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 43425 (AMD): R414-61-2. Incorporation by Reference  
Published: 01/01/2019  
Effective: 02/15/2019

No. 43442 (NEW): R277-308. New Educator Induction and Mentoring  
Published: 01/01/2019  
Effective: 02/07/2019

### Human Services

Administration, Administrative Services, Licensing  
No. 43356 (AMD): R501-7. Child Placing Adoption Agencies  
Published: 12/01/2018  
Effective: 02/12/2019

No. 43448 (NEW): R277-910. Underage Drinking Prevention Program  
Published: 01/01/2019  
Effective: 02/07/2019

No. 43237 (AMD): R501-21. Outpatient Treatment Programs  
Published: 11/01/2018  
Effective: 02/12/2019

No. 43439 (NEW): R277-912. Law Enforcement Related Incident Reporting  
Published: 01/01/2019  
Effective: 02/07/2019

### Insurance

Administration  
No. 43429 (AMD): R590-186-5. Company License Renewal  
Published: 01/01/2019  
Effective: 02/07/2019

NOTICES OF RULE EFFECTIVE DATES

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Natural Resources

Wildlife Resources

No. 43431 (AMD): R657-5. Taking Big Game

Published: 01/01/2019

Effective: 02/07/2019

No. 43430 (AMD): R657-9. Taking Waterfowl, Wilson's Snipe and Coot

Published: 01/01/2019

Effective: 02/07/2019

No. 43432 (AMD): R657-38. Dedicated Hunter Program

Published: 01/01/2019

Effective: 02/07/2019

Transportation

Motor Carrier

No. 43443 (AMD): R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

Published: 01/01/2019

Effective: 02/07/2019

Operations, Traffic and Safety

No. 43444 (AMD): R920-50. Ropeway Operation Safety

Published: 01/01/2019

Effective: 02/07/2019

**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, 2019 through February 15, 2019. 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

<p>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</p>	<p>LNR = Legislative Nonreauthorization                  NEW = New Rule (Proposed Rule)                  NSC = Nonsubstantive Rule Change                  R&amp;R = Repeal and Reenact (Proposed Rule)                  REP = Repeal (Proposed Rule)                  5YR = Five-Year Notice of Review and                  Statement of Continuation</p>
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<u>Finance</u>					
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
<b>AGRICULTURE AND FOOD</b>					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	43469	5YR	01/07/2019	2019-3/43
<b>COMMERCE</b>					
<u>Occupational and Professional Licensing</u>					
R156-20a (Changed to R156-20b)	Environmental Health Scientist Act Rule	43466	NSC	01/11/2019	Not Printed
R156-80a	Medical Language Interpreter Act Rule	43465	5YR	01/02/2019	2019-2/19
<u>Real Estate</u>					
R162-2f	Real Estate Licensing and Practices Rules	43407	AMD	01/23/2019	2018-24/8
<b>CORRECTIONS</b>					
<u>Administration</u>					
R251-105	Applicant Qualifications for Employment with Department of Corrections	43218	AMD	02/11/2019	2018-20/12
<b>EDUCATION</b>					
<u>Administration</u>					
R277-122	Board of Education Procurement	43441	AMD	02/07/2019	2019-1/17
R277-308	New Educator Induction and Mentoring	43442	NEW	02/07/2019	2019-1/22
R277-400	School Facility Emergency and Safety	43507	5YR	02/08/2019	Not Printed
R277-419	Pupil Accounting	43475	NSC	01/15/2019	Not Printed
R277-437	Student Enrollment Options	43397	AMD	01/09/2019	2018-23/6
R277-470	Charter Schools - General Provisions	43374	REP	01/09/2019	2018-23/9
R277-481	Charter School Oversight, Monitoring and Appeals	43399	REP	01/09/2019	2018-23/12
R277-482	Charter School Timelines and Approval Processes	43392	REP	01/09/2019	2018-23/15



R277-486	Professional Staff Cost Program	43508	5YR	02/08/2019	Not Printed
R277-509	Licensure of Student Teachers and Interns	43373	AMD	01/09/2019	2018-23/19
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	43509	5YR	02/08/2019	Not Printed
R277-550	Charter Schools – Definitions	43400	NEW	01/09/2019	2018-23/21
R277-551	Charter Schools - General Provisions	43393	NEW	01/09/2019	2018-23/24
R277-552	Charter School Timelines and Approval Processes	43394	NEW	01/09/2019	2018-23/26
R277-553	Charter School Oversight, Monitoring and Appeals	43401	NEW	01/09/2019	2018-23/31
R277-554	State Charter School Board Grants and Mentoring Program	43395	NEW	01/09/2019	2018-23/34
R277-555	Corrective Action Against Charter School Authorizers	43396	NEW	01/09/2019	2018-23/38
R277-600	Student Transportation Standards and Procedures	43375	AMD	01/09/2019	2018-23/38
R277-910	Underage Drinking Prevention Program	43448	NEW	02/07/2019	2019-1/24
R277-912	Law Enforcement Related Incident Reporting	43439	NEW	02/07/2019	2019-1/26
R277-922	Digital Teaching and Learning Grant Program	43398	AMD	01/09/2019	2018-23/45

ENVIRONMENTAL QUALITY

Air Quality

R307-101-2	Definitions	43372	AMD	02/07/2019	2018-23/49
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	AMD	01/03/2019	2018-13/35
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	CPR	01/03/2019	2018-21/134

Drinking Water

R309-100-9	Variances	43378	AMD	01/15/2019	2018-23/57
R309-105-4	General	43379	AMD	01/15/2019	2018-23/58
R309-110-4	Definitions	43380	AMD	01/15/2019	2018-23/60
R309-200	Monitoring and Water Quality: Drinking Water Standards	43381	AMD	01/15/2019	2018-23/73
R309-210-8	Disinfection Byproducts - Stage 1 Requirements	43382	AMD	01/15/2019	2018-23/80
R309-211	Monitoring and Water Quality: Distribution System -- Total Coliform Requirements	43383	AMD	01/15/2019	2018-23/85
R309-215-10	Residual Disinfectant	43384	AMD	01/15/2019	2018-23/91
R309-215-16	Groundwater Rule	43385	AMD	01/15/2019	2018-23/93
R309-220-4	General Public Notification Requirements	43386	AMD	01/15/2019	2018-23/99
R309-225-4	General Requirements	43387	AMD	01/15/2019	2018-23/101

Waste Management and Radiation Control, Radiation

R313-28-31	General and Administrative Requirements	43253	AMD	01/14/2019	2018-21/52
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Waste Management and Radiation Control, Waste Management

R315-273	Standards for Universal Waste Management	43252	AMD	01/14/2019	2018-21/55
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GOVERNOR

Economic Development

R357-7	Utah Capital Investment Board	43488	EXT	01/24/2019	2019-4/47
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Energy Development (Office of)

R362-4	High Cost Infrastructure Development Tax Credit Act	43223	AMD	02/05/2019	2018-20/18
R362-5	Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules	43419	NEW	01/23/2019	2018-24/15

HEALTH

Administration

R380-70	Standards for Electronic Exchange of Clinical Health Information	43487	5YR	01/24/2019	2019-4/43
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RULES INDEX

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Disease Control and Prevention, Environmental Services

R392-303 Public Geothermal Pools and Bathing Places 43502 5YR 02/05/2019 Not Printed

Family Health and Preparedness, Emergency Medical Services

R426-1 General Definitions 43177 AMD 01/11/2019 2018-18/15

R426-2 Emergency Medical Services Provider 43178 AMD 01/11/2019 2018-18/19

Designations for Pre-Hospital Providers,  
Critical Incident Stress Management and  
Quality Assurance Reviews

R426-9 Trauma and EMS System Facility Designations 43321 AMD 01/18/2019 2018-22/114

Health Care Financing, Coverage and Reimbursement Policy

R414-61-2 Incorporation by Reference 43425 AMD 02/15/2019 2019-1/28

R414-520 Admission Criteria for Medically Complex  
Children's Waiver 43332 NEW 01/04/2019 2018-22/111

R414-521 Accountable Care Organization Hospital  
Report 43352 NEW 01/04/2019 2018-22/113

HUMAN RESOURCE MANAGEMENT

Administration

R477-101 Administrative Law Judge Conduct Committee 43470 5YR 01/07/2019 2019-3/44

HUMAN SERVICES

Administration

R495-882 Termination of Parental Rights 43496 5YR 02/01/2019 2019-4/43

Administration, Administrative Services, Licensing

R501-1 General Provisions for Licensing 43330 AMD 01/17/2019 2018-22/119

R501-7 Child Placing Adoption Agencies 43356 AMD 02/12/2019 2018-23/105

R501-8 Outdoor Youth Programs 43234 AMD 01/17/2019 2018-21/89

R501-21 Outpatient Treatment Programs 43237 AMD 02/12/2019 2018-21/91

Child and Family Services

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**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	

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