

UTAH STATE BULLETIN

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

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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: Division 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 <http://www.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 <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for May 2016 Medicaid Rate Changes

Effective May 1, 2016, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>.

Health
Health Care Financing, Coverage and Reimbursement Policy

Public Meeting to Discuss the 1115 Waiver and H.B. 437 "Health Care Revisions" From the 2016 General Session

The Division of Medicaid and Health Financing (DMHF) will hold a public meeting to discuss the 1115 Waiver and H.B. 437- "Health Care Revisions" from the 2016 General Session. Please refer to <http://le.utah.gov/~2016/bills/static/HB0437.html> for information regarding H.B. 437.

These topics will be discussed at public meetings to be held on Wednesday, April 20, 2016, from 3:00 pm to 5:00 pm, and Friday, April 29, 2016, from 1:00 pm to 3:00 pm. Both meetings will be in the Cannon Health Building, 288 North 1460 West, Room 125, Salt Lake City, Utah.

A conference line is available for those who would like to attend by phone: 1-877-820-7831, passcode 196690#. Individuals requiring an accommodation to fully participate in this meeting should contact Jennifer Meyer Smart at 801-538-6338 before April 19, 2016.

Health
Health Care Financing, Coverage and Reimbursement Policy

Non-Routine Services, Quality Improvement (QI) Incentive, and Other Clarifications

The Division of Medicaid and Health Financing (DMHF) will amend Attachment 4.19-D of the Medicaid State Plan to update and clarify service coverage and specific incentives for provider reimbursement. For this purpose, DMHF will add hyperbaric oxygen therapy as a non-routine service for nursing home patients and remove certain education requirements for the QI program. It will also make other technical changes and clarifications.

DMHF does not expect an impact to total annual expenditures due to these changes.

This State Plan Amendment (SPA 16-0007-UT) is pending approval from the Centers for Medicare and Medicaid Services, and if approved, becomes effective July 1, 2016.

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

Health
Health Care Financing, Coverage and Reimbursement Policy
Annual Rebasing Update

The Division of Medicaid and Health Financing (DMHF) is updating its Medicaid State Plan through the following State Plan Amendments (SPAs):

SPA 16-0011-UT Reimbursement for Home Health Services;
SPA 16-0012-UT Reimbursement for Physician and Anesthesia Services;
SPA 16-0013-UT Reimbursement for Optometry Services;
SPA 16-0014-UT Reimbursement for Speech Pathology Services;
SPA 16-0015-UT Reimbursement for Audiology Services;
SPA 16-0016-UT Reimbursement for Chiropractic Services;
SPA 16-0017-UT Reimbursement for Eyeglasses Services;
SPA 16-0018-UT Reimbursement for Clinic Services;
SPA 16-0019-UT Reimbursement for Physical Therapy and Occupational Therapy;
SPA 16-0020-UT Reimbursement for Rehabilitative Mental Health Services; and
SPA 16-0021-UT Reimbursement for Transportation Services.

Based on the existing State Plan requirement to annually rebase pricing of physician codes, these amendments update the State Plan by changing the effective date of the pricing to July 1, 2016.

DMHF anticipates these changes to be budget neutral.

The proposed changes are pending Centers for Medicare and Medicaid Services approval.

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

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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 Division of Administrative Rules for publication and distribution.

Extending Administrative Rules through May 10, 2016, Utah Exec. Order No. 2016-2

EXECUTIVE ORDER

Extending Administrative Rules through May 10, 2016

WHEREAS, state agencies issue administrative rules pursuant to statutory authorization to implement or interpret statute and other law;

WHEREAS, administrative rules expire on May 1 of each year unless the Legislature reauthorizes them, pursuant to Utah Code Ann. Subsection 63G-3-502(2)(a);

WHEREAS, the Sixty-First Legislature passed Senate Bill 88, Reauthorization of Administrative Rules, during the 2016 General Session, reauthorizing all administrative rules within the bill;

WHEREAS, Senate Bill 88, Reauthorization of Administrative Rules, provides for a special effective date of May 1, 2016, if approved by two-thirds of all the members elected to each house;

WHEREAS, the House of Representatives passed Senate Bill 88 by less than the two-thirds majority required for the bill to go into effect on May 1, 2016;

WHEREAS, absent the two-thirds majority vote, the rules contained within the Bill will not be renewed until May 10, 2016; and

WHEREAS, Utah Code Subsection 63G-3-502(5)(d), authorizes the Governor to "declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin," if the omnibus bill required by Utah Code Ann. Subsection 63G-3-502(3) fails to pass both houses of the Legislature or a technical legal defect exists preventing reauthorization of administrative rules intended to be reauthorized by the Legislature; and

WHEREAS, it is necessary to extend the rules referenced in Senate Bill 88 until the Bill's May 10, 2016 effective date;

NOW THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah do hereby declare all administrative rules are extended through May 10, 2016.

IN WITNESS, WHEREOF, I have hereunto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this the 29th day of March 2016.

(State Seal)

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor

2016/02/EO

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

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 March 16, 2016, 12:00 a.m., and April 01, 2016, 11:59 p.m. are included in this, the April 15, 2016, 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 Division 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 Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 16, 2016. 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 August 13, 2016, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than 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 Division 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.

The Proposed Rules Begin on the Following Page

**Administrative Services, Risk
Management
R37-4
Adjusted Utah Governmental Immunity
Act Limitations on Judgments**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40282

FILED: 03/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to comply with Subsection 63G-7-604(4), which requires the State Risk Manager to calculate changes to the limitations of judgments against governmental entities based upon the Consumer Price Index and make rules, effective July 1 of each even-numbered year to establish the new limitation of judgment amounts.

SUMMARY OF THE RULE OR CHANGE: This amendment adjusts the limitations on judgment amounts that may be obtained from governmental entities for personal injury and property damage claims arising after 07/01/2016. The anticipated cost impact information provided below is an estimate of how these revisions will impact all governmental entities in the State of Utah and all businesses and individuals who may have personal injury or property damage claims against any governmental entity in the State of Utah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-7-604(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment will affect governmental entity judgment limitations as follows: \$14,100 increase for personal injuries for one person in any one occurrence; \$48,200 increase for the personal injury aggregate of individual awards for a single occurrence; and \$5,600 increase for property damages in any one occurrence. Consequently, state agencies, institutions of higher education, local education agencies, and the State Risk Fund will be exposed to those increased limits and may incur additional claim costs over the next two fiscal years. It is impossible to quantify what those increased costs may be because claims for personal injury and property damage can only be evaluated on an individualized basis and each claim is unique. Moreover, there is no way to predict accurately how many "immunity cap" claims the state will incur over the next two fiscal years.

◆ **LOCAL GOVERNMENTS:** This amendment will affect local government judgment limitations as follows: \$14,100 increase for personal injuries for one person in any one

occurrence; \$48,200 increase for the personal injury aggregate of individual awards for a single occurrence; and \$5,600 increase for property damages in any one occurrence. Consequently, local governments will be exposed to those increased limits and may incur additional claim costs over the next two fiscal years. It is impossible to quantify what those increased costs may be because claims for personal injury and property damage can only be evaluated on an individualized basis, and each claim is unique. Moreover, there is no way to predict accurately how many "immunity cap" claims local governments will incur over the next two fiscal years.

◆ **SMALL BUSINESSES:** Small businesses may be entitled to additional damages for personal injury and property damage claims caused by governmental entities; however, there is no way to predict those increases accurately, because damages for such claims can only be evaluated on an individualized basis. Furthermore, there is no way to predict accurately how many "immunity cap" claims involving small business will arise over the next two fiscal years.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons may be entitled to additional damages for personal injury and property damage claims caused by governmental entities; however, there is no way to predict those increases accurately, because damages for such claims can only be evaluated on an individualized basis. Furthermore, there is no way to predict accurately how many "immunity cap" claims involving persons will arise over the next two fiscal years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will not create any additional compliance costs other than potential increased claim costs that may be incurred by governmental entities, as indicated above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be a potential for increased damages for personal injury and property claims against governmental entities.

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Tani Downing, Director

R37. Administrative Services, Risk Management.

R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.

R37-4-1. Authority and Calculation Process.

Pursuant to UCA 63G-7-604(4) the Risk Manager hereby establishes a new limitation of judgment.

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years ~~[2011]~~2013 and ~~[2013]~~2015 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year ~~[2011]~~2013 is calculated to be ~~[222.43]~~232.02 and the index for ~~[2013]~~2015 is ~~[232.02]~~236.75. The percentage difference between the ~~[2011]~~2013 index and the ~~[2013]~~2015 index was then computed to be ~~[4.3%]~~2.0%.

R37-4-2. New Limitation of Judgment Amounts.

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, ~~[2014]~~2016 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is ~~[\$703,000]~~717,100 for one person in any one occurrence, and ~~[\$2,407,700]~~2,455,900 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is ~~[\$281,300]~~286,900 in any one occurrence.

R37-4-3. Limitations of Judgments by Calendar Date.

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(2).

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(2).

3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(2).

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more

persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(2).

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property damage for any one occurrence as explained in R37-4-2(2).

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence as explained in R37-4-2(2).

9) Incident(s) occurring on or after July 1, 2012 - \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2).

10) Incident(s) occurring on or after July 1, 2014 - \$703,000 for one person in an occurrence, \$2,407,700 aggregate for two or more persons in an occurrence, and \$281,300 for property damage for any one occurrence as explained in R37-4-2(2).

11) Incident(s) occurring on or after July 1, 2016 - \$717,100 for one person in an occurrence, \$2,455,900 aggregate for two or more persons in an occurrence, and \$286,900 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, Governmental Immunity Act caps

Date of Enactment or Last Substantive Amendment: ~~[April 30, 2014]~~2016

Notice of Continuation: May 30, 2012

Authorizing, and Implemented or Interpreted Law: 63G-7-604(4)

**Commerce, Real Estate
R162-2f
Real Estate Licensing and Practices
Rules**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 40276
FILED: 03/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to revise the rules section relative to the disclosures required to be made by persons who offer or sell an undivided fractionalized long-term estate.

SUMMARY OF THE RULE OR CHANGE: In Subsection R162-2f-102 (36), the definition of "Sponsor" is amended. In Section R162-2f-307, the disclosures required for all undivided fractionalized long-term estates are set forth in the proposed amendment. In addition to the disclosures for all undivided fractionalized long-term estates, additional disclosures are required for any undivided fractionalized long-term estates that include any of the following conditions: 1) management of the real property by the sponsor or an affiliate of the sponsor; 2) multiple tenants; 3) debt on the real property; or 4) a master lease agreement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 57-29-302

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The division has the staff and budget in place to administer this proposed amendment. It is not expected that the proposed amendment will affect those resources or result in any cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the real estate licensing and practices rules. No fiscal impact to local government is expected from the proposed amendment.

◆ **SMALL BUSINESSES:** The proposed amendment requires a person who offers or sells an undivided fractionalized long-term estate to make required disclosures to prospective purchasers. The existing rule also requires disclosures to be made. It is not anticipated that significant cost or savings will result to small businesses from the proposed rule amendment. If any cost or savings were to arise from the proposed amendment, they will vary and cannot be anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment requires a person who offers or sells an undivided fractionalized long-term estate to make required disclosures to prospective purchasers. The existing rule also requires disclosures to be made. It is not anticipated that significant cost or savings will result to persons other than small businesses, businesses, or local government entities from the proposed rule amendment. If any cost or savings were to arise from the proposed amendment, they will vary and cannot be anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment requires a person who offers or sells an undivided fractionalized long-term estate to make required disclosures to prospective purchasers. The existing rule also requires disclosures to be made. The cost of compliance to affected persons will vary and cannot be anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change revises the rules regarding disclosures by persons who offer or sell an undivided fractionalized long-term estate. No fiscal impact to businesses is anticipated.

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

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5) (c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(14) "Day" means calendar day unless specified as "business day."

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(19) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(20) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(24) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(26) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "Principal" in a transaction means an individual who is represented by a licensee and may be:

- (a) the buyer or lessee;
- (b) an individual having an ownership interest in the property;
- (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
- (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Subsection 61-2f-102(19).

(31) "Registration" means authorization from the division to engage in the business of real estate as:

- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) an association;
- (e) a dba;
- (f) a professional corporation;
- (g) a sole proprietorship; or
- (h) another legal entity of a real estate brokerage.

(32) "Reinstatement" is defined in Subsection 61-2f-102(22).

(33) "Reissuance" is defined in Subsection 61-2f-102(23).

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Subsection 61-2f-102(24).

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(38) "Sponsor" means:

(a) ~~[the party that]~~ a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(39) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

- (a) mortgage brokers;
- (b) mortgage lenders;
- (c) loan originators;

(d) title service providers;

(e) attorneys;

(f) appraisers;

(g) providers of document preparation services;

(h) providers of credit reports;

(i) property condition inspectors;

(j) settlement agents;

(k) real estate brokers;

(l) marketing agents;

(m) insurance providers; and

(n) providers of any other services for which a principal or investor will be charged.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-307. Undivided Fractionalized Long-Term Estate.

~~[(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:~~

~~(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and~~

~~(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.~~

~~(2) Required disclosures:~~

~~(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:~~

~~(i) current certified financial statements;~~

~~(ii) current credit reports;~~

~~(iii) information concerning any bankruptcies or civil lawsuits;~~

~~(iv) proposed use of purchaser proceeds;~~

~~(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and~~

~~(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;~~

~~(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and~~

~~(vii) statement as to whether any affiliate of the sponsor is:~~

~~(A) a third-party service provider; or~~

~~(B) a master lease tenant.~~

~~(b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:~~

~~(i) material information concerning any leases or subleases affecting the real property;~~

~~(ii) material information concerning any environmental issues affecting the real property;~~

~~(iii) a preliminary title report on the real property;~~

~~(iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;~~

~~(v) if applicable, rent rolls and operating history;~~

~~(vi) if applicable, loan documents;~~

~~(vii)(A) a tenants in common agreement; or~~

~~(B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;~~

~~(viii) third party reports acquired by the sponsor;~~

~~(ix) a narrative appraisal report that:~~

~~(A) is effective no more than six months prior to the date the offer of sale is made; and~~

~~(B) includes, at a minimum:~~

~~(I) pictures;~~

~~(II) type of construction;~~

~~(III) age of building; and~~

~~(IV) site information such as improvements, parking, cross easements, site and location maps;~~

~~(x) material information concerning the market conditions for the property class; and~~

~~(xi) material information concerning the demographics of the general market area.~~

~~(e) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:~~

~~(i) contact information for any existing or recommended asset managers and property managers;~~

~~(ii) description of any relationship between:~~

~~(A) the asset managers and the sponsor; and~~

~~(B) the property managers and the sponsor; and~~

~~(iii) copies of any existing:~~

~~(A) asset management agreements; and~~

~~(B) property management agreements.~~

~~(d) Disclosure as to potential tax consequences, including the following:~~

~~(i) a statement that there might be tax consequences for a failure to close on the purchase;~~

~~(ii) a statement that there might be risks involved in the purchase; and~~

~~(iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.~~

~~(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.]~~

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser prior to purchasing, and shall include the following:

(1) for all undivided fractionalized long-term estates:

(a) a brief account describing the professional qualifications, background, and experience of the sponsor;

(b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;

(c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;

(d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;

(e) any defects in the property known by the sponsor that may materially affect the value of the property;

(f) material information known by the sponsor concerning any environmental issues affecting the real property; and,

(g) a preliminary title report on the real property;

(2) in addition to the disclosures required by subsection (1), if the undivided fractionalized long-term estate includes:

(a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with UCA Section 61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:

(i) the sponsor's continuing interest, if any, in the real property;

(ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;

(iii) whether any affiliate of the sponsor is or is expected to become a third-party service provider to the real property;

(iv) any relationship between the property managers and the sponsor; and,

(v) any property management agreements that would continue after the sale;

(b) multiple tenants, the information required to be disclosed shall include:

(i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and

(ii) any tenant financial records the sponsor has in their possession, custody, or control;

(c) debt on the real property, the information required to be disclosed shall include:

(i) each of the loan documents; and

(ii) a current loan statement;

(d) a master lease agreement, the information required to be disclosed shall include:

(i) the master lease agreement;

(ii) disclosure of the sponsor's relationship with the master tenant, if any;

(iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:

(A) audited financial statements of the master lease tenant; and

(B) all bankruptcies or civil lawsuits involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

KEY: real estate business, operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment: [February 23, 2016]

Notice of Continuation: August 12, 2015

Authorizing, Implemented, or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307

**Education, Administration
R277-419
Pupil Accounting**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40287

FILED: 03/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-419 is amended to provide school districts and charter schools (LEAs) with additional accounting procedures on how an LEA counts a student's membership and enrollment in the LEA for purposes of receiving state funding.

SUMMARY OF THE RULE OR CHANGE: The amendments provide additional and updated accounting procedures for apportioning and distributing state funds for education and provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-1-401 and Section 53A-3-404 and Subsection 53A-1-301(3)(d) and Subsection 53A-1-402(1)(e) and Subsection 53A-1-404(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to Rule R277-419 provide additional accounting procedures and technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-419 provide additional accounting procedures and technical and conforming changes, which likely will not result in a cost or savings to the local government.

◆ **SMALL BUSINESSES:** The amendments to Rule R277-419 provide additional accounting procedures and technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to R277-419 provide additional accounting procedures and technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-419 provide additional accounting procedures and technical and conforming changes, which

likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to the rule in Subsection 53A-1-401(3), Subsection 53A-1-402(1)(e), Subsection 53A-1-404(2), Subsection 53A-1-301(3)(d), and Section 53A-3-404.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at 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 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-[2]1. Authority and Purpose.

[A-](1) This rule is authorized [under] by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the [State-] Board [of Education];

(b) [by-] Section 53A-1-401[(3)], which allows the Board to make rules in accordance with its responsibilities[;];

(c) Subsection 53A-1-402(1)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness[;];

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements[; and];

(d) Subsection 53A-1-404(2), which directs that local school board auditing standards shall include financial accounting and student accounting[; This rule is further authorized by];

(e) Subsection 53A-1-301(3)(d), which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs[;]; and

(f) Section 53A-3-404, which requires annual financial reports from all school districts.

~~[B-](2)~~ The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-[4]2. Definitions.

~~[A-](1)~~ "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

~~[B-](2)~~ "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

~~[C-](3)~~ "Blended learning program" means a program under the direction of an LEA:

(1)a. where a student learns at least in part:

(a)i. at a supervised brick and mortar location away from a student's home; and

(b)ii. ~~[at least in part]~~ through an online delivery; and

(2)b. that may include some element of student control over time, place, or path, or pace.

~~[D. "Board" means the Utah State Board of Education.]~~

~~[E-](4)~~ "Brick and mortar school" means a traditional school or traditional school building.

~~[F-](5)~~ "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

~~[H-](6)~~ "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

~~[I-](7)~~ "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

~~[J-](8)~~ "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

~~(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.~~

~~[K-](10)~~ "Electronic ~~[h]High [s]School~~" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

~~[L-](11)~~ "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Subsection R277-419-5.

~~[M-](12)~~ "Enrollment verification data" includes:

(1)a. a student's birth certificate or other verification of age;

(2)b. verification of immunization or exemption from immunization form;

(3)c. proof of Utah public school residency;

(4)d. family income verification; or

(5)e. special education program information, including ~~[information for]~~:

(a)i. an individualized education program;

(b)ii. a Section 504 accommodation plan; or

(e)iii. an English learner plan.

~~[N-](13)~~ "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

~~[O-](14)~~ "Home school" means the formal instruction of children in their homes instead of in an LEA. The differences between a home school student and an online student include:

(1)a. an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(2)b. an online student is:

(a)i. subject to laws and rules governing state and federal mandated tests; and

(b)ii. included in accountability measures;

(3)c. an online student receives instruction under the direction of highly qualified, licensed teachers who are subject to the licensure requirements of Rule R277-502 and fingerprint and background checks consistent with Rules R277-516 and R277-520;

(4)d. instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the ~~[m]Minimum [s]School [p]Program~~ in Title 53A, Chapter 17a, Minimum School Program Act.

~~[P-](15)~~ "Home school course" means instruction:

(1)a. delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(2)b. not supervised or directed by an LEA.

~~[Q-](16)~~ "Influenza pandemic" or ~~[c]"pandemic"]~~ means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

~~[R-](17)~~ "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

~~[S-](18)~~ "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

~~[T. "LEA" or "local education agency" means a school district or charter school.]~~

~~[U-](19)~~ "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1)a. [-] A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2)b. Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

~~[V-](20)~~ "Minimum School Program ~~[-(MSP)]~~" means the same as that term is defined in Section 53A-17a-103.

~~[W-](21)~~ "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(1)a. distance learning program;

(2)b. online learning program;

(3)c. blended learning program; or

(~~4~~)d. competency based learning program.

~~X~~-(22) "Online learning program" means a program:

(~~1~~)a. that is under the direction of an LEA; and

(~~2~~)b. in which students receive educational services primarily over the internet.

~~Y~~-(23) "Private school" means an educational institution that:

(~~1~~)a. is not an LEA;

(~~2~~)b. is owned or operated by a private person, firm, association, organization, or corporation; and

(~~3~~)c. is not subject to governance by the Board consistent with the Utah Constitution.

~~Z~~-(24) "Program" means a ~~program~~course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

~~AA~~-(25) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

~~G~~-(26) "~~Compulsory~~Qualifying school age" means:

(~~1~~)a. a person who is at least five years old and no more than 17 years old on or before September 1;

(~~2~~)b. with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

~~BB~~-(27) "Retained senior" means a student beyond the general compulsory ~~education~~school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:

(~~1~~)a. sickness;

(~~2~~)b. hospitalization;

(~~3~~)c. pending court investigation or action; or

(~~4~~)d. other extenuating circumstances beyond the control of the student.

~~CC~~-(28) "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

~~DD~~-(29) "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

~~EE~~-(30) "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

~~FF~~-(31) "School" means an educational entity governed by an LEA that:

(~~1~~)a. is supported with public funds;

(~~2~~)b. includes enrolled or prospectively enrolled full-time students;

(~~3~~)c. employs licensed educators as instructors that provide instruction consistent with Rule R277-502-5;

(~~4~~)d. has one or more assigned administrators;

(~~5~~)e. is accredited consistent with Rule R277-410-3; and

(~~6~~)f. administers required statewide assessments to the school's students.

~~GG~~-(32) "School day" means:

(~~1~~)a. a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints described in ~~[R277-419-1FF(2)]~~Subsection (32)(b).

(~~2~~)b)(~~a~~)i. All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(~~2~~)b)(~~a~~)ii. Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

~~HH~~-(33) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

~~II~~-(34) "School of enrollment" means~~the school~~:

(~~1~~)a. ~~[where a student takes a majority of the student's classes]~~a student's school of record; and

(~~2~~)b. ~~[designated to receive the student's weighted pupil unit]~~the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

~~JJ~~-(35) "School year" means the 12 month period from July 1 through June 30.

~~KK~~-(36) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

~~LL~~-(37) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

~~MM~~-"SEOP/Plan for College and Career Readiness" means a student education occupation plan for College and Career Readiness that is a developmentally organized intervention process that includes:

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

(2) all Board, local school board and local charter school governing board graduation requirements;

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

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

(5) identification of post-secondary goals and approved sequence of courses.]

~~NN~~-(38) "SSID" means Statewide Student Identifier.

~~OO~~-"Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.]

~~PP~~-"UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.]

~~QQ~~-(39) "Unexcused absence" means an absence charged to a student when:

(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-4[B](3); and

(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

~~RR~~-"USOE" means the Utah State Office of Education.]

~~[(SS-)](40)~~ "Year ~~[E]nd~~ upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the USOE for the prior school year.

~~[(FF-)](41)~~ "Youth in Custody (YIC)" means a person under the age of 21 who is:

~~[(1)]a)~~ in the custody of the Department of Human Services;

~~[(2)]b)~~ in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

~~[(3)]c)~~ being held in a juvenile detention facility.

R277-419-3. Schools and Programs.

~~[(A-)] Schools~~

~~[(1)]a)~~ The Superintendent shall provide a list to each school detailing the ~~[appropriate]~~required accountability reports and other state-mandated reports for the school type and grade range.

~~[(2)]b)~~ All schools shall submit a Clearinghouse report to the Superintendent.

~~[(3)]c)~~ All schools shall employ at least one licensed educator and one administrator.

~~[(B-)] Programs~~

~~[(1)]2)a)~~ ~~A~~ ~~[S]~~student[s] who ~~[are]~~is enrolled in a program ~~[are]~~is considered a member[s] of a public school.

~~[(2)]b)~~ The Superintendent may not require programs to receive separate accountability and other state-mandated reports.

~~[(3)]c)~~ ~~A~~ ~~[S]~~student[s] reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.

~~[(4)]d)~~ ~~A~~ ~~[C]~~course[s] taught at a program[s] shall be credited to the appropriate school of enrollment.

~~[(C-)] Private school or program~~

~~[(1)]3)~~ ~~A~~ ~~[P]~~private school[s] or program[s] may not be required to submit data to the USOE.

~~[(2)]4)~~ ~~A~~ ~~[P]~~private school[s] or program[s] may not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

~~[(A-)] Minimum standards for school days~~

~~[(1)]a)~~ Except as provided in ~~[R277-419-4]~~Subsection (1) (b), an LEA shall conduct school for at least 990 instructional hours and 180 school days each school year.

~~[(b)]~~ an LEA may seek an exception to the number of school days described in ~~[R277-419-4A]~~Subsection (1)(a) for an individual student[s] ~~and~~ or school[s] as provided for in Section R277-419-811.

~~[(2)]~~ An LEA may offer the required school days and hours described in ~~[R277-419-4A]~~Subsection (1)(a) at any time during the school year, consistent with the law.

~~[(3-)] Health Department Emergency or Pandemic~~

~~[(3)]a)~~ The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

~~[(b)]~~ In the event that the Board is unable to meet in a timely manner, the Superintendent may issue a waiver following consultation with a majority of Board members.

~~[(c)]~~ ~~[The]~~A waiver may be for a designated time period, for a specific area[s], or for a specific LEA in the state, as determined by the health department directive.

~~[(d)]~~ ~~[The]~~A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

~~[(e)]~~ ~~[The]~~A waiver by the Board or Superintendent shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

~~[(f)]~~ ~~[The]~~A waiver shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

~~[(g)]~~ The Board may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

~~[(4)]~~ Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

~~[(5)]~~ An LEA's governing board is encouraged to provide adequate school days and hours in the LEA's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

~~[(B-)] Official records~~

~~[(1)]6)~~ To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

~~[(a)]~~ entry date;

~~[(b)]~~ exit date;

~~[(c)]~~ exit or high school completion status;

~~[(d)]~~ whether or not an absence was excused;

~~[(e)]~~ disability status (resource or self-contained, if applicable); and

~~[(f)]~~ YIC status (ISI-1, ISI-2 or self-contained, if applicable).

~~[(2)]7)~~ An LEA shall ensure that:

~~[(a)]~~ computerized or manually produced records for CTE programs are kept by teacher, class, and Classification of Instructional Program (CIP) code; and

~~[(b)]~~ the records described in ~~[R277-419-4B]~~Subsection (2)7)a) clearly and accurately show for each student in a CTE class the:

~~[(i)]~~ entry date;

~~[(ii)]~~ exit date; and

~~[(iii)]~~ excused or unexcused status of absence.

~~[(3)]8)~~ An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.

~~[(c-)]9)~~ Due to school activities requiring schedule and program modification during the first days and last days of the school year:

~~[(1)]a)~~ for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;

~~[(2)]b)~~ for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and

~~[(3)]c)~~ schools shall continue instructional activities throughout required calendared instruction days.

~~[(D-)] Audits~~

(10) An LEA shall employ an independent auditor, under contract, to:

- (a) annually audit student accounting records; and
- (b) report the findings of the audit to:
 - (i) the LEA board; and
 - (ii) the Finance and Statistics Section of the USOE.

([2]11) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office and published under the heading of APP C-5.

([3]12) The Superintendent:

(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Rule R277-484-7 and 8; and

(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

[-----A. Eligibility]

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

([+3]3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which [is]are determined using one of the continuing enrollment measurements described in [R277-419-5A]Subsection ([2]4);

(d) is a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) is of [compulsory]qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury[;];

(II) illness[;];

(III) surgery[;];

(IV) suspension[;];

(V) pregnancy[;];

(VI) pending court investigation or action; or

([H]VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under Rule R277-700-6([7]14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA, other than the Utah Electronic High School, that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

([2]4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with [R277-419-5A]Subsection ([+3]3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with [R277-419-5A]Subsection ([+3]3)(c).

([3]5) The continuing enrollment measurement described in [R277-419-5A]Subsection ([2]4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

([4]6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

[5](7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in [R277-419-5A]Subsection ([+3]3)(f)(iii), or to seek a waiver from a requirement(s) in [R277-419-5A]Subsection ([+3]3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b), a student is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) A student transferring to or from an LEA with a schedule approved under R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(2) A student enrolled in two or more LEAs is eligible for no more than 180 days of regular membership per school year.

(3) If a student is enrolled in two or more LEAs, the Superintendent shall apportion the 180 days of regular membership between the LEAs.

B. Reporting

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

C. Calculations

(1)4. If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2)5. For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be $(900/990)*180$, and the LEA would report 164 days.

(3)6. For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(4)7. For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

D. Constraints

(1)8. The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(2)9. The sum of regular and resource special education membership days may not exceed 360 days.

(3)10. The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

~~(E. Exceptions)~~(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(1)1a. one period each school day, if the student has been:

(1)1i. released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(1)1ii. participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53A-11-102 for home schooling;

(2)1b. two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(3)1c. all periods each school day, if the student is enrolled in:

(1)1i. a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(1)1ii. a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(1)1iii. a foreign exchange student program under Subsection 53A-2-206(8);

(1)1iv. Electronic High School courses for credit which meet curriculum requirements, consistent with the student's SEOP/Plan for College and Career Readiness and following written school counselor approval; or

(1)1v. a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(1)1A. the student may only be counted in [(S1)] membership and may not have an S2 record; and

(1)1B. the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53A-17a-106.

R277-419-8. Reporting Requirements.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

R277-419-[6]9. High School Completion Status.

~~(A.)~~(1) An LEA shall account for the final status of all students who enter high school (grades [40]9-12) whether they graduate or leave high school for other reasons, using the following

decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1)a. graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Rule R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;

(2)b. ~~other students are~~ completers are students who have not satisfied Utah's requirements for graduation but who:

(a)i. are in membership in twelfth grade on the last day of the school year; and

(b)ii.(i)A. meet any additional criteria established by an LEA consistent with its authority under Rule R277-705-4(c);

(ii)B. meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, ~~August 2007~~ November 2013, and available from the USOE, and R277-700-8(5); or

(iii)C. pass a General Educational Development (GED) test with a designated score;

(3)c. continuing students are students who:

(a)i. transfer to higher education, without first obtaining a diploma;

(b)ii. transfer to the Utah Center for Assistive Technology ~~(UCAT)~~ without first obtaining a diploma; or

(e)iii. age out of special education;

(4)d. dropouts are students who:

(a)i. leave school with no legitimate reason for departure or absence;

(b)ii. withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5(A)(3)(f)(ii);

(e)iii. are expelled and do not re-enroll in another public education institution; or

(d)iv. transfer to adult education;

(5)e. an LEA shall exclude a student from the cohort calculation if the student:

(a)i. transfers out of state, out of the country, to a private school, or to home schooling;

(b)ii. is a U.S. citizen who enrolls in another country as a foreign exchange student;

(e)iii. is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code; ~~(f)~~

(d)iv. dies; or

(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.

(B)(1)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.

(2)b. High School completion status or exit codes for each student are due to the Superintendent by ~~Y~~ year ~~E~~ end upload for processing and auditing.

(3)c. Except as provided in ~~R277-419-6B~~ Subsection (4)2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of ~~the~~ a student's graduating cohort pursuant to Rule R277-484-3 ~~[Deadlines for Data Submission]~~.

(4)d. An LEA with an alternative school year schedule where all of the students have an ~~summer~~ extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's ~~summer~~ extended break, as defined in Rule R277-484-3.

(C)(1)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.

(2)b. The Superintendent shall calculate the graduation rates in accordance with ~~the No Child Left Behind Act of 2001 (NCLB) and the NCLB High School Graduation Rate: Non-Regulatory Guidance~~ applicable federal law.

(3)c. The Superintendent shall include a student in a school's graduation rate if:

(a)i. the school was the last school the student attended before the student's expected graduation date; and

(b)ii. ~~if~~ the student does not meet any exclusion rules as stated in ~~R277-419-6A(5)~~ Subsection (1)(c).

(4)d. The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.

(5)e. A student's graduation status will be attributed to the school attended in their final cohort year.

(6)f. If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:

(a)i. school with an attached graduation status for the final cohort year;

(b)ii. school with the latest exit date;

(e)iii. school with the earliest entry date;

(d)iv. school with the highest total membership;

(e)v. school of choice;

(f)vi. school with highest attendance; or

(g)vii. school with highest cumulative GPA.

(7)g. The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-7)10. Student Identification and Tracking.

(A)(1)(a) Pursuant to Section 53A-1-603.5, an LEA shall:

(a)i. use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and

(b)ii. display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

~~(2)(a)~~ (b) The unique student identifier:

(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program[-];

(b)ii. ~~The unique student identifier~~ may not be the student's social security number or contain any personally identifiable information about the student.

(B)(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(1)a. A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

([2]b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

([3]c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

([C-](3) The Superintendent and LEAs shall track students and maintain data using students' legal names.

([D-](4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.

([E-](5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in[—a] the LEA, and provide students and their parents with notification of enrollment in a public school.

([F-](6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-[8]11. Variances.

([A](1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student[s], in the length of the school day or year, for a student[s] with compelling circumstances.

([2]b) The time an excepted student is required to attend school shall be established by the student's IEP or SEOP/Plan for College and Career Readiness.

([B]([1]2)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

([2]b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency/activity time as part of the minimum required time to qualify for full Minimum School Program funding.

[—C. ~~Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.~~

([1]3)(a) To provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in Subsection R277-419-[1]3(2), are satisfied.

([2]b) A [S]school[s] may conduct parent-teacher and Student Education Plan (SEP) conferences during the school day.

([3]c) Parent-teacher and SEP conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

([4]d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

([5]e) An LEA may designate no more than 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

([6]f) If instruction days are designated for kindergarten assessment:

([a]i) an LEA shall designate the days in an open meeting;

([b]ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

([e]iii) qualified school employees shall conduct the assessment consistent with Section 53A-3-410; and

([d]iv) assessment time per student shall be adequate to justify the forfeited instruction time.

([7]g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

([8]h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

([D-](4) A school using a modified 45-day/[—]15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment, pupil accounting

Date of Enactment or Last Substantive Amendment: ~~July 8, 2015~~2016

Notice of Continuation: September 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401([3]); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

Education, Administration **R277-478** Block Grant Funding

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40288

FILED: 03/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-478 was coming due for its five-year review and continuation on 06/30/2016. Following a review of the rule, it was determined that the rule is no longer necessary so it is being repealed.

SUMMARY OF THE RULE OR CHANGE: Rule R277-478 is repealed in its entirety because the statute that provided for local discretionary block grant programs has been repealed, and the quality teaching block grant has not been funded since 2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Rule R277-478 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Rule R277-478 is repealed in its entirety, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Rule R277-478 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-478 is repealed in its entirety, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R277-478 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from repeal of this rule.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at 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 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.
[R277-478. Block Grant Funding.]

R277-478-1. Definitions:

- _____ A. "Board" means the Utah State Board of Education.
- _____ B. "Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be mastered by all students K-12 as a requisite for graduation from Utah's secondary schools.
- _____ C. "Fiscal Year (FY)" means the twelve month period from July 1 through June 30 during which state funds are distributed.

_____ D. "Limited English proficient (LEP)" means a student who:

- _____ (1) is aged 3 through 21;
- _____ (2) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or
- _____ (3) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or
- _____ (4) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and
- _____ (5) has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

_____ E. "USOE" means the Utah State Office of Education.

R277-478-2. Authority and Purpose:

_____ A. This rule is authorized under Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

_____ B. The purpose of this rule is to establish criteria and procedures for distributing block grant funds and to provide for appropriate monitoring, reporting, and accountability.

R277-478-3. Local Discretionary Block Grant Programs:

_____ A. Districts and charter schools shall use Local Discretionary Block Grant funds for:

- _____ (1) maintenance and operation costs;
- _____ (2) capital outlay; and
- _____ (3) debt service.

_____ B. Local Discretionary Block Grant funds shall be distributed using the following formula:

_____ (1) Eight percent of the total local discretionary block grant appropriation shall be divided into 41 equal shares.

_____ (2) Each district shall receive one share.

_____ (3) One share shall be divided equally among all charter schools except charter schools which were once existing district schools.

_____ (4) The remaining portion of the local discretionary block grant appropriation (ninety two percent) shall be divided among the districts and charters based upon their total WPU's in K-12, and the necessarily existent small schools portion of the Minimum School Basic program.

_____ C. Local discretionary program expenditures shall:

_____ (1) meet criteria and accountability standards consistent with the purposes of this rule.

_____ (2) be reported to the Board in annual budget and financial reports.

R277-478-4. Quality Teaching Block Grant:

_____ A. Districts and charter schools shall use Quality Teaching Block Grant funds to implement school and school district

~~comprehensive, long-term professional development plans required under Section 53A-3-701.~~

~~B. Each local school board shall, as provided by Section 53A-3-701, review and either approve or recommend modifications for each school's comprehensive, long-term professional development plan within the district so that each school's plan is compatible with the district's comprehensive, long-term professional development plan.~~

~~C. Each local school board and charter school governing board shall approve in an open public meeting a plan to spend Quality Teaching Block Grant funds to implement the school district's or charter school's comprehensive, long-term professional development plan. In developing the plan, districts and charter schools should consider involving educators from every core area.~~

~~D. By September 1 of each year, the local school board or charter school governing board shall submit a copy of its plan, a letter of assurance to the Board that the plan was approved in an open and public meeting, and a copy of the local board minutes of the meeting in which the plan was approved.~~

~~E. If a local school board or charter school governing board fails to submit the documents specified in R277-478-5D to the Board by September 1, the Board shall withhold the distribution of Quality Teaching Block Grant funds until documentation required under this rule is provided.~~

~~F. Career Ladder Programs~~

~~(1) Districts and charter schools may choose to implement a career ladder program of their own design with money received under the Quality Teaching Block Grant.~~

~~(2) If a career ladder program is funded, districts and charter schools shall ensure that their school and district professional development plans are consistent with Section 53A-3-701(2)(iv).~~

~~(3) Districts and charters shall also report to the Board how the career ladder funds were spent consistent with Section 53A-9-106.~~

~~G. Quality Teaching Block Grant funds shall be distributed using the following formula: thirty percent of the total Quality Teaching Block Grant funds shall be distributed on the basis of the number of full-time equivalent teachers employed by the district or charter school for the immediately previous school year. The remaining seventy percent of the funds shall be distributed on the basis of the number of WPUs in the basic programs of the Minimum School Program for the immediately previous school year.~~

~~**KEY: educational expenditures, block grant funding**
Date of Enactment or Last Substantive Amendment: August 8, 2011
Notice of Continuation: June 30, 2011
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)~~

**NOTICE OF PROPOSED RULE
 (Amendment)**

**DAR FILE NO.: 40289
 FILED: 03/30/2016**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-482 is amended to provide timelines for reporting an approved charter school expansion or satellite school; to comply with changes in statute; to remove redundant language also found in statute; to add necessary definitions; to clarify standards and expectations; and to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-482 add and revise definitions; change the requirement for USOE to maintain the charter agreement; change the reporting date for the State Charter School Board (SCSB) to report an approved expansion or addition of a satellite school to the Superintendent; require an authorizer to report an approved expansion or addition of a satellite school; change language about training sessions; expand website requirements; remove language about priority to applications; give flexibility to an authorizer to negotiate a new charter school's start date; clarify what an application may require from a school requesting to change authorizers and remove the timeline for consideration; remove expansion language and remove language about total number of charter school students authorized; clarify that the parent school and satellites are considered a single LEA; and make technical changes to numbering and terminology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Charter School Expansion Act of 1998 and Section 53A-1-401 and Section 53A-1a-504 and Section 53A-1a-505 and Section 53A-1a-513 and Section 53A-1a-515 and Section 53A-1a-521

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments to Rule R277-482 provide changes to and additions of numerous processes and procedures, and provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-482 provide changes to and additions of numerous processes and procedures, and provide technical and conforming changes, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to Rule R277-482 provide changes to and additions of numerous processes and procedures, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-482 provide changes to and additions of numerous processes and procedures, and provide technical and conforming changes, which likely will

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

not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-482 provide changes to and additions of numerous processes and procedures, and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to the rule.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at 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 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-482. Charter School Timelines and Approval Processes.

R277-482-[2]1. Authority and Purpose.

~~[A-](1)~~ This rule is authorized ~~[under]~~ 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[~~(3)~~], which allows the Board to adopt rules in accordance with its responsibilities[~~, and~~];

~~(c)~~ Section 53A-1a-504, which requires the Board to make rules regarding a charter school expansion or satellite campus;

~~(d)~~ Sections 53A-1a-505, 53A-1a-515, and 53A-1a-521, which require the Board to make a rule providing a timeline for the opening of a charter school;

~~(e)~~ Section 53A-1a-513, which directs the Board to distribute funds for charter school students directly to the charter school[;]; and

~~(f)~~ the Charter School Expansion Act of 1998, 20 U.S.C. [;] Sec[ti]on, 8063[~~(3)~~], which directs the Board to submit specific information prior to a charter school[s]' receipt of federal funds.

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

R277-482-[4]2. Definitions.

~~[A-](1)~~ "Amendment[;]" ~~[for purposes of this rule,]~~ means a change or addition to ~~[the]a~~ charter agreement.

~~[B-]~~ "Board" means the Utah State Board of Education.

~~[C-]~~ "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2);

~~[D-]~~ "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505;

~~[E-](2)~~ "Charter[~~school~~] agreement[~~(charter agreement)"]" means the [terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement]same as that term is defined in Section 53A-1a-501.3.~~

~~[F-]~~ "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board;

~~(3)~~ "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3

~~[G-](4)~~ "Charter school governing board" means the board designated ~~[by the charter school]in a charter agreement~~ to make decisions for the governance and operation of ~~[the]a~~ charter school.

~~[H-](5)~~ "Expansion" means a proposed increase of students or adding a grade level[~~(s)~~] in an operating charter school ~~[at a single location]with the same school number.~~

~~[I-](6)~~ "Satellite charter school" means a charter school affiliated with an operating charter school~~[~~having a common~~], which has the same charter school governing board and a similar program of instruction, but [located at a different site. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.]has a different school number than the affiliated charter school.~~

~~(7)~~ "School number" means a number that identifies a school within an LEA that:

~~(a)~~ receives money from the state;

~~(b)~~ enrolls or prospectively enrolls a full-time student;

~~(c)~~ employs an educator as an instructor who provides instruction consistent with Section R277-502-5;

~~(d)~~ has one or more assigned administrators;

~~(e)~~ is accredited consistent with Section R277-410-3; and

~~(f)~~ administers a required statewide assessment to a student.

~~[J-]~~ "State Charter School Board" means the board designated in Section 53A-1a-501.5;

~~[K-]~~ "USOE" means the Utah State Office of Education;

R277-482-3. State Charter School Board [Application and]Applicant Training.

~~[A-](1)~~ A~~[H]~~ charter school applicant[s] that is seeking to have a charter authorized by the State Charter School Board shall attend:

~~(a)~~ pre-application training;

~~(b)~~ ~~[and]~~planning year training~~[~~sessions, as well as~~]; and~~

~~_____ (c) other training sessions designated by the State Charter School Board.~~

~~[B-](2) The State Charter School Board shall schedule [P]pre-application training sessions [shall be scheduled for]multiple times annually [and]that may be available electronically[as determined by the State Charter School Board].~~

~~[C. Charter schools and applicants that attend training sessions may be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training sessions may receive priority for approval from the State Charter School Board and the Board.~~

~~_____ D. Training sessions shall provide information including:~~

- ~~_____ (1) charter school implementation requirements;~~
- ~~_____ (2) charter school statutory and Board requirements;~~
- ~~_____ (3) charter school financial and data management requirements;~~
- ~~_____ (4) charter school legal requirements;~~
- ~~_____ (5) federal requirements for charter school funding; and~~
- ~~_____ (6) other items as determined by the State Charter School Board.]~~

~~R277-482-4. [New or Expanding]Charter School [Notification to Prospective]Information for Students and Parents.~~

~~[A-](1) A[New or expanding] charter school[s] shall have a website that contains the following information[available on its website and notify all families consistent with the schools' outreach plans described in the charter agreements of]:~~

~~[_____ (1) the school's approved charter, purpose, focus and governance structure, including names, qualifications, and contact information of all governing board members;]~~

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

~~_____ (2)b_ the number of new students that will be admitted into the school by grade;~~

~~_____ (3)c_ the [proposed] school calendar[for the charter school, including at a minimum the first and last days of school, scheduled holidays, scheduled professional development days (no student attendance), and other scheduled non-school days;], which shall include:~~

- ~~_____ (i) the first and last days of school;~~
- ~~_____ (ii) scheduled holidays;~~
- ~~_____ (iii) scheduled professional development days; and~~
- ~~_____ (iv) scheduled non-school days;~~

~~_____ (4)d_ [the charter school's]timelines for acceptance of new students consistent with Section 53A-1a-506.5;~~

~~_____ (5)e_ the requirement and availability of a charter school student application;~~

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

~~_____ (6)g_ procedures for transferring to or from a charter school[, together with applicable timelines];[and]~~

~~_____ (h) timelines for a transfer;~~

~~_____ (7)i_ provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103[-];~~

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

~~_____ (k) other items required by:~~

~~_____ (i) the charter school's authorizer;~~

~~_____ (ii) statute; and~~

~~_____ (iii) Board rule.~~

~~[B-](2) [N]A new or expanding charter school[s] shall [provide written notice of]have an operative and readily accessible website containing the information described in [R277-482-4A consistent with the school's outreach plan and on the school's website]Subsection (1) at least 180 days before the proposed opening day of school.~~

~~[C. New or expanding charter schools shall have an operative and readily accessible electronic website providing information required under R277-482-4A in place. The completed charter school website shall be provided to the State Charter School Board for review at least 210 days prior to the proposed opening day of school and prior to posting the websites publicly.~~

~~_____ D. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, or provide an innovative educational program, service, or setting as determined by the State Charter School Board, among traditional public schools and operating charter schools.~~

~~_____ (1) Underserved student populations may include economically disadvantaged students, students with disabilities, English language learners, children of refugee families, or students in remote areas of the state who have limited access to the full range of academic courses;~~

~~_____ (2) Innovative educational opportunities shall be described on the State Charter School Board's website;~~

~~_____ (3) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and~~

~~_____ (4) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.~~

~~_____ E. The Board or chartering entity may request documentation of underserved student criteria that schools designate and for which they request a preference.~~

~~_____ F. The Board shall have authority for final approval of all charter schools.]~~

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

~~[A-](1) [Chartering entities shall accept a proposed starting date from a charter school applicant, or the chartering entity shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.]A charter school authorizer may:~~

~~_____ (a) accept the proposed starting date from a charter school applicant; or~~

~~_____ (b) negotiate and recommend a different starting date to the Board.~~

~~[B-](2) [Only]A charter school[s] may receive state funds if the charter school is approved as a new charter school[s] by October 1, one fiscal year prior to the state fiscal year the[y] charter school intends to serve students[shall be eligible for state funds].~~

~~[C-](3) A State Charter School Board authorized school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent~~

with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

~~[D:]~~(4) A State Charter School Board authorized charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

~~[E:]~~ Each charter school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).

~~[F:]~~ If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

~~[G:]~~(5) ~~[Despite a charter school meeting starting dates,~~ a charter school shall ~~[be required to satisfy]~~ comply with Rule R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under Section 53A-1a-511.

~~[H:]~~(6) The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the charter[ing entity's] school authorizer's recommendation.

R277-482-6. Procedures and Timelines to Change Charter[ing Entities] School Authorizers.

~~[A:]~~(1) A charter school may ~~[change]~~ transfer to another charter[ing entities] school authorizer.

~~[B:]~~(2) A charter school shall submit an application ~~[provided by]~~ to the new charter[ing entity to the Board to request a new chartering entity] school authorizer at least ~~[three months]~~ 90 days prior to the proposed ~~[change]~~ transfer.

~~[C:]~~(3) The charter school authorizer transfer application ~~[may require some or all of the following, as determined by the new chartering entity]~~ shall include:

(1)a) current governing board members ~~[and founding members];~~

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

(i) most recent annual financial report (AFR);²

(ii) annual project report (APR); and

(iii) audited financial statement;

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

(4)d) current employees ~~[identifying]~~ and assignments ~~[and licensing status, if applicable];~~

~~[E:]~~ school calendar for previous school year and prospective school year;

(6) course offerings, if applicable;

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

(7)f) affidavits, signed by all board members ~~[providing or]~~ certifying ~~[documentation may be required]~~;

~~[A:]~~ the school's nondiscrimination toward students and employees;

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

(e)ii) ~~[that]~~ all information on the transfer application ~~[provided]~~ is complete and accurate;
~~[D:]~~ that school meets/complies with all health and safety codes/laws;

(e)iii) ~~[that]~~ the charter school is current with all ~~[required]~~ charter school governing board policies ~~[(personnel, salaries, and fees), including board minutes for the most recent three months];~~

(f)iv) ~~[that]~~ the charter school is operating consistent with the charter school's charter agreement; and

(g)v) ~~[that]~~ there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the charter school;

~~[D:]~~(4) A charter school seeking to ~~[change]~~ transfer charter[ing entities] school authorizers shall submit a position statement from the current charter[ing entity] school authorizer about the charter school's status, compliance with the charter[ing entity] school authorizer requirements, and any unresolved concerns to the proposed new charter[ing entity] school authorizer.

~~[E:]~~(5) A new charter school authorizer shall review ~~[A:]~~ an application for ~~[changing]~~ transferring a charter[ing entity] school authorizer ~~[shall be reviewed]~~ for acceptance ~~[by the new chartering entity]~~ within 60 days of submission of a complete application, including all required documentation.

~~[F:]~~ The Board shall consider an application to change chartering entities to the State Charter School Board within 60 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

~~[G:]~~(6) Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. ~~[Approved]~~ Charter School Expansion Requests.

(1) A charter school authorizer shall maintain the final, official, and complete charter agreement.

~~[A:]~~(2) ~~[The following shall apply to requests for expansion from approved and operating charter schools]~~ A charter school may request approval for an expansion if:

(1)a) ~~[F]~~ the charter school satisfies ~~[all]~~ the requirements of federal and state law, regulations, ~~[Board]~~ rule, and the charter agreement; and

(2)b)(i) ~~[F]~~ the ~~[approved]~~ charter school's charter agreement ~~[shall]~~ provides for an expansion consistent with the request; or

(3)ii) ~~[F]~~ the charter school governing board has submitted a formal amendment request to the charter[ing entity] school authorizer consistent with the charter[ing entity's] school authorizer's requirements.

~~[B:]~~(3) If the charter[ing entity] school authorizer approves a charter school expansion:

(1) requiring a construction project number under R277-474, the expansion shall be approved before October 1 of the state fiscal year prior to the school's intended expansion date.

(2) that does not require a construction project number under R277-471, the charter school shall be approved before May 1 of the state fiscal year prior to the school's intended expansion.

C. If the expansion request is for an increase in enrollment capacity in the amount of 0.25 times or less, the number

of students in grades 9 through 12 enrolled in an online course in the previous school year through the Statewide Online Education Program, the request shall be submitted to the Board by October 1 of the school year for which the increase is requested.

~~D.~~ Requests under R277-482-7C are subject to the availability of sufficient funds appropriated under Section 53A-1a-513 to provide the full amount of the per student allocation for each charter school student in the state to supplement school district property tax revenues.

~~E.~~ Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under Section 53A-1a-502.5(1).

(4) For an expansion approved by an authorizer that is not the State Charter School Board, the charter school authorizer that authorizes an expansion of the authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the State Charter School Board and to the Superintendent on or before October 1 of the state fiscal year prior to the charter school's intended expansion.

R277-482-8. Requests for a New Satellite School for an Approved Charter School[s].

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

~~(A)(2)~~ An existing charter school may submit an amendment request to the charter school's charter[ing entity] authorizer for a satellite charter school if ~~the charter school fully satisfies the following~~:

~~(1)a~~ the charter school ~~currently~~ satisfies ~~all~~ requirements of federal and state law, regulations, and ~~Board~~ rule;

~~(2)b~~ the charter school has operated successfully for at least three years meeting the terms of its charter agreement;

~~(3)c~~ the students at the charter school are performing on standardized assessments at or above the standard in the charter agreement;

~~(4)d~~ the proposed satellite charter school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

~~(5)e~~ adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite charter school; and

~~(6)f~~ the charter school provides any additional information or documentation requested by the charter[ing entity] school authorizer or the Board.

~~(7)3~~ a satellite charter school that receives School LAND Trust funds shall have a ~~School LAND Trust committee~~ charter trust land council and satisfy all requirements for ~~School LAND Trust committees~~ charter trust land councils consistent with Rule R277-477.

~~(B)(4)~~ ~~Only a~~ A satellite charter school may receive state funding if the Board approves the satellite charter school ~~approved~~ by October 1 of the state fiscal year prior to the year the school intends to serve students ~~shall be eligible for state funds~~.

~~(C)(5)~~ The approval of ~~the~~ a satellite charter school by the charter[ing entity] school authorizer requires ratification by the ~~State~~ Board ~~of Education~~ and will expire 24 months following

~~such~~ the ratification if a building site ~~has~~ is not ~~been~~ secured for the satellite charter school.

KEY: training, timelines, expansion, satellite

Date of Enactment or Last Substantive Amendment: [October 8, 2013]2016

Notice of Continuation: August 2, 2013

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

**Education, Administration
R277-505
Administrative License Areas of
Concentration and Programs**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 40290

FILED: 03/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Administrative Rules R277-502 and R277-503 no longer allow teacher preparation programs to be approved based solely on national accreditation. Rule R277-505 details the requirements that the Board establishes for its approval of such programs in administrative/supervisory licensure.

SUMMARY OF THE RULE OR CHANGE: Proposed amendments require programs to be aligned with the Utah Education Leadership Standards and establish internship or experience minimum requirements; define specific areas of focus for all administrative licensure programs; require the State Superintendent to work with local education agencies and university programs to create standards for a second tier licensure credential for building principals after employment and to explore the creation of credentials in other leadership positions; and provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-1-401 and Section 53A-6-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to Rule R277-505 provide standards and procedures for Education Leadership licenses, approval of programs for Education Leadership licenses, and LEA-specific, competency-based licenses, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-505 provide standards and procedures for Education

Leadership licenses, approval of programs for Education Leadership licenses, and LEA-specific, competency-based licenses, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to Rule R277-505 provide standards and procedures for Education Leadership licenses, approval of programs for Education Leadership licenses, and LEA-specific, competency-based licenses, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to Rule R277-505 provide standards and procedures for Education Leadership licenses, approval of programs for Education Leadership licenses, and LEA-specific, competency-based licenses, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-505 provide standards and procedures for Education Leadership licenses, approval of programs for Education Leadership licenses, and LEA-specific, competency-based licenses, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to the rule.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at 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 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-505. ~~[Administrative]~~ Education Leadership License Areas of Concentration and Programs.

R277-505-~~[2]~~1. Authority and Purpose.

~~[A-]~~(1) This rule is authorized ~~[under]~~by:
~~(a)~~ Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board~~[-]~~;
~~(b)~~ Section~~[s]~~ 53A-6-~~[101(1) and (2)]~~104, which permits the Board to issue certificates for educators~~[-]~~; and
~~(c)~~ Section 53A-1-401~~[(3)]~~, which allows the Board to adopt rules in accordance with its responsibilities.

~~[B-]~~(2) The purpose of this rule is to:
~~(1)~~a specify the requirements for ~~[Administrative]~~education leadership license areas of concentration~~[-, including meaningful internships];~~~~[- and]~~
~~(2)~~b provide standards and procedures for district-specific and charter school-specific ~~[Administrative]~~education leadership license areas of concentration~~[-]; and~~
~~(c)~~ specify the requirements for an education leadership preparation program that must be met to receive Board approval of the program.

R277-505-~~[4]~~2. Definitions.

~~[A-]~~ "Acceptable professional experience" means ~~successful, full-time experience in public or accredited private or parochial schools in an area for which certification is required for employment in the public schools.~~

~~[B-]~~(1) "[~~Administrative~~]Education leadership license area of concentration" means the initial credential issued by the Board ~~[which permits the]~~that authorizes a holder to be employed in a position [which requires administration or supervision of elementary, middle, or secondary levels within the public education system]that requires the license holder to administer educational programs or supervise educators in improving educational practices and outcomes within the public education system, including the administration and supervision of a school.

~~[C-]~~ "Board" means the Utah State Board of Education.

~~[D-]~~ "District-specific educator license with an administrative license area of concentration" means an area of concentration awarded by a school district or charter school to an administrator following verification of criteria consistent with this rule.

~~[E-]~~(2) "Internship" means an on-site supervised experience in an accredited public or private school or other approved location.

~~[F-]~~(3) "Level 2 license" means a Utah professional educator license issued to an applicant after ~~[satisfaction of]~~the Level 2 applicant.

~~(a)~~ completes all requirements for a Level 1 license;
~~[-and]~~

~~(3)~~b ~~[satisfaction of]~~completes the requirements under R277-522 for a teacher[s] whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school~~[-]~~;

~~(2)c. completes:~~
~~(i) at least three years of successful education experience[within a five-year period] in a Utah public LEA or accredited private school; or~~
~~(ii)(A) one year of successful education experience in a Utah public LEA or accredited private school; and~~
~~(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and~~
~~(1)d. completes additional requirements established by law or rule;~~

~~(G)(4) "Level 3 license" means a Utah professional educator license issued to an educator who:~~

~~(a) holds a current Utah Level 2 license; and[has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution]~~

~~(b) receives:~~

~~(i) National Board Certification;~~

~~(ii) a doctorate in:~~

~~(A) education; or~~

~~(B) a field related to a content area in a unit of the public education system or an accredited private school; or~~

~~(iii)(A) a Speech-Language Pathology area of concentration; and~~

~~(B) currently holds American Speech-Language Hearing Association (ASHA) certification.~~

~~(5) "LEA governing board" means:~~

~~(a) for a school district, the school district's local school board; or~~

~~(b) for a charter school, the charter school's charter school governing board.~~

~~H. "Outstanding professional qualifications" means a person who has completed a Bachelor's degree from an accredited institution of higher education and who has demonstrated successful managerial experience in business, government, or similar setting.]~~

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

R277-505-3. [Administrative]Education Leadership License Area of Concentration Positions.

~~[A.](1) [Local boards and charter schools]An LEA shall determine[, consistent with Sections 53A-3-301(4), 53A-6-104.5, 53A-6-110, and this rule, required licenses or letters of authorization for administrators working in] the various positions and settings in which an individual must hold an Education Leadership license area of concentration in accordance with the requirements of Sections:~~

~~(a) 53A-1a-511;~~

~~(b) 53A-3-301;~~

~~(c) 53A-6-104.5;~~

~~(d) 53A-6-110; and~~

~~(e) this Board rule.~~

~~B. Local boards and charter schools shall, by board policy determined in an open meeting, notify the public of required licenses or credentials for administrators in their schools.]~~

~~(2) An LEA's governing board shall adopt a policy, in an open and public meeting, that describes the required licenses or credentials for administrators in the LEA's schools.~~

~~[C. Local boards and charter schools that have designated appropriate administrative requirements consistent with the law and this rule shall receive professional staff costs only for administrators licensed consistent with the policies and this rule.]~~

~~[D. Administrative interns currently registered for academic credit in an institution of higher education for the internship are not required to hold an Administrative license area of concentration but shall hold a Level 2 or Level 3 license.]~~

~~[E. The Board strongly recommends that all educators who supervise educators complete Administrative license areas of concentration programs and participate in ongoing professional development.]~~

R277-505-4. [Administrative]Education Leadership License Area of Concentration Requirements.

~~[A.](1) Except as provided in Subsection (2), [A]an applicant for [the Administrative]an education leadership license area of concentration [shall have successfully completed or received all of the following:~~

~~(1) a Level 2 teaching license or equivalent from another state with area of concentration;]may be granted an education leadership license area of concentration if the applicant:~~

~~(2)a. holds a master's degree or more advanced degree;~~

~~(3) an education administrative program; and]~~

~~(4)b. passes a Board-approved [administrative]education leadership test; and~~

~~(c)(i) completes a Board-approved education leadership licensure program; or~~

~~(ii) subject to Subsection (3), holds an education leadership license valid in another state under the NASDTEC interstate agreement.~~

~~(5)2. [Exceptions may be made to R277-505-4A(1)(2) or (3) by the USOE] The Board may grant an education leadership license area of concentration to an applicant for:~~

~~(a) exceptional professional experience, including non-education experience;~~

~~(b) exceptional education accomplishments[-]; or~~

~~(c) other noteworthy experiences or circumstances.~~

~~(3) An applicant that holds an education leadership license valid in another state under the NASDTEC interstate agreement as described in Subsection (1)(c)(ii) shall complete:~~

~~(a) at least one year of education leadership experience in that state; or~~

~~(b) an education leadership internship substantially equivalent to the internship required for Board-approved education leadership licensure programs as described in this rule.~~

~~(6) not fewer than three years of acceptable full-time professional experience in an education-related area in a public or accredited private or parochial school. Appropriate experiences that may be substituted for up to one-half of this requirement include:~~

~~(a) alternative school or similar type professional experience;~~

~~(b) community college, trade-technical college, or other post-secondary professional experience;~~

~~(c) district-level administrative experience;~~

~~(d) headstart or preschool professional experience;~~

~~(c) college of education or state education agency professional experience; or~~

~~(f) professional experience in academic departments of colleges or universities if there has been sufficient involvement with public school programs and curriculum.~~

~~(7) a recommendation from a Utah institution whose program of preparation has been accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC).~~

~~B. In addition to R277-505-4A, above, an applicant for the Administrative license area of concentration shall successfully complete an administrative internship. The internship shall:~~

~~(1) consist of a minimum of 450 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours.~~

~~(2) include a minimum of 200 of the required hours in a school setting which offers the opportunity of working with a properly licensed principal, students, faculty, classified employees, parents and patrons.~~

~~(3) include the remainder of the required internship hours in school district offices, the USOE or other USOE approved and appropriate agencies or school settings.~~

~~(4) include the majority of the school-level supervised experience during the regular school day in concentrated blocks of a minimum of three hours each when students are present.~~

~~(5) presume interns' involvement in extracurricular activities.~~

~~(6) include experiences at both elementary and secondary school levels.~~

~~(7) have clinical experience in a different school than where the intern may be employed as a teacher.~~

~~(8) provide opportunities for the intern to demonstrate application of knowledge and skills gained through the higher education experience in school settings, including the opportunity to:~~

~~(a) understand the school community;~~

~~(b) understand the school culture and its importance to the student;~~

~~(c) experience managing a safe, efficient learning environment;~~

~~(d) collaborate with families of diverse students;~~

~~(e) support ethics and fairness in the school setting; and~~

~~(f) participate in the larger political, social, economic, legal and cultural school context.~~

~~C. In the first year of employment as an administrator, an applicant for the Administrative license area of concentration shall complete a one school year mentoring experience established and supervised by the employing school district or charter school that includes criteria identified in R277-522-3A and B, as applied to administrators.~~

~~D. Relicensure and professional development requirements for active and non-practicing administrators shall include:~~

~~(1) for active administrators, at least 75 of the required 200 points shall focus on leadership issues to ensure that:~~

~~(a) administrators have current and effective knowledge and skills;~~

~~(b) administrators understand and can demonstrate employee corrective action directives;~~

~~(c) administrators are working to improve student achievement, teacher effectiveness and teacher retention skills; and~~

~~(d) administrators are using student data to assess student learning.~~

~~(2) for non-practicing administrators, at least 100 points of the required 200 points shall be related to school administration.]~~

R277-505-5. Standards for the Approval of Programs for Education Leadership Licensure.

~~(1) The Board may approve the education leadership licensure preparation program of an institution of higher education if the program:~~

~~(a) prepares candidates to meet the Utah educational leadership Standards described in R277-530;~~

~~(b) subject to Subsection (2), establishes entry requirements designed to ensure that only high quality individuals enter the licensure program;~~

~~(c) includes coursework specifically designed to prepare candidates to:~~

~~(i) properly utilize data, including student performance data, to evaluate educator and school performance and provide actionable information to educators to improve instruction;~~

~~(ii) facilitate educator use of technology to support and meaningfully supplement the learning of students in traditional, online-only, and blended classrooms~~

~~(iii) collaborate with all stakeholder groups to create a shared vision, mission, and goals for a school;~~

~~(iv) communicate effectively with parents, community groups, staff, and students;~~

~~(v) recognize effective and ineffective instructional practice in order to ensure authentic learning and assessment experiences for all students;~~

~~(vi) counsel educators in relation to the educator's evaluation, professional learning, and student performance to improve the educator's practice;~~

~~(vii) ensure a safe, secure, emotionally protective and healthy school environment, including the prevention of bullying and youth suicide; and~~

~~(viii) connect management operations, policies, and resources to the vision and values of the school; and~~

~~(d) includes a minimum of 50 hours of clinical experience in elementary and secondary schools throughout program coursework.~~

~~(2) Beginning on January 1, 2017, the entry requirements described in Subsection (1)(b) shall require an individual entering a Board-approved education leadership licensure program to:~~

~~(a) clear a USOE fingerprint background check;~~

~~(b) hold a Level 2 or 3 Utah educator license;~~

~~(c) have been deemed effective or higher by:~~

~~(i) an evaluation system meeting the standards of R277-531; or~~

~~(ii) the LEA's equivalent on the applicant's most recent evaluation;~~

~~(d) have a recommendation from:~~

~~(i) the individual's immediate administrative supervisor;~~

~~or~~

_____ (ii) an LEA-level administrator with knowledge regarding the individual's potential as an education leader; and

_____ (e) pass an interview conducted by the program to measure the potential of the individual as an education leader.

_____ (3) A Board-approved education leadership licensure program may waive the entrance requirements described in Subsections (2)(b) through (e) based on program established guidelines for no more than ten percent of an incoming cohort.

_____ (4) A Board-approved education leadership licensure program shall ensure that each incoming cohort after January 1, 2017 has a mean post-secondary G.P.A. of 3.0 or higher.

_____ (5) A Board-approved education leadership licensure program is exempt from the entrance requirements in R277-502-3(C)(6).

_____ (6) For a program applicant accepted on or after January 1, 2017, a Board-approved education leadership licensure program shall require the following opportunities for a program applicant to demonstrate application of knowledge and skills gained through the program in a culminating experience:

_____ (a) analyzing school assessment data from common formative assessments, summative assessments, standardized assessments, and interim or benchmark assessments with school staff and with individual teachers;

_____ (b) participating in all aspects of at least two teacher evaluations using an evaluation system that meets the requirements of:

_____ (i) R277-531; or

_____ (ii) the LEAs equivalent;

_____ (c) participating in all aspects of at least one evaluation of a classified employee;

_____ (d) planning, or participating in the planning of, organizing, conducting, and evaluating the effectiveness of a professional development activity for school staff;

_____ (e) participating in multiple meetings of more than one school-based learning team;

_____ (f) participating in School Community Council meetings including the annual development and evaluation of the School Improvement Plan or the School LAND Trust plan;

_____ (g) participating in multiple classroom observations and walk-throughs;

_____ (h) participating in multiple IEP and 504 accommodation plan meetings in support of or as the LEA representative;

_____ (i) handling multiple cases of student discipline referred to the school office for more than one type of misconduct;

_____ (j) supervising a variety of after school activities and monitoring the process for collecting and handling fees and gate receipts;

_____ (k) participating in the school's screening process, including interviews and the notification of successful and unsuccessful applicants; and

_____ (l) any additional specific experiences as defined by the program.

_____ (7) A program applicant shall complete the competencies described in Subsection (6) by participating in one of the following culminating experiences:

_____ (a) employment in an education leadership position where the educator:

_____ (i) supervises other educators and that meets the following requirements:

_____ (ii) is employed half-time or more in the position for a full school year;

_____ (iii) is mentored by a licensed education leader that has been deemed effective or higher by:

_____ (A) an evaluation meeting the standards of R277-531; or

_____ (B) the LEA's equivalent on the educator's most recent evaluation;

_____ (iv) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in an elementary school where the educator is not employed if the educator is not employed as an elementary principal or vice-principal; and

_____ (v) works a minimum of 100 hours in a minimum of two hour blocks during the regular school day and the regular school year in a secondary school where the educator is not employed if the educator is not employed as a secondary principal or vice-principal; or

_____ (b) an internship where the educator:

_____ (i) works a minimum of 400 hours of supervised clinical experiences, excluding additional hours required by a university for seminars or discussion sessions within the required hours;

_____ (ii) works a minimum of 300 of the required hours in a school setting which offers the opportunity of working with:

_____ (A) students, faculty, classified employees, parents, and patrons; and

_____ (B) a licensed principal that has been deemed effective or higher by:

_____ (I) an evaluation system meeting the standards of R277-531; or

_____ (II) the LEA's equivalent on the principal's most recent evaluation;

_____ (iii) works the remainder of the required internship hours in a school district office; at the USOE; with a Board-approved agency; or in another Board-approved program or school setting;

_____ (iv) works the majority of the school-level supervised experience completed during the regular school day and in concentrated blocks of a minimum of two hours each when students are present;

_____ (v) works a minimum of 150 hours in an elementary school;

_____ (vi) works a minimum of 150 hours in a secondary school; and

_____ (vii) works a minimum of 32 hours in concentrated blocks of a minimum of eight hours each during the regular school day and the regular school year in a school in which the intern is not employed as a teacher.

_____ (8) The Superintendent may approve a culminating experience proposal that does not meet the requirements of Subsection (6) to pilot innovative or alternative practice if:

_____ (a) a Board-approved education leadership licensure program and a partner LEA submit a joint proposal to the Superintendent; and

_____ (b) the proposal is for a maximum of two years.

_____ (9) The Superintendent shall report the results of a pilot described in Subsection (8)(a) to the Board after completion.

~~R277-505-[5]6. [District-Specific and Charter School-Specific Administrator Standards]LEA-specific Competency-based License for Education Leadership Area of Concentration.~~

~~[A. A local school board may request a district-specific educator license and Administrative license area of concentration permitting a person with outstanding professional qualifications to serve in a position for which that license or area of concentration is required, including all areas listed in R277-505-4.~~

~~B. In order to receive an educator license in a district-specific Administrative license area of concentration, a district shall make a request using a USOE-approved form.~~

~~C. The candidate shall:~~

~~(1) hold a Bachelors degree from an accredited institution of higher education;~~

~~(2) have a record of documented, demonstrated success in a managerial role;~~

~~(3) take a USOE-approved school leadership test which shall be used to inform and guide continuing professional development; and~~

~~(4) complete a one-year supervised administrative experience under the supervision of a licensed and trained administrative mentor assigned by the employing school district or charter school. The candidate shall be issued a letter of authorization by the USOE during the year of supervision.~~

~~D. At the end of the supervised year, the employing district or charter school shall request that a district or charter school-specific Administrative license area of concentration be awarded by the USOE.~~

~~E. The district-specific Administrative license area of concentration shall be valid only in the employing district/charter school for the duration of the individual's employment.~~

~~F. The completed Administrative license area of concentration shall qualify the school district or charter school to receive professional staff costs.~~

~~G. The USOE may receive and investigate, or both, complaints about district-specific or charter school-specific administrators. Investigations shall be conducted by the Utah Professional Practices Advisory Commission and action may be taken consistent with Section 53A-6-405, Denial of license, and Section 53A-6-501, Disciplinary action against educator.~~

~~H. Individuals who receive district-specific or charter school-specific administrative license areas of concentration shall be subject to professional development requirements established by local boards or charter schools.]~~

~~An LEA may request an LEA-specific competency-based license for an education leadership area of concentration under Subsection R277-503-4D for an individual if the individual has successfully completed:~~

~~(1) a master's degree or more advanced degree; and~~

~~(2) a Board-approved education leadership test.~~

~~R277-505-[6]7. [Reciprocity for Administrative Credentials]Education Leadership Tier Two Credentials.~~

~~[A. An applicant for a Utah administrative area of concentration shall submit documentation of successful completion of an administrative program that meets Utah administrative requirements of R277-505-4.~~

~~B. The requirements of R277-505-4 may be satisfied, at the discretion of the USOE, by administrative experience in another state.~~

~~C. The USOE may require out-of-state applicants to pass a state-approved administrative test, if such a test is required of in-state applicants.]~~

~~(1) The Superintendent shall work with LEAs and Board-approved licensure programs to create a tier two principal credential that may be earned by an individual employed as a principal or vice-principal.~~

~~(2) In the first year of employment as an education leader, an individual shall complete a one school year mentoring experience established and supervised by the employing LEA in consultation with a Board-approved education leadership program that includes criteria identified in R277-522-3A and B, as applied to education leaders.~~

~~(3) An individual employed for the first time as a Utah school principal or vice-principal after June 30, 2019 in a school district shall complete the tier two principal credential within the first three years of employment as a principal or vice-principal.~~

~~(4) An individual holding a Utah Administrative/Supervisory (K-12) license area of concentration shall be considered to hold an education leadership license area of concentration and the tier two principal credential for all licensure purposes.~~

~~(5) The Superintendent shall work with LEAs and Board-approved licensure programs to develop additional tier two leadership credentials intended to provide specialized skills for individuals holding an education leadership license area of concentration.~~

KEY: professional competency, teacher certification, accreditation

Date of Enactment or Last Substantive Amendment: [August 9, 2010]2016

Notice of Continuation: August 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-101(1); 53A-6-101(2); 53A-1-401[(3)]

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-310
Permit Requirements for Solid Waste
Facilities**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40267

FILED: 03/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds coal ash facilities operated by electrical generation facility to the list of facilities requiring a permit.

SUMMARY OF THE RULE OR CHANGE: The rule change adds coal ash disposal facilities resulting from electric power generation to the list of solid waste disposal facilities that are required to have a solid waste permit. It makes some wording changes to clarify the rule and adds a section that refers to the information that will be required in a permit application for a coal ash disposal facility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 258 and Section 19-6-105 and Section 19-6-108 and Section 19-6-109

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** All costs for this rule change are covered in the rule analysis for the new Rule R315-319.
- ◆ **LOCAL GOVERNMENTS:** All costs for this rule change are covered in the rule analysis for the new Rule R315-319.
- ◆ **SMALL BUSINESSES:** All costs for this rule change are covered in the rule analysis for the new Rule R315-319.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** All costs for this rule change are covered in the rule analysis for the new Rule R315-319.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All costs for this rule change are covered in the rule analysis for the new Rule R315-319.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: All costs for this rule change are covered in the rule analysis for the new Rule R315-319.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**R315-310. Permit Requirements for Solid Waste Facilities.****R315-310-1. Applicability.**

- (1) The following solid waste facilities require a permit:
 - (a) New and existing Class I, II, III, IV, V, ~~and~~ VI, and coal combustion residual (CCR) Landfills and coal combustion residual surface impoundments;
 - (b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);
 - (c) incinerator facilities that are regulated by Rule R315-306;
 - (d) land treatment disposal facilities that are regulated by Rule R315-307; and
 - (d) waste tire storage facilities.
- (2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.
- (3) The requirements of ~~[Rule R315-310]~~ Sections R315-310-2 through 12 apply to each existing and new solid waste facility ~~for which a permit is required~~ as indicated.
 - (a) The Director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.
 - (b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:
 - (i) apply for a permit according to the requirements of Rule R315-310;
 - (ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and
 - (iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).
 - (4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Director for the desired class, or subclass, of landfill.
 - (5) Any facility that is in operation at the time that a permit is required for the facility by Subsection R315-310-1(a) and has submitted a permit application within six months of the date the facility became subject to the permit requirements of Subsection R315-310-1(a) may continue to operate during the permit review period but must meet all applicable requirements of rules R315-301 through 320 unless an alternative requirement has been approved by the Director.

R315-310-12. Contents of a Permit Application for a New or Expanding Coal Combustion Residual Landfill and Coal Combustion Residual Surface Impoundment.

Each application for a coal combustion residual landfill and coal combustion residual surface impoundment permit shall contain

the information required in Subsections R315-310-3(1)(a) and (k), and Section R315-319.

KEY: solid waste management, waste disposal

Date of Enactment or Last Substantive Amendment: [~~April 25, 2013~~2016]

Notice of Continuation: February 13, 2013

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

**Environmental Quality, Waste
Management and Radiation Control,
Waste Management
R315-319
Coal Combustion Residuals
Requirements**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40266

FILED: 03/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule establishes a permit and compliance program for electric power generation facilities that generate coal ash.

SUMMARY OF THE RULE OR CHANGE: The rule establishes the requirements that must be met to receive a permit for a coal ash disposal facility including siting, design, operation, maintenance, closure, and monitoring. Compliance time frames and permit requirements are established.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-108

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The program will require permits for three facilities that are not currently under a solid waste permit. The increased workload will be absorbed by current staff.

◆ **LOCAL GOVERNMENTS:** No facility that will be required to obtain a permit is operated by a local government.

◆ **SMALL BUSINESSES:** No facility that will be impacted by the rule is a small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No person, other than the four facilities discussed in other parts of the rule analysis form, are affected by the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The facilities that are affected by the rule are currently required to generate all of the information required by the rule as part of a US Environmental Protection Agency rule. There will be no extra cost to a facility to provide the same information to the Division except for the cost of postage. Each permit applicant will be required to pay a permit application of \$750 and a review fee of \$90 per hour with a total estimated cost for permit review of \$3,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The facilities that are affected by the rule are currently required to generate all of the information required by the rule as part of a US Environmental Protection Agency rule. There will be no extra cost to a facility to provide the same information to the Division except for the cost of postage. Each permit applicant will be required to pay a permit application of \$750 and a review fee of \$90 per hour with a total estimated cost for permit review of \$3,000.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-319. Coal Combustion Residuals Requirements.

R315-319-1. Permit Required.

(a) All landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals shall have a permit for a Class I, II, or V landfill in accordance with Rules R315-302 through 307 or a coal combustion residuals permit issued under Rule R315-319.

(b) An application for a permit for a coal combustion residual landfill or surface impoundment or multiple landfills and impoundments at a facility covered by one permit shall be made to the Director.

(c)(1) An application for a permit a Coal Combustion Residue (CCR) unit shall contain the information required in Sections R315-319-60 through 107. No information need be submitted for which the effective date in Sections R315-319-60 through 107 has not been reach at the time of application submittal.

(2) All information required in Sections R315-319-60 through 107 with an effective date that falls later than the application submittal required in Subsection R315-319-1(c)(1) shall be submitted within six months of the effective date of the requirement found in Sections R315-319-60 through 107.

(d) Permit application procedures shall follow the requirements of Sections R315-310-1 and 2.

(e) Permit transfers shall follow the procedures of Section R315-310-11.

(f) Permit applicants shall follow the notification requirements of Subsection R315-310-3(2).

(g) Permit approvals shall follow the requirements of Rule R315-311.

(h) The Director approvals required in Sections R315-319-60 through 107 are satisfied by the issuance of a permit by the Director.

R315-319-2. Relation to Federal Coal Combustion Residuals Rule in 40 CFR 257.

(a) The compliance dates in 40 CFR 257 Subpart D are not affected by the requirements in Rule R315-319 for director approval except as the extensions allowed by 40CFR 256.26 may be applied by the Director.

R315-319-50. Scope and Applicability.

(a) Rule R315-319 establishes criteria for purposes managing coal combustion residuals in Utah.

(b) Rule R315-319 applies, except as provided in Subsection R315-319-50(i), to owners and operators of new and existing CCR units as defined in Subsection R315-319-53(a)(15). Rule R315-319 applies to any practice that does not meet the definition of a beneficial use of coal combustion residuals.

(c) Rule R315-319 applies to inactive CCR surface impoundments that have not closed prior to the effective date of Rule R315-319.

(d) Rule R315-319 does not apply to coal combustion residual landfills that have ceased receiving coal combustion residuals prior to October 19, 2015.

(e) Rule R315-319 does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.

(f) Rule R315-319 does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels, including other fossil fuels, other than coal. Disposal of these solid wastes are covered by Rules R315-301 through 307.

(g) Rule R315-319 does not apply to practices that meet the definition of a beneficial use of coal combustion residuals.

(h) Rule R315-319 does not apply to coal combustion residual placement at active or abandoned underground or surface coal mines.

(i) Rule R315-319 does not apply to Class I or V solid waste landfills that receive coal combustion residuals.

R315-319-51. Effective Date.

The effective date of R315-319 will be based on the approval of the Waste Management and Radiation Control Board after publication in the Utah State Bulletin.

R315-319-52. Applicability of Other Regulations.

(a) Compliance with the requirements of Sections R315-319-50 through 107 does not affect the need for the owner or operator of a coal combustion residuals landfill, coal combustion residuals surface impoundment, or lateral expansion of a coal combustion residuals unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in Section R315-302-2.

R315-319-53. Definitions.

(a) The following definitions apply to Rule R315-319. Terms not defined in Section R315-319-53 have the meaning given in R315-301.

(1) "Acre foot" means the volume of one acre of surface area to a depth of one foot.

(2) "Active facility or active electric utilities or independent power producers" means any facility subject to the requirements of Sections R315-319-50 through 107 that is in operation on October 14, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 14, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 14, 2015.

(3) "Active life or in operation" means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with Section R315-319-102.

(4) "Active portion" means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with Section R315-319-102.

(5) "Aquifer" means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(6) "Area-capacity curves" means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

(7) "Areas susceptible to mass movement means those areas of influence, i.e., areas characterized as having an active or substantial possibility of mass movement, where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(8) "Beneficial use of CCR" means the CCR meet all of the following conditions:

(i) The CCR shall provide a functional benefit;

(ii) The CCR shall substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(iii) The use of the CCR shall meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(iv) When unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use in accordance with R315-101.

(9) "Closed" means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with Subsection R315-319-102 and has initiated post-closure care in accordance with Subsection R315-319-104.

(10) "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(11) "CCR fugitive dust" means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

(12) "CCR landfill or landfill" means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of Rule R315-319, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

(13) "CCR pile or pile" means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

(14) "CCR surface impoundment or impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

(15) "CCR unit" means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

(16) "Dike" means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(17) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(18) "Disposal" is defined in 19-6-102(7); disposal does not include the storage or the beneficial use of CCR.

(19) "Downstream toe" means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

(20) "Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

(21) "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(22) "Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(23) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(24) "Factor of safety, Safety factor," means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

(25) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(26) "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

(27) "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

(28) "Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

(29) "Groundwater" means water below the land surface in a zone of saturation.

(30) "Hazard potential classification" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(i) High hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(ii) Low hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or

environmental losses. Losses are principally limited to the surface impoundment owner's property.

(iii) Significant hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

(31) "Height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

(32) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

(33) "Hydraulic conductivity" means the rate at which water can move through a permeable medium, i.e., the coefficient of permeability.

(34) "Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 14, 2015 and still contains both CCR and liquids on or after October 14, 2015.

(35) "Incised CCR surface impoundment" means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

(36) "Inflow design flood" means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

(37) "In operation" means the same as active life.

(38) "Karst terrain" means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

(39) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 14, 2015.

(40) "Liquefaction factor of safety" means the factor of safety, safety factor, determined using analysis under liquefaction conditions.

(41) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(42) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(43) New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 14, 2015. A new CCR landfill has

commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015. Overfills are also considered new CCR landfills.

(44) "New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 14, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015.

(45) "Operator" means the person(s) responsible for the overall operation of a CCR unit.

(46) "Overfill" means a new CCR landfill constructed over a closed CCR surface impoundment.

(47) "Owner" means the person(s) who owns a CCR unit or part of a CCR unit.

(48) "Poor foundation conditions" mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in Subsections R315-319-73(e) and 74(e) would cause a poor foundation condition.

(49) "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

(50) "Qualified person" means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

(51) "Qualified professional engineer" means an individual who is licensed by Utah as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under Sections R315-319-50 through 107.

(52) "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

(53) "Retrofit" means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in Section R315-319-72

(54) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, and groundwater, which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9, available at <http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/ind ex.htm>, for a discussion and examples of representative samples.

(55) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

(56) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

(57) "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

(58) "Seismic factor of safety" means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

(59) "Seismic impact zone" means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

(60) "Slope protection" means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

(61) "Solid waste management or management" means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

(62) State means the State of Utah unless otherwise indicated.

(63) State Director or Director means the director of the Division of Waste Management and Radiation Control.

(64) "Static factor of safety" means the factor of safety, safety factor, determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

(65) "Structural components" mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

(66) "Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(67) "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. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

(68) "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

R315-319-60. Location Restrictions

Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall be constructed with a base that is located no less than 1.52 meters, five feet, above the upper limit of the uppermost aquifer, or shall demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations, including the seasonal high water table. The owner or operator shall demonstrate by the dates specified in Subsection R315-319-60(c) that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-60(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-60(a) by the date specified in either Subsection R315-319-60(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to and has received approval from the Director and is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-60(a) by the date specified in Subsection R315-319-60(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-60(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the internet requirements specified in Subsection R315-319-107(e).

R315-319-61. Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in wetlands, as defined in Section R315-301-2, unless the owner or operator demonstrates by the dates specified in Rule R315-319 (c) that the CCR unit meets the requirements of Subsections R315-319-61(a)(1) through (5).

(1) Where applicable under section 404 of the Clean Water Act or applicable Utah wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit will not cause or contribute to any of the following:

(i) A violation of any applicable Utah or federal water quality standard;

(ii) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act; and

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973.

(3) The CCR unit will not cause or contribute to significant degradation of wetlands by addressing all of the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(iii) The volume and chemical nature of the CCR;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(v) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent reasonable as required by Subsections R315-319-61(a)(1) through (3), then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions, e.g., restoration of existing degraded wetlands or creation of man-made wetlands; and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in Subsections R315-319-61(a)(1) through (4).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-61(a).

(c) The owner or operator of the CCR unit shall complete the demonstrations required by Subsection R315-319-61(a) by the date specified in either Subsection R315-319-61(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-61(a) when the demonstration has been submitted to and has received approval

from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-61(a) by the date specified in Subsection R315-319-61(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstrations showing compliance with the requirements of Subsection R315-319-61(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-62. Fault Areas.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located within 60 meters, 200 feet, of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in Subsection R315-319-62(c) that an alternative setback distance of less than 60 meters, 200 feet, will prevent damage to the structural integrity of the CCR unit.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-62(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-62(a) by the date specified in either Subsection R315-319-62(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-62(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-62(a) by the date specified in Subsection R315-319-62(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-62 (a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-

319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-63. Seismic Impact Zones.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in Subsection R315-319-63(c) that all structural components including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-63(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-63(a) by the date specified in either Subsection R315-319-63(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-63(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-63(a) by the date specified in Subsection R315-319-63(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-63(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-64. Unstable Areas.

(a) An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansion of a CCR unit shall not be located in an unstable area unless the owner or operator demonstrates by the dates specified in Subsection R315-319-64(d) that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

(b) The owner or operator shall consider all of the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events, both surface and subsurface.

(c) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-64(a).

(d) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-64(a) by the date specified in either Subsection R315-319-64(d)(1) or (2).

(1) For an existing CCR landfill or existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-64(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment or existing CCR landfill who fails to demonstrate compliance with the requirements of Subsection R315-319-64(a) by the date specified in Subsection R315-319-64(d)(1) is subject to the requirements of Subsection R315-319-101(b)(1) or (d)(1), respectively.

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-64(a) is prohibited from placing CCR in the CCR unit.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-70. Design Criteria for New CCR Landfills and Any Lateral Expansion of a CCR Landfill.

(a)(1) New CCR landfills and any lateral expansion of a CCR landfill shall be designed, constructed, operated, and maintained with either a composite liner that meets the requirements of Subsection R315-319-70(b) or an alternative composite liner that meets the requirements in Subsection R315-319-70(c), and a leachate collection and removal system that meets the requirements of Subsection R315-319-70(d).

(2) Prior to construction of an overfill the underlying surface impoundment shall meet the requirements of Subsection R315-319-102(d).

(b) A composite liner shall consist of two components: the upper component consisting of, at a minimum, a 30-mil geomembrane liner (GM), and the lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The GM or upper liner component shall be installed in direct and uniform contact with the compacted soil or lower liner component. The composite liner shall be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

(3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

(c) If the owner or operator elects to install an alternative composite liner, all of the following requirements shall be met:

(1) An alternative composite liner shall consist of two components: the upper component consisting of, at a minimum, a 30-mil GM, and a lower component, that is not a geomembrane, with a liquid flow rate no greater than the liquid flow rate of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. If the lower component of the alternative liner is compacted soil, the GM shall be installed in direct and uniform contact with the compacted soil.

(2) The owner or operator shall obtain certification from a qualified professional engineer that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of 1×10^{-7} cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than 1×10^{-7} cm/sec. The hydraulic conductivity of any alternative to the two feet of compacted soil shall be determined using recognized and generally accepted methods. The liquid flow rate comparison shall be made using Equation 1 of Section R315-319-70, which is derived from Darcy's Law for gravity flow through porous media.

Equation 1

$$Q/A=q=k(h/t+1)$$

Where,

Q = flow rate, cubic centimeters/second;

A = surface area of the liner, squared centimeters;

q = flow rate per unit area, cubic centimeters/second/squared centimeter;

k = hydraulic conductivity of the liner, centimeters/second;

h = hydraulic head above the liner, centimeters; and

t = thickness of the liner, centimeters.

(3) The alternative composite liner shall meet the requirements specified in Subsections R315-319-70(b)(1) through (4).

(d) The leachate collection and removal system shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The leachate collection and removal system shall be:

(1) Designed and operated to maintain less than a 30-centimeter depth of leachate over the composite liner or alternative composite liner;

(2) Constructed of materials that are chemically resistant to the CCR and any non-CCR waste managed in the CCR unit and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and equipment used at the CCR unit; and

(3) Designed and operated to minimize clogging during the active life and post-closure care period.

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the design of the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system meets the requirements of Section R315-319-70.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system has been constructed in accordance with the requirements of Section R315-319-70.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-71. Liner Design Criteria for Existing CCR Surface Impoundments.

(a)(1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment shall document whether or not such unit was constructed with any one of the following:

(i) A liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec;

(ii) A composite liner that meets the requirements of Subsection R315-319-70(b); or

(iii) An alternative composite liner that meets the requirements of Subsection R315-319-70(c).

(2) The hydraulic conductivity of the compacted soil shall be determined using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of Subsection R315-319-71(a)(1)(i), (ii), or (iii); or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of Subsection R315-319-71 (a)(1)(i), (ii), or (iii).

(4) All existing unlined CCR surface impoundments are subject to the requirements of Subsection R315-319-101(a).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of Subsection R315-319-71(a) is accurate.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-72. Liner Design Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments shall be designed, constructed, operated, and maintained with either a composite liner or an alternative composite liner that meets the requirements of Subsection R315-319-70(b) or (c).

(b) Any liner specified in Section R315-319-72 shall be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator shall obtain certification from a qualified professional engineer that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of Section R315-319-72.

(d) Upon completion, the owner or operator shall obtain certification from a qualified professional engineer that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of Section R315-319-72.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-73. Structural Integrity Criteria for Existing CCR Surface Impoundments.

(a) The requirements of Subsections R315-319-73(a)(1) through (4) apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-73(a)(1) through (4).

(1) No later than December 17, 2015, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit

and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-73(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-73(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-73.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-73(a)(2) shall prepare and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-73(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface

impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-73(a)(3) and submit the certification to the Director.

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-73(c) through (e) apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit shall compile and submit to the Director a history of construction, which shall contain, to the extent feasible, the information specified in Subsections R315-319-73(c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and

construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes to the history of construction. If there is a significant change to any information compiled under Subsection R315-319-73(c)(1), the owner or operator of the CCR unit shall update the relevant information, submit it to the Director, and place it in the facility's operating record as required by Subsection R315-319-105(f)(9).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-73(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-73(d)(1)(v)(B).

(A) All spillways shall be either:

(1) Of non-erodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-73(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken and submit the documentation to the Director.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-73 and submit the certification to the Director.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct and submit to the Director an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iii) The calculated seismic factor of safety shall equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-73(e)(1) meets the requirements of Section R315-319-73.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-73(f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-73(a)(2), (d), and (e) no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has and submit to the Director and placed the assessment required by Subsections R315-319-73(a)(2), (d), and (e) in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(2) Use of a previously completed assessment(s) in lieu of the initial assessment(s). The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by Subsections R315-319-73(a)(2), (d), and (e) provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of Subsections R315-319-73 (a)(2), (d), and (e).

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete and submit to the Director the assessments required by Subsections R315-319-73 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by Subsection R315-319-73 (f)(2), the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator submits the assessment to the Director and places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73 (a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-73 (e) is subject to the requirements of Subsection R315-319-101(b)(2).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-74. Structural Integrity Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) The requirements of Subsections R315-319-74(a)(1) through (4) apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-74(a)(1) through (4).

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-74(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-74(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-74.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-74 (a)(2) shall prepare, and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-74(a)(3)(i) may amend the written EAP at any time provided the revised plan is placed in the

facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-74(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare and submit to the Director a written EAP for the CCR unit as required by Subsection R315-319-74(a)(3)(i) within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-74(a)(3).

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of six inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-74(c) through (e) apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator shall compile the design and construction plans for the CCR unit, which shall include, to the extent feasible, the information specified in Subsection R315-319-74 (c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes in the design and construction. If there is a significant change to any information compiled under Subsection R315-319-74 (c)(1), the owner or operator of the CCR unit shall update the relevant information and place it in the facility's operating record as required by Subsection R315-319-105(f)(13).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-74(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-74 (d)(1)(v)(B).

(A) All spillways shall be either:

(1) Of non-erodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-74(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-74.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iv) The calculated seismic factor of safety shall equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-74(e)(1) meets the requirements of Section R315-319-74.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-74 (f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-74(a)(2), (d), and (e) prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by Subsections R315-319-74 (a)(2), (d), and (e) in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(2) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct, complete the assessments required by Subsections R315-319-74 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-74 (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-74 (a)(2), (d), and (e) has been placed in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(3) Failure to document minimum safety factors during the initial assessment. Until the date an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in Subsections R315-319-74 (e) (1)(i) through (v), the owner or operator is prohibited from placing CCR in such unit.

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-74 (e) is subject to the requirements of Subsection R315-319-101(c).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-80. Operating Criteria - Air Criteria.

(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

(b) CCR fugitive dust control plan. The owner or operator of the CCR unit shall prepare and operate in accordance with a CCR fugitive dust control plan has been submitted to and has received approval from the Director and as specified in Subsections R315-319-80(b)(1) through (7). This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan shall identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator shall select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan shall include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal, but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan shall include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan shall include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of a CCR unit shall prepare an initial CCR fugitive dust control plan for the facility no later than October 19, 2015, or by initial receipt of CCR in any CCR unit at the facility if the owner or operator becomes subject to Sections R315-319-50 through 107 after October 19, 2015. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(1).

(6) Amendment of the plan. The owner or operator of a CCR unit subject to the requirements of Section R315-319-80 may

amend the written CCR fugitive dust control plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(1). The owner or operator shall amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

(7) The owner or operator shall obtain a certification from a qualified professional engineer that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of Section R315-319-80.

(c) Annual CCR fugitive dust control report. The owner or operator of a CCR unit shall prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report shall be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of Subsection R315-319-80(c), the owner or operator has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(2).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-81. Operating Criteria Run-On and Run-Off Controls for CCR Landfills.

(a) The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill shall design, construct, operate, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a 24-hour, 25-year storm; and

(2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Run-on and run-off control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-81(c)(3) and (4). These plans shall document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of Section R315-319-81. Each plan shall be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(2) Amendment of the plan. The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating

record as required by Subsection R315-319-105(g)(3). The owner or operator shall amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR landfills. The owner or operator of the CCR unit shall prepare the initial run-on and run-off control system plan no later than October 17, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator shall prepare the initial run-on and run-off control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator of the CCR unit shall prepare periodic run-on and run-off control system plans required by Subsection R315-319-81(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-81(c)(4), the owner or operator has completed a periodic run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic run-on and run-off control system plans meet the requirements of Section R315-319-81.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-82. Operating Criteria - Hydrologic and Hydraulic Capacity Requirements for CCR Surface Impoundments.

(a) The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall design, construct, operate, and maintain an inflow design flood control system as specified in Subsections R315-319-82(a)(1) and (2).

(1) The inflow design flood control system shall adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in Subsection R315-319-82(a)(3).

(2) The inflow design flood control system shall adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in Subsection R315-319-82(a)(3).

(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 1,000-year flood;

(iii) For a low hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 100-year flood; or

(iv) For an incised CCR surface impoundment, the 25-year flood.

(b) Discharge from the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Inflow design flood control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic inflow design flood control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-82 (c)(3) and (4). These plans shall document how the inflow design flood control system has been designed and constructed to meet the requirements of Section R315-319-82. Each plan shall be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(2) Amendment of the plan. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(4). The owner or operator shall amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall prepare the initial inflow design flood control system plan no later than October 17, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator shall prepare the initial inflow design flood control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator shall prepare periodic inflow design flood control system plans required by Subsection R315-319-82(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-82(c)(4), the owner or operator has completed an inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic inflow design flood control system plans meet the requirements of Section R315-319-82.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-83. Operating Criteria - Inspection Requirements for CCR Surface Impoundments.

(a) Inspections by a qualified person.

(1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(ii) At intervals not exceeding seven days, inspect the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow or discharge of debris or sediment; and

(iii) At intervals not exceeding 30 days, monitor all CCR unit instrumentation.

(iv) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(5).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) no later than October 19, 2015.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under Subsection R315-319-73(d) or Subsection R315-319-74(d), the CCR unit shall additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., CCR unit design and construction information required by Subsections R315-319-73(c)(1) and 74(c)(1), previous periodic structural stability assessments required under Subsections R315-319-73(d) and 74(d), the results of inspections by a qualified person, and results of previous annual inspections;

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(iii) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the impounding structure since the previous annual inspection;

(ii) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(iii) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(iv) The storage capacity of the impounding structure at the time of the inspection;

(v) The approximate volume of the impounded water and CCR at the time of the inspection;

(vi) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions, that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(vii) Any other change(s) which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall complete the initial inspection required by Subsections R315-319-8 (b)(1) and (2) no later than January 18, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-83(b)(1) and (2) is completed no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections.

(i) Except as provided for in Subsection R315-319-83(b)(4)(ii), the owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-83(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-83, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(6).

(ii) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial, occurring every five years, structural stability assessment by a qualified professional engineer required by Subsections R315-319-73(d) and 74(d) are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. If the annual inspection is not conducted in a year as provided by Subsection R315-319-83(b)(4)(ii), the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or

release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-84. Operating Criteria - Inspection Requirements for CCR Landfills.

(a) Inspections by a qualified person.

(1) All CCR landfills and any lateral expansion of a CCR landfill shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(ii) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(8).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR landfills. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) no later than October 19, 2015.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) Existing and new CCR landfills and any lateral expansion of a CCR landfill shall be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., the results of inspections by a qualified person, and results of previous annual inspections; and

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the structure since the previous annual inspection;

(ii) The approximate volume of CCR contained in the unit at the time of the inspection;

(iii) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions, that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(iv) Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR landfills. The owner or operator of the CCR unit shall complete the initial inspection required by

Subsections R315-319-84(b)(1) and (2) no later than January 18, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-84(b)(1) and (2) no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections. The owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-84(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-84, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(9).

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-90. Groundwater Monitoring and Corrective Action - Applicability.

(a) Except as provided for in Subsection R315-319-100 for inactive CCR surface impoundments, all CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under Subsections R315-319-90 through 98.

(b) Initial timeframes

(1) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2017, the owner or operator of the CCR unit shall be in compliance with the following groundwater monitoring requirements:

(i) Install the groundwater monitoring system as required by Subsection R315-319-91;

(ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by Subsection R315-319-93;

(iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by Subsection R315-319-94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of Rule R315-319 as required by Subsection R315-319-94.

(2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units. Prior to initial receipt of

CCR by the CCR unit, the owner or operator shall be in compliance with the groundwater monitoring requirements specified in Subsections R315-319-90(b)(1)(i) and (ii). In addition, the owner or operator of the CCR unit shall initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by Subsection R315-319-94(b).

(c) Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by Sections R315-319-50 through 107, the owner or operator shall conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) In the event of a release from a CCR unit, the owner or operator shall immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit shall comply with all applicable requirements in Subsections R315-319-96, 97, and 98.

(e) Annual groundwater monitoring and corrective action report. For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator shall prepare an annual groundwater monitoring and corrective action report and forward the report to the Director by March 1 of each year. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator shall prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by Sections R315-319-50 through 107, and annually thereafter. For the preceding calendar year, the annual report shall document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of Sections R315-319-90, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by Subsection R315-319-105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report shall contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background, or upgradient, and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under Sections R315-319-90 through 98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs, e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in

addition to identifying the constituent(s) detected at a statistically significant increase over background levels; and

(5) Other information required to be included in the annual report as specified in Section R315-319-90 through 98.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-91. Groundwater Monitoring and Corrective Action - Groundwater Monitoring Systems.

(a) Performance standard. The owner or operator of a CCR unit shall install a groundwater monitoring system consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system shall be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways shall be monitored.

(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(c) The groundwater monitoring system shall include the minimum number of monitoring wells necessary to meet the performance standards specified in Subsection R315-319-91(a), based on the site-specific information specified in Subsection R315-319-91(b). The groundwater monitoring system shall contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

(d) The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.

(1) The multiunit groundwater monitoring system shall be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in Subsections R315-319-91(a) through (c) for each CCR unit based on the following factors:

(i) Number, spacing, and orientation of each CCR unit;

(ii) Hydrogeologic setting;

(iii) Site history; and

(iv) Engineering design of the CCR unit.

(2) If the owner or operator elects to install a multiunit groundwater monitoring system, and if the multiunit system includes at least one existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), and if at any time after October 19, 2015 the owner or operator determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for the multiunit system, then all unlined CCR surface impoundments comprising the multiunit groundwater monitoring system are subject to the closure requirements under Subsection R315-319-101(a) to retrofit or close.

(e) Monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well borehole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the borehole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(1) The owner or operator of the CCR unit shall document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer shall be given access to this documentation when completing the groundwater monitoring system certification required under Subsection R315-319-91(f).

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) The owner or operator shall obtain a certification from a qualified professional engineer stating that the groundwater monitoring system has been designed and constructed to meet the requirements of Section R315-319-91. If the groundwater monitoring system includes the minimum number of monitoring wells specified in Subsection R315-319-91(c)(1), the certification shall document the basis supporting this determination.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-93. Groundwater Monitoring and Corrective Action - Groundwater Sampling and Analysis Requirements.

(a) The groundwater monitoring program shall include consistent sampling and analysis procedures designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by Subsection R315-319-91. The owner or operator of the

CCR unit shall develop and receive approval from the Director for a sampling and analysis program that includes procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody control; and
- (5) Quality assurance and quality control.

(b) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. For purposes of Subsections R315-319-90 through 98, the term constituent refers to both hazardous constituents and other monitoring parameters listed in either appendix III or IV of Rule R315-319.

(c) Groundwater elevations shall be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator of the CCR unit shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same CCR management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

(d) The owner or operator of the CCR unit shall establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of Subsection R315-319-91(a)(1).

(e) The number of samples collected when conducting detection monitoring and assessment monitoring, for both downgradient and background wells, shall be consistent with the statistical procedures chosen under Subsection R315-319-93(f) and the performance standards under Subsection R315-319-93(g). The sampling procedures shall be those specified under Subsections R315-319-94(b) through (d) for detection monitoring, Subsection R315-319-95(b) through (d) for assessment monitoring, and Subsection R315-319-96(b) for corrective action.

(f) The owner or operator of the CCR unit shall select one of the statistical methods specified in Subsections R315-319-93(f) (1) through (5) to be used in evaluating groundwater monitoring data for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of Subsection R315-319-93(g) and has been approved by the Director.

(6) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. The certification shall include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

(g) Any statistical method chosen under Subsection R315-319-93(f) shall comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of constituents. Normal distributions of data values shall use parametric methods. Non-normal distributions shall use non-parametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free, non-parametric, theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. The parameter values shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that shall at least as effective as any other approach in Section R315-

319-93 for evaluating groundwater data. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(h) The owner or operator of the CCR unit shall determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each constituent at each monitoring well designated pursuant to Subsection R315-319-91(a)(2) or (d)(1) to the background value of that constituent, according to the statistical procedures and performance standards specified under Subsections R315-319-93(f) and (g).

(2) Within 90 days after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

(i) The owner or operator shall measure "total recoverable metals" concentrations in measuring groundwater quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. Groundwater samples shall not be field-filtered prior to analysis.

(j) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-94 Groundwater Monitoring and Corrective Action - Detection Monitoring Program.

(a) The owner or operator of a CCR unit shall conduct detection monitoring at all groundwater monitoring wells consistent with Section R315-319-94. At a minimum, a detection monitoring program shall include groundwater monitoring for all constituents listed in appendix III to Rule R315-319.

(b) Except as provided in Subsection R315-319-94(d), the monitoring frequency for the constituents listed in appendix III to Rule R315-319 shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well shall be collected and analyzed for the constituents listed in appendix III and IV to Rule R315-319 no later than October 17, 2017. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well shall be collected and analyzed for the constituents listed in appendices III and IV to Rule R315-319 during the first six months of sampling.

(c) The number of samples collected and analyzed for each background well and downgradient well during subsequent

semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well.

(d) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix III to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. This demonstration shall be submitted and approved by the Director. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-94(d)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;
 (ii) Hydraulic conductivity of the aquifer and unsaturated zone; and
 (iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-94. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the owner or operator of the CCR unit determines, pursuant to Subsection R315-319-93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to Rule R315-319 at any monitoring well at the waste boundary specified under Subsection R315-319-91(a)(2), the owner or operator shall:

(1) Except as provided for in Subsection R315-319-94(e)(2), within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of Subsection R315-319-95.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator shall complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under Section R315-319-94. If a successful demonstration is not

completed within the 90-day period, the owner or operator of the CCR unit shall initiate an assessment monitoring program as required under Subsection R315-319-95. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(3) The owner or operator of a CCR unit shall prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(5).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-95. Groundwater Monitoring and Corrective Action - Assessment Monitoring Program.

(a) Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to Rule R315-319.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit shall sample and analyze the groundwater for all constituents listed in appendix IV to Rule R315-319. The number of samples collected and analyzed for each well during each sampling event shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each well.

(c) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix IV to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-95(c)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-95. The owner or operator shall include the demonstration providing the basis for the

alternative monitoring frequency and the certification by a qualified professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(d) After obtaining the results from the initial and subsequent sampling events required in Subsection R315-319-95(b), the owner or operator shall:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of Section R315-319-91, conduct analyses for all parameters in appendix III to Rule R315-319 and for those constituents in appendix IV to Rule R315-319 that are detected in response to Subsection R315-319-95(b), and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to Subsection R315-319-95(b) or (d). The groundwater protection standards shall be established in accordance with Subsection R315-319-95(h); and

(3) Include the recorded concentrations required by Subsection R315-319-95(d)(1), identify the background concentrations established under Subsection R315-319-94(b), and identify the groundwater protection standards established under Subsection R315-319-95(d)(2) in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the concentrations of all constituents listed in appendices III and IV of Rule R315-319 are shown to be at or below background values, using the statistical procedures in Subsection R315-319-93(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit. The owner or operator shall prepare a notification stating that detection monitoring is resuming for the CCR unit and submit the notification to the Director for approval. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(7).

(f) If the concentrations of any constituent in appendices III and IV to Rule R315-319 are above background values, but all concentrations are below the groundwater protection standard established under Subsection R315-319-95(h), using the statistical procedures in Subsection R315-319-93(g), the owner or operator shall continue assessment monitoring in accordance with Section R315-319-95.

(g) If one or more constituents in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) in any sampling event, the owner or operator shall prepare a notification identifying the constituents in appendix IV to Rule R315-319 that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(8). The owner or operator of the CCR unit also shall:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately.

selected. The characterization shall be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to Subsection R315-319-96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of Rule R315-319 and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Subsection R315-319-95(d)(1); and

(iv) Sample all wells in accordance with Subsection R315-319-95(d)(1) to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with Subsection R315-319-95(g)(1). The owner or operator has completed the notifications when they are placed in the facility's operating record as required by Subsection R315-319-105(h)(8).

(3) Within 90 days of finding that any of the constituents listed in appendix IV to Rule R315-319 have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator shall either:

(i) Initiate an assessment of corrective measures as approved by the Director and as required by Subsection R315-319-96; or

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration shall be submitted to and has received approval from the Director and supported by a report that includes the factual or evidentiary basis for any conclusions and shall be certified to be accurate by a qualified professional engineer. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to Section R315-319-95, and may return to detection monitoring if the constituents in appendices III and IV to Rule R315-319 are at or below background as specified in Subsection R315-319-95(e). The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by Subsection R315-319-95(g)(3)(ii), the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under Subsection R315-319-96.

(5) If an assessment of corrective measures is required under Subsection R315-319-96 by either Subsection R315-319-95(g)(3)(i) or (g)(4), and if the CCR unit is an existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), then the CCR unit is subject to the closure requirements under

Subsection R315-319-101(a) to retrofit or close. In addition, the owner or operator shall prepare a notification stating that an assessment of corrective measures has been initiated.

(h) The owner or operator of the CCR unit shall establish a groundwater protection standard for each constituent in appendix IV to Rule R315-319 detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a ground water protection standard has been established in rule R315-308, the ground water protection standard in Rule R315-308;

(2) For constituents for which a ground water protection standard has not been established in Rule R315-308, the background concentration for the constituent established from wells in accordance with Section R315-319-91; or

(3) For constituents for which the background level is higher than the ground water protection standard identified under Subsection R315-319-95(h)(1), the background concentration.

(i) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-96. Groundwater Monitoring and Corrective Action Assessment of Corrective Measures.

(a) Within 90 days of finding that any constituent listed in appendix IV to Rule R315-319 has been detected at a statistically significant level exceeding the groundwater protection standard defined under Subsection R315-319-95(h), or immediately upon detection of a release from a CCR unit, the owner or operator shall initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures shall be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(b) The owner or operator of the CCR unit shall continue to monitor groundwater in accordance with the assessment monitoring program as specified in Subsection R315-319-95.

(c) The assessment under Subsection R315-319-96(a) shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Subsection R315-319-97 addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health

requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator shall place the completed assessment of corrective measures in the facility's operating record. The assessment has been completed when it is placed in the facility's operating record as required by Subsection R315-319-105(h)(10).

(e) The owner or operator shall discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-97. Groundwater Monitoring and Corrective Action Selection of Remedy.

(a) Based on the results of the corrective measures assessment conducted under Subsection R315-319-96, the owner or operator shall, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in Subsection R315-319-97(b). This requirement applies to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator shall prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator shall prepare a final report describing the selected remedy and how it meets the standards specified in Subsection R315-319-97(b). The remedy and report shall be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer that the remedy selected meets the requirements of Section R315-319-97. The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h)(12).

(b) Remedies shall:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standard as specified pursuant to Subsection R315-319-95(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to Rule R315-319 into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in Subsection R315-319-98(d).

(c) In selecting a remedy that meets the standards of Subsection R315-319-97(b), the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal of contaminant;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for implementing and completing remedial activities. Such a schedule shall require the completion of remedial activities within a reasonable period of time taking into consideration the factors set forth in Subsections R315-319-97 (d) (1) through (6). The owner or operator of the CCR unit shall consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination, as determined by the characterization required under Subsection R315-319-95(g);

(2) Reasonable probabilities of remedial technologies in achieving compliance with the groundwater protection standards established under Subsection R315-319-95(h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(5) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land; and

(vi) The availability of alternative water supplies; and

(6) Other relevant factors as required by the Director.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-98. Groundwater Monitoring and Corrective Action Implementation of the Corrective Action Program.

(a) Within 90 days of selecting a remedy under Subsection R315-319-97, the owner or operator shall initiate remedial activities. Based on the schedule established under Subsection R315-319-97(d) for implementation and completion of remedial activities the owner or operator shall:

(1) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under Subsection R315-319-95;

(ii) Documents the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with the groundwater protection standard pursuant to Subsection R315-319-98(c).

(2) Implement the corrective action remedy selected under Subsection R315-319-97; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit, and/or potential exposures to human or ecological receptors. Interim measures shall, to the greatest extent feasible, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection R315-319-97. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix IV of Rule R315-319;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause any of the constituents listed in appendix IV to this part to migrate or be released;

(vi) Potential for exposure to any of the constituents listed in appendix IV to Rule R315-319 as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of Subsection R315-319-97(b) is not being achieved through the remedy selected, the owner or operator shall, with approval of the Director, implement other methods or techniques that could feasibly achieve compliance with the requirements.

(c) Remedies selected pursuant to Subsection R315-319-97 shall be considered complete when:

(1) The owner or operator of the CCR unit demonstrates compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under Subsection R315-319-91 and has received Director approval.

(2) Compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved by demonstrating that concentrations of constituents listed in appendix IV to Rule R315-319 have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in Subsection R315-319-93(f) and (g).

(3) All actions required to complete the remedy have been satisfied.

(d) All CCR that are managed pursuant to a remedy required under Section R315-319-97, or an interim measure required under Subsection R315-319-98(a)(3), shall be managed in a manner that complies with all applicable Utah requirements.

(e) Upon completion of the remedy, the owner or operator shall prepare a notification stating that the remedy has been completed. The notification shall be submitted to and be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the remedy has been completed in compliance with the requirements of Subsection R315-319-98(c). The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h) (13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-100. Closure and Post-Closure Care Inactive CCR Surface Impoundments.

(a) Except as provided by Subsection R315-319-100(b), inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments.

(b) An owner or operator of an inactive CCR surface impoundment that completes closure of such CCR unit, and meets all of the requirements of either Subsections R315-319-100(b)(1) through (4) or Subsection R315-319-100(b)(5) no later than April 17, 2018, is exempt from all other requirements of Sections R315-319-50 through 107.

(1) Closure by leaving CCR in place. If the owner or operator of the inactive CCR surface impoundment elects to close the CCR surface impoundment by leaving CCR in place, the owner or operator shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system; and

(iv) Minimize the need for further maintenance of the CCR unit.

(2) The owner or operator of the inactive CCR surface impoundment shall meet the requirements of Subsections R315-319-100(b)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-100(b)(3).

(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.

(3) The owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-100 (b) (3)(i), or the requirements of an alternative final cover system specified in Subsection R315-319-100(b)(3)(ii).

(i) The final cover system shall be designed and constructed to meet the criteria specified in Subsections R315-319-100(b)(3)(i)(A) through (D).

(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} centimeters/second, whichever is less.

(B) The infiltration of liquids through the CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-100(b)(3)(ii)(A) through (C).

(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-100(b) (3)(i)(A) and (B).

(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-100(b)(3)(i)(C).

(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(4) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer stating that the design of the final cover system meets either the requirements of Subsection R315-319-100(b)(3)(i) or (ii).

(5) Closure through removal of CCR. The owner or operator may alternatively elect to close an inactive CCR surface impoundment by removing and decontaminating all areas affected by releases from the CCR surface impoundment. CCR removal and decontamination of the CCR surface impoundment are complete when all CCR in the inactive CCR surface impoundment is removed, including the bottom liner of the CCR unit.

(6) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer that closure of the CCR surface impoundment under either Subsections R315-319-100(b)(1) through (4) or (b)(5) is technically feasible within the timeframe in Subsection R315-319-100(b).

(7) If the owner or operator of the CCR surface impoundment fails to complete closure of the inactive CCR surface impoundment within the timeframe in Subsection R315-319-100(b), the CCR unit shall comply with all of the requirements applicable to existing CCR surface impoundments under Sections R315-319-50 through 107.

(c) Required notices and progress reports. An owner or operator of an inactive CCR surface impoundment that closes in accordance with Subsection R315-319-100(b) shall complete the notices and progress reports specified in Subsections R315-319-100(c)(1) through (3).

(1) No later than December 17, 2015, the owner or operator shall prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment. The notification shall state that the CCR surface impoundment is an inactive CCR surface impoundment closing under the requirements of Subsection R315-319-100(b). The notification shall also include a narrative description of how the CCR surface impoundment will be closed, a schedule for completing closure activities, and the required certifications under Subsections R315-319-100(b)(4) and (6), if applicable.

(2) The owner or operator shall prepare periodic progress reports summarizing the progress of closure implementation, including a description of the actions completed to date, any problems encountered and a description of the actions taken to resolve the problems, and projected closure activities for the upcoming year. The annual progress reports shall be completed according to the following schedule:

(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to initiate closure required by Subsection R315-319-100(c)(1).

(ii) The second annual progress report shall be prepared no later than 12 months after completing the first progress report required by Subsection R315-319-100(c)(2)(i).

(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-100 (c)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(2).

(3) The owner or operator shall prepare and place in the facility's operating record a notification of completion of closure of the CCR surface impoundment. The notification shall be submitted within 60 days of completing closure of the CCR surface impoundment and shall include a written certification from a

qualified professional engineer stating that the CCR surface impoundment was closed in accordance with the requirements of either Subsections R315-319-100 (b)(1) through (4) or (b)(5).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the internet requirements specified in Subsection R315-319-107(i).

R315-319-101. Closure and Post-Closure Care - Closure or Retrofit of CCR Units.

(a) The owner or operator of an existing unlined CCR surface impoundment, as determined under Subsection R315-319-71(a), is subject to the requirements of Subsection R315-319-101(a)(1).

(1) Except as provided by Subsection R315-319-101(a)(3), if at any time after October 19, 2015 an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for such CCR unit, within six months of making such determination, the owner or operator of the existing unlined CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with Subsection R315-319-101(a)(1) shall include a statement in the notification required under Subsection R315-319-102(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of Subsection R315-319-101(a)(1).

(3) The timeframe specified in Subsection R315-319-101(a)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(4) At any time after the initiation of closure under Subsection R315-319-101(a)(1), the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of Subsection R315-319-102(k).

(b) The owner or operator of an existing CCR surface impoundment is subject to the requirements of Subsection R315-319-101(b)(1).

(1) Except as provided by Subsection R315-319-101(b)(4), within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-73(e) by the deadlines specified in Subsections R315-319-73(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv), the owner or

operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with Subsection R315-319-101(b)(1) or (2) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(b)(1) or (2).

(4) The timeframe specified in Subsection R315-319-101(b)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(c) The owner or operator of a new CCR surface impoundment is subject to the requirements of Subsection R315-319-101(c)(1).

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-74(e) by the deadlines specified in Subsections R315-319-74(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of a new CCR surface impoundment that closes in accordance with Subsection R315-319-101(c)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(c)(1).

(d) The owner or operator of an existing CCR landfill is subject to the requirements of Subsection R315-319-101(d)(1).

(1) Except as provided by Subsection R315-319-101(d)(3), within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in Subsection R315-319-64(a), the owner or operator of the CCR unit shall cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of an existing CCR landfill that closes in accordance with Subsection R315-319-101(d)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR landfill is closing under the requirements of Subsection R315-319-101(d)(1).

(3) The timeframe specified in Subsection R315-319-101(d)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Section R315-319-103.

R315-319-102. Closure and Post-Closure Care - Criteria for Conducting the Closure or Retrofit of CCR Units.

(a) Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in Subsections R315-319-102(b) through (j). Retrofit of a CCR surface impoundment shall be

completed in accordance with the requirements in Subsection R315-319-102(k).

(b) Written closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan shall include, at a minimum, the information specified in Subsections R315-319-102(b)(1)(i) through (vi).

(i) A narrative description of how the CCR unit will be closed in accordance with Section R315-319-102.

(ii) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with Subsection R315-319-102(c).

(iii) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with Subsection R315-319-102(d), and the methods and procedures to be used to install the final cover. The closure plan shall also discuss how the final cover system will achieve the performance standards specified in Subsection R315-319-102(d).

(iv) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(v) An estimate of the largest area of the CCR unit ever requiring a final cover as required by Subsection R315-319-102(d) at any time during the CCR unit's active life.

(vi) A schedule for completing all activities necessary to satisfy the closure criteria in Section R315-319-102, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in Subsection R315-319-102(f)(1), the written closure plan shall include the site-specific information, factors and considerations that would support any time extension sought under Subsection R315-319-102(f)(2).

(2) Timeframes for preparing the initial written closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(ii) New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(iii) The owner or operator has completed the written closure plan when the plan, including the certification required by Subsection R315-319-102(b)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written closure plan.

(i) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to Subsection R315-319-102 (b)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(B) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(iii) The owner or operator shall amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator shall amend the current closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of Section R315-319-102.

(c) Closure by removal of CCR. An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to Subsection R315-319-95(h) for constituents listed in appendix IV to Rule R315-319.

(d) Closure performance standard when leaving CCR in place

(1) The owner or operator of a CCR unit shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(iv) Minimize the need for further maintenance of the CCR unit; and

(v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) Drainage and stabilization of CCR surface impoundments. The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall meet the requirements of Subsections R315-

319-102(d)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-102(d)(3).

(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.

(3) Final cover system. If a CCR unit is closed by leaving CCR in place, the owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-102(d)(3)(i), or the requirements of the alternative final cover system specified in Subsection R315-319-102(d)(3)(ii).

(i) The final cover system shall be designed and constructed to meet the criteria in Subsections R315-319-102(d)(3)(i)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less.

(B) The infiltration of liquids through the closed CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-102(f)(3)(ii)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-102(d)(3)(i)(A) and (B).

(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-102(d)(3)(i)(C).

(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(iii) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of Section R315-319-102.

(e) Initiation of closure activities. Except as provided for in Subsection R315-319-102(e)(4) and Section R315-319-103, the owner or operator of a CCR unit shall commence closure of the CCR unit no later than the applicable timeframes specified in either Subsection R315-319-102(e)(1) or (2).

(1) The owner or operator shall commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(i) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(ii) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2)(i) Except as provided by Subsection R315-319-102(e)(2)(ii), the owner or operator shall commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(ii) Notwithstanding Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation shall be supported by, at a minimum, the information specified in Subsections R315-319-102(e)(2)(ii)(A) and (B). The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(5) prior to the end of any two-year period.

(A) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(B) Information demonstrating that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative shall include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in Subsections R315-319-102(e)(2)(ii)(B)(1) through (4) are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(1) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(2) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled, e.g., CCR is not being generated, and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(3) The CCR unit is dedicated to an operating coal-fired boiler, i.e., CCR is being generated; however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(4) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an

extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(iii) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(e)(2)(ii) the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration 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.

(3) For purposes of Sections R315-319-50 through 107, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(i) Taken any steps necessary to implement the written closure plan required by Subsection R315-319-102(b);

(ii) Submitted a completed application for any required state or agency permit or permit modification; or

(iii) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) The timeframes specified in Subsections R315-319-102(e)(1) and (2) do not apply to any of the following owners or operators:

(i) An owner or operator of an inactive CCR surface impoundment closing the CCR unit as required by Subsection R315-319-100(b);

(ii) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(a);

(iii) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(b);

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(c); or

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by Subsection R315-319-101(d).

(f) Completion of closure activities.

(1) Except as provided for in Subsection R315-319-102(f)(2), the owner or operator shall complete closure of the CCR unit:

(i) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(ii) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2)(i) Extensions of closure timeframes. The timeframes for completing closure of a CCR unit specified under Subsection R315-319-102(f)(1) may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the

facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by Subsection R315-319-102(b)(1), the demonstration shall include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(A) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(B) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(C) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(D) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(ii) Maximum time extensions.

(A) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(B) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(C) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(iii) In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by Subsection R315-319-102(f)(1), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(f)(2)(i) the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration 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.

(3) Upon completion, the owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in Subsection R315-319-102(b) and the requirements of Section R315-319-102.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator shall prepare a

notification of intent to close a CCR unit. The notification shall include the certification by a qualified professional engineer for the design of the final cover system as required by Subsection R315-319-102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator shall prepare a notification of closure of a CCR unit. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(8).

(i) Deed notations.

(1) Except as provided by Subsection R315-319-102(i)(4), following closure of a CCR unit, the owner or operator shall record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a CCR unit; and

(ii) Its use is restricted under the post-closure care requirements as provided by Subsection R315-319-104(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator shall prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with Subsection R315-319-102(c) is not subject to the requirements of Subsections R315-319-102(i)(1) through (3).

(j) The owner or operator of the CCR unit shall comply with the closure recordkeeping requirements specified in Subsection R315-319-105(i), the closure notification requirements specified in Subsection R315-319-106(i), and the closure Internet requirements specified in Subsection R315-319-107(i).

(k) Criteria to retrofit an existing CCR surface impoundment.

(1) To retrofit an existing CCR surface impoundment, the owner or operator shall:

(i) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(ii) Comply with the requirements in Subsection R315-319-72.

(iii) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action.

(2) Written retrofit plan

(i) Content of the plan. The owner or operator shall prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan shall include, at a minimum, all of the following information:

(A) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with Section R315-319-102.

(B) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

(C) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

(D) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

(E) A schedule for completing all activities necessary to satisfy the retrofit criteria in Section R315-319-102, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(ii) Timeframes for preparing the initial written retrofit plan.

(A) No later than 60 days prior to date of initiating retrofit activities, the owner or operator shall prepare an initial written retrofit plan consistent with the requirements specified in Subsection R315-319-102(k)(2). For purposes of Sections R315-319-50 through 107, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

(1) Taken any steps necessary to implement the written retrofit plan; and

(2) Submitted a completed application for a permit or permit modification.

(B) The owner or operator has completed the written retrofit plan when the plan, including the certification required by Subsection R315-319-102(k)(2)(iv), has been placed in the facility's operating record as required by Subsection R315-319-105(j)(1).

(iii) Amendment of a written retrofit plan.

(A) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(B) The owner or operator shall amend the written retrofit plan whenever:

(1) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

(2) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(C) The owner or operator shall amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator shall amend the current retrofit plan no later than 30 days following the triggering event.

(iv) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of Section R315-319-102.

(3) Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted shall complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in Subsection R315-319-102(f) or, where applicable, Subsection R315-319-103.

(4) Upon completion, the owner or operator shall obtain a certification from a qualified professional engineer verifying that

the retrofit activities have been completed in accordance with the retrofit plan specified in Subsection R315-319-102(k)(2) and the requirements of Section R315-319-102.

(5) No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator shall prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(5).

(6) Within 30 days of completing the retrofit activities specified in Subsection R315-319-102(k)(1), the owner or operator shall prepare a notification of completion of retrofit activities. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102 (k)(4). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(6).

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of Subsection R315-319-102.

(8) The owner or operator of the CCR unit shall comply with the retrofit recordkeeping requirements specified in Subsection R315-319-105(j), the retrofit notification requirements specified in Subsection R315-319-106(j), and the retrofit Internet requirements specified in Subsection R315-319-107(j).

R315-319-103. Closure and Post-Closure Care - Alternative Closure Requirements.

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d) may continue to receive CCR in the unit provided the owner or operator meets the requirements of either Subsection R315-319-103(a) or (b).

(a)(1) No alternative CCR disposal capacity. Notwithstanding the provisions of Subsection R315-319-101(a), (b)(1), or (d), a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR shall continue to be managed in that CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under Subsection R315-319-103(a)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;

(iii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR unit shall cease receiving CCR and initiate closure following the timeframes in Subsections R315-319-102(e) and (f).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit shall cease receiving CCR and close in accordance with the timeframes in Subsections R315-319-102(e) and (f).

(b)(1) Permanent cessation of a coal-fired boiler(s) by a date certain. Notwithstanding the provisions of Subsections R315-319-101(a), (b)(1), and (d), a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframes specified in Subsections R315-319-103(b)(2) through (4), but in the interim period, prior to closure of the coal-fired boiler, the facility shall continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under this Subsection R315-319-103(b)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103.

(ii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler shall cease operation and the CCR surface impoundment shall have completed closure no later than October 17, 2023.

(3) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler shall cease operation, and the CCR surface impoundment shall complete closure no later than October 17, 2028.

(4) For a CCR landfill, the coal-fired boiler shall cease operation, and the CCR landfill shall complete closure no later than April 19, 2021.

(c) Required notices and progress reports. An owner or operator of a CCR unit that closes in accordance with Subsection R315-319-103(a) or (b) shall complete the notices and progress reports specified in Subsections R315-319-103(c)(1) through (3).

(1) Within six months of becoming subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d), the owner or operator shall prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of Section R315-319-103. The notification shall describe why the CCR unit qualifies for the alternative closure

provisions under either Subsection R315-319-103(a) or (b), in addition to providing the documentation and certifications required by Subsection R315-319-103(a) or (b).

(2) The owner or operator shall prepare the periodic progress reports required by Subsection R315-319-103(a)(1)(iv) or (b)(1)(iii), in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports shall be completed according to the following schedule:

(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by Subsection R315-319-103(c)(1).

(ii) The second annual progress report shall be prepared no later than 12 months after completing the first annual progress report. Additional annual progress reports shall be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-103(c)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(10).

(3) An owner or operator of a CCR unit shall also prepare the notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-104. Closure and Post-Closure Care - Post-Closure Care Requirements.

(a) Applicability.

(1) Except as provided by either Subsection R315-319-104(a)(2) or (3), Section R315-319-104 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under Section R315-319-102.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by Subsection R315-319-102(c) is not subject to the post-closure care criteria under Section R315-319-104.

(3) An owner or operator of an inactive CCR surface impoundment that elects to close a CCR unit pursuant to the requirements under Subsection R315-319-100(b) is not subject to the post-closure care criteria under Section R315-319-104.

(b) Post-closure care maintenance requirements. Following closure of the CCR unit, the owner or operator shall conduct post-closure care for the CCR unit, which shall consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under Section R315-319-70, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the

leachate collection and removal system in accordance with the requirements of Section R315-319-70; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of Sections R315-319-90 through 98.

(c) Post-closure care period.

(1) Except as provided by Subsection R315-319-104(c)(2), the owner or operator of the CCR unit shall conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with Section R315-319-95, the owner or operator shall continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with Section R315-319-95.

(d) Written post-closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written post-closure plan and any amendments to the plan. The plan shall include, at a minimum, the information specified in Subsections R315-319-104(d)(1)(i) through (iii).

(i) A description of the monitoring and maintenance activities required in Subsection R315-319-104(b) for the CCR unit, and the frequency at which these activities will be performed;

(ii) The name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in Sections R315-319-50 through 107. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration shall be certified by a qualified professional engineer, and notification shall be provided to the Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible Internet site.

(2) Deadline to prepare the initial written post-closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(ii) New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(iii) The owner or operator has completed the written post-closure plan when the plan, including the certification required by Subsection R315-319-104(d)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written post-closure plan.

(i) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to Subsection R315-319-104(d)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or

(B) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(iii) The owner or operator shall amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator shall amend the written post-closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written post-closure plan meets the requirements of Section R315-319-104.

(e) Notification of completion of post-closure care period. No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit shall prepare a notification verifying that post-closure care has been completed. The notification shall include the certification by a qualified professional engineer verifying that post-closure care has been completed in accordance with the closure plan specified in Subsection R315-319-104(d) and the requirements of Section R315-319-104. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-105. Recordkeeping, Notification, and Posting of Information to the Internet - Recordkeeping Requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain files of all information required by Section R315-319-105 in a written operating record at their facility.

(b) Unless specified otherwise, each file shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-105 in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) The owner or operator of a CCR unit shall submit to the Director any demonstration or documentation required by Sections R315-319-50 through 107.

(e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), as it becomes available, in the facility's operating record.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by Subsections R315-319-70(e) and (f).

(2) The documentation of liner type as required by Subsection R315-319-71(a).

(3) The design and construction certifications as required by Subsections R315-319-72(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by Subsections R315-319-73(a)(1) and 74(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by Subsections R315-319-73(a)(2) and 74(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by Subsections R315-319-73(a)(3) and 74(a)(3), except that only the most recent EAP shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by Subsections R315-319-73(a)(3)(i)(E) and 74(a)(3)(i)(E).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by Subsections R315-319-73(a)(3)(v) and 74(a)(3)(v).

(9) The history of construction, and any revisions of it, as required by Subsection R315-319-73(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(10) The initial and periodic structural stability assessments as required by Subsections R315-319-73(d) and 74(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-73(d)(2) and 74(d)(2).

(12) The initial and periodic safety factor assessments as required by Subsections R315-319-73(e) and 74(e).

(13) The design and construction plans, and any revisions of it, as required by Subsection R315-319-74(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by Subsection R315-319-80(b), except that only the most recent control plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(2) The annual CCR fugitive dust control report required by Subsection R315-319-80(c).

(3) The initial and periodic run-on and run-off control system plans as required by Subsection R315-319-81(c).

(4) The initial and periodic inflow design flood control system plan as required by Subsection R315-319-82(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by Subsection R315-319-83(a).

(6) The periodic inspection report as required by Subsection R315-319-83(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-83(b)(5) and 84(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by Subsection R315-319-84(a).

(9) The periodic inspection report as required by Subsection R315-319-84(b)(2).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by Subsection R315-319-90(e).

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by Subsection R315-319-91(e)(1).

(3) The groundwater monitoring system certification as required by Subsection R315-319-91(f).

(4) The selection of a statistical method certification as required by Subsection R315-319-93(f)(6).

(5) Within 30 days of establishing an assessment monitoring program, the notification as required by Subsection R315-319-94(e)(3).

(6) The results of appendices III and IV to Rule R315-319 constituent concentrations as required by Subsection R315-319-95(d)(1).

(7) Within 30 days of returning to a detection monitoring program, the notification as required by Subsection R315-319-95(e).

(8) Within 30 days of detecting one or more constituents in appendix IV to Rule R315-319 at statistically significant levels above the groundwater protection standard, the notifications as required by Subsection R315-319-95(g).

(9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by Subsection R315-319-95(g)(5).

(10) The completed assessment of corrective measures as required by Subsection R315-319-96(d).

(11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by Subsection R315-319-96(e).

(12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by Subsection R315-319-97(a), except that the selection of remedy report shall be maintained until the remedy has been completed.

(13) Within 30 days of completing the remedy, the notification as required by Subsection R315-319-98(e).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by Subsection R315-319-100(c)(1).

(2) The annual progress reports of closure implementation as required by Subsections R315-319-100(c)(2)(i) and (ii).

(3) The notification of closure completion as required by Subsection R315-319-100(c)(3).

(4) The written closure plan, and any amendment of the plan, as required by Subsection R315-319-102(b), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(5) The written demonstration(s), including the certification required by Subsection R315-319-102(e)(2)(iii), for a time extension for initiating closure as required by Subsection R315-319-102(e)(2)(ii).

(6) The written demonstration(s), including the certification required by Subsection R315-319-102(f)(2)(iii), for a time extension for completing closure as required by Subsection R315-319-102(f)(2)(i).

(7) The notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(8) The notification of completion of closure of a CCR unit as required by Subsection R315-319-102(h).

(9) The notification recording a notation on the deed as required by Subsection R315-319-102(i).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-103(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-103(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by Subsection R315-319-104(d), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(13) The notification of completion of post-closure care period as required by Subsection R315-319-104(e).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by Subsection R315-319-102(k)(2), except that only the most recent retrofit plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in Subsection R315-319-103.

(3) The annual progress reports required under the alternative requirements as required by Subsection R315-319-103.

(4) The written demonstration(s), including the certification in Subsection R315-319-102(f)(2)(iii), for a time extension for completing retrofit activities as required by Subsection R315-319-102(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by Subsection R315-319-102(k)(5).

(6) The notification of completion of retrofit activities as required by Subsection R315-319-102(k)(6).

R315-319-106. Recordkeeping, Notification, and Posting of Information to the Internet Notification Requirements.

(a) The notifications required under Subsections R315-319-106(e) through (i) shall be sent to the Director before the close of business on the day the notification is required to be completed. For purposes of Section R315-319-106, before the close of business means the notification shall be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day.

(b) Reserved

(c) Notifications may be combined as long as the deadline requirement for each notification is met.

(d) Unless otherwise required in Section R315-319-106, the notifications specified in Section R315-319-106 shall be sent to the Director within 30 days of placing in the operating record the information required by Subsection R315-319-105.

(e) Location restrictions. The owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall notify the Director that each demonstration specified under Subsection R315-319-105(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under Subsection R315-319-105(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator shall also submit to the Director a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under Subsection R315-319-105(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under Subsection R315-319-105(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) Provide notification of the availability of the initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1).

(2) Provide notification of the availability of the annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

_____ (1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

_____ (2) Provide notification of the availability of the groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

_____ (3) Provide notification of the availability of the selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

_____ (4) Provide notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

_____ (5) Provide notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

_____ (6) Provide notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

_____ (7) Provide notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

_____ (8) Provide notification of the availability of assessment of corrective measures specified under Subsection R315-319-105(h)(10).

_____ (9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12).

_____ (10) Provide notification of the completion of the remedy specified under Subsection R315-319-105(h)(13).

_____ (i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

_____ (1) Provide notification of the intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

_____ (2) Provide notification of the availability of the annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

_____ (3) Provide notification of closure completion specified under Subsection R315-319-105(i)(3).

_____ (4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

_____ (5) Provide notification of the availability of the demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

_____ (6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

_____ (7) Provide notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

_____ (8) Provide notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

_____ (9) Provide notification of the deed notation as required by Subsection R315-319-105(i)(9).

_____ (10) Provide notification of intent to comply with the alternative closure requirements specified under Subsection R315-319-105(i)(10).

_____ (11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

_____ (12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

_____ (13) Provide notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

_____ (j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

_____ (1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

_____ (2) Provide notification of intent to comply with the alternative retrofit requirements specified under Subsection R315-319-105(j)(2).

_____ (3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

_____ (4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

_____ (5) Provide notification of intent to initiate retrofit of a CCR unit specified under Subsection R315-319-105(j)(5).

_____ (6) Provide notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

R315-319-107. Recordkeeping, Notification, and Posting of Information to the Internet - Publicly Accessible Internet Site Requirements.

_____ (a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain a publicly accessible Internet site, CCR Web site, containing the information specified in Section R315-319-107. The owner or operator's Web site shall be titled "CCR Rule Compliance Data and Information."

_____ (b) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-107 by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

_____ (c) Unless otherwise required in Section R315-319-107, the information required to be posted to the CCR Web site shall be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

_____ (d) Unless otherwise required in Section R315-319-107, the information shall be posted to the CCR Web site within 30 days of placing the pertinent information required by Subsection R315-319-105 in the operating record.

_____ (e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place each demonstration specified under Subsection R315-319-105(e) on the owner or operator's CCR Web site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under Subsection R315-319-105(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) The documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) The emergency action plan (EAP) specified under Subsection R315-319-105(f)(6), except that only the most recent EAP shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) The history of construction, and any revisions of it, specified under Subsection R315-319-105(f)(9).

(9) The initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) The initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) The design and construction plans, and any revisions of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1) except that only the most recent plan shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(2) The annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) The periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) The periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50

through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

(2) The groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

(3) The selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

(4) The notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

(5) The notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

(6) The notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

(7) The notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

(8) The assessment of corrective measures specified under Subsection R315-319-105(h)(10).

(9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12), except that the selection of the remedy report shall be maintained until the remedy has been completed.

(10) The notification that the remedy has been completed specified under Subsection R315-319-105(h)(13).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The notification of intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

(2) The annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

(3) The notification of closure completion specified under Subsection R315-319-105(i)(3).

(4) The written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

(5) The demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

(6) The demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

(7) The notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

(8) The notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

(9) The notification recording a notation on the deed as required by Subsection R315-319-105(i)(9).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

(13) The notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by Subsection R315-319-105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

(5) The notification of intent to retrofit a CCR unit specified under Subsection R315-319-105(j)(5).

(6) The notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

R315-319-108. Appendix III to Rule R315-319 - Constituents for Detection Monitoring.

Table

Common name(1)

Boron
Calcium
Chloride
Fluoride
pH
Sulfate
Total Dissolved Solids (TDS)

(1)Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

R315-319-109. Appendix IV to Rule R315-319 - Constituents for Assessment Monitoring.

Table

Common name(1)

Antimony
Arsenic
Barium
Beryllium
Cadmium
Chromium
Cobalt
Fluoride
Lead
Lithium
Mercury
Molybdenum
Selenium
Thallium
Radium 226 and 228 combined

(1)Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

KEY: permit, solid waste, coal ash

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 19-6-108

**Health, Family Health and
Preparedness, Emergency Medical
Services
R426-5
Emergency Medical Services Training
and Certification Standards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40283

FILED: 03/25/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify epi pen training, BCI requirements, and to add language for the EMS Rules Task Force. The amendments were due to past public comment received.

SUMMARY OF THE RULE OR CHANGE: This amendment adds clarification of the existing rule for epi pen training, and background criminal investigation criteria for EMS certification, as well as the addition of an EMS Rules Task Force for Emergency Medical Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget will not be impacted due to the amended training resources for epi pen use, the clarification of criminal background criteria, or the EMS Rules Task Force. The EMS Rules Task Force has been operational for several years, and this is only a proposal to add its functionality to administrative rule.

♦ **LOCAL GOVERNMENTS:** The local government budgets will not be impacted due to the amended training resources for epi pen use, the clarification of criminal background criteria, or the EMS Rules Task Force. The EMS Rules Task Force has been operational for several years, and this is only a proposal to add its functionality to administrative rule.

♦ **SMALL BUSINESSES:** Fiscal impacts will be minimal since changes are primarily at the state level.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Fiscal impacts will be minimal since the changes are primarily at the state level.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Persons affected will not have any additional compliance costs due to rule amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
There is no fiscal impact on business because all requirement changes are directed at the state.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-5. Emergency Medical Services Training and Certification Standards.

R426-5-2600. Epinephrine Auto-Injector Use.

(1) Any qualified entities or qualified adults as defined in 26-41-102 in accordance with 26-41-107 shall receive training approved by the Department.

(a) The training shall include:

- (i) recognition of life threatening symptoms of anaphylaxis;
- (ii) appropriate administration of an epinephrine auto-injector;
- (iii) proper storage of an epinephrine auto-injector;
- (iv) disposal of an epinephrine auto-injector; and
- (v) an initial and annual refresher course.

(2) The annual refresher course requirement may be waived

if:

- (a) The qualified entities or qualified adults are currently licensed or certified at the EMR or higher level by the State of Utah, or
- (b) The approved trainings are the Red Cross and American Heart Association epinephrine auto-injector modules.

(3) Training in the school setting shall be based on approved Department trainings found on <http://www.choosehealth.utah.gov/prek-12/school-nurses.php> and provided in accordance with 26-41-104.

(4) All epinephrine auto injectors shall be stored and disposed of following the manufacturer's specifications.

R426-5-2700. Background Screening Clearance for EMS Certification.

(1) The Department shall conduct a background screening on each individual who seeks to certify or recertify as an EMR, EMT, AEMT, EMT-IA, Paramedic, or EMD. The Department shall approve EMS certification or recertification upon successful completion of a background screening. Background clearance indicates the individual does not pose an unacceptable risk to public health and safety.

(2) The Department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1; and

(g) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(3) If the Department determines an individual is not eligible for certification or recertification based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(4) If the Department determines an individual is not eligible for certification or recertification based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

(5) The individual seeking certification or recertification shall submit the completed application, including fees, prior to submission of finger prints.

(6) Exclusion from certification or recertification.

(a) Criminal Convictions or Pending Charges:

(i) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses within the past 15 years, they shall not be approved for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(ii) If an individual has been convicted or has pleaded no contest for the following offenses, 15 years ~~has~~ have passed since the last conviction and the offense cannot be expunged they shall be considered ~~may not be approved~~ for certification or recertification:

(A) any felony or class A under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(B) any felony or class A under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code excluding sections 103 and 108;

(C) any felony or class A or B under the following Utah Criminal Codes:

(I) 76-9-301.8, Bestiality;

(II) 76-9-702.1, Sexual Battery; and

(III) 76-9-702.5, Lewdness Involving Child.

(iii) If an individual has been convicted, has pleaded no contest, is subject to a plea in abeyance, or a diversion agreement, for the following offenses, they shall be considered ~~may not be approved~~ for certification or recertification:

(A) any felony or class A under Utah Criminal Code not listed in R426-5-2700(6)(a)(i).

(B) any class B or C under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(C) any felony, class A ~~[-B- or -C-]~~ under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(D) any felony or class A under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(E) any felony or class A under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(F) any felony, class A ~~[-B- or -C-]~~ under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(G) any felony, class A, B or C under the following Utah Criminal Codes:

(I) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(II) 76-10-1301 to 1314, Prostitution;

~~(III)~~ ~~(H)~~ any felony or class A under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

~~(H)~~ ~~(I)~~ any felony or class A or ~~B~~ ~~[- or -C-]~~ under Utah Motor Vehicles Traffic Code 41-6a-502 and 517.

~~(I)~~ ~~(J)~~ any felony or class A ~~[- or -B- or -C-]~~ under Utah Occupations and Professions Utah Controlled Substances Act 58-37.

~~(J)~~ ~~(K)~~ any felony or class A ~~[- or -B- or -C-]~~ under Alcoholic Beverage Control Act 32B-4-409.

~~(K)~~ ~~(L)~~ any criminal conviction or pattern of convictions that may represent an unacceptable risk to public health and safety.

(iv) An individual seeking certification who has been convicted or has pleaded no contest, is subject to a plea in abeyance, a diversion agreement, a warrant for arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), shall be considered ~~may not be approved~~ for certification.

(v) A certified EMS individual who is subject to a warrant ~~off for~~ arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(iii), and after an investigation and Peer Review Board process as established in R426-5-2900, the Department may issue recertification, or suspend or revoke a certification, or place a certification on probation.

(vi) A certified EMS individual who is subject to a warrant ~~off for~~ arrest, arrested or charged for any of the identified offenses in R426-5-2700(6)(a)(i), shall immediately have the individual's EMS certification placed on restriction pending the outcome of a CCEU investigation as per the process established in R426-5-2900.

(b) Juvenile Records.

(i) As required by Utah Code Subsection 26-8a-310(5)(b), juvenile court records shall be reviewed if an individual is:

(A) under the age of 28; or

(B) over the age of 28 and has convictions or pending charges identified in R426-5-2600(6)(a).

(ii) Adjudications by a juvenile court may exclude the individual from certification or recertification if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor any of the identified offenses in R426-5-2700(6)(a).

(c) Non-Criminal Records.

(i) The Department may deny certification or recertification based on a supported finding from:

(A) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(B) child abuse or neglect findings described in Section 78A-6-323;

(C) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(ii) The Department may deny certification or recertification based on a finding from licensing records of individuals licensed by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions.

(d) Review of Relevant Information.

(i) Results of background screening review, as listed above in R426-5-2700(6)(a)(ii)-(iii), (b) or (c) may be reviewed to determine under what circumstance, if any, the individual may be granted certification or recertification. The following factors may be considered:

(A) types and number;

(B) passage of time;

(C) surrounding circumstances;

(D) intervening circumstances; and

(E) steps taken to correct or improve.

(ii) The Department shall rely on relevant information identified in R426-5-2700(2) as conclusive evidence and may deny certification or recertification based on that information.

(e) Appeal of Department certification decision.

(i) A certified EMS individual may appeal a Department certification decision as listed in R426-5-2700(6)(d)(i) to the CCEU as per the process established in R426-5-2900.

(7) A certified EMS individual who has been arrested, charged, or convicted shall notify the Department CCEU and all employers or affiliated entities who utilize the EMS individual's certification within 7 business days. The certified EMS individual shall also notify the Department of all entities they work for or are affiliated with.

(8) All licensed or designated EMS providers who are notified or become aware of a certified EMS individual arrest, charge or conviction shall notify the Department CCEU within 7 business days.

R426-5-2800. Review and Investigation by the Complaint, Compliance and Enforcement Unit (CCEU).

(1) The CCEU shall review all complaints filed against an EMS provider and a certified EMS individual.

(a) Complaints shall be in writing and submitted on an approved CCEU complaint form.

(b) Every complaint shall have the complainants contact information and be signed by the complainant.

(2) Designated or licensed provider complaints will be investigated by the CCEU.

(a) The CCEU may conduct interviews with the provider.

(b) The CCEU will allow the provider an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(c) Based on the investigation, the CCEU will make recommendations to the Department's Bureau Director.

(d) If the CCEU recommendation is that the provider is to be placed on probation or suspension, the CCEU shall recommend terms and conditions.

(e) The Department may take action against a designated or licensed provider's license or designation based on the investigative findings.

(f) The Department shall notify the provider in writing of the Department's decision within 30 days of completion of the investigation.

(3) Certified EMS individual complaints will be investigated either by the CCEU or by the Primary Affiliated Provider (PAP).

(a) The CCEU shall investigate the following complaints against a certified EMS individual.

(i) If the CCEU determines that:

(A) the certified EMS individual demonstrates a threat to him or herself or to a coworker,

(B) the certified EMS individual demonstrates a threat to the public health,

(C) the certified EMS individual demonstrates a threat to the safety or welfare of the public,

(D) the certified EMS individual potentially violated R426-5-2800(4), or

(E) the CCEU determines the risk cannot be reasonably mitigated.

(ii) The Department may place the certified EMS individual on a restricted certification while and investigation is pending until terms are reached for a provisional certification using the process outlined in R426-5-2800(5)(e).

(iii) The CCEU may conduct interviews with all parties necessary. The CCEU will gather information and evidence, which may include requiring the certified EMS individual to submit to a drug or alcohol screening or any other appropriate evaluation.

(iv) The certified EMS individual shall have an opportunity to respond to the allegations and to provide supporting witnesses and documentation.

(v) Once the CCEU has completed its investigation it shall submit the report with all findings and recommendations to the Peer Review Board per R426-5-2900 and the Bureau Director for review.

(vi) While waiting for the Peer Review Board process, the Department shall notify the certified EMS individual in writing of the CCEU's recommendation within 30 days of the completion of the investigation.

(b) The Primary Affiliated Provider shall investigate a complaint against the certified EMS individual who the CCEU refers to the PAP.

(i) The PAP investigation shall:

(A) be investigated by the licensed or designated EMS provider's EMS certified medical training officer or designee;

(B) be completed and findings submitted to the CCEU within 30 calendar days from receipt of complaint from the CCEU;

(ii) If the CCEU determines that the PAP actions are insufficient, the CCEU may initiate an investigation of the certified EMS individual which follows the CCEU and the Peer Review Board process.

(4) The Department shall investigate a certified EMS individual's certification or a provider's license or designation for any of the following:

(a) refusal to submit to a drug test requested by the EMS provider or the Department;

(b) failure to report by an individual or any affiliated provider pursuant to 426-5-2700(7)and(8);

(c) non-prescribed use of or addiction to narcotics or drugs;

(d) use of alcoholic beverages or being under the influence of alcoholic beverages at any level while on call or on duty as an EMS personnel or while driving any EMS vehicle;

(e) being under the influence of a prescribed or non-prescribed medication or drug(legal or illegal) while on call or on duty as a certified EMS individual who affects the person's ability to operate or function safely.

(f) failure to comply with the training, licensing, or relicensing requirements for the license or certification;

(g) failure to comply with a contractual agreement as an EMS instructor, a training officer, or a course coordinator. Action taken by the Department on this item shall only be against the individual's ability to perform this particular function and would not affect their base certification;

(h) fraud or deceit in applying for or obtaining a certification;

(i) fraud, deceit, lack of professional competency, patient abuse, or theft in the performance of the duties as a certified EMS individual;

(j) false or misleading information or failure to disclose criminal background information during an investigation or an EMS Personnel Peer Review Board proceeding;

(k) unauthorized use or removal of narcotics, medications, supplies or equipment from a provider, emergency vehicle or health care facility;

(l) performing procedures or skills beyond the level of certification or providers licensure;

(m) violation of laws pertaining to medical practice, drugs, or controlled substances;

(n) mental incompetence as determined by a court of competent jurisdiction;

(o) demonstrated inability and failure to perform adequate patient care;

(p) inability to provide emergency medical services with reasonable skill and safety because of illness, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated;

(q) misrepresentation of an individual's level of certification;

(r) failure of a certified EMS individual to display a clearly identifiable level of medical certification during an EMS response;

(s) unsafe, unnecessary or improper operation of an emergency vehicle that would likely cause concern or create a danger to the general public; or

(t) improper or unnecessary use of emergency equipment.

(5) Background screening referrals may be submitted to the CCEU.

(a) The CCEU shall review any case referred under R426-5-2700.

(b) The CCEU may require the certified EMS individual to provide the proper criminal background documentation.

(c) The certified EMS individual shall notify the CCEU of all entities they work for or are affiliated with or that they may become affiliated with in connection to their EMS certification.

(d) Failure to comply with any CCEU requirements may result in disciplinary action against the certified EMS individual's certification.

(e) The CCEU may negotiate with the certified EMS individual and their primary affiliated provider to determine terms and conditions of the EMS individual's provisional certification.

(i) When the Department determines a certified EMS individual's certification will be restricted, the CCEU shall notify both the certified EMS individual and all providers they are affiliated with.

(ii) Within 2 business days of receiving the complaint or referral, the CCEU will attempt to contact and begin negotiations with the primary affiliated provider and the certified EMS individual. All parties will attempt to determine reasonable terms and conditions to the certified EMS individual's certification that would mitigate the concerns alleged in the complaint or referral.

(iii) If terms and conditions are agreed upon between the parties, the certified EMS individual and all affiliated providers shall be notified immediately. This notification will include that the certified EMS individual is under a provisional certification with terms and conditions until the resolution of any criminal charge or the completion of an investigation.

(iv) If the certified EMS individual is not employed or affiliated with a provider or if terms and conditions are not agreed upon, the CCEU will take action necessary to protect the public's best interest.

(v) The CCEU, the certified EMS individual and the provider, if applicable shall sign the terms of the provisional certification and licensure agreement. Non-licensed providers shall be notified of the provisional certification and its terms and conditions.

(vi) Once the provisional certification has been signed, all known EMS providers who the certified EMS individual is affiliated with will be notified immediately by the CCEU.

(vii) If any affiliated EMS provider or the certified EMS individual fail to abide by the terms and conditions of a provisional certification, both may be subject to sanctions by the Department.

(6) Appeal process;

(a) If a provider chooses to appeal an action by the Department, they may appeal to the EMS Committee or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

(i) If the Department action is appealed to the EMS Committee, then the recommendation shall be given to the Department Executive Director for a final decision.

(b) If a certified EMS individual chooses to appeal an action by the Department, they may appeal to the Executive Director, or pursue a remedy under the Utah Administrative Procedures Act, 63G-4-201.

R426-5-2900. Peer Review Board.

The EMS Personnel Peer Review Board is created under section 26-8a-105(4).

(1) Membership of the EMS Personnel Peer Review Board. The EMS Personnel Peer Review Board shall be composed of the following 15 members appointed by the Executive Director of the Department of Health:

(a) One EMS administrative officer representing a licensed provider from a county of the first or second class;

(b) One EMS administrative officer representing a licensed provider from a county of the third through sixth class;

(c) One educational representative from an accredited EMS training program;

(d) One physician certified and practicing as an EMS Medical Director;

(e) One certified EMD;

(f) Two representatives from professional employee groups, one fire based, and one non-fire based;

(g) Two certified quality assurance/medical training officers;

(h) Two non-supervisory certified EMT's;

(i) Two non-supervisory certified AEMT's;

(j) Two non-supervisory certified Paramedics;

(2) EMS Personnel Peer Review Board member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a six year term beginning no later than October 1, 2015.

(b) The Department shall adjust the length of terms to ensure the terms of members of the board are staggered so approximately one third of the board is appointed every two years.

(c) No member shall serve consecutive full terms.

(d) When a vacancy occurs in the membership of the board for any reason, the Executive Director of the Department shall appoint the replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Personnel Peer Review Board shall organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a board member becomes ineligible for the EMS Personnel Peer Review Board membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Personnel Peer Review Board Meetings.

(a) Regular meetings of the Peer Review Board shall be scheduled quarterly.

(i) Regular meetings shall be noticed and posted to employers and posted in accordance with the Utah Open and Public Meetings Act, Section 52-4-202.

(ii) Failure to attend three or more consecutive meetings by any member may be grounds for removal of that member and replacement in accordance with subsection (2)(d).

(iii) A member may not receive compensation or benefits from the Department for the member's service. The member may receive per diem and travel expensed in accordance with Department rules and policies.

(4) Once a complaint against a certified EMS individual is investigated, the CCEU shall refer the case and provide a report with all findings and recommendations to the EMS Personnel Peer Review Board.

(5) If the EMS Personnel Peer Review Board chooses to recommend any action that deviates from the CCEU recommendation, the board shall provide written justification for that recommendation.

(6) The EMS Personnel Peer Review Board may make recommendations to the Bureau Director, of:

(a) no Department action, or

(b) a letter of notice, or

(c) probation of the certified EMS individual's certification with specific terms and conditions for a period of time, or

(d) suspension of the certified EMS individual's certification for a defined period of time, or

(e) permanent revocation of the certified EMS individual's certification.

(7) If the Department's Bureau Director modifies the recommended action of the EMS Personnel Peer Review Board, the Director shall attach a written letter of dissent noting the reasoning for the decision. The Bureau Director shall then notify the EMS Personnel Peer Review Board of the dissent and action taken.

(8) The certified EMS individual shall be notified by the Department of any action taken within 15 days of the decision by mail.

(9) An action to restrict, place on probation, suspend, or revoke the certified EMS individual's certification shall be done in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

R426-5-3000. EMS Rules Task Force.

The EMS Rules Task Force is created under section 26-8a-105(3).

(1) Membership of the EMS Rules Task Force. The EMS Rules Task Force shall be composed of the following members appointed by the Executive Director of the Department of Health:

(a) a representative from the Utah Fire Chiefs' Association;

(b) a representative from the EMS Directors' Association;

(c) a EMS medical director;

(d) a privately owned EMS representative;

(e) a rural EMS medical dispatch representative;

(f) a paramedic licensed provider representative;

(g) an urban EMS medical dispatch representative;

(h) an Emergency Nurses Association representative;

(i) a course coordinator from an accredited EMS training program;

(j) an EMS training officer;

(k) a representative from the State EMS Committee;

(l) a trauma center representative.

(2) EMS Rules Task Force member terms of office:

(a) Except as provided in subsection (2)(b) members shall be appointed for a three year term.

(b) The Department shall adjust the length of terms to ensure the terms of members of the EMS Rules Task Force are

staggered so approximately one third of the EMS Rules Task Force is appointed every two years.

(c) Members may serve two consecutive full terms.

(d) When a vacancy occurs in the membership for any reason, the Department shall solicit applications for replacement for the balance of the unexpired term. If the balance of the term is greater than 50% of the initial term, then the term shall be considered a full term.

(e) The EMS Rules Task Force may organize and select one of its members as Chair and one of its members as Vice Chair to serve no more than two years in each position.

(f) If a EMS Rules Task Force member becomes ineligible for the EMS Task Force membership position through promotion, an increase in level of certification or transfer out of the employment position which qualified them for the appointment, they shall be replaced at the next two year interval.

(g) An equitable mix of urban and rural members is preferred.

(3) EMS Rules Task Force Meetings.

(a) Regular meetings of the EMS Rules Task Force shall be scheduled as determined by the membership and the Department.

KEY: emergency medical services

Date of Enactment or Last Substantive Amendment: [September 24, 2015]2016

Notice of Continuation: April 26, 2012

Authorizing, and Implemented or Interpreted Law: 26-8a-302

Insurance, Administration **R590-102** Insurance Department Fee Payment Rule

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40272

FILED: 03/18/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to codify new fees passed during recent General Sessions. Captive cell fees were passed in H.B. 24 (2015). Individual and Agency Navigator fees were passed in H.B. 160 (2013). The actuarial review assessment fee was passed in H.B. 128 (2011). The risk Adjustment Program insurer assessment was passed in H.B. 141 (2014).

SUMMARY OF THE RULE OR CHANGE: The rule adopts new fees for captive cells that include an initial renewal, late renewal, and commerce fee; fees for individual navigators and navigator agencies for initial renewal and reinstatement; an annual health insurance actuarial review assessment fee; and a risk adjustment program insurer assessment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-3-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The captive cell initial and renewal fees are \$1,000. Utah currently licenses 83 captive cells for an annual budget of \$83,000. Currently, there are 33 individual navigators whose initial application fee is \$35 a year for an annual budget of \$1,155. Currently, there are 9 agency navigators whose initial application fee is \$40 a year for an annual budget of \$360. The annual health insurance assessment funds the department health actuary and is capped at a total assessment of \$150,000 a year. Currently, the department is not assessing the risk adjustment program fee. The department is still reviewing the impact of a state-based program.

◆ **LOCAL GOVERNMENTS:** None--The fees and assessments included in the rule only impact budgets at the state level.

◆ **SMALL BUSINESSES:** Currently, there are 33 individual navigators whose initial application fee is \$35 a year. Currently, there are 9 agency navigators whose initial application fee is \$40 a year.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals could see a small increase in their insurance premium cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The captive cell initial and renewal fees are \$1,000. Utah currently licenses 83 captive cells. Currently, there are 33 individual navigators whose initial application fee is \$35 a year. Currently, there are 9 agency navigators whose initial application fee is \$40 a year. The annual health insurance assessment funds the department health actuary and is capped at a total assessment of \$150,000 a year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The captive cell fees are the lowest in the nation and will capture the monies required for the department's additional work. The individual navigator and agency navigator license fees are consistent with other similar entities. The annual health insurance assessment is spread amongst all individual and small employer health insurers and provides the department an invaluable resource in the complex regulation of these entities.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-102. Insurance Department Fee Payment Rule.

R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.

- (1) Annual license fees:
 - (a) certificate of authority, initial license application - due with license application: \$1,000;
 - (b) certificate of authority - renewal - due by the due date on the invoice: \$300;
 - (c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: \$350;
 - (d) certificate of authority - reinstatement - due with application for reinstatement: \$1,000.
- (2) Other license fees:
 - (a) certificate of authority - amendments - due with request for amendment: \$250;
 - (b)(i) Form A - application for merger, acquisition, or change of control, due with filing: \$2,000.
 - (ii) Expenses incurred for consultant(s) services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;
 - (c) redomestication filing - due with filing: \$2,000; and
 - (d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: \$1,000.
- (3) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:
 - (a) filing annual statement and report of Utah business - due annually on March 1;
 - (b) filing holding company registration statement - Form B;
 - (c) filing application for material transactions between affiliated companies - Form D;
 - (d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and
 - (e) application for individual license to solicit in accordance with the stock solicitation permit.
- (4) Annual service fee:
 - (a) Due annually by the due date on the invoice.
 - (b) A prescription drug plan is exempted from payment of a service fee.
 - (c) The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation

example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(d) Fee schedule:

(i) \$0 premium volume: no service fee;

(ii) more than \$[zero]0 but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(e) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(f) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

(5) Other fees:

(a) E-commerce fee: (see R590-102-21[8]).

(b) Insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Administrative/Service Fees.

(1) Initial Fee - due with application, alien surplus lines insurers file Utah State Alien Surplus Lines Information Form \$1,000.

(2) Annual Fee - due annually by the due date on the invoice: \$500;

(3) Late annual payment - due for any annual payment paid after the due date on the invoice: \$550;

(4) Reinstatement - due with application, alien surplus insurers submit request for reinstatement: \$1,000;

(5) The initial or annual surplus line fee includes the surplus lines annual statement filing for:

(a) U.S. companies - due annually on May 1; and

(b) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(6) The initial or annual accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(7) The annual fee includes the following services for which no additional fee is required and is paid in advance:

(a) filing of power of attorney; and

(b) filing of registered agent.

(8) Other fees: E-commerce fee: see R590-102-21[8].

R590-102-7. Other Organization Fees.

(1) Annual license fee:

(a) initial - due with application: \$250;

(b) renewal - due annually by the due date on the invoice:

\$200;

(c) late renewal - due for any renewal paid after the date on the invoice: \$250;

(d) reinstatement - due with application for reinstatement: \$250;

(e) The annual other organization initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(2) Annual service fee - due annually by the due date on the invoice: \$200.

(a) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent; and

(iii) rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees: E-commerce fee: see R590-102-21[8].

R590-102-8. Captive Insurer Fees.

(1) Initial license application - due with license application: \$200.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: \$5,000;

(b) renewal - due by the due date on the invoice: \$5,000;

(c) late renewal - due for any renewal paid after the date on the invoice: \$5,050;

(d) reinstatement - due with application for reinstatement: \$5,050.

(4) Other fees:

(a) e-commerce fee: see R590-102-18.

(b) Examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-9. Captive Cell Fees.

(1) Initial license application -- due with license application: \$200.

(2) Annual license fees:

(a) initial -- due by the due date on the invoice: \$1,000;

(b) renewal -- due by the due date on the invoice: \$1,000;

(c) late renewal -- due for any renewal paid after the date on the invoice: \$1,050.

(4) Other fees:

(a) e-commerce fee: see R590-102-21.

(b) Examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-10. Life Settlement Provider Fees.

(1) Annual license fees:

(a) initial - due with application: \$1,000;

(b) renewal - due by the due date on the invoice: \$300;

(c) late renewal - due for any renewal paid after the date on the invoice: \$350;

(d) reinstatement - due with reinstatement application: \$1,000.

(2) Annual service fee - due by the due date on the invoice: \$600.

(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

(3) Other fees:

(a) e-commerce fee: see R590-102-21[8]; and

(b) examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-1[0]1. Professional Employer Organization (PEO) Fees.

(1) Annual license fees:

(a) PEO - not certified by an assurance organization:

(i) initial - due with application: \$2,000;

(ii) renewal - due by the due date on the invoice: \$2,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: \$2,050;

(iv) reinstatement - due with reinstatement application: \$2,050;

(b) PEO - certified by an assurance organization:

(i) initial - due with application: \$2,000;

(ii) renewal - due by the due date on the invoice: \$1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: \$1,050;

(iv) reinstatement - due with reinstatement application: \$1,050;

(c) PEO - small operator:

(i) initial - due with application: \$2,000;

(ii) renewal - due by the due date on the invoice: \$1,000;

(iii) late renewal - due for any renewal paid after the date on the invoice: \$1,050;

(iv) reinstatement - due with reinstatement application: \$1,050.

(5) E-commerce fee: see R590-102-21[8].

R590-102-1[4]2. Individual Resident and Non-Resident License Fees, Other Than Individual Navigators.

(1) Biennial resident and non-resident full-line individual initial license or renewal fee:

(a) initial license fee - due with application: \$70;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$70;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$120.

(2) Biennial resident and non-resident limited-line individual initial or renewal license fee:

(a) initial license fee - due with application: \$45;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$45;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$95.

(3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$25.

(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) individual continuing education services.

(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(6) Other fees:

(a) e-commerce fee: see R590-102-21[8]; and

(b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: \$25.

R590-102-13. Individual Navigator.

(1) Annual individual navigator per annual license period:

(a) initial license fee -- due with application: \$35;

(b) renewal license fee if renewed prior to license expiration date -- due with renewal application: \$35;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date -- due with application for reinstatement: \$60.

(2) The annual initial and renewal individual license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) individual continuing education services.

(3) The annual initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(4) E-commerce fee: see R590-102-21.

R590-102-1[2]4. Agency License Fees, Other than Navigator or Bail Bond Agencies.

(1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: \$75;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$75;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$125;

(d) resident title license:

(i) initial license fee - due with application: \$100;

(ii) renewal license fee, if renewed prior to license expiration date - due with renewal application: \$100.

(iii) reinstatement license fee, if reinstated within one year following the license inactivation date -- due with application for reinstatement: \$150.

(2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$25.

(3) The biennial initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(4) Other fees: E-commerce fee: see R590-102-21[8].

R590-102-15. Navigator Agency.

(1) Annual navigator agency per annual license period:

(a) initial license fee -- due with application: \$40;

(b) renewal license fee if renewed prior to license expiration date -- due with renewal application: \$40;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date -- due with application for reinstatement: \$65.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license -- initial;

(e) filing of producer designation to agency license -- termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(3) E-commerce fee: see R590-102-21.

R590-102-1[3]6. Bail Bond Agency.

(1) Annual bail bond agency per annual license period:

(a) initial license fee - due with application: \$250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(3) E-commerce fee: see R590-102-21[8].

R590-102-1[4]7. Health Insurance Purchasing Alliance.

(1) Annual license fee:

(a) initial - due with application: \$500;

(b) renewal - due by the due date on the invoice: \$500;

(c) late renewal - due for any renewal paid after the date of the invoice: \$550; and

(d) reinstatement - due with application for reinstatement: \$500.

(2) E-commerce fee: see R590-102-21[8].

R590-102-1[5]8. Continuing Education Fees.

(1) Annual continuing education provider license fees per annual license period:

(a) initial license fee - due with application: \$250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$25.

R590-102-1[6]9. Non-electronic Processing or Payment Fees.

(1) Non-electronic filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper non-electronic filing or by the due date on the invoice: \$5.

(2) Non-electronic application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper non-electronic application or by the due date on the invoice: \$25.

(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: \$25.

R590-102-[47]20. Dedicated Fees.

The following are fees dedicated to specific uses:

(1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;

(b) late fee -- due for any fraud assessment fee paid after the due date on the invoice: \$50;

(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;

(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:

(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: \$15;

(b) agency title licensee applicant - due with the initial application: \$1,000;

(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:

(i) Band A: \$0 to \$1 million: \$125;

(ii) Band B: more than \$1 million to \$10 million: \$250;

(iii) Band C: more than \$10 million to \$20 million: \$375;

(iv) Band D: more than \$20 million: \$500;

(4) ~~[relative value study book fee -- due when book purchased or by invoice due date: \$10]~~ annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice;

(5) mailing fee for books - due if book is to be mailed to purchaser: \$3;

(6) fingerprint fee - due with application for individual license:

(a) Bureau of Criminal Investigation (BCI): \$20.00; and

(b) Federal Bureau of Investigation (FBI): ~~[\$16.50]~~14.75;

(7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice due by the due-date on the invoice;

(8) Risk Adjustment Program insurer assessment per covered life per year: \$0.96.

R590-102-~~148~~21. Electronic Commerce Dedicated Fees.

(1) E-commerce and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the initial, annual, renewal, or reinstatement application: \$75;

(b) captive insurer - due with the initial, annual renewal, or reinstatement application: \$250;

(c) other organization, professional employer organization, and life settlement provider - due with the initial, annual renewal, or reinstatement application: \$50;

(d) continuing education provider - due with the initial, annual renewal, or reinstatement application: \$20;

(e) agency - due with the initial, biennial renewal, or reinstatement application: \$10;

(f) health insurance purchasing alliance - due with the initial, annual renewal, or reinstatement application: \$10; and

(g) individual - due with the initial, biennial renewal, or reinstatement application: \$5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: \$3 per transaction;

(b) rate and form filing database access to an electronic public rate and form filing:

(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);

(ii) each line of insurance accessed is charged the following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD - \$45;

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time - \$45;

(iii) additional DVD - \$2;

(iv) payment due at time of service or by the due date on the invoice.

R590-102-~~119~~22. Other Fees.

(1) Photocopy fee - per page: \$.50.

(2) Complete annual statement copy fee - per statement: \$40.

(3) Fee for accepting service of legal process: \$10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: \$1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - \$50, due with request for information;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - \$50, due by the due date on the invoice;

(iii) additional CD - \$1.00, due by the due date on the invoice.

(5) Returned check fee: \$20.

(6) Workers compensation loss cost multiplier schedule: \$5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: \$35.

(8) Independent Review Organization. Initial application fee -- due with application: \$250.

R590-102-2~~10~~3. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

KEY: insurance fees

Date of Enactment or Last Substantive Amendment: ~~[May 14, 2013]~~2016

Notice of Continuation: December 29, 2011

Authorizing, and Implemented or Interpreted Law: 31A-3-103

Insurance, Administration
R590-262
Health Data Authority Health Insurance
Claims Reporting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40273

FILED: 03/18/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update reporting standards as a result of the Supreme Court's ruling on *Gobeille v. Liberty Mutual Insurance Company*.

SUMMARY OF THE RULE OR CHANGE: The rule clarifies that self-funded employer welfare benefit plans no longer have to submit reports under this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-22-614.5(3)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Insurance Department will have very slight savings being that the Department is no longer able to collect data on employer self-funded plans.
- ◆ **LOCAL GOVERNMENTS:** There is no impact on local government because it only affects ERISA plans.
- ◆ **SMALL BUSINESSES:** Small third-party administrators may experience a slight savings being that they no longer will be required to submit data to the insurance department regarding employer self-funded plans.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact on any other persons because the rule change governs the reporting requirement between third-party administrators and state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a very slight reduction in compliance costs for affected persons because of minimal reporting requirements that will no longer be required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The data previously collected by third-party administrators was helpful assessing the market as a whole. However, the *Gobeille v. Liberty Mutual Insurance Company* decision rules that a state may not in any way regulate a self-funded ERISA plan.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.**R590-262. Health Data Authority Health Insurance Claims Reporting.****R590-262-2. Purpose and Scope.**

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936; and

(ii) the electronic commerce agreements established in a business associate agreement;

(b) for the purpose of coordination of health benefit plans; and

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering a health benefit plan.

(b) This rule does not apply to:

(i) an insurer that covers fewer than 2500 individual Utah residents;

(ii) a long-term care insurance policy; or

(iii) an income replacement policy.

(c) This rule does not require a person to provide information concerning a self-funded employee welfare benefit plan as defined in 29 U.S.C. Section 1002(1).

R590-262-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

(2) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires an insurer to report.

(3) "Insurer" means:

(a) a person engaged in the business of offering a health benefit plan, including a business under an administrative services organization or administrative services contract arrangement;

(b) a third party administrator that collects premiums or settles claims for health care insurance policies;

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410(d), Internal Revenue Code; or

(e) a licensed professional employer organization that is acting as an administrator of a health care insurance policy [~~or a health benefit plan funded by a self insurance arrangement~~].

(5) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

KEY: health insurance claims reporting

Date of Enactment or Last Substantive Amendment: [~~October 3, 2012~~]**2016**

Authorizing, and Implemented or Interpreted Law: 31A-22-614.5(3)(a)

Insurance, Administration
R590-266
Utah Essential Health Benefits
Package

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40275

FILED: 03/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make revisions for 2017 plan year and add new definitions and clarifications.

SUMMARY OF THE RULE OR CHANGE: The changes revise the benchmark plan for 2017 plans, provide definitions for the terms "habilitative" and "rehabilitative", and add two clarifying statements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-30-116(3)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The updates are a response to changes required by the Centers for Medicare and Medicaid Services in relation to the Affordable Care Act (ACA). There are no costs because it merely updates and clarifies the existing rule.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The updates are a response to changes required by the Centers for Medicare and Medicaid Services in relation to the ACA. There are no costs because it merely updates and clarifies the existing rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The updates are a response to changes required by the Centers for Medicare and Medicaid Services in relation to the ACA. There are no costs because it merely updates and clarifies the existing rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to any other persons. The updates are a response to changes required by the Centers for Medicare and Medicaid Services in relation to the ACA. There are no costs because it merely updates and clarifies the existing rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the rule merely updates the benchmark plan required by the ACA for insurers to follow from 2017 forward. There are no benefit updates added to the rule that would impact costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses because the rule only brings the benchmark plan into compliance with the ACA. All individual and small group insurers are required to have, at minimum, the same benefit outline set forth in the benchmark plan.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 04/20/2016 11:00 AM, State Office Building, 450 N State Street, Room 3110E, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-266. Utah Essential Health Benefits Package.

R590-266-1. Authority.

This rule is promulgated pursuant to Subsection 31A-30-116(3)(b) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package in Utah as ~~provided~~ required by Section

1302 of the Patient Protection and Affordable Care Act of 2010, [~~as amended by~~]the Health Care Education Reconciliation Act of 2010[~~(ACA)~~], and related federal regulations and guidance (PPACA).

(2) This rule applies to all non-grandfathered individual and small employer health benefit plans issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule:

(1) "Essential health benefits" means the following health care service categories that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014:

- (a) ambulatory patient services;
- (b) emergency services;
- (c) hospitalization;
- (d) maternity and newborn care;
- (e) mental health and substance use disorder services, including behavioral health treatment;
- (f) prescription drugs;
- (g) rehabilitative and habilitative services and devices;
- (h) laboratory services;
- (i) preventive and wellness services and chronic disease management; and

(j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

(a) was in existence when the PPACA was enacted on March 23, 2010;

(b) has not had any significant changes that reduce benefits or increase costs to consumer including:

(i) a significant cut or reduction in benefits, such as excluding coverage for people with diabetes;

(ii) an increase in co-pays by more than \$5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;

(iii) the employer reduces contributions by more than five percentage points; or

(iv) reducing annual dollar limits, or adding a new limit; and

(c) the insured has received notification from the carrier that their health benefit plan is a grandfathered plan.

(3) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living. Habilitative services may include physical therapy, occupational therapy, speech-language pathology, and other services.

(4) "Non-Grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that reduce benefits or increase costs to consumers that has caused the plan to lose the grandfathered status as provided in (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods, to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

([4]6) "Utah Essential Health Benefits Package" means the benefits designated in this rule by the commissioner as essential health benefits in non-grandfathered plans for the purposes of the PPACA in Utah.

R590-266-4. Utah Essential Health Benefits.

(1)(a) The commissioner hereby designates the PEHP Utah Basic Plus plan as the Utah Essential Health Benefits Package for purposes of the PPACA in Utah.

(b) The PEHP Utah Basic Plus 201[2]3 Plan as incorporated herein and available at <http://insurance.utah.gov/health/healthreform.html>.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013. Some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsection (b) and (c), an individual or small employer carrier who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at a minimum the benefits of the Utah Essential Health Benefits Package.

(b) A carrier may substitute coverage provided in the Utah Essential Health Benefits Package as long as substitutions are actuarially equivalent and complies with the standards set forth in 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one carrier offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) This rule does not prohibit an individual or small employer carrier from offering a non-grandfathered plan with benefits in addition to the Utah Essential Health Benefits Package.

R590-266-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-266-6. [Enforcement Date.

~~The commissioner will begin enforcing this rule January 1, 2014.~~

R590-266-7. [Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: essential health benefit insurance

Date of Enactment or Last Substantive Amendment: ~~October 25, 2012~~**2016**

Authorizing, and Implemented or Interpreted Law: 31A-30-116(3)(b)

School and Institutional Trust Lands,
Administration
R850-90-200
Exchange Criteria

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40291

FILED: 03/31/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment will allow the agency greater discretion in accepting cash amounts greater than the current limit of 25% of the asset value when negotiating exchanges.

SUMMARY OF THE RULE OR CHANGE: The current rule limits the amount of cash that the agency may accept in an exchange to 25% of the value of the transaction. This rule amendment will allow the director to make a determination as to whether or not it is in the best interest of the trust beneficiary to accept cash in an amount that exceeds the 25% limit when negotiating an exchange.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53C-1-302(1)(a)(ii) and Subsection 53C-4-101(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It is not anticipated that there will be either a cost or savings to the state budget as a result of this rule amendment because the combination of cash and other assets received by the agency in an exchange must still equal the value of the asset being exchanged.
- ◆ **LOCAL GOVERNMENTS:** It is not anticipated that there will be either a cost or savings to local government as a result of this rule amendment as the combination of cash and other assets offered by the local government in an exchange must still equal the total value of the asset being traded.
- ◆ **SMALL BUSINESSES:** It is not anticipated that there will be either a cost or savings to small businesses as a result of this rule amendment. The combination of cash and other assets offered by a small business in an exchange must still equal the total value of the asset being exchanged.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is not anticipated that there will be either a cost or savings to persons other than small businesses, businesses, or local government entities as a result of this rule amendment. The combination of cash and other assets offered by a "person" in an exchange must still equal the total value of the asset being traded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should not be any additional compliance costs for affected persons beyond those that already exist. The amendment to this rule only removes the limitation of the amount of cash that the agency is able to accept towards the full value of the assets being offered in the exchange.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will not have any impact on businesses as the total asset value of the exchange remains the same.

Only the ratio of the amount of cash the agency may accept as part of the total asset value has increased.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2016

THIS RULE MAY BECOME EFFECTIVE ON: 05/23/2016

AUTHORIZED BY: David Ure, Director

R850. School and Institutional Trust Lands, Administration.**R850-90. Land Exchanges.****R850-90-200. Exchange Criteria.**

[1-] The agency may exchange trust land for land and other assets which the director finds suitable and [or other assets] of equal or greater value and utility. ~~The criteria by which an exchange proposal will be considered follows:~~

~~(a) Asset is herein defined as personal property, including cash, which has a readily determined market value.~~

~~(b) The percentage of cash which may be included in an exchange transaction shall not exceed 25% of the value.~~

[2]1. Exchanges must clearly be in the best interest of the appropriate trust as documented in [the records of the agency] a director's finding. The ~~record~~ finding shall address:

(a) the appraised value of affected lands [or] and other assets and the amount of cash involved;

(b) the [degree to which there is reasonable assurance] likelihood that the acquired land [or other asset may] and other assets will provide income in excess of that being generated from existing trust land;

(c) [the likelihood of greater revenue flowing to the appropriate trust from sale of fee or leasehold estates in] an analysis of the revenue potential of the existing trust land; and

(d) potential management and administrative costs and opportunities.

[3]2. The ~~record~~ finding shall verify that the exchange will not result in an unmanageable and/or uneconomical parcel of trust land, nor eliminate access to a remnant holding, without appropriate remuneration or compensation.

3. The percentage of cash which may be included in an exchange shall not exceed 25% of the value of the trust land involved unless the director has determined that a higher percentage is in the best interests of the trust beneficiary.

KEY: land exchange, administrative procedures

Date of Enactment or Last Substantive Amendment: [~~November 1, 2002~~] May 23, 2016

Notice of Continuation: January 12, 2012

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1); 53C-4-102

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Education, Administration **R277-752** Adult Students with Disabilities and Informed Consent

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40274

FILED: 03/18/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures for: 1) determining of an adult student's ability to make informed consent in the student's educational program; and 2) appointing a parent of an adult student with a disability, a former surrogate parent, or another appropriate official to represent the interests of an adult student with a disability throughout the student's eligibility for IDEA services.

SUMMARY OF THE RULE OR CHANGE: The rule provides definitions, as well as procedures for transfer of rights to informed consent, for determining ability to provide informed consent and appointment of an educational representative, and for applicability of rule to adult students with disabilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 20 U.S.C. 1415(m)(2) and 34 CFR 300.520(b) and Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(c)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: 20 U.S.C. 1415(m)(2) requires the state to establish procedures for appointing the parent of a child or other individual to represent certain adult students with disabilities throughout the student's eligibility for IDEA services.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This new rule provides procedures regarding adult students with disabilities and informed consent, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** An LEA may be required to update special education policies and procedures, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** This new rule provides procedures regarding adult students with disabilities and informed consent, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new rule provides procedures regarding adult students with disabilities and informed consent, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new rule provides procedures regarding adult students with disabilities and informed consent, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from the amendments to the rule.

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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

EFFECTIVE: 03/18/2016

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

R277. Education, Administration.

R277-752. Adult Students with Disabilities and Informed Consent.

R277-752-1. 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;
- (b) Subsection 53A-1-402(1)(c), which directs the Board to adopt rules regarding services to students with disabilities;
- (c) Section 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities;
- (d) the Individuals with Disabilities Education Act, 20 U.S.C. 1415(m)(2); and
- (e) 34 CFR 300.520(b).
- (2) The purpose of this rule is:
- (a) to adopt procedures for determination of an adult student's ability to make informed consent in the student's educational program;
- (b) to adopt procedures for appointing a parent of an adult student with a disability, or if a parent is not available and willing, a former surrogate parent or another appropriate individual to represent the educational interests of the adult student with a disability throughout the period of IDEA eligibility; and

(c) not to replace the other legal options for participating in the decision making process for an adult student with a disability's education program.

R277-752-2. Definitions.

- (1) "Adult student with a disability" means:
- (a) a student who has reached the age of majority; and
- (b) meets eligibility criteria for special education and related services, as defined in Board special education rules.
- (2) "Age of majority" means age 18 or over for a student with a disability who has not been determined to be incompetent under state law.
- (3) "Educational representative" means a person who:
- (a) represents the educational interests of an adult student with a disability throughout the period of IDEA eligibility; and
- (b) is appointed as described in Subsection R277-752-4(8).
- (4) "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.
- (5) "Informed consent" means that an adult student with a disability, the student's parent, or other appropriate individual has:
- (a) all information relevant to the activity for which consent is sought in the student's native language or other mode of communication;
- (b) understands and agrees in writing to the carrying out of the activity for which the student's consent is sought, and the consent describes that activity unless the records, if any, that will be released and to whom;
- (c) understands that the granting of consent is voluntary on the part of the student and may be revoked at any time;
- (d) understands that revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked;
- (e) understands the revocation of consent for the student's receipt of special education and related services must be in writing with the LEA providing accommodations to accomplish a revocation in writing; and
- (f) understands the LEA is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.
- (6) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (7) "Notice of Transfer of Rights" means the notification an LEA must provide to an adult student with a disability and the adult student's parent when the adult student reaches the age of majority.
- (8) "Surrogate parent" means an individual formerly assigned to act as a parent for a student with a disability as required in Board special education rules.

R277-752-3. Notice of Transfer of Rights.

- (1) An LEA shall provide a Notice of Transfer of Rights to both an adult student with a disability and either the parents, former surrogate parents, or guardians of an adult student with a disability within a reasonable time after an adult student with a disability reaches the age of majority, but no less than 30 days before a student's next annual IEP.

(2) A Notice of Transfer of Rights shall include:

(a) notice that an adult student with a disability has reached the age of majority causing the rights of parents or former surrogate parents under the IDEA to transfer to the adult student with a disability; and

(b) a copy to the adult student with a disability the procedural safeguards;

(c) a description of the rights transferred to an adult student with a disability based upon the LEA's policy;

(3) Based upon LEA policy, a Notice of Transfer of Rights may include:

(a) options for an adult student with a disability and parents that may include:

(i) limited power of attorney;

(ii) guardianship; or

(iii) a determination by two or more professionals' written certification that the professional determined the adult student with a disability lacks the ability to provide informed consent with respect to the student's education program pursuant to R277-752;

(b) copies of forms to facilitate options identified in Subsection R277-752-3(3)(a), which may be created by the Board's office;

(c) links to resources; and

(d) any other information an LEA deems appropriate to assist the adult student with a disability and parent, former surrogate parent, or guardian.

R277-752-4. Procedure for Determining Ability to Provide Informed Consent and Appointment of Educational Representative.

(1) An adult student with a disability is presumed to be capable of making the student's own decisions.

(2) In accordance with the requirements of Subsection (3), the presumption in Subsection (1) is rebuttable if an adult student with a disability is determined by two or more professionals' written certification, to lack the ability to provide informed consent with respect to the student's educational program.

(3) To rebut the presumption, as described in Subsection(2), at least one professional from each of the following two lists shall determine whether an adult student with a disability lacks the ability to provide informed consent with respect to the student's educational program:

(a) at least one of the following:

(i) a medical doctor licensed in the state where the doctor practices medicine;

(ii) a physician's assistant whose certification is countersigned by a supervising physician meeting the criteria specified in Subsection (3)(a)(i); or

(iii) a certified nurse practitioner; and

(b) at least one of the following:

(i) a licensed clinical psychologist;

(ii) a licensed clinical social worker;

(iii) an attorney who is qualified to serve as a guardian ad litem for adults; or

(iv) a court-appointed special advocate for the adult student with a disability.

(4) A written certification described in Subsection (2) shall include at least the following:

(a) name of the adult student with a disability being evaluated;

(b) name of the professional examining, observing, or interviewing the adult student with a disability;

(c) professional degree or license that demonstrates that the professional qualifies to make the determination and certification;

(d) statements that demonstrate the professional's determination:

(i) is based upon personal examination, observation, or interview of the adult student with a disability as necessary to determine the student's ability or lack thereof to provide an informed consent with respect to the student's educational program;

(ii) is supported by specific factual information or data obtained in the personal examination, observation, or interview of the adult student with a disability;

(iii) that the adult student with a disability lacks the ability to provide an informed consent with respect to the student's education program;

(iv) that the professional informed the adult student with a disability of the professional's determination verbally or in writing;

(v) of how often a review of the adult student with a disability's lack of ability to provide informed consent shall be made, and why, but which may not be less than annually;

(e) a declaration that the professional has read and understands:

(i) all parts of the determination process; and

(ii) the professional's duty to determine the adult student with a disability's ability to provide informed consent with respect to the student's educational program under the IDEA based upon examination, observation, or interview of the adult student with a disability;

(f) the signature of the professional;

(g) the title of the professional;

(h) the address and email of the professional;

(i) the phone number of the professional;

(j) a witness's signature;

(k) the witness's address or email; and

(l) the witness's phone number.

(5) A professional who provides a written certification described in Subsection (2) may not:

(a) be an employee of the LEA currently serving the adult student with a disability; or

(b) be related by blood or marriage to the adult student with a disability.

(6) A professional determination certifying an adult student with a disability is incapable of providing informed consent may be made as early as 60 calendar days prior to the adult student with a disability's age of majority or within a reasonable time for the parent, former surrogate parent, or other appropriate individual to represent the educational interests of the adult student with a disability by participating in the annual IEP meeting.

(7) An individual who seeks to have a determination and certification made by two or more professionals as described in this R277-752-3 shall:

(a) be responsible to pay the costs for the professional's examination, observation, or interview of the adult student with a disability; and

_____ (b) provide the professional determination and certifications to the LEA and anyone with priority described in Subsection (8) at least 10 days before the IEP meeting.

_____ (8) Upon receiving two or more professional certifications of determination that an adult student with a disability lacks the ability to provide informed consent with respect to the student's education program, the LEA shall appoint an educational representative in the following order:

_____ (a) first, the spouse of an adult student with a disability if married;

_____ (b) if there is no spouse or the spouse is unavailable or unwilling, then the parents of the adult student with a disability;

_____ (c) if the parents are unavailable or unwilling, then a former surrogate parent; or

_____ (d) if there is no former surrogate parent or the former surrogate parent is unavailable or unwilling, then another appropriate individual under the circumstances.

_____ (9)(a) Recertification of an adult student with a disability's inability to provide informed consent shall occur at least 45 days before the annual IEP team meeting where the adult student with a disability's educational program will be discussed and consented to for the next year.

_____ (b) The recertification process shall consist of all requirements as set forth in these procedures for certification.

_____ (10) A professional's determination and certification, or the LEA's appointment of an educational representative may be challenged by one of the following individuals subject to the following priority:

_____ (a) a court appointed guardian;

_____ (b) the adult student with a disability;

_____ (c) the spouse of the adult student with a disability;

_____ (d) a parent of the adult student with a disability;

_____ (e) the nearest living relative of the adult student with a disability;

_____ (f) a person who:

_____ (i) is seeking guardianship of the adult student with a disability; and

_____ (ii) has provided a copy of the guardianship documents filed in court; or

_____ (g) any individual with a bona fide interest in and knowledge of the adult student with a disability's ability to consent to the student's educational program.

_____ (11)(a) A challenge to a professional determination and certification or the LEA's appointment of an educational representative shall be provided in writing to the LEA.

_____ (b) If a person making a challenge is unable to provide the challenge in writing, an LEA shall:

_____ (i) obtain information related to the challenge described in Subsection (11)(a) from the person making the challenge; and

_____ (ii) complete the written challenge for the person.

_____ (c) If a person making a challenge described in Subsection (11)(a) uses alternative communication, an LEA shall reasonably accommodate the person to obtain the challenge in writing.

_____ (12) Upon receiving a challenge described in Subsection (11)(a), an LEA shall provide the following to the adult student with a disability and the student's educational representative:

_____ (a) a copy of the challenge described in Subsection (11); and

_____ (b) notice of action the LEA will take, which may include:

_____ (i) the transfer of all educational rights back to the adult student with a disability;

_____ (ii) holding an IEP meeting for the purpose of compliance with IDEA with the adult student with a disability and the individual with priority described in Subsection (10); or

_____ (iii) any other action the LEA will take while the challenge is resolved through the process set forth in Board special education rules.

R277-752-5. Applicability of Rule to Adult Students with Disabilities.

_____ (1) This rule only applies if:

_____ (a) the presumption that an adult student with a disability is capable of making the student's own decisions is rebutted as set forth in R277-752-4; and

_____ (b) the adult student with a disability has not been determined to be incompetent by a court.

_____ (2) This rule does not apply if:

_____ (a) there is a valid limited power of attorney, that is signed by the adult student with a disability and a parent or other appropriate individual, to allow the parent or other appropriate individual to represent the educational interests of the adult student with a disability throughout the IDEA eligibility period; or

_____ (b) there is a court-issued guardianship decree that provides that the guardian will represent the educational interests of the adult student with a disability throughout the IDEA eligibility period.

KEY: special education

Date of Enactment of Last Substantive Amendment: March 18, 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c); 53A-1-401(3); 20 U.S.C. 1415(m)(2); 34 CFR 300.520(b)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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 <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Regulatory Services **R70-330** Raw Milk for Retail

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40268
FILED: 03/16/2016

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 4-3-2 authorizes the department to make rules regulating the sale of raw milk. The statute requires the department to make rules regarding the sale of raw whole milk at a self-owned retail store.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of 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 rule sets out the permitting, building, labeling, and sanitation requirements for a person engaged in the sale of raw milk. This rule provides for testing of the product and inspection by a state regulatory agency (Utah Department of Agriculture and Food) to make sure that the milk sold is safe for human consumption. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
♦ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 03/16/2016

Agriculture and Food, Regulatory Services **R70-370** Butter

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40270
FILED: 03/16/2016

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 4-3-2 authorizes the department to make rules for the enforcement of the Dairy Act. The Utah Dairy Act (Title 4, Chapter 3) requires that rules be made regarding the manufacturing, distribution, and processing of butter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of 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 rule sets out the requirements for the manufacturing of butter and similar products, such as whipped butter. The manufacturing facility must be suitable, and the process must ensure a safe product, and this can only be accomplished if facilities are under inspection by a designated regulatory facility. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
- ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 03/16/2016

**Agriculture and Food, Regulatory
Services
R70-380**

**Grade A Condensed and Dry Milk
Products and Condensed and Dry
Whey**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40269
FILED: 03/16/2016**

**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 4-3-2 authorizes the department to make rules for the enforcement of the Dairy Act. The Utah Dairy Act (Title 4, Chapter 3) requires that rules be made regarding the manufacturing, distribution and processing of dairy products.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the department since the last five-year review of 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 sets forth the oversight requirements for the Utah Department of Agriculture and Food to ensure the safe, sanitary manufacture of Grade A condensed and dry milk and condensed and dry whey products. This includes appropriate facilities and proper processing procedures to ensure the safety of the end consumer. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov
- ◆ Travis Waller by phone at 801-538-7150, by FAX at 801-538-7124, or by Internet E-mail at twaller@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 03/16/2016

**Commerce, Administration
R151-14**

New Automobile Franchise Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40293
FILED: 03/31/2016**

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In accordance with the New Automobile Franchise Act, Title 13, Chapter 14, this rule governs adjudicative proceedings before the Utah Motor Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce and is adopted under the authority of Subsection 13-14-104(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: 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 governs adjudicative proceedings before the Board and the Commerce Department executive director. The rule is still needed because these proceedings still take place. Therefore, this rule should be continued.

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

COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gregory Soderberg by phone at 801-530-6706, or by Internet E-mail at gsoderberg@utah.gov

AUTHORIZED BY: Thomas Brady, Deputy Director

EFFECTIVE: 03/31/2016

Education, Administration

R277-482

Charter School Timelines and Approval Processes

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40284
FILED: 03/30/2016

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: Article X, Section 3, vests general control and supervision of public education in the Board; Subsection 53A-1-401(3) authorizes the Board to adopt rules in accordance with its responsibilities; Section 53A-1a-504 requires the Board to make rules regarding a charter school expansion or satellite campus; and Sections 53A-1a-505, 53A-1a-515, and 53A-1a-521 require the Board to make a rule providing a timeline for the opening of a charter school.

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 R277-482 continues to be necessary because it establishes procedures for timelines and approval processes for charter 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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 03/30/2016

Education, Administration

R277-505

Administrative License Areas of Concentration and Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40285
FILED: 03/30/2016

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: Article X, Section 3, vests general control and supervision of public education in the Board; Section 53A-6-104, permits the Board to issue certificates for educators; and Subsection 53A-1-401(3) 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 comment has 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 R277-505 continues to be necessary because it provides standards and procedures for district-specific and charter school-specific administrative license areas of concentration. 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 Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

AUTHORIZED BY: Angela Stallings, Associate Superintendent, Policy and Communication

EFFECTIVE: 03/30/2016

Insurance, Administration
R590-260
Utah Defined Contribution Risk
Adjuster Plan of Operation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40271
FILED: 03/18/2016

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 31A-42-204 states that the commissioner shall approve the plan of operation created by the Risk Adjuster Board if it is consistent with Title 31A, Chapter 42, and is a reasonable administration of the risk adjuster.

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 rule was recently updated, and no written comments were received during that process or previous to it.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule adopts the Risk Adjuster Board Plan of Operation, which details business rules for Avenue H transitional plans. Therefore, this rule should be continued. The board is set to expire 12/31/2018.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ 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: 03/18/2016

Public Service Commission,
Administration
R746-409
Pipeline Safety

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40292
FILED: 03/31/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 54-13-2 and 54-13-3 require the Public Service Commission (PSC) to establish pipeline safety standards and to adopt and enforce rules incorporating the Natural Gas Pipeline Safety Act. Rule R746-409 adopts safety rules and incorporates by reference 49 CFR Parts 190, 191, 192, 198, and 199, which implement requirements of the Natural Gas Pipeline Safety Act. This rule was recently amended to: 1) update the date of the referenced U.S. Department of Transportation pipeline safety regulations to 09/01/2015; 2) identify that penalties for violations of Pipeline Safety regulations fall under the jurisdiction of Title 54, Chapter 13, Part 8; 3) delete unnecessary and duplicative requirements; and 4) consolidate, update, and clarify reporting and operating requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been submitted in the last five years. However this rule was recently amended; as a result comments were received from Questar Gas and the Division of Public Utilities. Questar was supportive of the amendment but recommended modifications or rewording in Sections R746-409-2, R746-409-3, and R746-409-4. The Division of Public Utilities also

supported the amendment but recommended changes to Subsection R746-409-4(B)(2).

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to comply with Section 54-13-2 and 54-13-3. As noted above, these statutes require the PSC to establish pipeline safety standards and to adopt and enforce rules incorporating the Natural Gas Pipeline Safety Act. Therefore, this rule should be continued.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
- ♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 03/31/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

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 Division 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.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Center for Health Data, Health Care Statistics

No. 40170 (AMD): R428-1. Health Data Plan and Incorporated Documents

Published: 02/15/2016

Effective: 03/25/2016

Commerce

Occupational and Professional Licensing

No. 40164 (AMD): R156-55d. Burglar Alarm Licensing Rule

Published: 02/15/2016

Effective: 03/24/2016

No. 40171 (AMD): R428-2. Health Data Authority Standards for Health Data

Published: 02/15/2016

Effective: 03/25/2016

Health

Child Care Center Licensing Committee

No. 40163 (AMD): R381-60. Hourly Child Care Centers

Published: 02/15/2016

Effective: 03/30/2016

No. 40172 (R&R): R428-10. Health Data Authority Hospital Inpatient Reporting Rule

Published: 02/15/2016

Effective: 03/25/2016

No. 40162 (AMD): R381-70. Out of School Time Child Care Programs

Published: 02/15/2016

Effective: 03/30/2016

No. 40173 (REP): R428-11. Health Data Authority Ambulatory Surgical Data Reporting Rule

Published: 02/15/2016

Effective: 03/25/2016

No. 40161 (AMD): R381-100. Child Care Centers

Published: 02/15/2016

Effective: 03/30/2016

No. 40174 (AMD): R428-13. Health Data Authority. Audit and Reporting of Health Plan Performance Measures

Published: 02/15/2016

Effective: 03/25/2016

Health Care Financing, Coverage and Reimbursement Policy

No. 40180 (AMD): R414-2B. Inpatient Hospital Intensive Physical Rehabilitation Services

Published: 02/15/2016

Effective: 04/01/2016

No. 40179 (AMD): R428-15. Health Data Authority Health Insurance Claims Reporting

Published: 02/15/2016

Effective: 03/25/2016

Family Health and Preparedness, Emergency Medical Services

No. 40178 (AMD): R426-7. Emergency Medical Services Prehospital Data System Rules

Published: 02/15/2016

Effective: 03/25/2016

Family Health and Preparedness, Child Care Licensing

No. 40160 (AMD): R430-50. Residential Certificate Child Care

Published: 02/15/2016

Effective: 03/30/2016

No. 40159 (AMD): R430-90. Family Licensed Child Care
Published: 02/15/2016
Effective: 03/30/2016

Insurance

Administration

No. 40182 (AMD): R590-167-11. Actuarial Certification and
Additional Filing Requirements
Published: 02/15/2016
Effective: 03/23/2016

No. 40005 (REP): R590-212. Requirements for Interest
Bearing Accounts Used by Title Insurance Agencies for Trust
Fund Deposits
Published: 01/15/2016
Effective: 03/16/2016

No. 40155 (AMD): R590-220-16. Classification of
Documents
Published: 02/15/2016
Effective: 03/23/2016

No. 40156 (AMD): R590-226. Submission of Life Insurance
Filings
Published: 02/15/2016
Effective: 03/23/2016

No. 40157 (AMD): R590-227. Submission of Annuity Filings
Published: 02/15/2016
Effective: 03/23/2016

No. 40158 (AMD): R590-228-9. Correspondence and Status
Checks
Published: 02/15/2016
Effective: 03/23/2016

Title and Escrow Commission

No. 40006 (NEW): R592-17. Requirements for Interest
Bearing Accounts Used by Title Insurance Agencies for Trust
Fund Deposits
Published: 01/15/2016
Effective: 03/16/2016

Natural Resources

Water Rights

No. 40169 (AMD): R655-10-5A. Hazard Classification --
Criteria
Published: 02/15/2016
Effective: 03/24/2016

No. 40175 (AMD): R655-11. Requirements for the Design,
Construction and Abandonment of Dams
Published: 02/15/2016
Effective: 03/24/2016

No. 40176 (AMD): R655-12. Requirements for Operational
Dams
Published: 02/15/2016
Effective: 03/24/2016

Public Safety

Driver License

No. 40140 (REP): R708-16. Pedestrian Vehicle Rule
Published: 02/15/2016
Effective: 03/24/2016

Public Service Commission

Administration

No. 39934 (AMD): R746-409. Pipeline Safety
Published: 12/01/2015
Effective: 03/30/2016

No. 39934 (CPR): R746-409. Pipeline Safety
Published: 02/01/2016
Effective: 03/30/2016

School and Institutional Trust Lands

Administration

No. 40185 (AMD): R850-30-400. Special Use Leases
Published: 02/15/2016
Effective: 03/23/2016

Workforce Services

Employment Development

No. 40104 (AMD): R986-700. Child Care Assistance
Published: 02/01/2016
Effective: 04/01/2016

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2016 through April 01, 2016. 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 Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
<u>Finance</u>					
R25-7-10	Reimbursement for Transportation	40042	AMD	02/23/2016	2016-2/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
<u>Purchasing and General Services</u>					
R33-6-114	Technology Acquisitions for Executive Branch Procurement Units	40048	AMD	02/23/2016	2016-2/6
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	40234	5YR	02/29/2016	2016-6/27
R51-4	ADA Complaint Procedure	40235	5YR	02/29/2016	2016-6/27
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
<u>Marketing and Development</u>					
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28
<u>Plant Industry</u>					
R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	2016-5/23
R68-7	Utah Pesticide Control Rule	40232	5YR	02/29/2016	2016-6/28
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	2016-5/23
<u>Regulatory Services</u>					
R70-330	Raw Milk for Retail	40268	5YR	03/16/2016	Not Printed
R70-370	Butter	40270	5YR	03/16/2016	Not Printed
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40269	5YR	03/16/2016	Not Printed
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77

R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507
COMMERCE					
<u>Administration</u>					
R151-4	Department of Commerce Administrative Procedures Act Rule	40265	5YR	03/15/2016	2016-7/63
R151-14	New Automobile Franchise Act Rule	40293	5YR	03/31/2016	Not Printed
<u>Occupational and Professional Licensing</u>					
R156-3a	Architect Licensing Act Rule	40058	5YR	01/07/2016	2016-3/507
R156-9a	Uniform Athlete Agents Act Rule	40071	5YR	01/07/2016	2016-3/508
R156-26a	Certified Public Accountant Licensing Act Rule	39982	AMD	02/11/2016	2016-1/4
R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
R156-46b	Division Utah Administrative Procedures Act Rule	40052	5YR	01/05/2016	2016-3/509
R156-47b	Massage Therapy Practice Act Rule	40000	AMD	03/08/2016	2016-2/8
R156-55c	Plumber Licensing Act Rule	40131	NSC	02/02/2016	Not Printed
R156-55d	Burglar Alarm Licensing Rule	40164	AMD	03/24/2016	2016-4/10
R156-60b-102	Definitions	39924	AMD	01/07/2016	2015-23/12
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39911	AMD	01/07/2016	2015-23/14
R156-60d	Substance Use Disorder Counselor Act Rule	40055	5YR	01/05/2016	2016-3/509
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	2016-5/24
R156-69	Dentist and Dental Hygienist Practice Act Rule	40150	5YR	01/21/2016	2016-4/77
R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	2016-5/25
R156-78-102	Definitions	39912	AMD	01/07/2016	2015-23/16
R156-82-201	Security	39980	AMD	02/08/2016	2016-1/12
<u>Real Estate</u>					
R162-2f	Real Estate Licensing and Practices Rules	40041	AMD	02/23/2016	2016-2/11
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<u>Administration</u>					
R277-99-2	Definitions	40247	NSC	03/29/2016	Not Printed
R277-107-6	Public Education Employees	40248	NSC	03/29/2016	Not Printed
R277-207	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	39837	NEW	01/11/2016	2015-21/17
R277-402-4	LEA Responsibilities	40249	NSC	03/29/2016	Not Printed
R277-404	Requirements for Assessments of Student Achievement	40097	NSC	02/02/2016	Not Printed
R277-482	Charter School Timelines and Approval Processes	40284	5YR	03/30/2016	Not Printed
R277-494	Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities	40098	AMD	03/09/2016	2016-3/6
R277-497	School Grading System	39984	AMD	02/08/2016	2016-1/13
R277-505	Administrative License Areas of Concentration and Programs	40285	5YR	03/30/2016	Not Printed
R277-507-1	Definitions	40250	NSC	03/29/2016	Not Printed
R277-510	Educator Licensing - Highly Qualified Assignment	40099	5YR	01/14/2016	2016-3/510
R277-510	Educator Licensing - Highly Qualified Assignment	40100	AMD	03/09/2016	2016-3/8
R277-616-3	Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School	40251	NSC	03/29/2016	Not Printed
R277-700-7	Student Mastery and Assessment of Core Standards	40252	NSC	03/29/2016	Not Printed
R277-702-4	Eligibility for GED Testing	40253	NSC	03/29/2016	Not Printed

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R277-705	Secondary School Completion and Diplomas	39936	AMD	01/07/2016	2015-23/17
R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	2016-5/25
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-752	Adult Students with Disabilities and Informed Consent	40274	EMR	03/18/2016	Not Printed
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20

Rehabilitation

R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40102	AMD	03/09/2016	2016-3/11

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R307-101-2	Definitions	39994	AMD	03/03/2016	2016-1/21
R307-104	Conflict of Interest	39995	NEW	03/03/2016	2016-1/28
R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46
R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-351-4	Standards for Rotogravure, Flexographic, and Specialty Printing Operations	40225	NSC	03/11/2016	Not Printed
R307-403-2	Applicability	40193	NSC	02/25/2016	Not Printed
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
R307-415-3	Definitions	39847	AMD	02/04/2016	2015-21/50

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R313-19-34	Terms and Conditions of Licenses	39990	AMD	03/15/2016	2016-1/32
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	39992	AMD	03/15/2016	2016-1/38

Waste Management and Radiation Control, Radiation

R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-21	General Licenses	40008	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	40009	NSC	01/15/2016	Not Printed
R313-26	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities	40259	5YR	03/10/2016	2016-7/63
R313-27	Medical Use Advisory Committee	40230	NSC	03/08/2016	Not Printed
R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed

Waste Management and Radiation Control, Waste Management

R315-15	Standards for the Management of Used Oil	40260	5YR	03/10/2016	2016-7/64
R315-17	End of Life Automotive Mercury Switch Removal Standards	40261	5YR	03/10/2016	2016-7/65
R315-101	Cleanup Action and Risk-Based Closure Standards	40262	5YR	03/10/2016	2016-7/65
R315-102	Penalty Policy	40263	5YR	03/10/2016	2016-7/66

Water Quality

R317-1-3	Requirements for Waste Discharges	39981	AMD	02/25/2016	2016-1/40
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FAIR CORPORATION (UTAH STATE)

Administration

R325-1	Utah State Fair Competitive Exhibitor Rules	40220	5YR	02/23/2016	2016-6/29
R325-2	Utah State Fair Commercial Exhibitor Rules	40221	5YR	02/23/2016	2016-6/30

R325-3	Utah State Fair Patron Rules	40222	5YR	02/23/2016	2016-6/30
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	40223	5YR	02/23/2016	2016-6/31
R325-5	Interim Renters Rules (Other Than Utah State Fair)	40224	5YR	02/23/2016	2016-6/32

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R331-26	Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	40139	5YR	01/15/2016	2016-3/511
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GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	39964	AMD	02/10/2016	2015-24/14
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Economic Development

R357-13	Hotel Convention Center Incentive	40027	NEW	03/14/2016	2016-2/76
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HEALTH

Administration

R380-40	Local Health Department Minimum Performance Standards	40049	AMD	03/02/2016	2016-2/79
R380-60	Local Health Department Emergency Protocols	39879	AMD	01/20/2016	2015-22/32

Center for Health Data, Health Care Statistics

R428-1	Health Data Plan and Incorporated Documents	40170	AMD	03/25/2016	2016-4/37
R428-2	Health Data Authority Standards for Health Data	40171	AMD	03/25/2016	2016-4/38
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	40172	R&R	03/25/2016	2016-4/43
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	40173	REP	03/25/2016	2016-4/45
R428-13	Health Data Authority, Audit and Reporting of Health Plan Performance Measures	40174	AMD	03/25/2016	2016-4/47
R428-15	Health Data Authority Health Insurance Claims Reporting	40179	AMD	03/25/2016	2016-4/48

Center for Health Data, Vital Records and Statistics

R436-13	Disclosure of Records	39817	AMD	02/17/2016	2015-21/88
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Child Care Center Licensing Committee

R381-60	Hourly Child Care Centers	39902	AMD	01/31/2016	2015-22/34
R381-60	Hourly Child Care Centers	40163	AMD	03/30/2016	2016-4/15
R381-70	Out of School Time Child Care Programs	39898	AMD	01/31/2016	2015-22/40
R381-70	Out of School Time Child Care Programs	40162	AMD	03/30/2016	2016-4/20
R381-100	Child Care Centers	39896	AMD	01/31/2016	2015-22/45
R381-100	Child Care Centers	40161	AMD	03/30/2016	2016-4/24

Disease Control and Prevention, Epidemiology

R386-702	Communicable Disease Rule	39952	AMD	02/11/2016	2015-24/17
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Family Health and Preparedness, Child Care Licensing

R430-50	Residential Certificate Child Care	39897	AMD	01/31/2016	2015-22/52
R430-50	Residential Certificate Child Care	40160	AMD	03/30/2016	2016-4/49
R430-90	Licensed Family Child Care	39895	AMD	01/31/2016	2015-22/57
R430-90	Family Licensed Child Care	40159	AMD	03/30/2016	2016-4/53

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Family Health and Preparedness, Emergency Medical Services

R426-7 Emergency Medical Services Prehospital Data System Rules 40178 AMD 03/25/2016 2016-4/33

Family Health and Preparedness, Licensing

R432-100 General Hospital Standards 39963 AMD 02/10/2016 2015-24/29
 R432-270 Assisted Living Facilities 39966 AMD 01/28/2016 2015-24/41

Family Health and Preparedness, Primary Care and Rural Health

R434-50 Assistance for People with Bleeding Disorders 40240 5YR 03/01/2016 2016-6/32

Health Care Financing

R410-14 Administrative Hearing Procedures 39983 R&R 02/10/2016 2016-1/43

Health Care Financing, Coverage and Reimbursement Policy

R414-1-5 Incorporations by Reference 40043 AMD 03/08/2016 2016-2/85
 R414-1A Medicaid Policy for Experimental, Investigational or Unproven Medical Practices 39985 AMD 03/08/2016 2016-1/56
 R414-2B Inpatient Hospital Intensive Physical Rehabilitation Services 40180 AMD 04/01/2016 2016-4/30
 R414-303-8 Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents 40040 AMD 03/08/2016 2016-2/89
 R414-320 Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver 40181 5YR 02/01/2016 2016-4/78
 R414-512 Use of Extrapolation in Provider Audits 39914 NEW 01/11/2016 2015-23/20

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R455-6 State Register for Historic Resources and Archaeological Sites 40187 5YR 02/02/2016 2016-5/26
 R455-9 Board of State History as the Cultural Sites Review Committee Review Board 40186 5YR 02/02/2016 2016-5/27

Indian Affairs

R456-1 Native American Grave Protection and Repatriation 40137 5YR 01/14/2016 2016-3/511

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Administration

R460-1 Authority and Purpose 40013 NSC 01/15/2016 Not Printed
 R460-2 Definition of Terms Used Throughout R460 40012 AMD 03/09/2016 2016-2/90
 R460-3 Programs of UHC 40018 AMD 03/09/2016 2016-2/92
 R460-4 Additional Servicing Rules (Reserved) 40014 NSC 01/15/2016 Not Printed
 R460-5 Termination of Eligibility to Participate in Programs 40015 NSC 01/15/2016 Not Printed
 R460-6 Adjudicative Proceedings 40016 NSC 01/15/2016 Not Printed
 R460-8 Americans with Disabilities Act (ADA) Complaint Procedures 40017 NSC 01/15/2016 Not Printed

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Administration

R495-862 Communicable Disease Control Act 40050 5YR 01/04/2016 2016-3/512

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R501-14 Background Screening 39913 R&R 01/13/2016 2015-23/24

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R512-31 Foster Parent Due Process 39938 AMD 01/07/2016 2015-23/33
 R512-43 Adoption Assistance 40151 5YR 01/25/2016 2016-4/79
 R512-60 Children's Account 40194 5YR 02/08/2016 2016-5/27
 R512-100 In-Home Services 39905 AMD 01/07/2016 2015-22/65
 R512-205 Child Protective Services, Investigation of Domestic Violence Related Child Abuse 40152 5YR 01/25/2016 2016-4/79

R512-301	Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian	39939	AMD	01/07/2016	2015-23/35
R512-305	Out-of-Home Services, Transition to Adult Living Services	39955	AMD	01/21/2016	2015-24/44
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	39956	AMD	01/21/2016	2015-24/46
R512-310	Reasonable and Prudent Parent Standard	39940	AMD	01/07/2016	2015-23/38
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R590-164-6	Electronic Data Interchange Transactions	39998	AMD	02/23/2016	2016-2/97
R590-167-11	Actuarial Certification and Additional Filing Requirements	40182	AMD	03/23/2016	2016-4/57
R590-177	Life Insurance Illustrations Rule	40237	5YR	02/29/2016	2016-6/33
R590-200	Diabetes Treatment and Management	40238	5YR	02/29/2016	2016-6/34
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R590-220-16	Classification of Documents	40155	AMD	03/23/2016	2016-4/59
R590-226	Submission of Life Insurance Filings	40156	AMD	03/23/2016	2016-4/60
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R590-259	Dependent Coverage to Age 26	40154	5YR	01/25/2016	2016-4/80
R590-260	Utah Defined Contribution Risk Adjuster Plan of Operation	40271	5YR	03/18/2016	Not Printed
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R628-13	Collateralization of Public Funds	40228	5YR	02/26/2016	2016-6/35
R628-16	Certification as a Dealer	40229	5YR	02/26/2016	2016-6/36
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R651-206	Carrying Passengers for Hire	40091	NSC	02/02/2016	Not Printed
R651-207	Registration Fee	40066	5YR	01/07/2016	2016-3/516
R651-207	Registration Fee	40188	NSC	02/25/2016	Not Printed
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R651-208	Backing Plates	40189	NSC	02/25/2016	Not Printed
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R651-210	Change of Address	40190	NSC	02/25/2016	Not Printed
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R651-211	Assigned Numbers	40191	NSC	02/25/2016	Not Printed
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R651-214	Temporary Registration	40073	5YR	01/07/2016	2016-3/520
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R651-220	Registration and Numbering Exemptions	40079	5YR	01/07/2016	2016-3/523
R651-221	Boat Liveries - Boat Rental Companies	40080	5YR	01/07/2016	2016-3/524
R651-222	Muffling Requirements	40081	5YR	01/07/2016	2016-3/524
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R651-405	Off-Highway Implement of Husbandry Sticker Fee	40088	5YR	01/07/2016	2016-3/526
R651-406	Off-Highway Vehicle Registration Fees	40089	5YR	01/07/2016	2016-3/527
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R655-10-5A	Hazard Classification -- Criteria	40169	AMD	03/24/2016	2016-4/67
R655-11	Requirements for the Design, Construction and Abandonment of Dams	40167	5YR	01/29/2016	2016-4/81
R655-11	Requirements for the Design, Construction and Abandonment of Dams	40175	AMD	03/24/2016	2016-4/68
R655-12	Requirements for Operational Dams	40168	5YR	01/29/2016	2016-4/81
R655-12	Requirements for Operational Dams	40176	AMD	03/24/2016	2016-4/71
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R657-5	Taking Big Game	39976	AMD	02/08/2016	2016-1/60
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	39978	AMD	02/08/2016	2016-1/66
R657-33	Taking Bear	40093	AMD	03/09/2016	2016-3/490
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R657-63	Self Defense Against Wild Animals	40231	5YR	02/29/2016	2016-6/37
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R661-2	Utah Navajo Trust Fund Definitions	40020	NEW	02/29/2016	2016-2/104
R661-3	Utah Navajo Trust Fund Residency Policy	40021	NEW	02/29/2016	2016-2/105
R661-4	Utah Navajo Trust Fund Chapter Projects	40022	NEW	02/29/2016	2016-2/107

R661-5	Utah Navajo Trust Fund Blue Mountain Dine' Community	40023	NEW	02/29/2016	2016-2/109
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40024	NEW	02/29/2016	2016-2/110
R661-7	Utah Navajo Trust Fund Housing Projects Policy	40025	NEW	02/29/2016	2016-2/113
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R708-16	Pedestrian Vehicle Rule	40140	REP	03/24/2016	2016-4/72
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R708-20	Motor Vehicle Accident Prevention Course Standards	40143	5YR	01/19/2016	2016-4/83
R708-38	Anatomical Gift	40144	5YR	01/19/2016	2016-4/83
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R708-43	Verification of Personal Identifying Information by Depository Institutions	40146	5YR	01/19/2016	2016-4/84
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R850-30-400	Special Use Leases	40185	AMD	03/23/2016	2016-4/73
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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
GEX = Governor's Extension Statement of Continuation

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<u>accountants</u> Commerce, Occupational and Professional Licensing	39982	R156-26a	AMD	02/11/2016	2016-1/4
<u>accreditation</u> Education, Administration	40285	R277-505	5YR	03/30/2016	Not Printed

<u>activities</u>						
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<u>adjudicative procedures</u>						
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<u>adjudicative proceedings</u>						
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	40293	R151-14	5YR	03/31/2016	Not Printed	
<u>administrative law</u>						
Human Services, Recovery Services	40053	R527-200	5YR	01/05/2016	2016-3/512	
<u>administrative procedures</u>						
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	40136	R652-41	5YR	01/14/2016	2016-3/530	
	40135	R652-80	5YR	01/14/2016	2016-3/531	
	40132	R652-123	5YR	01/14/2016	2016-3/531	
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	40185	R850-30-400	AMD	03/23/2016	2016-4/73	
	39960	R850-50	AMD	01/21/2016	2015-24/52	
	40184	R850-50	NSC	02/17/2016	Not Printed	
<u>administrative proceedings</u>						
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<u>adoption</u>						
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<u>adult education</u>						
Education, Administration	40253	R277-702-4	NSC	03/29/2016	Not Printed	
	39936	R277-705	AMD	01/07/2016	2015-23/17	
<u>aggregate</u>						
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<u>air pollution</u>						
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	39849	R307-110-28	AMD	02/04/2016	2015-21/45	
	39844	R307-312-5	AMD	02/04/2016	2015-21/46	
	39845	R307-328-4	AMD	02/04/2016	2015-21/47	
	40225	R307-351-4	NSC	03/11/2016	Not Printed	
	39846	R307-405-3	AMD	02/04/2016	2015-21/48	
	39847	R307-415-3	AMD	02/04/2016	2015-21/50	
<u>air quality</u>						
Environmental Quality, Air Quality	40193	R307-403-2	NSC	02/25/2016	Not Printed	
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<u>alarm company</u>						
Commerce, Occupational and Professional Licensing	40164	R156-55d	AMD	03/24/2016	2016-4/10	
<u>alcohol</u>						
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Education, Administration	40211	R277-716	5YR	02/16/2016	2016-5/25	
<u>anatomical gift</u>						
Public Safety, Driver License	40144	R708-38	5YR	01/19/2016	2016-4/83	
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<u>annuity insurance filings</u>						
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<u>assessment</u>						
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<u>athlete agent</u>						
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<u>Board of Trustees</u>						
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	40060	R651-202	5YR	01/07/2016	2016-3/514	
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	40062	R651-204	5YR	01/07/2016	2016-3/515	
	40090	R651-204	NSC	02/02/2016	Not Printed	
	40063	R651-205	5YR	01/07/2016	2016-3/515	
	40064	R651-206	5YR	01/07/2016	2016-3/516	
	40091	R651-206	NSC	02/02/2016	Not Printed	
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	40188	R651-207	NSC	02/25/2016	Not Printed
	40067	R651-208	5YR	01/07/2016	2016-3/517
	40189	R651-208	NSC	02/25/2016	Not Printed
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	40068	R651-210	5YR	01/07/2016	2016-3/518
	40190	R651-210	NSC	02/25/2016	Not Printed
	40069	R651-211	5YR	01/07/2016	2016-3/518
	40191	R651-211	NSC	02/25/2016	Not Printed
	40070	R651-212	5YR	01/07/2016	2016-3/519
	40072	R651-213	5YR	01/07/2016	2016-3/519
	40073	R651-214	5YR	01/07/2016	2016-3/520
	40074	R651-215	5YR	01/07/2016	2016-3/520
	40075	R651-216	5YR	01/07/2016	2016-3/521
	40076	R651-217	5YR	01/07/2016	2016-3/522
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	40078	R651-219	5YR	01/07/2016	2016-3/523
	40079	R651-220	5YR	01/07/2016	2016-3/523
	40080	R651-221	5YR	01/07/2016	2016-3/524
	40081	R651-222	5YR	01/07/2016	2016-3/524
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	40083	R651-226	5YR	01/07/2016	2016-3/525
<u>brachytherapy</u>					
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<u>breath testing</u>					
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<u>broad scope</u>					
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<u>burglar alarms</u>					
Commerce, Occupational and Professional Licensing	40164	R156-55d	AMD	03/24/2016	2016-4/10
<u>byproduct material</u>					
Environmental Quality, Radiation Control	39992	R313-24	AMD	03/15/2016	2016-1/38
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<u>chapter</u>					
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	40023	R661-5	NEW	02/29/2016	2016-2/109
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<u>chapter resolution</u>					
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	40161	R381-100	AMD	03/30/2016	2016-4/24
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<u>child care centers</u>					
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	40162	R381-70	AMD	03/30/2016	2016-4/20
	39896	R381-100	AMD	01/31/2016	2015-22/45
	40161	R381-100	AMD	03/30/2016	2016-4/24
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	40163	R381-60	AMD	03/30/2016	2016-4/15
	39898	R381-70	AMD	01/31/2016	2015-22/40
	40162	R381-70	AMD	03/30/2016	2016-4/20
	39896	R381-100	AMD	01/31/2016	2015-22/45
	40161	R381-100	AMD	03/30/2016	2016-4/24
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	40160	R430-50	AMD	03/30/2016	2016-4/49
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	40159	R430-90	AMD	03/30/2016	2016-4/53
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	40053	R527-200	5YR	01/05/2016	2016-3/512
	40054	R527-250	5YR	01/05/2016	2016-3/513
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	39939	R512-301	AMD	01/07/2016	2015-23/35
	39955	R512-305	AMD	01/21/2016	2015-24/44
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	39940	R512-310	AMD	01/07/2016	2015-23/38
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