

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Government Operations, 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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

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

Office of Administrative Rules, Salt Lake City 84114

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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 February 16, 2023, 12:00 a.m., and March 01, 2023, 11:59 p.m. are included in this, the March 15, 2023, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least April 14, 2023. 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 July 13, 2023, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or 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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R58-22	Filing ID: 55254

Agency Information

1. Department:	Agriculture and Food	
Agency:	Animal Industry	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state, and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state, and zip:	Salt Lake City, UT 84114-6500	
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Amanda Price	801-982-2200	amandaprice@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R58-22. Equine Infectious Anemia (EIA)
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Changes are needed to ensure the import requirements in this rule are in line with current disease risks and federal movement requirements for all species. Changes are also required to make the text more consistent with the requirements of the Utah Rulewriting Manual.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Definitions are simplified in Section R58-22-2 and testing requirements are clarified. The Equine Infectious Anemia rule is clarified in Section R58-22-3, and unnecessary language is removed to make this rule easier to understand.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

These changes clarify this rule, are consistent with current practice, and should not impact the state budget.

B) Local governments:

Local governments do not participate in the Department of Agriculture and Food's animal health programs and would not be impacted by the changes.

C) Small businesses ("small business" means a business employing 1-49 persons):

These changes clarify this rule, are consistent with current practice, and should not impact small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These changes clarify this rule and are consistent with current practice, and should not impact non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

These changes clarify this rule and are consistent with current practice, and should not impact other persons.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

Compliance requirements and costs will not be impacted by these clarifying changes.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig Butters, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 4-31-109	Subsection 4-2-103(1)(c)	Subsection 4-2-103(1)(i)

Incorporations by Reference Information

7. Incorporations by Reference:	
A) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Equine Infectious Anemia: Uniform Methods and Rules
Publisher	United States Department of Agriculture, Animal, and Plant Health Inspection Service
Issue Date	January 10, 2007
Issue or Version	2007

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the

agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	02/17/2023
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R58. Agriculture and Food, Animal Industry.**R58-22. Equine Infectious Anemia (EIA).****R58-22-1. Authority.**

Promulgated under the authority of ~~[Title 4, Chapter 31, Control of Animal Disease]~~Section 4-31-109, and Subsections 4-2-103(1)(c), and 4-2-103(1)(i).

The intent of ~~[these rules]~~this rule is to eliminate or reduce the spread of Equine Infectious Anemia among equines by providing ~~[for]~~a protocol for testing and handling of equines infected and exposed to Equine Infectious Anemia.

R58-22-2. Definitions.

(1) "Accredited Veterinarian" ~~[—]~~means a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) in accordance with ~~[provisions of]~~9 CFR Part 161.

~~[Coggins test — means a common name for the Agar Gel Immuno-diffusion (AGID) test for diagnosis of EIA.](2) "EIA test" means the Agar Gel Immuno-diffusion (AGID) or ELISA test for diagnosis of EIA.~~

(3) "Equine" ~~[—]~~means any animal in the family Equidae, including horses, ~~[asses]~~donkeys, mules, ponies, and Zebras.

(4) "Equine Infectious Anemia (EIA)" ~~[—]~~means an infectious disease of equines caused by ~~[a lentivirus,]~~equine infectious anemia virus (EIAV).~~[The disease is characterized by three distinct clinical forms: acute, chronic and inapparent.]~~

~~[Identification — means permanent notation of equines that are determined to be EIA reactors by application of a hot iron, or freeze marking using the National Uniform Tag code number for the State of Utah (87), followed by the letter "A" on the left side of the neck or left shoulder.](5) "Exposed Animals" means any equines that may have been exposed to EIA by reason of association with the affected animal.~~

(6) "Official test" ~~[—]~~means any~~[test for the]~~ laboratory test for diagnosis of EIA that ~~[utilizes a diagnostic product that is (1) produced under license from the Secretary of Agriculture, and found to be efficacious for that diagnosis, under the Virus Serum Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 et seq.); and (2) conducted in a laboratory approved by the Administrator of APHIS]~~is approved by and produced under a license of USDA, APHIS, VS and conducted in a USDA approved laboratory.

(7) "Reactor" [-] means any equine that has been subjected to an official laboratory test whose result is positive for EIA and confirmed by the USDA National Veterinary Services Laboratory. ~~[Exposed Animals means all equines that have been exposed to EIA by reason of association with the affected animal.]~~

R58-22-3. Equine Infectious Anemia - Rules - Prevention and Control.

(1) The State Veterinarian shall have authority to conduct or supervise testing at an official laboratory to diagnose EIA and to quarantine and order disposition of any individuals or herds that are found to be positive for EIA, ~~[at such time as may be deemed necessary]~~ for the control and elimination of EIA[-], as granted under Section 4-31-115.

(2) Personnel authorized to submit samples, approved laboratories, and official tests shall be those identified in the ~~[Uniform Methods and Rules, USDA, APHIS 91-55-037 Part II, B, C, and D, effective January 1, 1998, or subsequent revisions]~~ January 10, 2007 edition of the USDA Equine Infectious Anemia Uniform Methods and Rules and is incorporated by reference in this rule.

(3) Procedures for handling equines ~~[which]~~ that are classified as reactors[?].

(a) Quarantine - When an equine has a positive result on an official test for EIA, the animal shall be placed under quarantine within 24 hours after positive test results are known and a second, confirmatory, test shall be performed under the direction of the [s]State [v]Veterinarian. The equine shall remain in quarantine until final classification and disposition [is] are made. Equines ~~[which]~~ that have been located within 200 yards of the infected animal shall be quarantined and tested also.

~~(b) [Repeat testing and removal of reactors - When a reactor is disclosed in a herd, and removed, testing of all exposed equines for EIA must be repeated at no less than 45-day intervals until all remaining equines on the premise test negative, at which time the quarantine may be removed.]~~

~~Identification of reactor equines - Equines that are determined to be reactors must be permanently identified using the National Uniform Tag code number for Utah (87) followed by the letter "A". Markings must be permanently applied using a hot iron, or freeze marking by an APHIS representative, State representative, or accredited veterinarian. The marking shall be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Official identification is not necessary if the reactor is moved directly to slaughter under a permit and is in a conveyance sealed with an official seal.]~~ Euthanasia and disposal - ~~Once an equine has been classified as a reactor, it must be removed from the herd by euthanasia. Euthanized animals shall be properly disposed of in accordance with local and state law.~~

~~(c) [Euthanasia and disposal - Once an equine has been classified as a reactor, it must be removed from the herd. This can be accomplished by euthanasia or removal to slaughter. If slaughter is chosen, the equine must be moved either to a federally or state inspected slaughtering establishment per 9 CFR Part 75.4. If euthanasia is chosen, the animal must be properly buried six feet underground.]~~ After a reactor is removed from a herd, testing of any exposed equines for EIA must be repeated at no less than 45 day intervals until any remaining equines on the premise test negative. At this time, the quarantine may be removed.

R58-22-4. Importation of Equines.

~~[A-]~~ Equines imported to Utah shall be in compliance with Section R58-1-6.

KEY: inspections

Date of Last Change: ~~[August 12, 2015]~~ 2023

Notice of Continuation: December 28, 2021

Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(c); 4-2-103(1)(j)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R68-29	Filing ID: 55257
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Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, Floor 2	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
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Kelly Pehrson	385-977-2147	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R68-29. Quality Assurance Testing on Cannabis

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Clarifications are needed to Table 2 to ensure the table clearly indicates which testing is required for which types of products.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Table 2 has been updated to show broader products types and ensure that testing requirements for each product type are clear.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

These changes are clarifying only and will not impact the state budget because the operation of the program and testing requirements are not changing.

B) Local governments:

Local governments will not be impacted because they do not participate in the medical cannabis program.

C) Small businesses ("small business" means a business employing 1-49 persons):

These changes are clarifying only and will not impact small businesses because the operation of the program and testing requirements are not changing.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These changes are clarifying only and will not impact non-small businesses because the operation of the program and testing requirements are not changing.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These changes are clarifying only and will not impact other persons because the operation of the program and testing requirements are not changing.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

Compliance costs will not change because testing requirements and fees charged by the department are not changing.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture and Food, Craig W Buttars, has reviewed and approved this regulatory impact analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 4-41a-701(3)		
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Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	04/14/2023
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9. This rule change MAY become effective on:

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	02/13/2023
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R68. Agriculture and Food, Plant Industry.

R68-29. Quality Assurance Testing on Cannabis.

R68-29-1. Authority and Purpose.

[4]—Pursuant to Subsection 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product potency testing and sets limits for water activity, foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

R68-29-2. Definitions.

(1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- (a) pesticides;
- (b) heavy metals;
- (c) solvents;
- (d) microbial life;
- (e) toxins; or
- (f) foreign matter.

(2) "Analyte" means a substance or chemical component that is undergoing analysis.

(3) "Batch" means a quantity of:

(a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

(b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

(c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

(4) "Cannabinoid" means any:

(a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

(b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

(5) "Cannabis" means any part of the marijuana plant.

(6) "Cannabinoid concentrate" means:

(a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; or

(b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

(7) "Cannabis cultivation facility" means a person that:

(a) possesses cannabis;

(b) grows or intends to grow cannabis; and

(c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.

(8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.

(9) "Cannabis derivative product" means a cannabis product made using cannabis concentrate.

(10) "Cannabis plant product" means any portion of a cannabis plant intended to be sold in a form that is recognizable as a portion of a cannabis plant.

(11) "Cannabis processing facility" means a person that:

(a) acquires or intends to acquire cannabis from a cannabis production establishment;

(b) possesses cannabis with the intent to manufacture a cannabis product;

(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis concentrate; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.

(12) "Cannabis product" means a product that:

(a) is intended for human use; and

(b) contains cannabis or delta 9-tetrahydrocannabinol.

(13) "CBD" means cannabidiol (CAS 13956-29-1).

(14) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

(15) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for the performed testing.

(16) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS #1972-08-03, the primary psychotropic cannabinoid in cannabis.

(17) "Department" means the Utah Department of Agriculture and Food.

(18) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert a naturally occurring cannabinoid into another cannabinoid.

(19) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.

(20) "Foreign matter" means:

(a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

(b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient, including seeds.

(21) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

(22) "Industrial hemp waste" means:

(a) a cannabinoid extract above 0.3% total THC derived from verified industrial hemp biomass; or

(b) verified industrial hemp biomass with a total THC concentration of less than 0.3% by dry weight.

(23) "Lot" means the quantity of:

(a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

(b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

(24) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

(25) "Pesticide" means any:

(a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with

deflocculating properties of its own, used with a pesticide to aid in the application or effect of a pesticide.

(26) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis plant product, cannabis concentrate, or cannabis product from a cannabis production establishment who is:

- (a) an employee of the department;
- (b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or
- (c) a person authorized by the department to perform sampling.

(27) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.

(28) "Synthetic cannabinoid" means any cannabinoid that:

- (a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and
- (b) is not a derivative cannabinoid.

(29) "THC" means delta-9-tetrahydrocannabinol (CAS 1972-08-3).

(30) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

(31)(a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

(b) "THC analog" does not include the following substances or their naturally occurring acid forms:

- (i) cannabichromene (CBC), CAS# 20675-51-8;
- (ii) cannabicyclol (CBL), CAS# 21366-63-2;
- (iii) cannabidiol (CBD), CAS# 13956-29-1;
- (iv) cannabidivarin (CBDV), CAS# 24274-48-4;
- (v) cannabielsoin (CBE), CAS# 52025-76-0;
- (vi) cannabigerol (CBG), CAS# 25654-31-3;
- (vii) cannabigerovarin (CBGV), CAS# 55824-11-8;
- (viii) cannabinol (CBN), CAS# 521-35-7; or
- (ix) cannabivarin (CBV), CAS# 33745-21-0.

(32) "Total CBD" means the sum of the determined amounts of CBD and CBDA.

(33) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

(34) "Unit" means each individual portion of an individually packaged product.

(35) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.

R68-29-3. Required Cannabis, Cannabis Product, and Industrial Hemp Waste Tests.

(1) Before the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility shall make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.

(2) A representative sample of each batch or lot of cannabis plant product shall be tested by an independent cannabis testing laboratory to determine:

- (a) the water activity of the sample;
- (b) the amount of total THC, total CBD, and any THC analog known to be present in the sample; and

(c) the presence of adulterants in the sample, as specified in Table 1.

(3) Required testing shall be performed either:

- (a) Before the transfer of the cannabis plant product to a cannabis processing facility; or
- (b) following the transfer of the cannabis plant product to a cannabis processing facility.

(4) If cannabis plant product is tested before being transferred to a cannabis processing facility, repeat testing for microbial contaminants and foreign matter shall be performed following the transfer.

(5) Cannabis cultivation byproduct shall either be:

- (a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or
- (b) destroyed pursuant to Section 4-41a-405.

(6) Before its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:

- (a) the amount of total THC, total CBD, and any THC analog known to be present in the sample; and
- (b) the presence of adulterants in the sample, as specified in Table 1.

(c) Any derivative or synthetic cannabinoids present in the cannabis concentrate shall be isolated to a purity of greater than 95%, with a 5% margin of error, as determined by an independent cannabis testing laboratory using liquid chromatography-mass spectroscopy or an equivalent method.

(7) Before the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:

- (a) the water activity of the sample, as determined applicable by the department;
- (b) the quantity of any cannabinoid or terpene to be listed on the product label; and
- (c) the presence of adulterants in the sample, as specified in Table 1.

(8) Testing results for cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.

(9) Mycotoxin testing of a cannabis plant product, or cannabis product may be required if the department has reason to believe that mycotoxins may be present.

(10) Mycotoxin testing shall be required for cannabis concentrate.

(11) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.

(12) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.

(13) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.

(14) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.

(15) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.

(16) If test results cannot be retained in the Inventory Control System, the laboratory shall:

- (a) keep a record of test results;
- (b) issue a COA for required tests; and
- (c) keep a copy of the COA on the laboratory premises.

(17) Plant product that has been classified as industrial hemp waste may enter the state and be held by a medical cannabis cultivation facility until required testing is completed by an independent cannabis testing laboratory. A cannabis cultivation facility may not take ownership of the industrial hemp plant product until testing requirements have been met.

(18) Industrial hemp waste purchased by a cannabis cultivation facility in the form of a plant product or a concentrate must meet department cannabis testing standards as determined by an independent cannabis testing laboratory before its transfer to a cannabis cultivation facility.

(19) Industrial hemp waste that is transferred to a cannabis cultivation facility will be considered cannabis for all testing and regulatory purposes of the department.

TABLE 1 Required Test by Sample Type			
Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X
Foreign Matter	Required	Required	Required
Potency	Required	Required	Required
Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required

R68-29-4. Sampling Cannabis and Cannabis Products.

(1) The entity that requests testing of a cannabis plant product lot or cannabis concentrate batch, or cannabis product batch shall make the entirety of the lot or batch available to the sampling technician.

(2) The lot or batch being sampled shall be contained in a single location and physically separated from other lots or batches.

(3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.

(4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the selection of the sample.

(5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, that is ISO 17025 compliant, maintained by the laboratory that will perform the testing.

(6) When collecting the representative sample, the sampling technician shall:

- (a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;
- (b) place tamper proof tape on the container; and
- (c) appropriately label the sample pursuant to Section R68-30-6.

(7) For cannabis plant product lots the minimum representative sample shall be taken according to the following schedule:

- (a) 10 subunits with an average weight of one gram each for lots weighing 5 kilograms or less;
- (b) 16 subunits with an average weight of one gram each for lots weighing 5.01-9 kilograms;
- (c) 22 subunits with an average weight of one gram each for lots weighing 9.01-14 kilograms;
- (d) 28 subunits with an average weight of one gram each for lots weighing 14.01-18 kilograms;
- (e) 32 subunits with an average weight of one gram each for lots weighing 18.01-23 kilograms.

(8) For cannabis concentrate the minimum representative sample shall be taken according to the following schedule:

- (a) 10 mL or grams for batches of one liter or kilogram or less; or
- (b) 20 mL or grams for batches of four liters or kilograms or less.

(9) For cannabis products in their final product form the following minimum number of sample units must be taken, the combined total weight of which must be at least 10 grams, not including packaging materials:

- (a) four units for a sample product batch with 5-500 products;
- (b) six units for a sample product batch with 501-1000 products;
- (c) eight units for a sample product batch with 1,001-5,000 products; and
- (d) ten units for a sample product batch with 5,001-10,000 products.

(10) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

R68-29-5. Moisture Content Testing and Water Activity Standards.

(1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

(2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

(3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

R68-29-6. Foreign Matter Standards.

(1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

(a) the sample contains foreign matter visible to the unaided human eye;

(b) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

(c) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R68-29-7. Potency Testing.

(1) A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall have its potency determined and listed on a COA as total THC, total CBD, and the total concentration of any THC analog known to be present.

R68-29-8. Microbial Standards.

(1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 2.

(2) Each sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall be tested for total aerobic microbial count and total combined yeast and mold. The specific pathogens listed in Table 2 may be tested for at the discretion of the department.

TABLE 2 Microbial Analytes and Action Levels	
Material	Microbial Limit Requirement (cfu)
[Flower] Cannabis Plant Product	-Total Aerobic Microbial Count ≤100,000 <u>Absence of E. Coli and Salmonella spp.</u> <u>Absence of Aspergillus fumigatus, Aspergillus flavus, Aspergillus niger, and Aspergillus terreus</u>
	[Absence of E. Coli and Salmonella spp.]
	[Absence of Aspergillus]
[Concentrated oil Wax Resin] Cannabinoid Concentrate	Total Aerobic Microbial Count ≤10,000 Total Combined Yeast and Mold Count ≤1,000 <u>Absence of STEC</u> <u>Absence of Pseudomonas</u> <u>Absence of Staph</u>
	[Total Combined Yeast and Mold Count ≤1,000]
	[Absence of STEC]
	[Absence of Pseudomonas]

	[Absence of Staph]
[Tablet] Orally Consumable Products	Total Aerobic Microbial Count ≤10,000 Total Combined Yeast and Mold Count ≤1,000 <u>Absence of E. Coli and Salmonella spp.</u> <u>Absence of Staph</u>
[Capsule]	[Total Combined Yeast and Mold Count ≤1,000]
[Liquid Suspension]	[Absence of E. Coli and Salmonella spp.]
[Gelatinous Cube]	[Absence of Staph]
Transdermal Products	Total Aerobic Microbial Count ≤ [400] 250 Total Yeast and Mold Count ≤250 <u>Absence of Pseudomonas</u> <u>Absence of Staph</u>
	[Total Yeast and Mold ≤100]
	[Absence of Pseudomonas]
	[Absence of Staph]
	[Absence of E. coli]

R68-29-9. Pesticide Standards.

(1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

(2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

(3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

TABLE 3 Pesticide Analytes and Action Levels		
Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2

Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2

MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl_butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

(4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

(5) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

(6) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R68-29-10. Residual Solvent Standards.

(1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

- (a) a component of the product formulation;
- (b) listed as an ingredient; and
- (c) generally considered to be safe for the intended form of use.

TABLE 4 List of Solvents and Action Levels		
Solvent	Chemical Abstract Service	Action level
	(CAS)Registry number	Ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000
Ethylbenzene	100-41-4	See Xylenes

Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	290	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

(2) Xylenes is a combination of the following:

- (a) 1,2-dimethylbenzene;
- (b) 1,3-dimethylbenzene;
- (c) 1,4-dimethylbenzene; and
- (d) ethyl benzene.

R68-29-11. Heavy Metal Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for heavy metals if the results exceed the limits provided in Table 5.

TABLE 5 Heavy Metals	
Metals	Natural Health Products Acceptable
	limits in parts per million
Arsenic	<2
Cadmium	<.82

Lead	<1.2
Mercury	<.4

R68-29-12. Mycotoxin Standards.

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

TABLE 6 Mycotoxin	
Test	Specification
The Total of	
Aflatoxin B1,	
Aflatoxin B2,	
Aflatoxin G1, and	
Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

KEY: cannabis testing, quality assurance, cannabis laboratory
Date of Last Change: ~~January 10, 2023~~ 2023
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R68-37	Filing ID: 55258
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Agency Information

Agency information:

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, Floor 2	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
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Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov

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Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R68-37. Industrial Hemp Cannabinoid Product Testing

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Clarifications are needed to Table 1 to ensure the table clearly indicates which testing is require for which types of products.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Table 1 has been updated to show broader products types and ensure that testing requirements for each product type are clear.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

These changes are clarifying only and will not impact the state budget because the operation of the program and testing requirements are not changing.

B) Local governments:

Local governments will not be impacted because they do not participate in the industrial hemp program.

C) Small businesses ("small business" means a business employing 1-49 persons):

These changes are clarifying only and will not impact small businesses because the operation of the program and testing requirements are not changing.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

These changes are clarifying only and will not impact non-small businesses because the operation of the program and testing requirements are not changing.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These changes are clarifying only and will not impact other persons because the operation of the program and testing requirements are not changing.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

Compliance costs will not change because testing requirements and fees charged by the department are not changing.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture and Food, Craig W Buttars, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection
4-41-204(2)

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	Date:	02/13/2023
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R68. Agriculture and Food, Plant Industry.

R68-37. Industrial Hemp Cannabinoid Product Testing.

R68-37-1. Authority and Purpose.

1) Pursuant to Subsection 4-41-204(2), this rule establishes the standards for industrial hemp cannabinoid product potency testing and sets limits for foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

R68-37-2. Definitions.

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- pesticides;
- heavy metals;
- solvents;
- microbial life;
- mycotoxins; or
- foreign matter.

2) "Analyte" means a substance or chemical component that is undergoing analysis.

3) "Batch or lot" means a quantity of:

a) cannabinoid concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of industrial hemp are used; or

b) cannabinoid product produced on a particular date and time, following clean up until the next clean up during which industrial hemp concentrate is used.

4) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

5) "Cannabinoid concentrate" means:

a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; and

b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

6) "Cannabinoid product" means the same as the term is defined in Subsection 4-41-102(1).

7) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

8) "CBD" means cannabidiol (CAS 13956-29-1).

9) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

10) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the results for which that testing was performed.

11) "Department" means the Utah Department of Agriculture and Food.

12) "Final product" means a reasonably homogenous cannabinoid product in its final packaged form created using the same standard operating procedures and the same formulation.

13) "Foreign matter" means:

a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient.

14) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

15) "Industrial hemp manufacturer" means an entity that holds, stores, packages, or labels an industrial hemp cannabinoid product.

16) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

17) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the application or effect of a pesticide.

18) "THC" means total composite tetrahydrocannabinol, including delta-9-tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(ii)(AA).

19) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

20) "Total CBD" means the sum of the determined amounts of CBD and CBDA, according to the formula: Total CBD = CBD + (CBDA x 0.877).

21) "Total THC" means the sum of the determined amounts of THC and THCA, according to the formula: Total THC = THC + (THCA x 0.877).

22) "Unit" means each individual portion of an individually packaged product.

R68-37-3. Required Cannabinoid Product Tests.

1) An industrial hemp manufacturer may not register or sell a cannabinoid product unless a third party testing laboratory has tested a representative sample of the cannabinoid product to determine:

a) the amount of any THC analogs present in the sample; and

b) the presence of adulterants in the sample.

2) A certificate of analysis shall be included with each batch of cannabinoid product in accordance with Section R68-26-4.

R68-37-4. Foreign Matter Standards.

A sample and related batch of cannabinoid product fails quality assurance testing if:

1) the sample contains foreign matter visible to the unaided human eye;

2) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

3) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R68-37-5. Potency Testing and Standards.

1) A batch of cannabinoid product shall have the following determined and listed on the COA:

a) quantity of any cannabinoid it is known to contain, including any THC analog; and

b) the cannabinoid profile by percentage of mass.

2) Cannabinoid products shall not exceed the cannabinoid product THC level.

R68-37-6. Microbial Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 1.

TABLE 1 Microbial Analytes and Action Levels	
Material	Microbial Limit Requirement (cfu)
[Concentrated oil] Cannabinoid Concentrate	Total Aerobic Microbial Count ≤100,000 Absence of <i>E. Coli</i> and <i>Salmonella</i> spp. Absence of <i>Aspergillus fumigatus</i> , <i>Aspergillus flavus</i> , <i>Aspergillus niger</i> , and <i>Aspergillus terreus</i>

Orally Consumable Products [Tablet]	Total Aerobic Microbial Count ≤10,000 Total Combined Yeast and Mold Count ≤1,000 Absence of E. Coli and Salmonella spp. Absence of Staph
[Capsule]	[Total Combined Yeast and Mold Count ≤1,000]
[Liquid Suspension]	[Absence of E. Coli and Salmonella spp.]
[Gelatinous eube]	[Absence of Staph]
Transdermal Products	Total Aerobic Microbial Count ≤[400]250 Total Yeast and Mold ≤250 Absence of Pseudomonas Absence of Staph
	[Total Yeast and Mold ≤100]
	[Absence of Pseudomonas]
	[Absence of Staph]

R68-37-7. Pesticide Standards.

1) A sample and related batch of cannabinoid product fails quality assurance testing for pesticides if the results exceed the limits as set forth in Table 2.

TABLE 2 Pesticide Analytes and Action Levels		
Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4

Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

2) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

3) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

4) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R68-37-8. Residual Solvent Standards.

1) A sample and related batch of cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 3 unless the solvent is:

- a component of the product formulation;
- listed as an ingredient; and
- generally considered to be safe for the intended form of use.

TABLE 3 List of Solvents and Action Levels		
Solvent	Chemical Abstract Service (CAS)Registry number	Action level Ppm
1,2 Dimethoxyethane	110-71-4	100

1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	290	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

2) Xylenes is a combination of the following:

- a) 1,2-dimethylbenzene;
- b) 1,3-dimethylbenzene;
- c) 1,4-dimethylbenzene; and
- d) ethyl benzene.

R68-37-9. Heavy Metal Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for heavy metals if the results exceed the limits provided in Table 4.

TABLE 4 Heavy Metals	
Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<.82
Lead	<1.2
Mercury	<.4

R68-37-10. Mycotoxin Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for mycotoxin if the results exceed the limits provided in Table 5.

TABLE 5[6] Mycotoxin	
Test	Specification
The Total of	
Aflatoxin B1,	
Aflatoxin B2,	
Aflatoxin G1, and	
Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

R68-37-11. Prohibited Additives.

Vitamin E Acetate shall not be permitted to be present in any inhalable cannabinoid product.

KEY: industrial hemp, cannabinoid, testing

Date of Last Change: [October 11, 2022]2023

Authorizing, and Implemented or Interpreted Law: 4-41-204(2)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R68-38	Filing ID: 55259
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Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, Floor 2	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov

Brandon Forsyth	801-710-9945	bforsyth@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R68-38. Cannabis Licensing Process
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule satisfies Subsection 4-41a-201(2)(a)(ii) that requires the Department of Agriculture and Food (Department) to establish rules creating an efficient and transparent process to solicit applications for medical cannabis licenses, allow comments, evaluate applications, hold hearings, and select licensees.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule sets forth guidelines for the Cannabis Production Establishment Licensing Advisory Board (Board) related to cannabis licensing, including application requirements, department review, Board review, renewal procedures, and hearing procedures.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There will be some cost to the state budget due to travel expenses for Board members to attend meetings to consider license applications. The Department estimates this at \$100 per year per board member so a total of up to \$600 per year.
B) Local governments:
There is no fiscal impact to local governments because they do not participate in the medical cannabis program.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no fiscal impact to small businesses because this rule does not change the requirements to apply for a cannabis license or the fees charged.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no fiscal impact to non-small businesses because this rule does not change the requirements to apply for a cannabis license or the fees charged.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no fiscal impact to other persons because this rule does not change the requirements to apply for a cannabis license or the fees charged.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

Compliance costs for affected persons will not be impacted because licensing requirements and costs charged by the Department will not change.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$600	\$600	\$600
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$600	\$600	\$600
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$(600)	\$(600)	\$(600)
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, Craig W Butters, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 4-41a-201(2)(a)(ii)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023

9. This rule change MAY become effective on:	04/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	02/23/2023
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R68. Agriculture and Food, Plant Industry.

R68-38. Cannabis Licensing Process.

R68-38-1. Authority and Purpose.

Pursuant to Subsection 4-41a-201(2)(a)(ii), this rule establishes the process for issuing a cannabis production establishment license.

R68-38-2. Definitions.

- (1) "Cannabis cultivation facility" means a person that:
- (a) possesses cannabis;
 - (b) grows or intends to grow cannabis; and
 - (c) sells or intends to sell cannabis to a cannabis cultivation facility, a cannabis processing facility, or a medical cannabis research licensee.
- (2) "Cannabis processing facility" means a person that:
- (a) acquires or intends to acquire cannabis from a cannabis production establishment;
 - (b) possesses cannabis with the intent to manufacture a cannabis product;

(c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

(d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or a medical cannabis research licensee.

(3) "Cannabis production establishment" means a cannabis cultivation facility, a cannabis processing facility, or an independent cannabis testing laboratory.

(4) "Cannabis Production Establishment Licensing Advisory Board" or "Board" means the board established under Section 4-41a-201.1.

(5) "Department" means the Utah Department of Agriculture and Food.

(6) "Independent cannabis testing laboratory" means a person that:

(a) conducts a chemical or other analysis of cannabis or cannabis product; or

(b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.

R68-38-3. Cannabis Production Establishment Licensing.

(1) The Department will solicit applications for cannabis cultivation facility licenses if the conditions in Subsection 4-41a-205(2)(a) or (b) are met.

(2) A licensed cannabis cultivation facility may not be awarded a second cannabis cultivation facility license.

(3) Pursuant to Section 4-41a-201, the Board will not accept a license application unless it is complete. An incomplete application will be returned to the applicant.

(4) If there are more qualified applicants than available licenses, the department will evaluate the applicants pursuant to Subsection 4-41a-205(3).

(5) The following conditions shall be met before the Board will consider a license application:

(a) a complete application including documents and supplemental materials on the department's application checklist has been submitted;

(b) a department official has inspected the premises; and

(c) a department official has conducted an inspection as described in Section R68-38-4.

(6) The department shall forward to the Board the information and recommendation to aid in the license determination.

(7) The Board will follow the process outlined in Subsection 4-41a-201.1(6) in considering the application.

R68-38-4. Department Review.

(1) The department's inspection shall:

(a) verify required documents and supplemental materials have been submitted with the application;

(b) confirm the information in the application is correct;

(c) conduct the criminal background check required in Section 4-41a-202; and

(d) confirm that operating and business plans comply with state laws and administrative rules.

(2) The department may require additional information from an applicant.

(3) The department shall submit the cannabis processing facility or independent cannabis testing laboratory application to the Board with information within 30 days of receiving a completed cannabis processing facility or independent cannabis testing laboratory application.

(4) Consistent with Subsection R68-38-3(1), the department shall submit a cannabis cultivation facility application to the Board when the department finds a need based on market needs and available licenses.

R68-38-5. Board Review-Licenses with Limited Availability.

(1) If the Department solicits applications for a limited number of cannabis production establishment licenses, complete applications shall be scored by the Board after the requirements of Subsection R68-38-3(5) are met.

(2) Licenses shall be issued by the Board according to those applicants with the highest score depending on how many licenses are available.

(3) Board review in these circumstances shall be a blind process and with each name removed from each document that is provided to the Board for consideration.

(4) The Board may consider the following factors in determining whether to grant cannabis production establishment licenses:

(a) the applicant's experience in the medical cannabis industry;

(b) the applicant's ability to be compliant within their operating plan;

(c) the applicants positive community involvement, if applicable;

(d) the applicant's anticipated pricing structure;

(e) the timeline under which each phase of the applicant's business will be operational; and

(f) other factors determined by the Department or the Board.

(5) Board meetings may only be closed if the Board is discussing security interests. All votes shall be taken in an open meeting.

(6) If an applicant's initial score is changed based on Board discussion, the reason for the change shall be documented.

R68-38-6. Board Review-License Renewals.

(1) The following conditions shall be met before the Board will approve a renewal license application for a cannabis production establishment:

(a) a complete application including documents and supplemental materials on the department's application checklist has been submitted;

(b) the department has confirmed that the cannabis production establishment has been sufficiently compliant with state laws and administrative rules during the term of their license, pursuant to Chapter 4-41a Part 8; and

(c) for cannabis cultivation facilities, the department has confirmed that production has met or exceeded the amounts that were included in the previous year's operating plan.

(2) In approving a renewal license application for a cannabis production establishment, the Board may consider:

(a) information from the department regarding any issues that have arisen during the license term related to product quality; and

(b) any verified customer complaints.

R68-38-7. Public Hearing.

(1) The Board shall make licensing determination during a public hearing where the application was considered.

(2) The Board shall allow prospective applicants to make a presentation at the public hearing in which their application is considered.

(3) The Board shall notify the prospective applicant a minimum of ten business days in advance of the public hearing where their application is being considered.

(4) The Board may limit the time available for presentations by the applicants.

R68-38-8. Cannabis Production Establishment Licensing Advisory Board Electronic Meetings.

(1) The following provisions govern any meeting of the Board.

(a) Notice of the meeting shall specify the anchor location where the members of the Board not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. The notice shall describe how a member may participate in the meeting electronically or by telephone.

(d) When notice is given of the possibility of a member appearing electronically or by telephone, any member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board.

(e) At the commencement of the meeting, or at such time as any member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically.

(f) Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

(g) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

KEY: cannabis, cannabis production, licensing, Cannabis Production Establishment Licensing Advisory Board

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 4-2-103; 4-41a-201(2)(a)(ii)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R432-16

Filing ID:
55269

Agency Information

1. Department:	Health and Human Services		
Agency:	Family	Health	Preparedness, Licensing
Room number:	1st Floor		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO BOX 144103		
City, state and zip:	Salt Lake City, UT 84414-4103		
Contact persons:			
Name:	Phone:	Email:	
Janice Weinman	385-321-5586	jweinman@utah.gov	
Jonah Shaw	385-310-2389	jshaw@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R432-16. Hospice Inpatient Facility Construction
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The revisions include more specific language consistent with the Utah Rulewriting Manual standards.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with current state rulewriting manual standards. Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the

Department of Health and Human Services (Department) plans review process.

B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with current state rulewriting manual standards.

The Hospice Inpatient Facility Construction Standards are regulated by the Department and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved. Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the department plans review process.

C) Small businesses ("small business" means a business employing 1-49 persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with current state rulewriting manual standards.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with current state rulewriting manual standards.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with current state rulewriting manual standards.

Substantive changes only constitute removal of incorporated materials that will be encompassed as

recommended standards in the Department plans review process.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with current state rulewriting manual standards.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Title 26, Chapter 21

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	03/01/2023
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R432. Health and Human Services, Family Health and Preparedness, Licensing.

R432-16. Hospice Inpatient Facility Construction.

R432-16-1. Legal Authority.

This rule is ~~promulgated pursuant to~~ authorized by Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-16-2. Purpose.

The purpose of this rule is to promote quality of life in a home-like setting through the establishment and enforcement of construction standards for hospice inpatient facilities.

R432-16-3. Definitions.

(1) ~~["Hospice Inpatient Facility" means a freestanding licensed hospice facility or a licensed hospice unit in an existing health care facility.]~~ "ASTM" means the American Society for Testing and Materials.

(2) ~~["Small Hospice Inpatient Facility" means a hospice facility capable of housing two to eight patients.]~~ "Hospice Inpatient Facility" means a freestanding licensed hospice facility or a licensed hospice unit in an existing health care facility.

(3) "Large Hospice Inpatient Facility" means a hospice facility capable of housing nine or more patients.

(4) "Small Hospice Inpatient Facility" means a hospice facility capable of housing two to eight patients.
~~_____~~ (3) "Large Hospice Inpatient Facility" means a hospice facility capable of housing nine or more patients.]

R432-16-4. Hospice Unit.

(1) Each ~~[H]~~hospice ~~[U]~~unit is an area identified by the ~~[L]~~licensee within a licensed health care facility and consists of at least two ~~[resident]~~patient beds, ~~[resident]~~patient care spaces, and service spaces.

(2) If licensed health care facilities share spaces and service areas, ~~[as permitted in this rule,]~~the licensee shall ensure the shared spaces and service areas ~~[shall be]~~are contiguous to each health care facility served.

(3) A hospice inpatient licensee that operates a facility ~~[operated]~~in conjunction with another licensed health care facility ~~[shall comply with all provisions of this section]~~may share the following functions between two or more facilities:~~[- Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more health care facilities.]~~

- ~~_____~~ (a) dietary;
- ~~_____~~ (b) storage;
- ~~_____~~ (c) pharmacy;
- ~~_____~~ (d) maintenance;
- ~~_____~~ (e) laundry;
- ~~_____~~ (f) housekeeping;
- ~~_____~~ (g) medical records; and
- ~~_____~~ (h) laboratory functions.

(4) The licensee shall ensure ~~[F]~~facility service areas ~~[shall be]~~are accessible from common areas without compromising ~~[resident]~~patient privacy.

R432-16-5. General Design Requirements.

(1) Rule R432-4~~[1 through R432-4-22]~~ appl[ies] to hospice inpatient facility construction. The licensee shall additionally ensure that:~~[with the following modifications:]~~

~~_____~~ (1)a) ~~[All public, common, and at least 10 percent of]ten percent of patient[resident] toilet rooms and bathrooms, and each public and common toilet or bathroom [shall]ha[ve]s fixtures that comply with the plans review of Rule R432-4; and[Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines, (ADA/ABA AG).]~~

~~_____~~ (2)3) ~~[These rooms]each room listed in Subsection R432-16-5(2) is [shall be]wheelchair accessible with wheelchair turning space within the rooms.~~

~~_____~~ (3) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.]

R432-16-6. Administrative Areas.

(1) ~~[There shall be]~~The licensee shall ensure there is space and equipment for the administrative services as follows:

(a) ~~[I]~~in a large hospice inpatient facility~~[ies]~~, an administrative office ~~[of sufficient]~~large enough ~~[size]~~to store records and equipment~~[-]~~;

(b) ~~[I]~~in a small hospice inpatient facility~~[ies]~~, an area may be designated for administrative activities and record storage~~[-]~~; and

~~_____~~ (2)c) ~~[S]~~storage shall be provided for securing staff belongings.

~~_____~~ (3)2) A large hospice inpatient facility licensee shall provide a public reception or information area.

~~_____~~ (4)3) The licensee shall ensure ~~[A]~~a telephone ~~[shall be]~~is provided for private use by ~~[residents]~~patients and visitors.

R432-16-7. ~~[Resident]~~Patient Rooms.

(1) The licensee shall ensure that:~~[Maximum room occupancy is two residents.]~~

~~_____~~ (a) a maximum room occupancy is two patients;

~~_____~~ (2)b) the ~~[M]~~minimum room areas for new construction, ~~[(exclusive of)]excluding~~ toilets, closets, lockers, wardrobes, alcoves, or vestibules,~~[-]~~ ~~[]~~ ~~[shall be]~~measures 120 square feet in single~~[-]~~bed~~[-]~~ rooms and 100 square feet per bed in multiple-bed rooms~~[-]~~;

~~_____~~ (c) ~~[E]~~existing buildings or spaces being licensed as a hospice shall have a minimum of 80 square feet of clear floor area per bed in multiple-bed areas and 100 square feet of clear floor area in single-bed rooms~~[-]~~;

~~_____~~ (3)d) ~~[I]~~in multiple-bed rooms, clearance shall allow for the movement of beds and equipment without disturbing ~~[residents]~~patients~~[-]~~;

~~_____~~ (e) ~~[F]~~the dimensions and arrangement of rooms shall ~~[be such that there is]~~allow for a minimum of three feet clearance ~~[at least]~~at one side, the foot, and between another bed~~[-]~~;

~~_____~~ (4)f) there is a~~[A]~~ nurse call system ~~[shall be provided. E]~~and each bed ~~[shall be]~~is provided with a call device~~[-]~~ that functions as follows:~~[- Two call devices serving adjacent beds may be served by one calling station. Calls in a large inpatient hospice facility shall also activate a visible signal in the corridor at the resident's door.]~~

~~_____~~ (i) two call devices serving adjacent beds may be served by one calling station; and

~~_____~~ (ii) calls in a large inpatient hospice facility activate a visible signal in the corridor at the patient's door; and

~~_____~~ (5)g) a~~[A]~~ nurse emergency call device ~~[shall be]~~is provided at each inpatient toilet, bath, and shower room and is~~[- The call device shall be]~~ accessible to a collapsed ~~[resident]~~patient lying on the floor. Inclusion of a pull cord ~~[with]~~may satisfy this standard~~[- The emergency call system shall be designed so that a signal activated at a resident's calling station will initiate a visible and audible signal distinct from the regular nurse call system and can be turned off only at the resident calling station. The signal shall activate an annunciator panel at the nurse station or other location appropriate to ensure immediate nurse notification. Emergency calls in a large hospice inpatient facility shall also activate a visible signal in the corridor at the resident's door.]~~

(2) The licensee shall ensure the emergency call system is designed so that a signal activated at a patient's calling station will initiate a visible and audible signal distinct from the regular nurse call system and can be turned off only at the patient calling station. This signal shall activate:

~~_____~~ (a) an annunciator panel at the nurse station or other location appropriate to ensure immediate nurse notification; and

~~_____~~ (b) a visible signal in the corridor at the patient's door for emergency calls in a large hospice inpatient facility.

~~_____~~ (6)3) The licensee shall ensure ~~[E]~~each ~~[resident]~~patient ~~[shall have]~~has access to a toilet room without having to enter the corridor area that includes:~~[- One toilet room shall serve not more than four beds and no more than two resident rooms. The toilet room shall contain a water closet and a lavatory. The toilet room door shall swing outward.]~~

~~(a) one toilet room serves four or fewer beds and no more than two patient rooms;~~

~~(b) the toilet room contains a toilet and sink; and~~

~~(c) the toilet room door swings outward.~~

~~(7) At least one single bed room with a private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each eight beds, or fraction thereof, in a hospice facility.]~~

~~(4) The licensee shall ensure at least one single-bed room with a private toilet room containing a toilet, sink, and bathing facility is provided for each eight beds.~~

~~([a]5) In addition to the [lavatory]sink in the toilet room, in new construction [and]or remodeling, the licensee shall ensure a [lavatory or hand washing]-sink [shall be]is provided in the patient room.~~

~~([b]6) The licensee shall ensure [V]ventilation is represented in the department plans review as required in Rule R432-4.[shall be in accordance with Table 7-1 of Part 6 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, which is adopted and incorporated by reference.]~~

~~([8]7) The licensee shall ensure [E]each resident room, intended for 24-hour occupancy, [shall have]has an operable window open to the building exterior or to a courtyard [which]that is open to the sky.~~

~~([9]8) The licensee shall ensure that [E]each [resident]patient closet [shall be]is a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned at 70 inches to hang full length garments.~~

~~([10]9) The licensee shall ensure that [V]visual privacy [shall be]is provided for each [resident]patient in a multiple-bed room[s]. Design for privacy shall not restrict [resident]patient access to the toilet, lavatory, or room entrance.~~

R432-16-8. Service Requirements.

(1) The licensee shall provide a[A] nurse station ~~[shall be provided]~~and have space for charting, storage, medication security, and administrative activities.

(2) ~~The licensee shall ensure the following service requirements: [Toilet room(s) with hand washing facilities for staff shall be provided and may be unisex.]~~

~~(a) there is a toilet room with a hand washing facility for staff is provided and may be unisex;~~

~~([3]b) a [H]hand washing facility[ies] [shall be]is located immediately adjacent to the nursing station and the drug distribution station[-];~~

~~([4]c) [Provisions shall be made for 24-hour distribution of medications by providing-]a medicine preparation room or a self-contained medicine dispensing unit is provided for 24-hour distribution of medications[-]; [I]f a medical cart is used it shall be under visual control of staff[-];~~

~~([5]d) [A]a clean workroom or clean holding room [shall be]is provided for [resident]patient care items, as follows[-];~~

~~([a]i) [The clean work room shall contain-]there is a counter, a hand washing facility[ies], and a storage facility[ies]; and~~

~~([b]ii) [F]the work counter and hand washing facility[ies] may be omitted in a room[s] used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials[-];~~

~~([6]e) [A]a soiled supply workroom [shall be]is provided[-] and contains:~~

~~(a) The soiled workroom shall contain a clinical sink, a sink equipped for hand washing, a work counter, waste receptacles, and a linen receptacle.]~~

~~(i) a clinical sink;~~

~~(ii) a hand washing sink;~~

~~(iii) a work counter;~~

~~(iv) waste receptacles; and~~

~~(v) a linen receptacle;~~

~~([b]f) a [H]hand washing sink[s], clinical sink[s], and work counter[s] may be omitted in a room[s] used only for temporary holding of soiled, bagged material[-];~~

~~([e]g) [F]in a small hospice inpatient facility[ies], soiled workroom, accommodation[s] [shall be available]is made for cleaning and sanitizing patient service items[-];~~

~~([7]h) [C]clean linen [shall be]is stored in a separate closet or room[-] as follows: [-If a closed cart is used for clean linen storage, it shall be stored in a room with a self-closing door. Storage in an alcove in a corridor is prohibited. Clean linen may be stored in the clean work room or a clean holding room.]~~

~~(i) if a closed cart is used for clean linen storage, it shall be stored in a room with a self-closing door;~~

~~(ii) storage in an alcove in a corridor is prohibited; and~~

~~(iii) clean linen may be stored in the clean work room or a clean holding room;~~

~~([8]i) [Resident]a patient bathing facility[ies shall be] is provided in each hospice unit at a ratio of one bathing facility for [each]every eight beds[-, or fraction thereof,] not otherwise served by a bathing facility[ies] within an individual [resident]patient room[s-];~~

~~([a]k) [E]each [resident]patient bathtub or shower [shall be]is in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing[-];~~

~~([b]l) [A]a toilet and [hand]-sink [shall be]are provided at each common bathing area[-]; and~~

~~([9]m) [A]an equipment storage room with a minimum area of five square feet for each licensed bed, but no less than 30 square feet, for portable equipment [shall be]is provided.~~

~~([10]3) In a small hospice inpatient facility[ies], accommodation shall be made for storage of portable equipment.~~

R432-16-9. [Resident]Patient Support Areas.

~~(1) The licensee shall ensure [There shall be resident]patient living areas are equipped with tables, reading lamps, and comfortable chairs designed to be usable by [all]each [residents]patient. [-The total area set aside for dining, resident lounges, and recreation area shall be at least 35 square feet per bed with a minimum total area of at least 225 square feet. At least 20 square feet per bed shall be available for dining-]~~

~~(2) The licensee shall ensure:~~

~~(a) the total area set aside for dining, patient lounges, and recreation area is at least 35 square feet per bed, with a minimum total area of 225 square feet with at least 20 square feet per bed available for dining; and~~

~~([2]b) there is[There shall be] a general[-]purpose room with a minimum area of 100 square feet[-. It shall] that accommodates family gatherings [and shall be]and is equipped with a table, comfortable chairs, and incandescent lighting. In a small hospice inpatient facility[ies], this room may be omitted if the required living area includes an enclosed lounge.~~

~~([3]4) The licensee shall ensure a[A] minimum area of ten square feet per [bed shall]is be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.~~

R432-16-10. General Services.

(1) ~~A~~ [F] large inpatient hospice ~~facilities shall have]~~ licensee shall provide linen services that comply with Subsection R432-4-24(~~3~~)8.

(2) ~~A~~ [S] small inpatient hospice ~~facilities shall have]~~ licensee shall provide space and equipment to store and process clean and soiled linen as required for patient care.

(3) ~~There shall be]~~ The licensee shall provide one housekeeping room for each hospice unit with ~~[- There shall be]~~ an exhaust for the ~~is]~~ room that exhausts air to the outside.

(4) The licensee shall ensure that y~~[-Y]~~ard equipment and supply storage areas ~~shall be]~~ are located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-16-11. Food Service.

(1) The licensee shall ensure ~~the]~~ food service facilities, space, and equipment ~~shall comply with Rule R392-100 and there is: [- the Utah Department of Health Food Service Sanitation Rules. -]~~
(2) Food service space and equipment shall be provided as follows:]

(a) a ~~[S]~~ storage area for food supplies, including a cold storage area for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) a ~~[F]~~ food preparation area;

(c) ~~[A]~~ an area to serve and distribute ~~[resident]~~ patient meals;

(d) ~~[A]~~ an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) ~~[A]~~ a waste storage area ~~[for waste]~~ located next to an outside facility exit allowing for direct pickup; and

(f) ~~[A]~~ an area for meal planning.

R432-16-12. Waste Storage and Disposal.

The licensee shall provide ~~[F]~~ facilities and equipment ~~[shall be provided]~~ for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques required by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-16-13. Details and Finishes.

(1) The licensee shall ensure that d~~[D]~~etails and finishes ~~[shall]~~ comply with the plans review of Rule R432-4 and the following:

(~~1~~)a) ~~[E]~~ corridor handrails ~~[- shall be]~~ are provided; and [- Handrail design shall comply with ADA/ABA AG.]

(~~2~~)b) ~~[C]~~ cubicle curtains and draperies ~~[shall be]~~ are affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(~~3~~)2) The licensee shall ensure that there are ~~[S]~~ signs ~~[shall be]~~ provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; ~~[- and]~~

(c) emergency directional signs; and

(d) ~~[all]~~ signs located in corridors ~~[shall]~~ comply with ~~[ADA/ABA AG]~~ the plans review of Rule R432-4.

(~~4~~)3) ~~[All]~~ The licensee shall ensure that partition and ~~[all]~~ floor and ceiling construction in ~~[resident]~~ each patient area[s] ~~[shall comply]~~ complies with the noise reduction criteria of Table 1 for sound control ~~[-, this includes:~~

(~~5~~)a) ~~[F]~~ floor materials ~~[shall be]~~ that are easily cleanable ~~[-];~~

(~~6~~)b) a ~~[F]~~ floor[s] in an area[s] used for food preparation or food assembly, including the tile joints, ~~[shall be]~~ is water-resistant and resistant to food acids; ~~[- Floor surfaces, including tile joints, shall be resistant to food acids.]~~

(~~7~~)c) an ~~[In]~~ area[s] subject to frequent wet-cleaning, contains ~~[the]~~ floor materials ~~[shall be]~~ that are sealed to prevent contamination by germicidal cleaning solutions ~~[-]; and~~

(~~8~~)d) the ~~[F]~~ floor[s] and wall base[s] of a kitchen[s], toilet room[s], bath ~~[-]~~ room[s], and housekeeping room[s] shall be homogeneous or the joints shall be tightly sealed. The b~~[B]~~ase[s] shall be integrated with the floor and coved.

(~~9~~)4) The licensee shall ensure that ~~[W]~~ wall finishes ~~[shall be]~~ are washable, [and, in the immediate vicinity of plumbing fixtures, -] smooth, [and -] moisture-resistant and in the immediate vicinity of plumbing fixtures.

(~~10~~)5) The licensee shall ensure the following regarding details and finishes: ~~[Finish, trim, floor, and wall construction in food preparation areas shall be free of insect and rodent harboring spaces.]~~

(a) finish, trim, floor, and wall construction in food preparation areas are free of insect and rodent harboring spaces;

(~~11~~)b) ~~[F]~~ floor and wall openings for pipes, ducts, conduits, and joints of structural elements ~~[shall be]~~ are tightly sealed to prevent entry of pests ~~[-];~~

(~~12~~)c) ~~[E]~~ carpet and padding shall be stretched taut and be free of loose edges ~~[-];~~

(~~13~~)d) ~~[F]~~ finishes of ~~[all]~~ each exposed ceiling ~~s and ceiling structures in resident rooms and staff work areas shall be]~~ is cleanable ~~[-];~~

(~~14~~)e) ~~[F]~~ finished ceilings are not required in a mechanical and equipment space[s], shop[s], general storage area[s], and similar spaces, unless required for fire resistive purposes ~~[-]; and~~

(~~15~~)f) ~~[F]~~ finished ceilings ~~[shall be]~~ are provided in areas where dust fallout ~~[might]~~ may occur.

[TABLE 1]

Sound Transmission Limitations
in Hospice Care Facilities

Airborne Sound Transmissions
Class (STC) (a)

Class (IIC) (b)	Partitions	Floors
(Residents')		
room to resident's room	35	40
Public space to (residents') room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

TABLE 1 Sound Transmission Limitations in Hospice Care Facilities		
Airborne Sound Transmissions Class (STC)(a)		
	Partitions	Floors
Class (IIC) (b) Patient's room to patient's room	35	40
Public space to patient's room (b)	40	40
Service areas to patient's room (c)	45	45
(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.		
(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.		
(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers, mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.		

R432-16-14. Mechanical Standards.

(1) The licensee shall ensure that [M]mechanical tests [shall be conducted prior to]are completed before a final [D]department construction inspection.

(2) The licensee shall retain [W]written test results [shall be retained]in facility maintenance files [and]available for [D]department review.

(3) The licensee shall ensure that [A]air conditioning, heating, and ventilating systems [shall]include:

(a) [A]a heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by [residents,]patients;

(b) [A]a cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by [residents,]patients; and

(c) filtration when mechanically circulated outside air is used.

([e]4) An [E]evaporative cooler[s] may not be used.

([d]5) A [S]supply and return system [s-must]shall be within a duct. A [C]common return[s] using a corridor or attic space[s] as a return plenum[s-are]is prohibited.

[-----] (e) Filtration shall be provided when mechanically circulated outside air is used.]

([4]6) The licensee shall ensure that [P]plumbing and other [P]piping [S]systems [shall]include[s] handwashing facilities with enough clearance for single-lever operating handles.

[-----] (a) Hand washing facilities that are arranged to provide sufficient clearance for single-lever operating handles.]

([b]7) The licensee shall ensure that a [D]dishwasher[s] and any other kitchen food storage or cooking appliance [s-shall be]is

approved by the National Sanitation Foundation (NSF) [approved]and has[ve] the NSF seal affixed.

([e]8) The licensee shall ensure that a k[K]itchen grease trap location [shall]comply[ies] with local health department rules.

([d]9) The licensee shall ensure that [H]hot water provided in a patient bathtub[s], shower[s], whirlpool[s], and hand washing facility[ies shall be]is regulated by a thermostatically controlled automatic mixing valve[s]. [These]A valve[s] may be installed on the recirculating system or on an individual inlet[s] to an appliance[s]. The licensee shall ensure [T]the temperature of hot water for patient fixtures [shall]range between 105[-]and[-]115 degrees Fahrenheit.

R432-16-15. Electric Standards.

([4]-)The [L]licensee shall maintain written certification to the [D]department verifying that systems and grounding comply with the recommended standards of the department plans review.[NFPA 99 and NFPA 70.]

[-----] (2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA). Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Recommended Practice RP 20-1998, Lighting for parking facilities by Illuminating Engineering Society of North America.]

(3) The licensee shall provide general and [A]automatic emergency lighting [shall be provided]in accordance with [NFPA 101]the department plans review.

[-----] (4) General lighting shall be provided as required in R432-6, table 4-]

R432-16-16. Penalties.

[The Department may assess a civil money penalty up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.]The department may assess a civil money penalty for any noncompliance with this rule according to Section 26-23-6.

KEY: health care facilities

Date of Last Change: 2023[February 21, 2012]

Notice of Continuation: January 23, 2023

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section
Number:

R432-30

Filing ID:
55268

Agency Information

1. Department:

Health and Human Services

Agency:

Family Health and Preparedness,
Licensing

Building:	Martha Hughes Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state and zip:	Salt Lake City, UT 84114-1000	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Erica Pryor	801-273-2994	ericapryor@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R432-30. Adjudicative Procedure
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
With the consolidation of the Department of Health and Human Services (Department), the Department is working to align the administrative hearing procedures. This repeal is to ensure the administrative hearing procedures are established and consolidated for the Department. With language changes in the amendment to Rule R497-100, this rule is no longer necessary.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This repeal, along with the amendment to Rules R497-100, align and consolidate the administrative hearing procedures for the Department. This rule is repealed in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings because these changes will not impact existing operations. This repeal will not substantively impact existing operations.

B) Local governments:																																				
There are no anticipated costs or savings because these changes do not impact local governments.																																				
C) Small businesses ("small business" means a business employing 1-49 persons):																																				
There are no anticipated costs or savings because these changes do not impact small businesses.																																				
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																																				
There are no anticipated costs or savings because these changes do not impact non-small businesses.																																				
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):																																				
There are no anticipated costs or savings because these changes do not impact persons other than small businesses, non-small businesses, state, or local government entities.																																				
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																																				
There are no anticipated compliance costs for affected persons. These changes will not substantively impact existing operations.																																				
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																																				
Regulatory Impact Table																																				
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2023</th> <th>FY2024</th> <th>FY2025</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Fiscal Benefits</td> <td>FY2023</td> <td>FY2024</td> <td>FY2025</td> </tr> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2023	FY2024	FY2025	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0	Fiscal Benefits	FY2023	FY2024	FY2025	State Government	\$0	\$0	\$0
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Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 26-21-5	Title 26, Chapter 21	
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	04/14/2023
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9. This rule change MAY become effective on:	04/21/2023
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	03/01/2023
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R432. Health, Family Health and Preparedness, Licensing. [R432-30. Adjudicative Procedure.

R432-30-1. Purpose.

~~This rule is adopted pursuant to Title 26, Chapter 21.~~

R432-30-2. Definitions.

~~(1) "Department" means the Utah Department of Health, Bureau of Licensing and Certification.~~

~~(2) "Initial agency determination" means a decision by Department staff, without conducting adjudicative proceedings, of~~

~~the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102.~~

~~(3) "Notice of agency action" means a written notice meeting the requirements of Subsection 63G-4-201(2) that the Department issues to commence an adjudicative proceeding.~~

~~(4) "Request for agency action" means a written request meeting the requirements of Subsection 63G-4-201(3) that requests the Department to commence an adjudicative proceeding.~~

R432-30-3. Commencement of Adjudicative Proceedings.

~~(1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are informal adjudicative proceedings.~~

~~(2) The Department may commence an adjudicative proceeding by sending a notice of agency action in accordance with Subsection 63G-4-201(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.~~

~~(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63G-4-201(3) by completing the "Request for Administrative Review" or the "Request for Agency Action" form and mailing or emailing the form to the Department. A Request for Administrative Review or Request for Agency Action shall be submitted within 25 calendar days of the mailing or emailing of the notice of agency action.~~

R432-30-4. Procedures for Informal Adjudicative Proceedings.

~~(1) No answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.~~

~~(2) The presiding officer shall promptly review a request for agency action and shall:~~

~~(a) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;~~

~~(b) notify the requesting party in writing that the request is denied; or~~

~~(c) notify the requesting party that further proceedings are required to determine the agency's response to the request.~~

~~(3) The agency shall email any notice required by Subsection R432-30-4(2) to all parties.~~

~~(a) The notice shall include all information required by Subsection R432-30-4(2), including:~~

~~(i) the agency's file number or other reference number;~~

~~(ii) the name of the proceeding;~~

~~(iii) designating the proceeding as informal, in accordance with the provisions of Section R432-30-3, enacted under Sections 63G-4-202 and 63G-4-203;~~

~~(iv) a statement of the parties; right to request a hearing;~~

~~(v) the deadline for requesting a hearing under the agency's rules; and~~

~~(vi) the name, title, email, mailing address, and telephone number of the presiding officer.~~

~~(b) In any hearing, the parties named in the notice of agency action or the request for agency action shall be permitted to testify, present evidence, and comment on the issues.~~

~~(c) Hearings will be held only after timely notice to all parties.~~

~~_____ (d) Discovery is prohibited, but the Department may issue subpoenas or other orders to compel production of necessary evidence.~~

~~_____ (e) All parties shall have access to information contained in the Department's files and to all materials and information gathered in any investigation, to the extent permitted by law.~~

~~_____ (f) All hearings shall be open to all parties.~~

~~_____ (g) The agency may record any hearing.~~

~~_____ (h) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.~~

~~_____ (4) Nothing in Rule R432-30 restricts or precludes any investigative right or power given to an agency by statute.~~

R432-30-5. Decisions and Orders.

~~_____ (1) Within a reasonable time, not to exceed 30 days, after the close of an informal adjudicative proceeding, the presiding officer shall issue a recommended order in writing to the agency head or their designee that states the following:~~

~~_____ (a) the decision;~~

~~_____ (b) the reasons for the decision;~~

~~_____ (c) a notice of any right of administrative or judicial review available to the parties; and~~

~~_____ (d) the time limits for filing an appeal or requesting a review.~~

~~_____ (2) In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head.~~

~~_____ (3) The presiding officer's recommended decision and order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.~~

~~_____ (4) The agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings.~~

~~_____ (5) If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain a revised decision and reasons for the decision as needed, based on the record before the presiding officer and as may be supplemented before the agency head.~~

~~_____ (6) A copy of the decision and order shall be promptly emailed to each of the parties at the email address provided to the Department.~~

~~_____ (7) The decision and order shall be mailed to any party known to lack internet access or an email address, or who requests a paper copy.~~

R432-30-6. Witnesses and Subpoenas.

~~_____ (1) Each party is responsible for the presence of that party's witnesses at the hearing.~~

~~_____ (2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:~~

~~_____ (a) the officer may issue the subpoena upon a party's motion supported by an affidavit showing sufficient need, or upon the officer's own motion;~~

~~_____ (b) the party to whom the presiding officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served;~~

~~_____ (c) every subpoena shall be issued by the presiding officer under the seal of the Department, shall state the title of the action,~~

~~and shall command every person to whom it is directed to attend and give testimony at time and place specified in the subpoena; and~~

~~_____ (d) a supporting affidavit for a subpoena duces tecum for the production of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing by a witness shall include the following:~~

~~_____ (i) the name and address of the entity upon whom the subpoena is to be served;~~

~~_____ (ii) a description of what the party seeks to have the witness bring;~~

~~_____ (iii) an explanation showing how the subpoenaed items are material to issues involved in the hearing; and~~

~~_____ (iv) a statement by the party that to the best of their knowledge the person or entity being subpoenaed has such items in their possession or under their control.~~

R432-30-7. Certificate of Service.

~~_____ All documents required to be served shall include a certificate of service dated and signed by the party or their agent in substantially the following form:~~

~~_____ I certify that I served the foregoing document upon all parties to this proceeding by delivering or mailing a copy with postage prepaid and properly addressed, which may include email to: provide the name of the person receiving the document).~~

R432-30-8. Stays and Temporary Remedy.

~~_____ (1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.~~

~~_____ (2) The presiding officer shall issue a written decision within ten working days of the filing date of the petition. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.~~

~~_____ (3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.~~

~~_____ (4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.~~

R432-30-9. Declaratory Orders.

~~_____ (1) Any person or agency may petition for a Department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.~~

~~_____ (2) Any person or agency may petition for a Department declaratory ruling on orders issued by the Bureau of Licensing and Certification in areas where the Health Facility Committee has statutory authority to issue orders by following the procedures outlined in Rule R380-5.~~

KEY: health care facilities

Date of Last Change: August 12, 2021

Notice of Continuation: March 21, 2019

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-14 through 26-21-16]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R432-106

Filing ID: 55267

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R432-106. Specialty Hospital Critical Access
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The revisions include more specific language consistent with the Utah Rulewriting Manual standards and licensing standards.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Specialty Hospital Standards are regulated by the Department of Health and Human Services and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved.

C) Small businesses ("small business" means a business employing 1-49 persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

There are no substantive changes being made regarding the fiscal impact of this rule.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Title 26, Chapter 21		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023

9. This rule change MAY become effective on:	04/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	03/01/2023
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R432. Health, Family Health and Preparedness, Licensing. R432-106. Specialty Hospital - Critical Access.

R432-106-1. [Legal] Authority.

This rule is ~~[adopted pursuant to]~~ authorized by Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-106-2. Purpose.

~~[The purpose of this rule is to promote the public health and welfare through establishment of a specialty hospital category for rural hospitals. Its intent is to allow rural communities to: preserve access to primary care and emergency health care services; provide health care services which meet community needs; and help assure the financial viability of program participants through improved reimbursement and different operating requirements. The rule sets standards for the operation of a Critical Access Hospital, (CAH). The standards of patient care apply to inpatient, outpatient, and satellite services.]~~

(1) The purpose of this rule is to promote public health and welfare through establishment of a specialty hospital category for rural hospitals. The intent is to allow rural communities to:

(a) preserve access to primary care and emergency health care services;

(b) provide health care services that meet community needs; and

(c) assure the financial viability of program participants through improved reimbursement and operating requirements.

(2) The rule sets standards for the operation of a Critical Access Hospital, (CAH).

R432-106-3. Definitions.

~~(1) [For purposes of this rule t]The definitions in Rule R432-1[-3] additionally apply.[-In addition the following definitions apply:]~~

~~([1]2) "Critical Access Hospital" means a nonprofit, profit or public hospital that is enrolled as a Medicaid provider and qualifies as a Critical Access Hospital under 42 CFR, Section 485, Subpart F.~~

~~([2]3) "Referral Hospital" means a hospital that has [sufficient resources]at least three full-time physicians on staff and licensure as a general hospital to receive emergency or non-emergency patient transfers and referrals from a CAH.[-Sufficient resources include at least three full time physicians on staff and licensure as a general hospital.]~~

(4) "Request for Agency Action" is the form used for any licensing changes including a new license, change of ownership, change of administrator, name change, or change in occupancy.

(5) "Swing-Bed" is defined in Rule R432-100.

R432-106-4. Licensure.

A license is required to operate a Critical Access Hospital as identified in ~~[section]~~ Rule R432-2.

R432-106-5. Construction, Facilities, and Equipment Standards.

(1) Each rural hospital, licensed ~~[prior to]~~before July 1, 2000, ~~[which]~~that elects to convert to a CAH, may maintain the physical plant ~~[which]~~that is currently licensed, without having to meet the current construction or building code for a general acute care hospital.

(2) ~~[New hospitals constructed as a CAH, or when a CAH is re-modeled, shall be constructed and maintained in accordance with R432-4-1 through R432-4-24.]~~ A newly constructed or remodeled CAH shall be constructed or remodeled and maintained in accordance with Sections R432-4-1 through R432-4-24.

R432-106-6. Critical Access Hospital Swing-Bed Units.

(1) ~~[The]~~A CAH participating in the swing-bed program may maintain up to 25 swing-beds for care at one time.

(2) In addition to Rule R432-106, designated hospital swing~~[-]~~-beds shall comply with the following ~~[s]~~Sections of Rule R432-150, Nursing Care Facility Rules:

- ~~[(1)]~~a R432-150-4, Definitions~~[-];~~;
- ~~[(2)]~~b R432-150-12, Resident Rights~~[-];~~;
- ~~[(3)]~~c R432-150-13, Resident Assessment~~[-];~~;
- ~~[(4)]~~d R432-150-14, Restraint Policy~~[-];~~;
- ~~[(5)]~~e R432-150-15, Quality of Care~~[-];~~;
- ~~[(6)]~~f R432-150-17, Social Services~~[-]; and~~
- ~~[(7)]~~g R432-150-20, Recreation Therapy.

R432-106-7. Hospital Rules and Exceptions.

(1) ~~[The following sections of]~~Rule R432-100, General Hospital Standards~~[Rules, are adopted and incorporated by reference.]~~ additionally apply to Critical Access Hospital licensees except Rule R432-100, Sections 3, 4, 13, 18, 20, 25 through 28, and 30. Wherever a rule in this section conflicts with Rule R432-100, this section shall supersede.

(2) Rule R432-100, Sections 14, 15, 17, 19, 23, 32, 34, and 35 only apply to a CAH that provides those clinical or ancillary services.

(3) Credentialing of medical and professional staff may be performed by a network hospital or a department approved equivalent.

(4) A network hospital or a department approved equivalent may perform quality improvement as required in Rule R432-100.

(5) A qualified registered nurse is not required to be on duty on a 24-hour basis, but shall be on duty if one acute care patient is admitted.

(6) The licensee shall make available 24-hour emergency care services, seven days a week, regardless of inpatient census. The CAH shall ensure at least one physician is on call at all times. The 30 minute response requirement is amended to 60 minutes if the CAH qualifies under Section 485.618 (d) (2) of the Federal Conditions of Participation.

(7) A network hospital, or through other arrangements approved by the Department, may provide off-site radiology services.

~~[(1)]~~ A CAH shall comply with the following:

- ~~[(a)]~~ R432-100-5, Governing Body.
- ~~[(b)]~~ R432-100-6, Administrator.
- ~~[(c)]~~ R432-100-7, Medical and Professional Staff.
- ~~[(d)]~~ Credentialing of medical and professional staff may be performed by a network hospital or a Department approved equivalent.
- ~~[(e)]~~ R432-100-8, Personnel Management Services.
- ~~[(f)]~~ R432-100-9, Quality Improvement Plans.

~~Quality improvement may be performed by a network hospital or a Department approved equivalent.~~

~~[(f)] R432-100-10, Infection Control.~~

~~[(g)] R432-100-11, Patient Rights.~~

~~[(h)] R432-100-12, Nursing Services.~~

~~A qualified registered nurse is not required to be on duty on a 24-hour basis, but shall be on duty if one acute care patient is admitted.~~

~~[(i)] R432-100-16, Emergency Services.~~

~~The hospital must make available 24-hour emergency care services, seven days a week, regardless of inpatient census. The CAH shall ensure at least one physician is on call at all times. The 30 minute response requirement is amended to 60 minutes if the CAH qualifies under Section 485.618 (d) (2) of the Federal Conditions of Participation.~~

~~[(j)] R432-100-21, Radiology Services.~~

~~Radiology services may be provided off-site through a network hospital or through other arrangements approved by the Department.~~

~~[(k)] R432-100-22, Laboratory and Pathology Services.~~

~~[(l)] R432-100-24, Pharmacy Services.~~

~~[(m)] R432-100-29, Respite Services.~~

~~[(n)] R432-100-31, Dietary Services.~~

~~[(o)] R432-100-33, Medical Records.~~

~~[(p)] R432-100-36, Housekeeping Services.~~

~~[(q)] R432-100-37, Maintenance Services.~~

~~[(r)] R432-100-38, Emergency and Disaster Plans.~~

~~(2) If the CAH provides the following clinical or ancillary services then the following shall apply:~~

~~[(a)] R432-100-14, Surgical Services.~~

~~[(b)] R432-100-15, Anesthesia Services.~~

~~[(c)] R432-100-17, Perinatal Services.~~

~~[(d)] R432-100-19, Respiratory Services.~~

~~[(e)] R432-100-23, Blood Services.~~

~~[(f)] R432-100-32, Telemedicine Services.~~

~~[(g)] R432-100-34, Central Supply.~~

~~[(h)] R432-100-35, Laundry Services.]~~

R432-106-8. Rural Health Network.

(1) The participating CAH shall be a member of a rural health network, as evidenced by a signed, written agreement with at least one Referral Hospital that is a member of the network.

(2) The agreement shall address the following:

- (a) ~~[(P)]~~patient referral and transfer;
- (b) ~~[(T)]~~the development and use of communications system; and
- (c) ~~[(E)]~~emergency and non-emergency transportation.

R432-106-9. Conversion to a General Hospital.

Within 18 months of conversion to the specialty CAH, a hospital may submit a Request for Agency Action to convert to a General Hospital category without being required to meet the current Rule R432-104, General Construction standards.

R432-106-10. Penalty.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Sections 26-21-11 and R432-3-6~~[and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.]~~

KEY: health care facilities

Date of Last Change: 2023[January 5, 2006]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R432-750	Filing ID: 55265
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Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg.	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R432-750. Hospice Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this amendment is to modify and replace outdated language with current licensing and the Utah Rulewriting Manual standards.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The revisions include more specific language consistent with the Utah Rulewriting Manual standards.
This amendment also updates citations and removes incorporations by reference for materials that the Division can cite.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language and updates incorporated and cited materials with the Utah Rulewriting Manual standards and licensing standards.

The changes in this amendment are technical in nature and will not result in a fiscal impact.

B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Hospice Rule Standards are regulated by the Department of Health and Human Services and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

These changes are technical in nature are no substantive changes being made regarding the fiscal impacts of this rule

C) Small businesses ("small business" means a business employing 1-49 persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with current state rulewriting manual and licensing standards.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards and licensing standards.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards and licensing standards.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

After conducting a thorough analysis, it was determined that this rule amendment will not result in compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards and licensing standards. These changes are technical in nature and should not impact existing operations.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Title 26,
Chapter 21

Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	04/21/2023
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R432. Health, Family Health and Preparedness, Licensing.**R432-750. Hospice Rule.****R432-750-1. Legal Authority.**

This rule is ~~adopted pursuant to~~ authorized by Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

R432-750-2. Purpose.

(1) A hospice ~~[program]~~ licensee provides support and care for persons with a limited life expectancy so that they might live as fully and comfortably as possible.

~~((1)2) A hospice [program] licensee offers services that: recognizes dying as a normal process resulting from disease or injury.~~

(a) recognize dying as a normal process resulting from disease or injury;

~~((2)b) [A hospice service] neither hastens nor postpones death[-];~~

~~((3)c) [A hospice program exists in the hope and belief that, through appropriate care and the promotion of a caring community sensitive to their needs,]prepares patients and families [may be free] to attain a degree of mental and spiritual preparation for death that is satisfactory to them, through appropriate care and the promotion of a caring community sensitive to their needs[-];~~

~~((4)d) [The hospice program is a health care agency or facility which offers palliative and supportive services-] provide[ing] physical, psychosocial, spiritual, and bereavement care for dying persons and their families[-];~~

((5)e) [A hospice provides services] are offered through an interdisciplinary team of professionals and volunteers[-]; and

~~((f)6)~~ ~~[Hospice services]~~ are available in both the home and an inpatient setting.

(3) This rule applies to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, that provides, directly or by contract, hospice services to the terminally ill.

[R432-750-3. Time for Compliance.

~~All hospice agencies shall be licensed and in full compliance with these rules by March 1, 1998.~~

~~]~~

R432-750-[4]3. Definitions.

~~(1) [See common definitions rule]~~ Section R432-1-3 additionally applies.

~~[(a)2] Special definitions:~~

~~((a)2)~~ "Appropriate" means especially suitable, ~~[or]~~ compatible, ~~[or]~~ fitting.

~~((b)3)~~ "Bereavement" means the period ~~[of time]~~, usually occurring within the first year after the loss, ~~[during which]~~ when a person or group of people experiences, responds emotionally to, and adjusts to the loss by death of another person.

~~((e)4)~~ "Care" means to perceive and respond to the needs of another.

~~((5)~~ "Certification in Cardiopulmonary Resuscitation" (CPR) refers to certification issued after completion of an in-person course, to include skills testing and evaluation on-site with a licensed instructor.

~~[(d) "Continuum" means the uninterrupted provision of services appropriate to the needs of the patient and family; these services are planned, coordinated, and made available by the hospice program.]~~

~~((6)~~ "Department" means the Department of Health and Human Services

~~((e)7)~~ "Family" means a group of individuals who: ~~[living under one roof and under one head; a group of persons of common ancestry; a group of individuals having a personal commitment one to the another.]~~

~~(a) live in the same home;~~

~~(b) are of common ancestry; or~~

~~(c) have a personal commitment to one another.~~

~~((f)8)~~ "Grief" means the response to loss that often occurs in stages of varying length. Stages are differentiated by changes in feeling, thought, and behavior.

~~((g)9)~~ "Hospice" means ~~[a public agency or private organization or subdivision of either of these]~~ an entity that is primarily engaged in providing care to terminally ill individuals and their families and includes institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.

~~((h)10)~~ "Hospice Administrator" means a person who the governing body appoints ~~[is appointed]~~ in writing by the governing body of the hospice organization and who shall be accountable and responsible for implementing the policies and programs approved by the governing body.

~~((i)11)~~ "Hospice Care" means the care given to the terminally ill and their family ~~[ies]~~ [which] ~~that~~ occurs in a home or in a health facility and ~~[which]~~ includes medical, palliative, psychosocial, spiritual, bereavement, ~~[and]~~ supportive care, and treatment.

~~((j)12)~~ "Hospice Inpatient Facility" means a freestanding licensed hospice facility or designated hospice licensed hospice unit in an existing health care facility.

~~((k)13)~~ "Interdisciplinary Team" means a team composed of ~~an attending physician, [attending and] medical director[s], nurse, social worker, pastoral care provider, volunteer, patient, [and]~~ patient's family, and any other professionals as indicated.

~~((l)14)~~ "Palliative Treatment" means treatment and comfort measures directed toward relief of symptoms and pain management rather than treatment to cure.

~~((m)15)~~ "Palliative Care" means the care given to the terminally ill, focusing on relief of distressing symptoms.

~~((n)16)~~ "Pastoral Care Provider" means an individual who has experience in pastoral duties and is capable of providing for hospice patient and patient family spiritual needs, and is an individual who: [an individual who has received a degree from an accredited theological school, or an individual who by ordination or by ecclesiastical endorsement from the individual's denomination has been approved to function in a pastoral capacity. A Pastoral Care Provider may also be an individual who has received certification in Clinical Pastoral Education which meets the requirements for the College of Chaplains. The individual shall have experience in pastoral duties and be capable of providing for hospice patients' and families' spiritual needs.]

~~(a) has received a degree from an accredited theological school;~~

~~(b) by ordination or by ecclesiastical endorsement from the individual's denomination, has been approved to function in a pastoral capacity; or~~

~~(c) has received certification in Clinical Pastoral Education that meets the requirements for the College of Chaplains.~~

~~((o)17)~~ "Primary Care Giver" means the family member or other person designated by the family who assumes the overall responsibility for the care of the patient in the home.

~~[(p) "Special Services" means those services not represented on the interdisciplinary team that may be valuable for specific patient and family needs, including but not limited to nurses, social workers, homemakers, certified nursing aide, recreation therapists, occupational therapists, respiratory therapists, pharmacists, dieticians, lawyers, certified public accountants, funeral directors, musical therapists, art therapists, speech therapists, physical therapists, and counselors.]~~

~~((q)18)~~ "Spiritual" means patient ~~[s]~~ and patient's family ~~[ies]~~ beliefs and practices as they relate to the meaning of their life, death, and their connection to humanity ~~[which]~~ that may or may not be of a religious nature.

~~((r)19)~~ "Terminal" ~~[Illness]~~ means a state of disease characterized by a progressive deterioration with impairment of function ~~[which]~~ that without aggressive intervention, survival is anticipated to be six months or less.

~~[(s) "Terminal Care" means the care provided to an individual during the final stage of their illness.]~~

~~[(t) "Unit of Care" means the individual to receive hospice services; since the term "unit" means a single, whole thing, hospice defines the patient and family to be the single whole, regardless of the degree of harmony or integration of the parts within that whole.]~~

~~((u)20)~~ "Volunteer" means an individual ~~[professional or nonprofessional]~~ who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice ~~[s]~~ and [one] who contributes time and talent to the hospice program without economic remuneration.

[R432-750-5. Licensure.

~~Hospice agencies shall include institutionally based hospice programs, freestanding public and proprietary hospice agencies, and any subdivision of an organization, public agency, hospital, or nursing home licensed to provide hospice services.]~~

[R432-750-6. Eligibility.

~~These provisions apply to a program advertising or presenting to be a hospice or hospice program of care, as defined in Section 26-21-2, which provides, directly or by contract hospice services to the terminally ill.]~~

R432-750-[7]4. Governing Body and Administration.

(1) The licensee shall ensure that the hospice agency ~~shall be~~is organized under a governing body that assumes full legal responsibility for the conduct and operations of the agency.

(2) The licensee shall develop an organization chart that shows the administrative structure of the agency. ~~[must be shown by an organization chart.]~~

(3) The governing body is responsible to:

(a) comply with ~~[all]~~any federal regulations, state rules, and local laws;

(b) adopt written policies and procedures ~~[which]~~that describe functions or services of the hospice and protect patient rights;

(c) adopt a statement that there will be no discrimination because of race, color, sex, religion, ancestry, disability status, sexual orientation, gender, or national origin ~~[-(Sections 13-7-1 through 4)]~~;

(d) develop and implement bylaws ~~[which]~~that shall include at least:

(i) a statement of purpose~~[-]~~;

(ii) a statement of qualifications for membership and methods to select members of the governing board~~[-]~~;

(iii) an ~~[provision]~~outline of ~~[for]~~the establishment, selection, and term of office for committee members and officers~~[-]~~;

(iv) a description of functions and duties of the governing body officers and committees~~[-]~~;

(v) a statement of the authority and responsibility delegated to the hospice administrator~~[-]~~; and

(vi) a policy statement relating to conflict of interest of members of the governing body or employees who ~~[may]~~influence agency decisions;

(e) meet at least annually~~[-, or more frequently]~~ as stated in the bylaws;

(f) appoint by name and in writing, a qualified hospice administrator who is responsible for the agency's overall functions;

(g) notify the ~~[licensing agency]~~department in writing 30 days ~~[prior to]~~before any proposed change in the hospice administrator, identifying the name of the new hospice administrator, and the effective date of the change;

(h) review the written annual evaluation report from the hospice administrator and document recommendations as necessary;

(i) ~~[make provision for]~~provide resources and equipment to provide a safe working environment for personnel; and

(j) establish a system of financial management and accountability.

(4) The hospice administrator is responsible for the overall management of the agency and shall~~[-]~~

(a) ~~[The hospice administrator must]~~designate in writing the name and title of a qualified person who shall act as hospice administrator in the temporary absence of the hospice administrator.

This designee shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being.

~~(b) complete, submit, file, and make available any records, reports, and documentation required by the department;~~

~~(c) review agency policies and procedures at least annually and recommend necessary changes to the governing body;~~

~~(d) implement agency policies and procedures;~~

~~(e) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;~~

~~(f) appoint the following, by name and in writing:~~

~~(i) a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;~~

~~(ii) a registered nurse to be the director of nursing services;~~

~~(iii) a person responsible for maintaining a clinical record system on any patients;~~

~~(iii) the members and their terms of membership in the interdisciplinary quality assurance committee;~~

~~(iv) other committees as deemed necessary, describe committee functions and duties, and outline the selection, term of office, and responsibilities of committee members; and~~

~~(g) maintain current written designations or letters of appointment for the agency;~~

~~(h) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;~~

~~(i) secure contracts for services not directly provided by the hospice;~~

~~(j) develop a staff communication system that:~~

~~(i) coordinates interdisciplinary team services;~~

~~(ii) coordinates implementation of plans of treatment;~~

~~(iii) utilizes services or resources to meet patient needs; and~~

~~(iv) promotes an orderly flow of information within the organization;~~

~~(k) implement a program of budgeting and accounting;~~

~~(l) establish, when appropriate, a billing system that itemizes services provided and charges submitted to the payment source; and~~

~~(m) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.~~

~~([b]5) The hospice administrator or designee shall be available during the agency's hours of operation.~~

~~[(c) The hospice administrator is responsible to:~~

~~(i) complete, submit, file, and make available all records, reports, and documentation required by the Department;~~

~~(ii) review agency policies and procedures at least annually and recommend necessary changes to the governing body;~~

~~(iii) implement agency policies and procedures;~~

~~(iv) organize and coordinate functions of the agency by delegating duties and establishing a formal means of staff accountability;~~

~~(v) appoint by name and in writing a physician or registered nurse to provide general supervision, coordination, and direction for professional services of the agency;~~

~~(vi) appoint by name and in writing a registered nurse to be the director of nursing services;~~

~~(vii) appoint by name and in writing the members and their terms of membership in the interdisciplinary quality assurance committee;~~
~~(viii) appoint other committees as deemed necessary, describe committee functions and duties, and make provision for selection, term of office, and responsibilities of committee members;~~
~~(ix) designate by name and in writing a person responsible for maintaining a clinical record system on all patients;~~
~~(x) maintain current written designations or letters of appointment in the agency;~~
~~(xi) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority, and who have the appropriate license or certificate of completion;~~
~~(xii) develop a staff communication system that coordinates interdisciplinary team services, coordinates implementation of plans of treatment, utilizes services or resources to meet patient needs, and promotes an orderly flow of information within the organization;~~
~~(xiii) secure contracts for services not directly provided by the hospice;~~
~~(xiv) implement a program of budgeting and accounting;~~
~~(xv) establish, when appropriate, a billing system which itemizes services provided and charges submitted to the payment source; and~~
~~(xvi) conduct an annual evaluation of the agency's overall function and submit a written report of the findings to the governing body.]~~

R432-750-[8]5. Personnel.

(1) The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

([1]2) The [agency]licensee shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for [the]each position[held];

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules;[method and period of payment; fringe benefits such as sick leave, vacation, and insurance;]

(e) method and period of staff payment;

(f) staff benefits including sick leave, vacation, and insurance;

([e]g) frequency and documentation of in-service training; and

([f]h) contents of personnel files of employed and volunteer staff.

([2]3) The licensee shall require that e[E]ach employee [must]provide [within 45 days of hire]proof of registration, certification, or licensure as required by the Utah Department of Commerce within 45 days of hire.

([3]4) The [agency]licensee shall establish and implement a policy and procedure for health screening of [all]any agency personnel.

(a) The licensee shall ensure that a[A]n employee placement health evaluation [to include at least a health inventory shall be]is completed when an employee is hired. The evaluation shall include at least a health inventory that outlines the employee's history of:

[~~(b) The health inventory shall obtain at least the employee's history of the following:~~

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions [which]that may prevent the employee from performing certain assigned duties satisfactorily[;].

([e]b) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with Rule R386-702 Communicable Disease.[Rule.]

([d]c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with Rule R388-804, Special Measures for the Control of Tuberculosis.

([i]d) The licensee shall ensure that [all]any employees are skin-tested for tuberculosis within two weeks of:

([A]i) initial hiring;

([B]ii) suspected exposure to a person with active tuberculosis; [and]or

([C]iii) development of symptoms of tuberculosis.

([i]e) Skin testing shall be exempted for [all]any employees with known positive reaction to skin tests.

([e]f) [AH]The facility shall report any infections and communicable diseases reportable by law [shall be reported by the facility]to the local health department in accordance with Section R386-702-3.

([4]5) The [hospice]licensee [must]shall document that [all]any employees, volunteers, and contract personnel are oriented to the agency and the job [for which]that they are hired. Orientation shall include:

[~~(a) Orientation shall include:~~

([i]a) the hospice concept and philosophy of care;

([i]b) the functions of agency employees and the relationships between various positions or services;

([i]c) job descriptions;

([i]d) duties [for which]that persons are trained, hold certificates, or are licensed;

([i]e) ethics, confidentiality, and patient[s'] rights;

([i]f) information about other community agencies including emergency medical services;

([i]g) opportunities for continuing education appropriate to the patient population served;

([i]h) policies related to volunteer documentation, charting, hours, and emergencies; and

([i]i) reporting requirements when observing or suspecting abuse, neglect, and exploitation pursuant to Section 62A-3-305.

([b]6) The [hospice]licensee shall provide and document in-service training and continuing education for staff at least annually.

([i]a) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

([i]b) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The [hospice]licensee shall train [all]personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

([5]7) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records, and personnel qualifications;

(b) assure that on[-]going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of ~~all~~ any levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine ~~which~~ that staff will be assigned to each case.

(~~6~~8) The ~~hospice program~~ licensee shall provide access to individual ~~and~~ or group support for interdisciplinary team members to assist with stress ~~and~~ or grief management related to providing hospice care.

R432-750-~~9~~6. Contracts.

(1) The hospice administrator shall secure a legally binding written contract for the provision of arranged patient services.

(2) The contract or agreement shall be available for review by the ~~the~~ department[-] and shall include:

~~_____ (3) The contract shall include:~~

(a) the effective and expiration dates of the contract;

(b) a description of goods or services provided by the contractor to the agency;

(c) ~~provision for~~ financial terms of the contract, including methods to determine charges, reimbursement, and the responsibility of contract personnel in the billing procedure;

(d) the method of supervision of contract personnel and the manner ~~in which~~ that services will be controlled, coordinated, and evaluated by the agency;

(e) a statement that contract personnel shall perform according to agency policies and procedures, and shall conform to standards required by laws, rules, ~~or~~ and regulations;

(f) a description of the contractor's role in the development of plans of treatment, and how to keep agency staff informed about the patient's needs or condition;

(g) ~~a provision to~~ terms of termination of the contract; and

(h) a photocopy of the professional license of any contracted personnel, ~~if applicable.~~

R432-750-~~10~~7. Acceptance and Termination.

(1) The ~~agency~~ licensee shall develop written acceptance and termination policies and make these policies available to the public upon request.

(2) The ~~agency~~ licensee shall make available to the public, upon request, information regarding the various services provided by the hospice and the cost of the services.

(3) The licensee ~~A patient will~~ shall ~~be~~ accept~~ed~~ a patient for treatment if there is reasonable expectation that the patient's needs can be met by the agency regardless of ability to pay for the services. The ~~agency~~ licensee shall base the acceptance determination on the following:

(a) ~~the~~ patient, family or responsible person agrees that hospice care is appropriate and completes a signed informed consent document requesting hospice services. If no primary care person is available, the ~~agency~~ licensee shall complete an evaluation to determine the patient's eligibility for service[-];

(b) ~~the~~ patient's attending physician ~~must~~ shall order hospice care[-]; and

(c) ~~the~~ ~~hospice agency~~ licensee determines that the patient's place of residence is adaptable and safe for the provision of hospice services.

(4) The ~~agency~~ licensee may terminate services to a patient if any of the following circumstances occur:

(a) ~~the~~ patient is determined to no longer be terminal[-];

(b) ~~the~~ family situation changes ~~which~~ that affects the delivery of services[-];

(c) ~~the~~ patient or family is uncooperative in efforts to attain treatment objectives[-];

(d) ~~the~~ patient moves from the geographic area served by the agency[-];

(e) ~~the~~ physician fails to renew orders or the patient changes ~~his~~ their physician and the ~~agency~~ licensee cannot obtain orders for continuation of services from the new physician[-];

(f) ~~the~~ ~~agency~~ licensee can no longer provide quality care in the existing environment due to safety of staff, patient, or family[-]; or

(g) ~~the~~ patient or family requests that agency services be discontinued.

(5) Upon transfer from a home program to an in[-]patient unit, or the reverse, the plan of care shall be forwarded to the receiving program.

R432-750-~~11~~8. Patients' Rights.

(1) The ~~agency~~ licensee shall establish ~~and make available to the patient~~ written patient[s'] rights that shall be available to the patient before or at admission and to the responsible party, next of kin, sponsoring agency, representative payee and the public upon request. The licensee may determine how patient rights information is distributed in the agency policy.

~~_____ (a) Written patients' rights shall be made available to the, responsible party, next of kin, sponsoring agency, representative payee, and the public upon request.~~

~~_____ (b) Agency policy may determine how patients' rights information is distributed.~~

(2) The ~~agency~~ licensee shall ~~it~~ ensure that each patient receiving care has the ~~following rights~~ right to:

(a) ~~to~~ receive information ~~on~~ regarding patient[s'] rights and responsibilities;

(b) ~~to~~ receive information ~~on~~ regarding services ~~for which~~ that the patient or a third-party pay~~er~~ may be responsible for and to receive information on ~~all~~ any change[s] in charges;

(c) ~~to~~ be informed of personal health conditions, unless medically contraindicated and documented in the clinical record, ~~and to~~

~~_____ (d) be~~ ~~afforded~~ given the opportunity to participate in the planning of the hospice services, including referral to health care institutions or other agencies; ~~and~~

~~_____ (e) to refuse to participate in experimental research;~~

~~_____ (f) to~~ refuse treatment to the extent permitted by law and to be informed of the medical consequences, ~~if such~~ if refused;

~~_____ (g) to~~ be assured confidential treatment of personal and medical records and to approve or refuse the release of records to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

~~_____ (h) to~~ be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

~~_____ (i) to~~ receive information about the hospice services required ~~in order~~ to assist in the course of treatment;

(~~h~~) ~~to~~ be assured the personnel who provide care are qualified through education and experience to carry out the services ~~for which~~ ~~that~~ they are responsible;

(~~i~~) ~~to~~ receive proper identification by the individual providing hospice services;

(~~j~~) ~~to permit the patient the right to~~ discontinue hospice care at any time ~~he or she~~ ~~they~~ choose[s]; and

(~~k~~) ~~to~~ receive information about advanced directives.

R432-750-~~12~~9. Patient Records.

(1) The administrator shall develop and implement record keeping policies and procedures that address the use of patient records by authorized staff, content, confidentiality, retention, and storage.

(a) The licensee shall ensure that r[R]ecords ~~shall be~~ are organized in a uniform medical record format.

(b) The ~~agency~~ licensee shall maintain an identification system to facilitate location of each patient's current or closed record.

(c) The ~~hospice~~ licensee shall maintain an accurate, ~~up-to-date~~ current record for ~~every~~ each patient receiving service.

(d) Each ~~hospice health care provider~~ licensee who has a patient contact or provides a service shall insure that a clinical note entry of that contact or service is made in the patient's record.

(e) ~~All~~ Any entries ~~must~~ shall be dated and authenticated with the signature and title of the person making the entry.

(f) The ~~hospice~~ licensee shall document ~~each~~ each service[s] provided and the outcome[s] of ~~these~~ each service[s] in the individual patient record.

(2) The licensee shall ensure that signed and dated p[P]hysician's orders ~~shall be~~ are incorporated into the plan of care and renewed at least every 90 days. A copy of the order is acceptable as long as the original order is available on request.

~~(a) The orders shall include the physician signature and date.~~

~~(b) Orders faxed from the physician are acceptable provided that the original order is available upon request.~~

(3) The licensee shall ensure that e[E]ach patient['s] record shall contain at least the following information:

(a) demographic information ~~including~~ that includes: patient's name, address, age, date of birth, name and address of nearest relative or responsible person, name and telephone number of physician with primary responsibility for patient care, and if applicable, the name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(i) patient name;

(ii) patient address;

(iii) age;

(iv) patient date of birth;

(v) name and address of nearest relative or responsible person;

(vi) name and telephone number of the physician with primary responsibility for patient care; and

(vii) name and telephone number of the person or family member who, in addition to agency staff, provides care in the place of residence;

(b) diagnosis;

(c) pertinent medical and surgical history if available;

(d) a written and signed informed consent to receive hospice services;

(e) orders by the attending physician for hospice services;

(f) medications and treatments as applicable;

(g) a written plan of care; and

(h) a signed, dated patient assessment ~~which~~ that includes the following:

(i) a description of the patient's functional limitations;

(ii) a physical assessment noting chronic or acute pain and other physical symptoms and their management;

(iii) a psychosocial assessment of the patient and family;

(iv) a spiritual assessment; and

(v) a written summary report of hospice services provided that is additionally sent to the patient's attending physician at least every 90 days.

~~(4) The hospice must send a copy of the summary required in subsection 12(3)(h)(v) to the patient's attending physician at least every 90 days. The summary shall become part of the patient's and family record as applicable.]~~

(~~5~~) 4 The person who is assigned to supervise or coordinate care for a patient ~~must~~ shall complete a discharge summary when services to the patient are terminated. The discharge summary shall include ~~the~~ the reason for discharge and the name of the facility or agency if the patient is referred or transferred.

~~(a) the reason for discharge; and~~

~~(b) the name of the facility or agency if the patient has been referred or transferred.]~~

(~~6~~) 5 The ~~hospice~~ licensee shall safeguard clinical record information against loss, destruction, and unauthorized use.

(a) The licensee shall ensure that w[W]ritten procedures ~~shall~~ govern the use and removal of records and conditions for release of patient information.

(b) A written consent is required for the release of patient/~~client~~ information and photographing ~~of~~ recorded information.

(c) When a patient is transferred to another facility or agency, the licensee shall send a copy of the record or abstract ~~must be sent~~ to that service agency.

(~~7~~) 6 The ~~agency~~ licensee shall provide an accessible area for filing and safe storage of medical records.

(a) The licensee shall ensure that each ~~P~~ patient record[s] ~~shall be~~ is retained for at least seven years after the last date of patient care.

(b) ~~[Upon change of ownership, all]~~ The licensee shall transfer any patient records ~~shall be transferred~~ to a new owner[s] upon a change of agency ownership.

R432-750-~~13~~10. Quality Assurance.

(1) The governing body shall evaluate the quality, appropriateness, and scope of services provided by the ~~agency~~ licensee at least annually to determine if the ~~agency~~ licensee has met ~~the agency~~ its objectives.

(2) An interdisciplinary quality assurance committee shall evaluate patient services at least quarterly and maintain a written report of findings. Recommendations from each meeting shall be submitted to the hospice administrator and shall be maintained ~~in the agency~~ for review by the department.

(a) The administrator shall appoint the members of the quality assurance committee for a given term of membership.

(b) The quality assurance committee shall include a minimum of three individuals who represent three different health care services.

R432-750-~~14~~11. Hospice Services.

(1) A hospice unit of care includes the patient and the patient's family. The licensee shall ensure that the patient, ~~and~~

]family, [~~for~~] or other primary care person[~~}]~~] participates in the development and implementation of the interdisciplinary care plan according to their ability.

(2) Hospice care includes responding to the scheduled and unscheduled needs of the patient and family 24 hours per day. The licensee shall ensure that w[~~W~~]ritten policies and procedures [shall] include:

(a) a procedure for accepting referrals[~~in accordance with the provisions of R432-750-10~~];

(b) a procedure for completing an initial assessment and developing the interdisciplinary care plan;

(c) a procedure for providing for and documenting that the interdisciplinary team meets regularly to evaluate care and includes inpatient and in-home care staff;

(d) [~~provision for~~] a requirement that the care plan to be available to team members for in-home and inpatient services;

(e) a process for the appropriate transfer of care from hospice in-home care to hospice inpatient care and vice-versa where available;

(f) [~~provision for~~] a clearly defined and integrated administrative structure between in-home care and inpatient services; and

(g) coordination of the care plan between in-home hospice and inpatient hospice care.

(3) Hospice care shall be provided by the interdisciplinary team.

(a) The interdisciplinary team may include ancillary staff when appropriate.

(b) The interdisciplinary team shall meet at least twice a month to develop and maintain an appropriate plan of care.

(4) A care plan for each patient [must]shall be signed by the attending physician and include the following:

(a) the name of patient;

(b) [~~all~~] any pertinent diagnoses;

(c) objectives, interventions, and goals of treatment, based upon needs identified in a comprehensive patient assessment;

(d) services to be provided, at what intervals and by whom; and

(e) the date the plan was initiated and dates of subsequent reviews.

(5) [~~No medication or treatment requiring an order may be given by hospice nurses except on the order of a person lawfully authorized to give such an order.~~] A hospice nurse may not give any medication or treatment requiring an order except on order of a person lawfully authorized to give such an order.

(a) Initial orders and subsequent changes in orders for the administration of medications shall be signed by the person lawfully authorized to give such orders and incorporated in the patient's record maintained by the [~~program~~] licensee.

(b) Telephone orders[~~must be~~] shall only be received by licensed personnel, who [and] shall record[ed] them immediately in the patient's medical record. Telephone orders [must]shall be countersigned by the initiator within 15 days of the date of issue.

(c) Orders for therapy services shall include the specific procedures to be used and the frequency and duration of the services.

(d) The attending physician shall review, sign, and date orders at least every 90 days.

(e) Only those hospice employees licensed to do so may administer medications to patients.

(f) Medications and treatments that are administered by hospice employees, [must]shall be administered as prescribed and recorded in the patients record.

R432-750-[~~15~~]12. Physician Services.

(1) Each patient admitted for hospice services shall be under the care of a licensed physician[~~}]~~ who shall provide the following:

[~~— (2) The physician shall provide the following:]~~

(a) approval for hospice care;

(b) admitting diagnosis and prognosis;

(c) current medical findings;

(d) medications and treatment orders; and

(e) pertinent orders regarding the patient's terminal condition.

[~~(3)~~]2 The administrator shall appoint in writing a licensed physician to be the medical director. The [~~M~~]medical [~~D~~]director [must]shall be knowledgeable about the psychosocial and medical aspects of hospice care, on the basis of training[~~}]~~ and experience,[and interest.] The medical director shall:

(a) act as a medical resource to the interdisciplinary team;

(b) coordinate services with each attending physician to ensure continuity in the services provided in the event the attending physician [~~is unable to~~] cannot retain responsibility for patient care; and

(c) act as liaison with physicians in the community.

R432-750-[~~16~~]13. Nursing Services.

(1) A registered nurse shall provide or direct nursing services.

(2) Registered nursing personnel shall perform the following tasks:

(a) make the initial nursing evaluation visit;

(b) re-evaluate the patient's nursing needs as required;

(c) initiate the plan of care and necessary revisions;

(d) provide directly, or by contract, skilled nursing care;

(e) assign, supervise, and teach other nursing personnel and primary care persons;

(f) coordinate [~~all~~] any services provided with members of the interdisciplinary team;

(g) inform the physician and other personnel of changes in the patient's condition and needs;

(h) prepare clinical progress notes; and

(i) participate in in-service training programs.

R432-750-[~~17~~]14. Medical Social Work Services.

(1) The [~~agency~~] licensee shall provide social work services by a [~~qualified~~] social worker who has received a degree from an accredited school of [~~S~~]social [~~W~~]work and is licensed under the Mental Health Professional Practice Act, Title 58, Chapter 60.

[~~— (2) Social work services shall be provided by a social worker licensed under the Mental Health Professional Practice Act (Title 58, Chapter 60).]~~

[~~(3)~~]2 The social worker shall participate in in-service training to meet the care needs of the patient and family.

R432-750-[~~18~~]15. Professional Counseling Services.

(1) The [~~agency~~] licensee shall provide counseling services to patients either directly or by contract. These services may include dietary and other counseling services deemed appropriate to meet the patients[~~']~~ and family[~~ies~~] needs.

(2) The licensee shall ensure that [H]individuals who provide counseling services, whether employed or contracted by the [~~agency~~] licensee, [must be]are licensed, certified, registered, or qualified as to education, training, or experience according to law.

R432-750-[19]16. Pastoral Care Services.

(1) The [hospice]licensee shall provide pastoral services through a qualified staff person who has a working relationship with local clergy or spiritual counselors.

(2) The licensee shall ensure that p[P]astoral services [shall] include the following:

- (a) spiritual counseling consistent with patient and family belief systems;
- (b) communication with and support of clergy or spiritual counselors in the community as appropriate; and
- (c) consultation and education to patients and families and interdisciplinary team members as requested.

R432-750-[20]17. Volunteer Services.

(1) Hospice volunteers may provide a variety of services as defined by the policies of each program and under supervision of a designated and qualified hospice staff member.

(1)2) The licensee shall ensure that v[V]olunteers [must] receive a minimum of 12 hours of documented orientation and training [which]that [shall]includes the following:

- (a) the hospice services, goals, and philosophy of care;
 - (b) the physiological aspects of terminal disease;
 - (c) family dynamics, coping mechanisms, [and] psychosocial and spiritual issues surrounding the terminal disease, death, and bereavement;
 - (d) communication skills;
 - (e) concepts of death and dying;
 - (f) care and comfort measures;
 - (g) confidentiality;
 - (h) patient's and family's rights;
 - (i) procedures to be followed in an emergency;
 - (j) procedures to follow at the time of patient death;
 - (k) infection control and safety;
 - (l) stress management; and
 - (m) the volunteer's role and documentation requirements.
- (3) The [hospice]licensee shall maintain records of hours of services and activities provided by volunteers.
- (4) The [agency]licensee shall have on file, a copy of certification, registration, or license of any volunteer providing professional services.

R432-750-[21]18. Bereavement Services.

(1) The licensee shall ensure that b[B]ereavement services [shall]address the family needs following the death of the patient. [Services are available, as needed, to survivors for at least one year.]This includes:

- (a) making bereavement services available, as needed, to survivors for at least one year;
- (2)b) supervised [B]bereavement services [shall be supervised]by a person possessing at least a degree or documented training in a field that addresses psychosocial needs, counseling, and bereavement services[-]; and
- (3)c) [All]any volunteers and staff who [deliver]provide bereavement services shall receive bereavement training.
- (4)2) The licensee shall ensure that b[B]ereavement services [shall]include the following:
 - (a) survivor contact, as needed and documented, following a patient's death;
 - (b) an interchange of information between the team members regarding bereavement activities; and
 - (c) a process for the assessment of possible pathological grief reactions and, as appropriate, referral for intervention.

R432-750-[22]19. Other Services.

(1) Other services offered by the licensee may include[but are not limited to]:

- (a) physical therapy;
 - (b) occupational therapy;
 - (c) speech therapy; and
 - (d) certified nursing aide.
- (2) Any [S]services provided directly by the licensee or through contract shall be ordered by a physician and documented in the clinical record.

R432-750-[23]20. Freestanding Inpatient Facilities.

[In addition to the requirements outlined in the previous sections of R432-750, f]Freestanding inpatient hospice [facilities]licensees shall additionally meet the Construction and Physical Environment requirements of Rules R432-4, R432-5, and R432-12, depending on facility size and type of patient admitted.

R432-750-[24]21. Hospice Inpatient Facilities.

[In addition to the requirements outlined in the previous sections of R432-750, i]Inpatient hospice [facilities]licensees shall additionally meet the requirements of Sections R432-750-[25]23 through R432-750-[40]38.

R432-750-[25]22. Inpatient Staffing Requirements.

- (1) [The]An inpatient hospice licensee [must]shall provide competent hospice trained nursing staff 24 hours per day[every day of the week] to meet the needs of [the]a patient in accordance with the patient's plan of care. Nursing services [must]shall provide treatments, medications, and diet as prescribed.
- (2) A hospice[-]trained registered nurse [must]shall be on duty 24 hours per day to provide direct patient care and supervision of [all]any nursing services.

R432-750-[26]23. [Inpatient Hospice]Infection Control.

- (1) The [hospice]licensee shall develop and implement an infection control program to protect patients, family, and hospice personnel [from hospice or]from community associated infections.
- (2) The hospice administrator and medical director shall develop written policies and procedures governing the infection control program.
- (3) [All]The licensee shall ensure that each employee[s shall] wears clean garments or protective clothing at all times, and practice good personal hygiene and cleanliness.
- (4) The [hospice]licensee shall develop and implement a system to investigate, report, evaluate, and maintain records of infections among patients and personnel.
- (5) The [hospice]licensee shall comply with Occupational Safety and Health Administration, OSHA, Blood Borne Pathogen Standards, 29 CFR 1910.1030, [July 1, 1998,]2001[which is adopted and incorporated by reference].

R432-750-[27]24. Pharmaceutical Services.

- (1) The [hospice]licensee shall establish and implement written policies and procedures to govern the procurement, storage, administration, and disposal of [all]any drugs and biologicals in accordance with federal and state laws.
- (2) A licensed pharmacist shall supervise pharmaceutical services. The pharmacist's duties shall include[, but not be limited to] the following:
 - (a) advise the hospice and hospice interdisciplinary team on [all]any matters pertaining to the following:[procurement, storage,

administration, disposal, and record keeping of drugs and biologicals; interactions of drugs; and counseling staff on appropriate and new drugs;]

(i) procurement, storage, administration, disposal, and record keeping of drugs and biologicals;

(ii) interactions of drugs; and

(iii) counseling staff on appropriate and new drugs;

(b) inspect ~~[all]~~ each drug storage area[s] at least monthly; and

(c) conduct patient drug regimen reviews at least monthly or more often if necessary, ~~[with]~~ and make recommendations to physicians and hospice staff.

(3) The ~~[hospice]~~ licensee shall establish and implement written policies and procedures for drug control and accountability. Records of receipt and disposition of ~~[all]~~ each controlled drug[s] shall be maintained for accurate reconciliation.

(4) The pharmaceutical service ~~[must]~~ shall ensure that drugs and biologicals are labeled based on currently accepted professional principles, and include the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.

(5) The ~~[hospice]~~ licensee ~~[must]~~ shall provide secure storage for medications. Medications that require refrigeration ~~[must]~~ shall be maintained between 36 and 46 degrees Fahrenheit (F).

(6) The licensee ~~[hospice must]~~ shall provide separately locked compartments for storage of controlled drugs ~~[as listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended,]~~ as well as other drugs subject to abuse. Only authorized personnel, in accordance with ~~[S]~~ state and ~~[F]~~ federal laws, shall have access to the locked medication compartments.

(7) Controlled drugs no longer needed by the patient shall be disposed of by the pharmacist and a registered nurse. The hospice ~~[must]~~ shall maintain written documentation of the disposal.

(8) An inpatient hospice licensee shall maintain an emergency drug kit appropriate to the needs of the facility, assembled in consultation with the pharmacist and readily available for use. The pharmacist shall check and restock the kit at least monthly, ~~[or more often as necessary.]~~

R432-750-[28]25. Inpatient Hospice Patient's Rights.

(1) In addition to Section R432-750-[44]9, the ~~[hospice]~~ licensee shall honor each patient's ~~[rights as follows]~~ right to:

(a) ~~[the right to]~~ exercise [his/her] their rights as a patient of the facility and as a citizen or resident of the United States;

(b) ~~[the right to]~~ be free of mental and physical abuse;

(c) ~~[the right to]~~ be free of chemical and physical restraints for [the purpose of] discipline or staff convenience;

(d) ~~[the right to]~~ have family members remain with the patient through the night;

(e) ~~[the right to]~~ receive visitors, including small children, at any hour, [including small children;]

(f) ~~[the right for the family to have privacy after]~~ privacy for the family following a patient's death;

(g) ~~[the right to]~~ keep personal possessions and clothing as space permits;

(h) ~~[the right to]~~ privacy during visits with family, friends, clergy, social workers, and advocacy representatives;

(i) ~~[the right to]~~ send and receive mail unopened[;] and have access to telephones to make and receive confidential calls;

(j) ~~[the right to]~~ have family or the responsible person informed by the inpatient hospice of significant changes in the patient's condition or needs;

(k) ~~[the right to]~~ participate in religious and social activities of the patient's choice;

(l) ~~[the right to]~~ manage and control personal cash resources;

(m) ~~[the right to]~~ receive palliative treatment rather than treatment aimed at intervention for [the purpose of] cure or prolongation of life;

(n) ~~[the right to]~~ refuse nutrition, fluids, medications, and treatments; and

(o) ~~[the right to]~~ leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night[;] except that the inpatient hospice may lock doors at night for the protection of patients.

(2) The licensee ~~[hospice must]~~ shall post patient rights in a public area of the facility.

(3) Restraints ordered to treat a medical condition ~~[must]~~ shall comply with the requirements of Rule R432-150[44].

R432-750-[29]26. Report of Death.

(1) The licensee ~~[hospice]~~ shall have a written plan to follow at the time of a patient's death ~~[The plan]~~ that shall include:

(a) recording the time of death;

(b) documentation of death;

(c) notification of the attending physician responsible for signing the death certificate;

(d) notification of the next of kin or legal guardian; and

(e) authorization and release of the body to the funeral home.[;]

(2) The ~~[hospice must]~~ licensee shall notify the ~~[D]~~ department of any death resulting from injury, accident, or other possible unnatural cause.

R432-750-[30]27. First Aid.

(1) The licensee ~~[hospice]~~ shall ensure that at least one staff person is on duty ~~[at all times]~~ 24 hours per day who is certified in cardiopulmonary resuscitation and has training in basic first aid, the Heimlich maneuver, and emergency procedures.

~~[(2) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.]~~

~~[(3)]~~ 2 Each ~~[hospice]~~ licensee, except those attached to a medical unit, shall ~~[have]~~ ensure that a first aid kit is available at a designated location in the facility.

~~[(4)]~~ 3 Each ~~[hospice]~~ licensee shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

R432-750-[34]28. Safeguards for Patients' ~~Monies~~ Funds and Valuables.

(1) The ~~[hospice]~~ licensee ~~[must]~~ shall safeguard patient[s'] cash resources, personal property, and valuables ~~[which]~~ that have been entrusted to the licensee or hospice staff.

(2) A ~~[hospice]~~ licensee is not required to handle patient's cash resources or valuables. However, if the ~~[hospice]~~ licensee accepts a patient's cash resources or valuables, then the ~~[hospice]~~ licensee ~~[must]~~ shall safeguard the patient's cash resources in accordance with the following:

(a) ~~[N]~~no licensee or hospice staff member may use patient~~[s' monies]~~ funds or valuables as ~~[his]~~their own or mingle them with ~~[his]~~own~~[-]~~;

(b) ~~[P]~~patient~~[s' monies]~~ funds and valuables shall be separated, ~~[and]~~ intact, and free from any liability that the licensee incurs in the use of ~~[his]~~their own or the institution's funds and valuables~~[-]~~;

(~~[b]~~c) ~~[T]~~the licensee ~~[must]~~shall maintain accurate records of patient~~[s' monies]~~ funds and valuables entrusted to the licensee~~[-]~~;

(~~[e]~~d) ~~[R]~~records of patient~~[s' monies]~~ funds ~~[which]~~that are maintained as a drawing account ~~[must]~~shall include a control account for ~~[all]~~any receipts and expenditures, and an account for each patient and supporting receipts filed in chronological order~~[-]~~;

(~~[d]~~e) ~~[E]~~each account shall be kept current with columns for debits, credits, and balance~~[-]~~;

(~~[e]~~f) ~~[R]~~records of patient~~[s' monies]~~ funds and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished for funds received~~[-]~~; and

(~~[f]~~g) ~~[A]~~any money entrusted with the facility in a patient account ~~[in excess of]~~over \$150 ~~[must]~~shall be deposited in an interest-bearing account in a local financial institution within five days of receipt.

(3) Each licensee ~~[inpatient hospice must]~~shall maintain a separate account for patient funds specific to that inpatient hospice and shall not commingle with patient funds from another inpatient hospice.

(4) Upon discharge, a patient's money and valuables, ~~[which]~~that have been entrusted to the licensee, shall be returned to the patient that day. Money and valuables kept in an interest-bearing account shall be available to the patient within three working days.

(5) Within 30 days following the death of a patient, except in a medical examiner case, the patient's money and valuables entrusted to the licensee shall be surrendered to the responsible persons, or to the administrator of the estate.

R432-750-~~[32]~~29. Emergency and Disaster.

(1) The ~~[hospice]~~licensee is responsible for the safety and well-being of patients in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop plans coordinated with the state and local emergency disaster authorities to respond to potential emergencies and disasters.

(a) The plan shall outline the protection or evacuation of ~~[all]~~any patients and include arrangements for staff response, or provisions of additional staff to ensure the safety of any patient with physical or mental limitations.

(~~[a]~~b) Emergencies and disasters include fire, severe weather, missing patients, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(~~[b]~~c) The emergency and disaster response plan shall be in writing and distributed or made available to ~~[all]~~any facility staff and patients to assure prompt and efficient implementation.

(~~[e]~~d) The licensee and the administrator shall review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the ~~[D]~~department.

(3) The ~~[hospices's]~~licensee's emergency and disaster response plans shall address the following:

(a) the names of the person in charge and any person[s] with decision-making authority;

(b) the name[s] of any person[s who shall] to be notified in an emergency in order of priority;

(c) the name[s] and telephone number[s] of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport patients and staff to a safe place within the hospice or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet ~~[the]~~patient~~[s']~~ needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services to facility occupants when additional ~~[persons-]~~individuals are housed in the hospice during an emergency;

(j) delivery of essential care and services to ~~[hospice]~~facility occupants when personnel are reduced by an emergency; and

(k) maintenance of safe ambient air temperatures within the facility.

(i) Emergency heating ~~[must have the approval of-]~~shall have approval of the local fire department.

(ii) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the patients in the hospice. The person in charge shall take immediate action in the best interests of the patients~~[-]~~; and

(iii) The ~~[hospice]~~licensee shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the hospice that may exacerbate the medical condition of patients.

(4) Personnel and patients shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The ~~[hospice]~~licensee shall:

(a) annually review the procedures with existing staff and patients;

(b) hold simulated disaster drills semi-annually; and

(c) document ~~[all]~~any drills, including date, participants, problems encountered, and the ability of each patient to evacuate.

(5) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the hospice, relieve subordinates, and take charge.

(6) Each inpatient hospice licensee shall provide in-house ~~[all]~~any equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, a first aid kit, and a radio.

(7) The ~~[hospice]~~licensee shall post the following information in appropriate locations throughout the facility:

(a) the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

(8) The ~~[hospice]~~licensee ~~[must]~~shall post emergency telephone numbers at each nursing station.

(9) Fire drills and fire drill documentation shall be in accordance with Rule R710-4, State of Utah Fire Prevention Board.

R432-750-~~[33]~~30. Food Service.

(1) The ~~[hospice]~~licensee may provide dietary services directly, or through a written agreement with a food service provider.

(2) The ~~[hospice]~~licensee food service shall comply with the Rule R392-100, Utah Department of Health Food Service Sanitation Rule.

(3) The ~~[hospice]~~licensee ~~[must]~~shall maintain for ~~[D]~~department review ~~[all]~~any inspection reports by the local health department.

(4) If the ~~[hospice]~~licensee accepts patients requiring therapeutic or special diets, the hospice shall have an approved dietary manual for reference when preparing meals.

(5) Dietary staff shall receive a minimum of four hours of documented in-service training each year.

(6) The ~~[hospice]~~licensee ~~[must]~~shall employ or contract with a certified ~~[dietician]~~dietitian to provide documented quarterly consultation if patients requiring therapeutic diets are admitted.

(7) The ~~[hospice]~~licensee ~~[must]~~shall ensure that ~~[sufficient]~~enough food service personnel are on duty to meet the needs of patients.

(8) ~~[While performing food service duties, t]~~The cook and other kitchen staff shall not perform concurrent duties outside the food service area, while performing food service duties.

(9) ~~[A]~~Any person~~[s who]~~ that prepares or serves food shall have a current ~~[F]~~food ~~[H]~~handler's ~~[P]~~permit.

R432-750-~~[34]~~31. Nutrition and Menu Planning.

(1) The ~~[hospice]~~licensee shall provide at least three meals or their equivalent daily.

(2) Meals shall be served with no more than a 14-hour interval between the evening meal and breakfast, unless a substantial snack is available in the evening.

(3) The ~~[hospice]~~licensee ~~[must]~~shall have between meal snacks of nourishing quality available on a 24-hour basis.

(4) A different menu shall be planned for and available for each day of the week.

(5) The ~~[hospice]~~licensee shall ensure that patients' favorite foods are included in their diets when~~[ever]~~ possible.

(6) The ~~[hospice]~~licensee shall maintain at least a one-week supply of non-perishable food and a three-day supply of perishable food.

(7) ~~[A]~~The licensee shall ensure that any food ~~[shall be]~~is nutritious, of good quality and appealing to the patient, ~~[palatable, and attractively served.]~~

R432-750-~~[35]~~32. Pets in the Facility.

(1) A ~~[hospice]~~licensee may permit patients to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinances.

(2) The licensee shall ensure that:~~[Pets must be clean and disease-free.]~~

(a) pets are clean and disease-free;

(~~[3]~~b) ~~[T]~~the pet~~[s]~~ environment ~~[must be]~~is kept clean~~[.]~~;

(~~[4]~~c) ~~[S]~~small pets ~~[shall be]~~are kept in appropriate enclosures~~[.]~~;

(~~[5]~~d) ~~[P]~~pets that are not confined ~~[shall be]~~are under leash control, or voice control~~[.]~~; and

(~~[6]~~e) ~~[P]~~pets that are kept at the facility ~~[shall]~~have documented current vaccinations.

(~~[7]~~3) Upon approval of the administrator, a family member~~[s]~~ may bring a patient's~~[s]~~ pets to visit. The administrator

shall ensure that the ~~v~~~~[V]~~isiting pets ~~[must]~~have current vaccinations.

(~~[8]~~4) A licensee that allows~~[Hospices with]~~ birds shall have procedures ~~[which]~~that prevent the transmission of psittacosis. Procedures shall ensure ~~[the minimum]~~minimal handling of droppings and placing of droppings into a closed plastic bag for disposal.

(~~[9]~~5) Pets ~~[are]~~shall not be permitted in food preparation, storage, or central dining areas, or in any area where their presence would create a significant health or safety risk to others.

R432-750-~~[36]~~33. Laundry Services.

(1) The ~~[hospice]~~licensee ~~[must]~~shall provide laundry services to meet the needs of the patients.

(2) If the ~~[hospice]~~licensee contracts for laundry services, the ~~[hospice]~~licensee ~~[must]~~shall obtain a signed, dated agreement from the contracted laundry service that details ~~[all]~~any services provided.~~[—The contracted laundry service must meet the requirements of R432-750-36(3)(c) through (f).]~~

(3) Each ~~[hospice]~~licensee that provides in-house laundry services ~~[must]~~shall meet the following requirements:

(a) ~~[The hospice must]~~maintain a supply of clean linen to meet the needs of the patients~~[.]~~;

(b) ~~[C]~~clean bed linens ~~[shall be]~~are changed as often as necessary, but no less than twice each week~~[.]~~;

(c) ~~[S]~~soiled linen and clothing ~~[shall be]~~is stored separate from clean linen and not allowed to accumulate in the facility~~[.]~~;

(d) ~~[L]~~laundry equipment ~~[shall be]~~is in good repair~~[.]~~;

(e) ~~[T]~~the laundry area ~~[shall be]~~is separate and apart from any room where food is stored, prepared, or served~~[.]~~; and

(f) ~~[P]~~personnel ~~[shall]~~handle, store, process, and transport linens in a manner to minimize contamination by air-borne particles and to prevent the spread of infection.

R432-750-~~[37]~~34. Maintenance Services.

(1) The ~~[hospice]~~licensee shall provide maintenance services to ensure that equipment, buildings, furnishings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) The ~~[hospice]~~licensee shall conduct a pest control program through a licensed pest control contractor or a qualified employee to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for ~~[D]~~department review.

(3) The licensee shall maintain ~~[E]~~entrances, exits, steps, and outside walkways ~~[shall be maintained]~~in a safe condition with regard to ice, snow, and other hazards.

R432-750-~~[38]~~35. Waste Storage and Disposal.

The ~~[hospice]~~licensee ~~[must]~~shall provide facilities and equipment for the sanitary storage and treatment or disposal of ~~[all]~~any categories of waste, including hazardous and infectious wastes, if applicable, using techniques acceptable to the Department of Environmental Quality and the local health authority.

R432-750-~~[39]~~36. Water Supply.

(1) The licensee shall ensure that ~~[H]~~hot water provided to patient tubs, showers, whirlpools, and hand washing facilities ~~[shall be]~~is regulated for safe use within a temperature range of 105~~[—]~~to 120 degrees F.

(2) Thermostatically controlled automatic mixing valves may be used to maintain hot water at the ~~[above]~~required temperatures.

R432-750-[40]37. Housekeeping Services.

(1) The [hospice]licensee [must]shall provide housekeeping services to maintain a clean, sanitary, and healthful environment.

(2) If the [hospice]licensee contracts for housekeeping services with an outside entity, the [hospice]licensee [must]shall obtain a signed and dated agreement that details the services provided.

(3) The [hospice]licensee [must]shall provide safe[,] and secure storage of cleaners and chemicals. In areas with potential access by children or confused disoriented patients[,] cleaners, and chemicals [must]shall be locked in a secure area to prevent unauthorized access.

(4) Personnel engaged in housekeeping or laundry services [may]shall not be concurrently engaged in food service or patient care.

(5) The [hospice]licensee [must]shall establish and implement policies and procedures to govern the transition of housekeeping personnel to food service or direct patient care duties.

R432-750-[41]38. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Sections 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

KEY: health care facilities

Date of Last Change: 2023[October 6, 2017]

Notice of Continuation: August 13, 2021

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-6

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R438-15	Filing ID: 55266
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Agency Information

1. Department:			Health and Human Services
Agency:			Disease Control and Prevention, Laboratory Services
Building:			Utah Public Health Laboratories
Street address:			4431 S Constitution Blvd
City, state and zip:			Taylorsville, UT 84129
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Please address questions regarding information on this notice to the agency.

General Information**2. Rule or section catchline:**

R438-15. Newborn Screening

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Newborn Screening Advisory Committee has recommended the addition of two disorders to the screening panel, Pompe disorder and Mucopolysacchridosis type I (MPSI). Additionally, recommended changes from the Office of Administrative Rules are incorporated.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amends Rule R438-15 to add Pompe and MPSI to Utah's Newborn Screening Panel per recommendation of the Newborn Screening Advisory Committee under Section R438-15-4.

Additionally, recommended changes from the Office of Administrative Rules have been incorporated throughout this rule.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

MPS I and Pompe has an estimated population frequency of 2 to 3 cases per 50,000 births. Infants identified with Pompe or MPS I through newborn screening are estimated to experience an average lifetime increase of 11.6 quality-adjusted life-years (QALYs) compared with individuals diagnosed clinically. The estimated Incremental cost-effectiveness ratio (ICER) is \$400,000/QALY.

The estimated cost of screening of these disorders for each newborn is \$2. Based on 2020 Medicaid data indicating 25% of Utah births are Medicaid eligible assumes cost coverage requirements by Medicaid of 9,000 babies or a total impact of \$18,000. The seriousness of these disorders are demonstrated by following disease onset of symptoms which are irreversible and ultimately can lead to death in early childhood.

References:

Health and economic outcomes of newborn screening for infantile-onset Pompe disease.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8035228/>

B) Local governments:

Since the fee for Newborn Screening is covered directly through the kit fee, which is paid through health insurance, there is no anticipated financial impact on local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

The Department of Health and Human Services (Department) does not have sufficient data to estimate the cost to small businesses.

Additional cost of X-Linked Adrenoleukodystroph (XALD) screening is passed on to Medicaid and third party payers.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The additional cost to third party payers is \$76,000 based on 2020 non-Medicaid deliveries. This is calculated as \$2 times 38,000 births.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated financial impact on Persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The compliance cost will be \$2 per newborn screened. The Department does not have sufficient data to estimate the cost to any particular third party payer who pays for the screening.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$18,000	\$18,000	\$18,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$76,000	\$76,000	\$76,000

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$94,000	\$94,000	\$94,000
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$400,000	\$400,000	\$400,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$400,000	\$400,000	\$400,000
Net Fiscal Benefits	\$306,000	\$306,000	\$306,000

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, has reviewed and approved this regulatory impact analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 26-10-6	Section 26-1-30	
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Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	03/01/2023
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R438. Health and Human Services, Disease Control and Prevention, Laboratory Services.

R438-15. Newborn Screening.

R438-15-1. Purpose and Authority.

(1) ~~[The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of developmental delays in infants with certain genetic and endocrine disorders.]~~ The purpose of this rule is to facilitate early detection, prompt referral, and treatment through screening of newborns for certain conditions.

(2) ~~[Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-6, 26-1-30 and 26-10-6.]~~ Sections 26-10-6 and 26B-1-202 authorize this rule.

R438-15-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening form that conforms with the criteria in Section R438-15-9.

(3) "Blood spot" means a clinical specimen ~~[(s)]~~ submitted on the ~~[filter] paper [(specially manufactured absorbent specimen collection paper)]~~ of the ~~[N] newborn [S] screening~~ form using the heel stick method.

(4) "Department" means the Utah Department of Health and Human Services.

(5) "Follow up" means ~~[the] tracking [of all] any~~ newborn~~[s]~~ with an abnormal result, inadequate or unsatisfactory specimen, or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah that provides maternity or nursery services or both.

(9) ~~["[Medical home/practitioner] Health care provider"]~~ means a person licensed by the Department of Commerce, Division of ~~[Occupational and] Professional Licensing~~ to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

(10) "Metabolic diseases" means those diseases screened by the Department which are caused by an inborn error of metabolism.

(11) "Newborn ~~[S]~~ screening form" means the Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(12) "Quantity not sufficient specimen" or "QNS specimen" means a specimen that the laboratory has ~~[been]~~ partially tested but does not have enough blood available to complete the full testing.

(13) "Unsatisfactory specimen" means an inadequate specimen.

R438-15-3. Newborn Screening Advisory Committee.

(1) Newborn Screening Advisory Committee shall be composed of at least ~~[9]~~ nine members as follows:

(a) an individual with an advanced degree ~~[(MS/PhD/MD)]~~ in genetics or other relevant field, who will serve as ~~[C] chair~~;

(b) a representative from the Utah Hospital Association;

(c) a community pediatrician;

~~(d) the Deputy or Assistant Deputy of the Clinical Services Section/~~ Director of the Division of Disease Control and Prevention;

(e) an advocate or a consumer of a newborn screening services;

(f) clinical consultants for the Newborn Screening program;

(g) a representative from the Utah Public Health Laboratory;

(h) a representative from the Newborn Screening Follow-up Program; and

(i) a representative ~~[from the research community]~~ with knowledge about disorders considered for future addition to the ~~[n] Newborn [s] Screening [p] Panel from the research community.~~

(2) The Department Executive Director shall approve committee membership with counsel from the advisory committee.

(3) The term of committee members shall be four years. ~~[i]~~

(a) ~~M[m]~~ members may serve up to three additional terms as requested. ~~[i]~~

(b) ~~[i]~~ If a vacancy occurs in the committee membership ~~[for any reason]~~, a replacement shall be appointed for the unexpired term in the same manner as the original appointment. ~~[i]~~

(c) ~~[a]~~ A majority of the committee constitutes a quorum at any meeting. If a quorum is present, the action of the majority of members shall be the action of the advisory committee.

(4) The committee shall:

(a) advise the Department on policy issues related to newborn screening services;

(b) provide guidance to programs and functions within the Department having to do with newborn screening services and

(c) evaluate potential tests that could be added to newborn or population screening and make recommendations to the Department.

R438-15-4. Implementation.

(1) The health care provider shall submit a sample for each newborn [Each newborn] in the state [of Utah shall submit] to the [N] newborn [S] screening testing, except as provided in Section R438-15-12.

(2) The Department ~~[of Health]~~, after consulting with the Newborn Screening Advisory Committee, will determine the disorders on the Newborn Screening Panel, based on demonstrated effectiveness and available funding. Disorders for which the laboratory screens the infant blood ~~[is screened] are:~~

(a) ~~[B] biotinidase [D] deficiency~~;

(b) ~~[C] congenital [A] adrenal [H] hyperplasia~~;

(c) ~~[C] congenital [H] hypothyroidism~~;

(d) ~~[G] galactosemia~~;

(e) ~~[H] hemoglobinopathy~~;

(f) ~~[A] amino [A] acid [M] metabolism [D] disorders~~;

(i) ~~[P] phenylketonuria [(phenylalanine hydroxylase deficiency and variants)]~~;

(ii) ~~[F] tyrosinemia type 1 [(fumarylacetoacetate hydrolase deficiency)]~~;

(iii) ~~[F] tyrosinemia type 2 [(tyrosine amino transferase deficiency)]~~;

(iv) ~~[F] tyrosinemia type 3 [(4-OH-phenylpyruvate dioxygenase deficiency)]~~;

(v) ~~[M] maple [S] syrup [U] urine [D] disease [(branched chain ketoacid dehydrogenase deficiency)]~~;

- (vi) [~~H~~]homocystinuria[~~-(cystathionine beta synthase deficiency)~~];
- (vii) [~~C~~]citrullinemia[~~-(arginino succinic acid synthase deficiency)~~];
- (viii) [~~A~~]argininosuccinic aciduria[~~-(argininosuccinic acid lyase deficiency)~~];
- (ix) [~~A~~]argininemia[~~-(arginase deficiency)~~];
- (x) [~~H~~]hyperprolinemia type 2[~~-(pyroline 5-carboxylate dehydrogenase deficiency)~~];
- (g) [~~F~~]fatty [~~A~~]acid [~~O~~]oxidation [~~D~~]disorders:
 - (i) [~~M~~]medium [~~C~~]chain [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (ii) [~~V~~]very [~~L~~]long [~~C~~]chain [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (iii) [~~S~~]short [~~C~~]chain [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (iv) [~~L~~]long [~~C~~]chain 3-OH [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (v) [~~S~~]short [~~C~~]chain 3-OH [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (vi) [~~P~~]primary carnitine deficiency[~~-(OCTN2-carnitine transporter defect)~~];
 - (vii) [~~C~~]carnitine [~~P~~]palmitoyl [~~T~~]transferase 1 [~~D~~]deficiency;
 - (viii) [~~C~~]carnitine [~~P~~]palmitoyl [~~T~~]transferase 2 [~~D~~]deficiency;
 - (ix) [~~C~~]carnitine [~~A~~]acylcarnitine [~~T~~]translocase [~~D~~]deficiency;
 - (x) [~~M~~]multiple [~~A~~]acyl [~~C~~]coA [~~D~~]dehydrogenase [~~D~~]deficiency;
 - (h) [~~O~~]organic [~~A~~]acids [~~D~~]disorders:
 - (i) [~~P~~]propionic [~~A~~]acidemia[~~-(propionyl-CoA-carboxylase deficiency)~~];
 - (ii) [~~M~~]methylmalonic ac[~~i~~]ademia[~~-(multiple enzymes)~~];
 - (iii) [~~M~~]malonic [~~A~~]aciduria;
 - (iv) [~~H~~]isovaleric acidemia[~~-(isovaleryl-CoA dehydrogenase deficiency)~~];
 - (v) 2-[~~M~~]methylbut[~~i~~]yryl [~~C~~]coA dehydrogenase deficiency;
 - (vi) [~~H~~]isobutyryl [~~C~~]coA dehydrogenase deficiency;
 - (vii) 2-[~~M~~]methyl-3-OH-butyryl-[~~C~~]coA dehydrogenase deficiency;
 - (viii) [~~G~~]glutaric acidemia type 1[~~-(glutaryl-CoA dehydrogenase deficiency)~~];
 - (ix) 3-[~~M~~]methylcrotonyl [~~C~~]coA carboxylase deficiency;
 - (x) 3-[~~K~~]ketothiolase deficiency;
 - (xi) 3-[~~H~~]hydroxy-3-methyl glutaryl [~~C~~]coA lyase deficiency;
 - (xii) [~~H~~]holocarboxylase synthase [~~-(multiple carboxylases)~~]deficiency;
 - (i) [~~C~~]cystic [~~F~~]fibrosis;
 - (j) [~~S~~]severe [~~C~~]combined [~~I~~]immunodeficiency syndrome;~~[and]~~
 - (k) [~~D~~]disorders of [~~C~~]creatine [~~M~~]metabolism;~~[and]~~
 - (l) [~~S~~]spinal [~~M~~]muscular [~~A~~]atrophy;
 - (m) [~~X~~]x-[~~L~~]linked [~~A~~]adrenoleukodystrophy;
 - (n) pompe disease; and
 - (o) mucopolysaccharidosis type I.

R438-15-5. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to [48]24 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn undergoes a transfer [~~is transferred~~] to another institution prior to [48]24 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R438-15-6. Timing of Collection of First Specimen.

The first specimen shall be collected between 24 and 48 hours of the newborn's life, except as outlined in Subsection R438-15-6(2). [~~Except:~~]

([1]2) If the newborn is discharged from an institution before [48]24 hours of age, [~~an appropriate~~] a specimen must be collected within [~~four~~]two hours of discharge.

([2]3) If the newborn is to receive a blood transfusion or dialysis, [~~the appropriate~~] a specimen must be collected [~~immediately before~~] prior to the procedure, [~~except in emergency situations where~~] unless an emergency situation prevents sufficient time for collection. [~~does not allow for collection of the specimen.~~] If the newborn receives a blood transfusion or dialysis prior to collecting the appropriate specimen, the health care provider [~~following~~] must [~~be done~~]:

(a) [~~R~~]repeat the collection and submission of an appropriate specimen 7-10 days after last transfusion or dialysis for a second screening specimen; and

(b) [~~R~~]repeat the collection and submission of an appropriate specimen 120 days after last transfusion or dialysis for a first screening specimen.

R438-15-7. Parent Education.

The person who has responsibility under Section R438-15-5 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the [~~N~~]newborn [~~S~~]screening form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R438-15-8. Timing of Collection of the Second Specimen.

(1) A health care provider shall collect a second specimen [~~shall be collected~~] between 7 and 16 days of age.

([1]2) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, [~~medical home/practitioner~~] health care provider, or local health department.

([2]3) If the health care provider obtains a newborn's first specimen [~~was obtained~~] prior to 24 hours of age, the second specimen [~~shall~~] must be collected by [~~fourteen~~] 14 days of age.

([3]4) If the newborn is to be hospitalized beyond the seventh day of life, the institution [~~shall~~] must arrange for the collection and submission of the appropriate second specimen.

R438-15-9. Criteria for Appropriate Specimen.

(1) The institution or ~~[medical home/practitioner]~~ health care provider collecting the appropriate specimen must:

(a) ~~u[se]~~ only a ~~[N]newborn [S]screening form~~ purchased from the Department~~[- The fee for the Newborn Screening form is set by the Legislature in accordance with Section 26-1-6];~~

(b) ~~[C]~~correctly store the ~~[N]newborn [S]screening form~~;

(c) ~~[N]~~not use the ~~[N]newborn [S]screening form~~ beyond the date of expiration;

(d) ~~[N]~~not alter the ~~[N]newborn [S]screening form~~ in any way;

(e) ~~[C]~~complete all information on the ~~[N]newborn [S]screening form~~~~[- If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed];~~

(f) ~~[A]~~apply sufficient blood to the filter paper;

(g) ~~[N]~~not contaminate the filter paper with any foreign substance;

(h) ~~[N]~~not tear, perforate, scratch, or wrinkle the filter paper;

(i) ~~[A]~~apply blood evenly to one side of the filter paper and ~~[be]~~ensure it soaks through to the other side;

(j) ~~[A]~~apply blood to the filter paper in a manner that does not cause caking;

(k) ~~[C]~~collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) ~~[D]~~dry the specimen properly; ~~and~~

(m) ~~[N]~~not remove the filter paper from the ~~[N]newborn [S]screening form~~.

(2) ~~The institution or health care provider shall [S]submit the completed [N]newborn [S]screening form to the Utah Department of Health and Human Services, Newborn Screening Laboratory, 4431 South 2700 West, Taylorsville, Utah 841[49]29.~~

(a) The ~~[N]newborn [S]screening form~~ shall be placed in an envelope large enough to accommodate it without folding the form.

(b) If mailed, the ~~[N]newborn [S]screening form~~ ~~[shall]must~~ be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the ~~[N]newborn [S]screening form~~ ~~[shall]must~~ be delivered within 48 hours of the time the appropriate specimen was collected.

(3) ~~The Legislature sets the fee for newborn screening and the newborn screening form.~~

(4) ~~If the infant is undergoing adoption, the following may be omitted from newborn screening form:~~

~~(a) infant's last name;~~

~~(b) birth mother's name;~~

~~(c) address;~~

~~(d) and telephone number.~~

(5) ~~The institution or health care provider shall include an identifying name and a contact person on the newborn screening form.~~

R438-15-10. Abnormal Result.

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall send written notice to the ~~[medical home/practitioner]~~ health care provider noted on the ~~[N]newborn [S]screening form~~.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a

notice to the ~~[medical home/practitioner]~~ health care provider based on the results on the second screening specimen.

(2) The Department may require the ~~[medical home/practitioner]~~ health care provider to collect and submit additional specimens for screening or confirmatory testing. The Department ~~[shall]may~~ pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the ~~[medical home/practitioner]~~ health care provider. ~~[The cost of additional testing recommended by the Department is not covered by the Department.]The cost of additional testing the Department recommends is not covered by the Department.~~

(3) The ~~[medical home/practitioner]~~ health care provider shall collect and submit specimens within the time frame and in the manner instructed by the Department.

(4) As instructed by the Department or the ~~[medical home/practitioner]~~ health care provider, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the ~~[Department or medical home/practitioner]~~ health care provider to have an appropriate specimen collected.

(5) The ~~[medical home/practitioner]~~ health care provider who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R438-15-11. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

(1) If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the institution or ~~[medical home/practitioner]~~ health care provider noted on the ~~[N]newborn [S]screening form~~.

~~([1]2)~~ The institution or ~~[medical home/practitioner]~~ health care provider that submitted the inadequate or unsatisfactory, or QNS specimen, shall submit an appropriate specimen, in accordance with Section R438-15-9. The responsible institution or ~~[medical home/practitioner]~~ health care provider shall collect and submit the new specimen within two days of notice, and the responsible institution or ~~[medical home/practitioner]~~ health care provider shall label the form for testing, as directed by the Department.

~~([2]3)~~ The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the institution or ~~[medical home/practitioner]~~ health care provider to have an appropriate specimen collected.

R438-15-12. Testing Refusal.

A parent or legal guardian may refuse to allow the required testing for religious reasons~~[- only]~~. The ~~[medical home/practitioner]~~ health care provider or institution shall file in the newborn's record documentation of refusal, reason, education of family about the disorders, and a signed waiver by both parents or legal guardian. The practitioner or institution shall submit a copy of the refusal to the Utah Department of Health and Human Services, Newborn Screening Program, P.O. Box 144710, Salt Lake City, UT 84114-4710.

R438-15-13. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn ~~[in order to]~~ identify ~~[medical home/practitioner]~~ health care provider, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the ~~[N]newborn [S]screening~~ form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R438-15-14. Noncompliance by Parent or Legal Guardian.

If the ~~[medical home/practitioner]~~health care provider or institution has information that leads it to believe that the parent or legal guardian is not complying with this rule, the ~~[medical home/practitioner]~~health care provider or institution shall report such noncompliance as medical neglect to the Department.

R438-15-15. Confidentiality and Related Information.

(1) The Department ~~[initially]~~releases test results to the institution of birth for first specimens and to the ~~[medical home/practitioner]~~health care provider for the second specimen, as noted on the ~~[N]newborn [S]screening form~~, ~~for the second specimen~~.

(2) The Department notifies the ~~[medical home/practitioner]~~health care provider noted on the ~~[N]newborn [S]screening form of any results that require follow up~~ ~~as provided in Section R438-15-10(1) of any results that require follow up~~.

(3) The Department releases information to ~~a~~ ~~medical home/practitioner]~~health care provider or other health practitioner on a need to know basis. Release may be oral~~ly~~, by a hard copy of results, or ~~available~~ electronically by authorized access.

(4) Upon request of the parent or guardian, the Department may release results, as directed in the release.

(5) All requests for test results or records are governed by ~~[Utah Code]~~Title 26, Chapter 3, Health Statistics.

(6) The Department may release information in summary, statistical, or other forms that do not identify ~~particular~~ an individual~~s~~.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R438-15-16. Blood Spots.

(1) ~~Once received by the laboratory the~~ ~~[B]blood spots~~ become the property of the Department.

(2) The Department includes ~~in parent education materials~~ information about the Department's policy on the retention and use of residual newborn blood spots in the parent education materials.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research to a person if the person applies in writing to the Department for approval. ~~upon the following:~~

~~(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research.~~

(a) The proposal~~application~~ shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information, if needed and requested by the Department. ~~When appropriate, the proposal will then be submitted to the Department's Internal Review Board for approval.~~

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) ~~[All research must be first approved by the Department's Internal Review Board.]The Department's internal review board shall approve all blood spot research.~~

R438-15-17. Retention of Blood Spots.

(1) The Department retains blood spots for a minimum of 90 days.

(2) Prior to disposal, the Department shall de-identify and autoclave the blood spots.

R438-15-18. Reporting of Disorders.

If a diagnosis is made for one of the disorders screened by the Department that was not identified by the Department, the ~~[medical home/practitioner]~~health care provider shall report it to the Department.

R438-15-19. Statutory Penalties.

~~[As required by Subsection 63G-3-201(5):]~~Any ~~[medical home/practitioner]~~health care provider or institution responsible for submission of a newborn screen that violates any provision of this rule may be assessed a civil money penalty, as provided in Subsection 26-23-6~~(2)~~.

KEY: health care, newborn screening

Date of Last Change: 2023~~[September 15, 2020]~~

Notice of Continuation: January 26, 2023

Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30; 26-10-6~~26b-1-202; 26-10-6~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:	R590-226	Filing ID: 55262
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Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R590-226. Submitting Life Insurance Filings

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties (the old R590-226-14) and Enforcement Date (the old R590-226-15) sections, and update the Severability (the new R590-226-14) section to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-2-201.1	
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/27/2023
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R590. Insurance, Administration.**R590-226. [Submission of] Submitting Life Insurance Filings.****[R590-226-1. Authority:**

~~This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).~~

R590-226-2. Purpose and Scope:

~~(1) The purpose of this rule is to set forth the procedures for submitting:~~

~~(a) life insurance filings required by Section 31A-21-201; and~~

~~(b) report filings as required.~~

~~(2) This rule applies to:~~

~~(a) all types of individual and group life insurance, and variable life insurance; and~~

~~(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.~~

R590-226-3. Definitions.

~~In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:~~

~~(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.~~

~~(2) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.~~

~~(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.~~

~~(4) "Electronic Filing" means a:~~

~~(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF; or~~

~~(b) filing submitted via an email system.~~

~~(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.~~

~~(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.~~

~~(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.~~

~~(8) "Filer" means a person who submits a filing.~~

~~(9) "Filing," when used as a noun, means an item required to be filed with the department including:~~

~~(a) a policy;~~

~~(b) a form;~~

~~(c) a document;~~

~~(d) an application;~~

~~(e) a report;~~

~~(f) a certificate;~~

~~(g) an endorsement;~~

~~(h) a rider;~~

~~(i) a life insurance illustration;~~

~~(j) a statement of policy cost and benefit information; and~~

~~(k) an actuarial memorandum, demonstration, and certification.~~

~~(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.~~

~~(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.~~

~~(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.~~

~~(13) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.~~

~~(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.~~

~~(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.~~

~~(16) "Rejected" means a filing is:~~

~~(a) not submitted in accordance with applicable laws or rules;~~

~~(b) returned to the licensee by the department with the reasons for rejection; and~~

~~(c) not considered filed with the department.~~

~~(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.~~

~~(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.~~

~~(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.~~

R590-226-4. General Filing Information.

~~(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.~~

~~(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.~~

~~(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:~~

- ~~(a) is not considered filed with the department;~~
- ~~(b) must be submitted as a new filing; and~~
- ~~(c) will not be reopened for purposes of resubmission.~~

~~(4) A prior filing will not be researched to determine the purpose of the current filing.~~

~~(5) The department does not review or proofread every filing.~~

- ~~(a) A filing may be reviewed:~~
 - ~~(i) when submitted;~~
 - ~~(ii) as a result of a complaint;~~
 - ~~(iii) during a regulatory examination or investigation; or~~
 - ~~(iv) at any other time the department deems necessary.~~
- ~~(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.~~

~~(6) Filing Correction:~~

- ~~(a) Filing corrections are considered informational.~~
- ~~(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.~~
- ~~(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.~~

~~(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-226-13 for instructions.~~

~~(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.~~

R590-226-5. Filing Submission Requirements.

- ~~(1) All filings must be submitted as an electronic filing.~~
 - ~~(a) All filers must use SERFF to submit a filing.~~
- ~~(b) EXCEPTION: life settlement filers may choose to use email instead of SERFF to submit a filing.~~
- ~~(c) All filings must comply with the "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.~~

~~(2) A filings must be submitted by market type and type of insurance.~~

~~(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.~~

~~(4) SERFF Filings:~~

~~(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below:~~

- ~~(i) Certification.~~
 - ~~(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.~~

~~(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-~~

~~226 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".~~

~~(C) The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the Supporting Documentation tab.~~

~~(D) A filing will be rejected if the certification is false, missing, or incomplete.~~

~~(E) A false certification may subject the licensee to administrative action.~~

~~(ii) Provide a description of the filing including:~~

- ~~(A) the intent of the filing; and~~
- ~~(B) the purpose of each document within the filing.~~
- ~~(iii) Indicate if the filing:~~

- ~~(A) is new;~~
- ~~(B) has been submitted to the Interstate Insurance Product Regulation Commission (IIPRC);~~

~~(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC approval date;~~

~~(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or~~

~~(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~

~~(iv) Identify if any of the provisions are unusual, innovative, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~

~~(v) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.~~

~~(vii) List the minimum death benefit.~~

~~(viii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.~~

~~(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:~~

- ~~(i) copy of domicile approval for the exact same filing; or~~
- ~~(ii) filing status information, which includes:~~
 - ~~(A) a list of the states to which the filing was submitted;~~
 - ~~(B) the date submitted; and~~
 - ~~(C) summary of the states' actions and their responses; or~~
- ~~(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC NOT SUBMITTED TO ANY OTHER STATE."~~

~~(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:~~

~~(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or~~

~~(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.~~

~~(d) Letter of Authorization.~~

~~(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.~~

~~(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(e) Statement of Variability.~~
~~(i) A statement of variability must be attached to the Supporting Documentation tab and certify:~~
~~(A) the final form will not contain brackets denoting variable data;~~
~~(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;~~
~~(C) the variable data included in this statement will be used on the referenced forms;~~
~~(D) any changes to variable data will be submitted prior to implementation.~~
~~(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.~~
~~(iii) Variable data must be reasonable, appropriate and compliant.~~
~~(iv) Use of unauthorized variable data is prohibited.~~
~~(f) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:~~
~~(i) basic illustration complete with data in John Doe fashion;~~
~~(ii) current illustration actuary's certification;~~
~~(iii) company officer certification; and~~
~~(iv) sample annual report.~~
~~(g) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.~~
~~(h) Items being submitted for filing:~~
~~(i) All forms must be attached to the Form Schedule tab.~~
~~(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.~~
~~(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah laws are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:~~
~~(A) a description of the coverage in detail;~~
~~(B) a demonstration of compliance with applicable nonforfeiture and valuation laws; and~~
~~(C) a certification of compliance with Utah law.~~
~~(5) Refer to each applicable section of this rule for additional procedures on how to submit forms and reports.~~
~~(6) A filer submitting a life settlement filing, in addition to the requirements contained in R590-222-14, shall:~~
~~(a) attach a letter of authorization from the licensee if the filer is not the licensee;~~
~~(b) submit the documents in PDF format;~~
~~(c) identify any provisions that are unusual, controversial, innovative, or have been previously objected to, or prohibited, and explain why the provision is included in the filing; and~~
~~(d) shall certify that the filing has been properly completed and is in compliance with Utah laws and rules.~~

R590-226-6. Procedures for Filings.

~~(1) Forms in General.~~
~~(a) Forms are "File and Use" filings.~~

~~(b) Each form must be identified by a unique form number. The form number may not be variable.~~
~~(c) Forms must contain a descriptive title on the cover page.~~
~~(d) Forms must be in final printed form. Drafts may not be submitted.~~
~~(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~
~~(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.~~
~~(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.~~
~~(2) Application Filing.~~
~~(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.~~
~~(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.~~
~~(3) Policy Filings.~~
~~(a) Each type of insurance must be filed separately.~~
~~(b) A policy filing consists of one policy form, including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.~~
~~(c) A policy data page must be included with every policy filing.~~
~~(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.~~
~~(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing.~~
~~(4) Rider or Endorsement Filing.~~
~~(a) Related riders or endorsements may be filed together.~~
~~(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.~~
~~(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."~~
~~(d) The filing must include:~~
~~(i) a listing of all base policy form numbers, title and Utah Filed Dates;~~
~~(ii) a description of how each filed rider or endorsement affects the base policy; and~~
~~(iii) a sample data page with data for the submitted form.~~
~~(e) Unrelated riders or endorsement may not be filed together.~~

R590-226-7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

~~(1) Insurers filing life insurance forms are advised to review the following code parts and rules prior to submitting a filing:~~
~~(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"~~
~~(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"~~

~~(c) R590-79, "Life Insurance Disclosure Rule;"~~
~~(d) R590-93, "Replacement of Life Insurance and Annuities;"~~
~~(e) R590-94, "Smoker/Nonsmoker Mortality Tables;"~~
~~(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"~~
~~(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"~~
~~(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"~~
~~(i) R590-122, "Permissible Arbitration Provisions;"~~
~~(j) R590-177, "Life Insurance Illustrations;"~~
~~(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"~~
~~(l) R590-198, "Valuation of Life Insurance Policies;" and~~
~~(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."~~

~~(2) Every filing for an individual life insurance policy, rider or benefit endorsement, and a group life insurance policy that includes certificates that are marketed individually, shall include an actuarial memorandum, which includes a demonstration and certification of compliance with:~~

~~(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;" and~~
~~(b) Section 31A-17 Part V, "Standard Valuation Law."~~

R590-226-8. Additional Procedures for Group Market Filings.

~~(1) A filer submitting group life insurance filings are advised to review the following code parts and rules prior to submitting a filing:~~

~~(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"~~
~~(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"~~
~~(c) Section 31A-22 Part V, "Group Life Insurance;"~~
~~(d) R590-79, "Life Insurance Disclosure Rule;" and~~
~~(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."~~

~~(2) A policy must be included with each certificate filing along with a master application and enrollment form.~~

~~(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.~~

~~(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.~~

~~(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."~~

~~(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.~~

~~(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.~~

~~(6) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.~~

~~(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.~~

~~(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:~~

~~(i) existence of a verifiable group;~~
~~(ii) that granting permission is not contrary to public policy;~~
~~(iii) the proposed group would be actuarially sound;~~
~~(iv) the group would result in economies of acquisition and administration which justify a group rate; and~~
~~(v) the group would not present hazards of adverse selection.~~

~~(c) Discretionary group filings that do not provide authorization documentation will be rejected.~~

~~(d) Any changes to an authorized discretionary group must be submitted to the department, such as change of name, trustee, domicile state, within 30 days of the change.~~

~~(e) The commissioner may periodically re-evaluate the group's authorization.~~

R590-226-9. Additional Procedures for Variable Life Filings.

~~(1) Insurers submitting variable life filings are advised to review the following code section and rule prior to submitting a filing:~~

~~(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"~~

~~(b) R590-133, "Variable Contracts."~~

~~(2) A variable life insurance policy must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.~~

~~(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.~~

~~(4) The description and the actuarial memorandum must:~~
~~(a) describe the types of accounts available in the policy; and~~

~~(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.~~

~~(5) The actuarial memorandum must demonstrate nonforfeiture compliance:~~

~~(a) for separate accounts pursuant to Section 31A-22-411; and~~

~~(b) for fixed interest general accounts pursuant to Section 31A-22-408.~~

~~(c) In addition, for fixed accounts, the actuarial memorandum must:~~

~~(i) identify the guaranteed minimum interest rate; and~~

~~(ii) identify the maximum surrender charges.~~

~~(6) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.~~

~~(7) A prospectus is not required to be filed.~~

R590-226-10. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

~~A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.~~

~~(1) A combination filing is a policy, rider, or endorsement which creates a product that provides both life and accident and health insurance benefits.~~

~~(a) The two types of acceptable combination filings are a rider or endorsement or an integrated policy.~~

~~(b) Combination filings take considerable time to process, and will be processed by both the Health Section and the Life Section of the Health and Life Insurance Division.~~

~~(2) A combination filing must be submitted separately to both the Health Section and the Life Section of the Health and Life Insurance Division.~~

~~(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.~~

~~(b) For a rider or endorsement, the filing must be submitted to the appropriate section based on benefits provided in the rider or endorsement.~~

~~(4) The Filing Description must identify the filing as having a combination of insurance types, such as:~~

~~(a) whole policy with a long-term care benefit rider; or~~

~~(b) major medical health policy that includes a life insurance benefit.~~

R590-226-11. Classification of Documents.

~~(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:~~

~~(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:~~

~~(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and~~

~~(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or~~

~~(b) commercial information and non-individual financial information obtained from a person if:~~

~~(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and~~

~~(ii) the person submitting the information has a greater interest in prohibiting access than the public has in obtaining access.~~

~~(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Subsection 63G-2-309(1)(a)(i).~~

~~(a) The filer shall request protected classification for the specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and~~

~~(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.~~

~~(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).~~

~~(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.~~

~~(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.~~

~~(c)(i) Despite the denial of protected classification, the commissioner shall treat the information as if it had been classified as protected until:~~

~~(A) the 30 day time limit for an appeal to the commissioner has expired; or~~

~~(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.~~

~~(ii) During the 30 day time limit to appeal or during the appeal process, the filer may withdraw:~~

~~(A) the filing; or~~

~~(B) the request for protected classification.~~

~~(d) If the filer combines, in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.~~

R590-226-12. Insurer Annual Reports.

~~All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.~~

R590-226-13. Responses.

~~(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:~~

~~(a) provide an explanation identifying all changes made;~~

~~(b) include an underline and strikeout version for each revised document;~~

~~(c) include a final version of revised documents that incorporates all changes; and~~

~~(d) for filing submitted in SERFF, attach the documents in Subsections R590-226-13(1)(b) and (c) to appropriate Form Schedule or Rate/Rule Schedule tab.~~

~~(2) Response to an Order to Prohibit Use.~~

~~(a) An Order to Prohibit Use becomes final 15 days after the date of the order.~~

~~(b) Use of the filing must be discontinued no later than the date specified in the order.~~

~~(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the order.~~

~~(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.~~

R590-226-14. Penalties.

~~Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-226-15. Enforcement Date.

~~The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.~~

R590-226-16. Severability.

~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule, which can be given effect~~

~~without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~

R590-226-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-2-201.1.

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to establish procedures for submitting a life insurance filing.

(2) This rule applies to an insurer offering life insurance, including a group life insurance policy issued to a nonresident policyholder when a Utah resident is provided coverage under the policy.

R590-226-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Certification" means a statement that a submitted filing is compliant.

(2) "Compliant" means a filing that is complete and complies with Title 31A, Insurance Code, and Title R590, Administration.

(3) "Data page" means the page or pages in a policy or certificate providing the specific data for the insured and detailing the coverage provided.

(4) "Discretionary group" means a group that is specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic filing" means a filing submitted using SERFF.

(6) "Eligible group" means a group that meets the requirements in Sections 31A-22-501.1 through 31A-22-508.

(7) "File and use" means a filing is used, sold, or offered for sale after it is filed with the department.

(8) "Filing objection letter" means a letter issued by the commissioner when a review of a filing determines the filing is not compliant and may require:

(a) correction of non-compliant items;

(b) clarification; or

(c) additional information related to the filing.

(9) "Letter of authorization" means a letter signed by an officer of the insurer giving authority to a third party to submit a filing on behalf of the insurer.

(10) "NAIC Product Coding Matrix" means a numerical coding system developed by the NAIC that provides uniform naming convention, uniform terminology, and uniform description for a type of insurance product in a filing.

(11) "Order to prohibit use" means an order issued by the commissioner prohibiting the use of a filing.

(12) "Qualified actuary" means an individual who is qualified to sign the applicable state of actuarial opinion in accordance with the American Academy of Actuaries qualification standards.

(13) "Rejected" means a filing is:

(a) not compliant;

(b) returned to the insurer stating the reason for rejection; and

(c) not considered filed with the department.

(14) "Resubmission" means a correction, modification, or replacement of a previously rejected, withdrawn, or prohibited filing.

(15) "SERFF" means the System for Electronic Rate and Form Filing.

(16) "Type of insurance" or "TOI" means:

(a) a specific life insurance product identified by the NAIC Product Coding Matrix including term, universal, variable, or whole life; and

(b) a TOI that can be selected in SERFF when submitting a filing in Utah.

(17) "Utah filed date" means the date the department indicates a paper filing is accepted.

R590-226-4. General Filing Information.

(1)(a) A filing shall be accurate, consistent, complete, and contain all required documents.

(b) The commissioner may request additional information, as necessary.

(2)(a) An insurer is responsible for assuring that any document in a filing is compliant.

(b) A filing that is not compliant is subject to regulatory action.

(3)(a) A filing that is not compliant shall be rejected.

(b) A rejected filing:

(i) may be resubmitted under a new filing; and

(ii) may not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) when a complaint is received;

(iii) during a regulatory examination or investigation; or

(iv) when the department considers a review necessary.

(b) If a filing is reviewed and is found not compliant, the commissioner:

(i) shall issue a filing objection letter or an order to prohibit use; and

(ii) may require the insurer to disclose deficiencies in a form or a rating practice to each affected insured.

(6)(a) A correction to a filing in an open status may be made at any time.

(b) A correction to a filing in a closed status:

(i) may not be made;

(ii) requires a new filing; and

(iii) shall reference the original filing in the filing description of the new filing.

(7) An insurer shall notify the department when discontinuing or withdrawing a previously filed form or supplementary information.

(8) If the Utah filed date is used for compliance with this rule, a complete copy with all subsequent amendments, including the Utah filed date, shall be attached as a supporting document.

R590-226-5. Filing Submission Requirements.

(1) General Filing Requirements.

(a) A filing shall be submitted:

(i) electronically through SERFF, except that a life settlement filing may be submitted using email; and

(ii) using the NAIC Product Coding Matrix, including the:

(A) TOI; and

(B) sub-TOI.

(b) A filing may not include more than one:

(i) TOI; or

(ii) insurer.

(c) A cover letter may not be submitted with a filing.

(2) SERFF Filing.

(a) Filing Description. The filing description on the general information tab shall contain the following information, in the sequence listed.

(i) Provide a summary, including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is a first-time filing;

(B) is a new form revising an existing form;

(C) is a new form that is substantially similar to an existing form;

(D) is a resubmission that includes a summary of the changes made and the previous filing's Utah filed date or SERFF tracking number;

(E) includes informational documents, referencing the Utah filed date or SERFF tracking number; or

(F) does not include the policy, and if so, provide the Utah filed date or SERFF tracking number of the policy and each amendment, summarizing the effect on the policy.

(iii) Identify any provision that is unusual, innovative, controversial, or that was previously objected to or prohibited, and explain why the provision is included in the filing.

(iv) List the range of minimum and maximum ages for which the policy will be issued.

(v) Indicate if the policy or associated forms have been submitted to the Interstate Insurance Product Regulation Commission.

(vi) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate-owned, or bank-owned.

(vii) Indicate if the form is illustrated.

(b) Filing Certification.

(i) The insurer shall certify that a filing and all related documents are compliant.

(ii) The following statement shall be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-226 AND IS COMPLIANT WITH APPLICABLE UTAH LAW."

(iii) The Utah Life and Annuity Filing Certification shall be attached to the supporting documentation tab.

(iv) A filing may be rejected if the filing certification is false, missing, or incomplete.

(v) A false filing certification may subject the insurer to administrative action.

(c) Domiciliary Approval and Filing Status Information. A filing for a foreign insurer shall include on the supporting documentation tab:

(i) filing status information, including:

(A) a list of states where a similar filing is submitted;

(B) the date of submission; and

(C) the disposition status or exemption; or

(ii) if the filing is specific to Utah and only filed in Utah, include:

(A) the phrase "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE"; and

(B) the reason the filing is only filed in Utah.

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing shall attach to the supporting documentation tab:

(i) a complete Utah Life and Annuity Group Questionnaire; or

(ii) a copy of the discretionary group authorization letter.

(e) Letter of Authorization.

(i) A filing submitted by a third party shall have a letter of authorization from the insurer attached to the supporting documentation tab.

(ii) The insurer is responsible for the filing being compliant.

(f) Variable Data.

(i)(A) Variable data is denoted by brackets, and is defined either by embedding the variable data in the form or in a separate form with a unique form number and an edition date.

(B) Variable data submitted as a separate form shall be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(ii) A certification statement of variability shall be attached to the supporting documentation tab and shall certify that:

(A) the final form will not contain brackets;

(B) the use of variable data is administered in a uniform and non-discriminatory manner that will not result in unfair discrimination;

(C) the variable data is used on the referenced forms; and

(D) any changes to variable data shall be filed before implementation.

(iii) Any variation of the variable data shall be disclosed, for example "Deductible is \$(xxx.xx) in \$(xxx.xx) increments."

(iv) Variable data shall be reasonable, appropriate, and compliant.

(v) The use of unfilled variable data is prohibited.

(g) Life Insurance Illustration Materials. If a life insurance form is identified as illustrated, the filing shall include:

(i) a basic illustration completed with data; and

(ii) an illustration actuary's certification.

(h) Items Submitted for Filing.

(i) A form shall be attached to the form schedule tab.

(ii) All supporting documentation, including actuarial memoranda, shall be attached to the supporting documentation schedule tab.

(iii) An actuarial memorandum required under Section R590-226-7, R590-226-8, or R590-226-9 shall include a certification of compliance with nonforfeiture and valuation laws by a qualified actuary.

(iv) A report is exempt from a filing submission requirement under:

(A) Subsections (2)(a)(ii) through (2)(a)(vi);

(B) Subsection (2)(c);

(C) Subsection (2)(d); and

(D) Subsection (2)(f).

(v) Underlining and Strikethrough. A resubmission or a new form revising an existing form shall include an underline and strikethrough version of the form and the final form on the form schedule tab.

(3) An insurer submitting a life settlement filing is exempt from:

(a) Subsections (2)(a)(iv) through (2)(a)(vii);

(b) Subsections (2)(b) through (2)(e); and

(c) Subsection (2)(g).

R590-226-6. Procedures for Filings.

(1) Forms in General.

(a) A form is a file and use filing.

(b) A form shall be identified by a unique form number that may not be variable.

(c) A form shall be in final printed form and may not be submitted as a draft.

(d) Blank spaces within a form shall be completed to accurately represent the purpose and use.

(i) If the intended market is for a senior age market, the form shall be completed with data representative of senior insureds.

(ii) Any data in a form, including the data page, shall be consistent with the actuarial memorandum, the basic illustration, the statement of policy cost and benefit information, and the application, as applicable.

(2) Application Filing.

(a) An application or enrollment form may be submitted as a separate filing or filed with its related policy or certificate filing.

(b) If an application was previously filed or is filed separately, an informational copy of the application shall be included with the policy or certificate filing.

(c) The Utah filed date or SERFF tracking number for the application shall be included in the filing description.

(3) Policy Filing.

(a) Each TOI shall be filed separately.

(b) A policy filing consists of one policy form, including the application, data page, certificate, rider, endorsement, and actuarial memorandum.

(c) A policy data page shall be included with each policy filing.

(d)(i) Only one policy filing for a single TOI may be filed.

(ii) A life insurance policy with different premium payment periods is considered one form.

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the filing description references each affected form.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is accident and health insurance and shall be filed under Rule R590-220.

(d) The filing description shall include:

(i) a list of each policy form number, title, and Utah filed date or SERFF tracking number;

(ii) a description of how each filed rider or endorsement affects the policy; and

(iii) a data page with data for the submitted form.

(e) Unrelated riders or endorsements may not be filed together.

R590-226-7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) An insurer filing a life insurance form shall comply with:

(a) Title 31A, Chapter 21, Insurance Contracts in General;

(b) Title 31A, Chapter 22, Part 4, Life Insurance and Annuities;

(c) Rule R590-79;

(d) Rule R590-93;

(e) Rule R590-94;

(f) Rule R590-95;

(g) Rule R590-98;

(h) Rule R590-108;

(i) Rule R590-122;

(j) Rule R590-177;

(k) Rule R590-191;

(l) Rule R590-198; and

(m) Rule R590-223.

(2) A life insurance policy, rider, or endorsement filing shall include an actuarial memorandum that demonstrates compliance with Section 31A-22-408 for:

(a) an individual life insurance policy; or

(b) a group life insurance policy that is marketed individually.

(3) The actuarial memorandum shall include:

(a) a detailed description of the coverage;

(b) a demonstration of compliance with nonforfeiture law;

(c) the specific basis for exemption from nonforfeiture law; and

(d) a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary.

R590-226-8. Additional Procedures for Group Market Filings.

(1) A group life insurance filing shall comply with:

(a) Title 31A, Chapter 21, Insurance Contracts in General;

(b) Title 31A, Chapter 22, Part 4, Life Insurance and Annuities;

(c) Title 31A, Chapter 22, Part 5, Group Life Insurance;

(d) Rule R590-79;

(e) Rule R590-108;

(f) Rule R590-122;

(g) Rule R590-177; and

(h) Rule R590-191.

(2) Statement of Policy Cost and Benefit Information.

(a) A statement of policy cost and benefit information shall be included in group life insurance that includes a preneed funeral policy or prearrangement.

(b) The disclosure requirement extends to the issuance or delivery of a certificate and the policy under Section R590-79-4.

(3) Actuarial Memorandum.

(a) An actuarial memorandum shall be included in a non-term group life insurance filing.

(b) A filing for a policy, a rider, or an endorsement shall include an actuarial memorandum that demonstrates compliance with Section 31A-22-515.

(c) The actuarial memorandum shall include:

(i) a detailed description of the coverage;

(ii) a demonstration of compliance with nonforfeiture law;

(iii) the specific basis for exemption from nonforfeiture law; and

(iv) a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary.

(4) An insurer shall determine if the group is an eligible group or a discretionary group.

(a) Eligible Group.

(i) A filing for an eligible group shall include a Utah Life and Annuity Group Questionnaire.

(ii) A questionnaire shall be completed for each eligible group under Sections 31A-22-501.1 through 31A-22-508.

(iii) When a filing applies to more than one employer or employee group, only one questionnaire is required.

(b) Discretionary Group.

(i) If a group is not an eligible group, a discretionary group authorization shall be obtained.

(ii) If a form filing is submitted without discretionary group authorization, the filing shall be rejected.

(iii) To obtain discretionary group authorization, a compliant Utah Life and Annuity Request for Discretionary Group Authorization must be submitted.

(iv) A change to an authorized discretionary group shall be submitted to the department within 30 days of the change.

(v) The commissioner may periodically re-evaluate a group's authorization.

(vi) An insurer shall file a separate discretionary group authorization to add another TOI to a previously authorized group.

R590-226-9. Additional Procedures for Variable Life Filings.

(1) An insurer submitting a variable life insurance filing shall comply with:

(a) Section 31A-22-411; and

(b) Rule R590-133.

(2) An insurer submitting a variable life insurance policy shall certify it has:

(a) a variable contract line of authority; and

(b) a separate account established in the state of domicile.

(3) Actuarial Memorandum. An actuarial memorandum shall:

(a) be included in a variable life insurance filing;

(b) describe the type of accounts available in the policy, identifying the accounts that are separate accounts, including modified guaranteed accounts, and general accounts;

(c) demonstrate nonforfeiture compliance for:

(i) separate accounts pursuant to Section 31A-22-411; and

(ii) fixed interest general accounts pursuant to Section 31A-22-408;

(d) identify a fixed account's:

(i) guaranteed minimum interest rate; and

(ii) maximum surrender charge; and

(e) include a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary.

R590-226-10. Additional Procedures for a Policy, Rider, or Endorsement Providing Life Insurance and Accident and Health Insurance Benefits.

(1) A life insurance filing that includes an accident and health insurance benefit, rider, or endorsement shall comply with Rule R590-220.

(2)(a) A combination filing is a policy, rider, or endorsement that creates a product providing both life insurance and accident and health insurance benefits.

(b) The acceptable combination filings are:

(i) a rider or endorsement; or

(ii) an integrated policy.

(c) A combination filing shall be submitted separately to both the health instance and the life instance in SERFF, as both instances will process the filing.

(d) A rider or endorsement shall be submitted to the appropriate instance in SERFF based on the benefits provided in the rider or endorsement.

(3) The filing description shall include the Utah filed date or SERFF tracking number and shall identify the filing as a combination of TOIs, such as:

(a) a whole life insurance policy with a long-term care insurance benefit; or

(b) a major medical health policy that includes a life insurance benefit.

R590-226-11. Classification of Documents.

(1) A record submitted under this rule is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) A record may be classified as protected if:

(a) requested under Section 63G-2-309;

(b) the request in Subsection (2)(a) includes each required element of Subsections 63G-2-309(1)(a)(i)(A) and 63G-2-309(1)(a)(i)(B); and

(c) the department notifies the requester that the record has been classified as protected.

(3) A filing may not be reopened to reclassify a previously filed document.

(4) A pattern of requesting that non-qualifying documents be protected, including putting both protected and public information in one document, may violate this rule.

R590-226-12. Insurer Annual Reports.

(1) An annual report shall be properly identified and shall be filed separately from any other filing.

(2) An annual report shall be submitted when requested.

R590-226-13. Objection Letter and Disposition Procedures.

(1) Response to a Filing Objection Letter. A response to a filing objection letter shall:

(a) be provided in SERFF under the filing correspondence tab;

(b) address each objection;

(c) include an explanation identifying each change made;

(d) include an underline and strikeout version of each revised document;

(e) provide a final version of the revised document, incorporating all changes;

(f) attach each document under the appropriate tab; and

(g) reference any additional document attached under the supporting documentation tab if the content is not included in the response.

(2) Order to Prohibit Use.

(a) An order to prohibit use is final 15 days after the date of the order to prohibit use.

(b) A filing that is prohibited pursuant to an order to prohibit use shall be discontinued by the date specified in the order to prohibit use.

(c) To contest an order to prohibit use, the insurer shall request a hearing, in writing, no later than 15 days after the date of the order to prohibit use.

(d) Notwithstanding Subsection (2)(c), an insurer may submit a resubmission that shall:

(i) make the requested changes addressed in the filing objection letter; and

(ii) reference the previously prohibited filing.

(3) Filing Rejection.

(a) An insurer may submit a resubmission.

(b) A resubmission shall reference the previously rejected filing.

R590-226-14. Severability.

If any provision of this rule, Rule R590-226, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: life insurance filings
Date of Last Change: 2023~~March 23, 2016~~
Notice of Continuation: March 14, 2019
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Rule or Section Number:	R590-227	Filing ID: 55263

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-227. Submission of Annuity Filings
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties (the old R590-227-12) and Enforcement Date (the old R590-227-13) sections, and update the Severability (the new R590-227-12) section to use the Department's current

language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-2-201.1	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023
9. This rule change MAY become effective on:	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/27/2023
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R590. Insurance, Administration.**R590-227. [Submission of] Submitting Annuity Filings.****[R590-227-1. Authority.**

~~This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).~~

R590-227-2. Purpose and Scope.

~~(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.~~

~~(2) This rule applies to:~~

~~(a) all types of individual and group annuities, and variable annuities; and~~

~~(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates of insurance.~~

R590-227-3. Definitions.

~~In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:~~

~~(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.~~

~~(2) "Contract" means the annuity policy including attached endorsements and riders;~~

~~(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract specifications, contract schedule, policy information, etc.~~

~~(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.~~

~~(5) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.~~

~~(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.~~

~~(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.~~

~~(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.~~

~~(9) "Filer" means a person who submits a filing.~~

~~(10) "Filing," when used as a noun, means an item required to be filed with the department including:~~

~~(a) a contract;~~

~~(b) a form;~~

~~(c) a document;~~

~~(d) an application;~~

~~(e) a report;~~

~~(f) a certificate;~~

~~(g) an endorsement;~~

~~(h) a rider; and~~

~~(i) an actuarial memorandum, demonstration, and certification.~~

_____ (11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction to non-compliant items, may request clarification or additional information pertaining to the filing.

_____ (12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

_____ (13) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

_____ (14) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

_____ (15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

_____ (16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

_____ (17) "Rejected" means a filing is:

_____ (a) not submitted in accordance with applicable laws or rules;

_____ (b) returned to the licensee by the department with the reasons for rejection; and

_____ (c) not considered filed with the department.

_____ (18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

_____ (19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

_____ (20) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-227-4. General Filing Information.

_____ (1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

_____ (2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

_____ (3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

_____ (a) is not considered filed with the department;

_____ (b) must be submitted as a new filing; and

_____ (c) will not be reopened for purposes of resubmission.

_____ (4) A prior filing will not be researched to determine the purpose of the current filing.

_____ (5) The department does not review or proofread every filing.

_____ (a) A filings may be reviewed:

_____ (i) when submitted;

_____ (ii) as a result of a complaint;

_____ (iii) during a regulatory examination or investigation; or

_____ (iv) at any other time the department deems necessary.

_____ (b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the

filer to disclose deficiencies in forms or rating practices to affected insureds.

_____ (6) Filing Correction.

_____ (a) Filing corrections are considered informational.

_____ (b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.

_____ (c) A new filing is required if a filing correction is made more than 15 days after the date original filing was submitted to department. The filer must reference the original filing in the filing description.

_____ (7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

_____ (8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-5. Filing Submission Requirements.

_____ (1) All filings must be submitted as an electronic filing.

_____ (a) All filers must use SERFF to submit a filing.

_____ (b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

_____ (2) A filings must be submitted by market type and type of insurance.

_____ (3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

_____ (4) SERFF Filings.

_____ (a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

_____ (i) Certification.

_____ A. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

_____ B. The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-227 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

_____ C. The "Utah Annuity Filing Certification" must be properly completed, signed, and attached to the Supporting Documentation tab.

_____ D. A filing will be rejected if the certification is false, missing, or incomplete.

_____ E. A false certification may subject the licensee to administrative action.

_____ (ii) Provide a description of the filing including:

_____ (A) the intent of the filing; and

_____ (B) the purpose of each document within the filing.

_____ (iii) Indicate if the filing:

_____ (A) is new;

_____ (B) has been submitted with the Interstate Insurance Product Regulation Commission (IIPRC);

_____ (C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC Date;

_____ (D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

~~(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~

~~(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~

~~(v) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.~~

~~(vii) List the minimum initial premium.~~

~~(viii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.~~

~~(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:~~

~~(i) copy of domicile approval for the exact same filing; or~~

~~(ii) filing status information which includes:~~

~~(A) a list of the states to which the filing was submitted;~~

~~(B) the date submitted; and~~

~~(C) summary of the states' actions and their responses; or~~

~~(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC NOT SUBMITTED TO ANY OTHER STATE."~~

~~(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:~~

~~(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or~~

~~(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.~~

~~(d) Letter of Authorization.~~

~~(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.~~

~~(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.~~

~~(e) Statement of Variability.~~

~~(i) A statement of variability must be attached to the Supporting Documentation tab and certify:~~

~~(A) the final form will not contain brackets denoting variable data;~~

~~(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;~~

~~(C) the variable data included in this statement will be used on the referenced forms;~~

~~(D) any changes to variable data will be submitted prior to implementation.~~

~~(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.~~

~~(iii) Variable data must be reasonable, appropriate and compliant.~~

~~(iv) Use of unauthorized variable data is prohibited.~~

~~(f) Annuity Report. All annuity filings must include a sample annuity annual report.~~

~~(g) Items being submitted for filing.~~

~~(i) All forms must be attached to the Form Schedule tab.~~

~~(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.~~

~~(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:~~

~~(A) description of the coverage in detail;~~

~~(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and~~

~~(C) a certification of compliance with Utah law.~~

~~(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.~~

~~R590-227-6. Procedures for Filings.~~

~~(1) Forms in General.~~

~~(a) Forms are "File and Use" filings.~~

~~(b) Each form must be identified by a unique form number. The form number may not be variable.~~

~~(c) Forms must contain a descriptive title on the cover page.~~

~~(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.~~

~~(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~

~~(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.~~

~~(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.~~

~~(2) Application Filing.~~

~~(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.~~

~~(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.~~

~~(3) Contract Filing.~~

~~(a) Each type of annuity must be filed separately.~~

~~(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and actuarial memorandum.~~

~~(c) A contract data page must be included with every contract filing.~~

~~(d) Only one contract form for a single type of insurance may be filed.~~

~~(e) A contract data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing.~~

~~(4) Rider or Endorsement Filings.~~

~~(a) Related riders or endorsements may be filed together.~~

~~(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.~~

~~(c) A rider or endorsement that is based on morbidity risks such as critical illness or long term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".~~

- _____ (d) The filing must include:
- _____ (i) a listing of all base contract form numbers, title and Utah Filed Dates; and
- _____ (ii) a description of how each filed rider or endorsement affects the base contract.
- _____ (iii) a sample data page with data for the submitted form.
- _____ (e) Unrelated endorsements may not be filed together.

~~R590-227-7. Additional Procedures for Fixed Annuity Filings.~~

- _____ (1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:
- _____ (a) Section 31A-21 Part III, "Specific Clauses in Contracts;"
- _____ (b) Section 31A-22 Part IV, "Life Insurance and Annuities;"
- _____ (c) R590-93, "Replacement of Life Insurance and Annuities;"
- _____ (d) R590-96, "Annuity Mortality Tables;" and
- _____ (e) R590-191, "Unfair Life Insurance Claims Settlement Practice."
- _____ (2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws. Refer to the following:
- _____ (a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and
- _____ (b) Section 31A-17 Part V, "Standard Valuation Law."
- _____ (3) When submitting annuity filings the General Information Tab must:
- _____ (a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;
- _____ (b) describe the basic features of the form submitted;
- _____ (c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;
- _____ (d) describe the guaranteed and nonguaranteed values including any bonuses;
- _____ (e) describe all charges, fees and loads;
- _____ (f) list and describe all accounts, options and strategies, if any;
- _____ (g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and
- _____ (h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.
- _____ (4) The contract must be complete with a sample specification page attached.
- _____ (5) The actuarial memorandum must:
- _____ (a) be currently dated and signed by the actuary;
- _____ (b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;
- _____ (c) describe all contract provisions in detail, including all guaranteed and non guaranteed elements, that may affect the values;
- _____ (d) identify the guaranteed minimum interest crediting rates;
- _____ (e) describe in detail the particular methods of crediting interest, including:
 - _____ (i) guaranteed fixed interest rates; and
 - _____ (ii) guaranteed interest terms.

- _____ (f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

- _____ (g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

- _____ (h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

- _____ (6) The actuarial demonstration must:

- _____ (a) compare minimum contract values with minimum nonforfeiture values;

- _____ (b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

- _____ (c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

- _____ (i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

- _____ (ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

- _____ (7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

~~R590-227-8. Additional Procedures for Group Annuity Filings.~~

- _____ (1) A filer submitting group annuity filings are advised to review the following code sections and rules prior to submitting a filing:

- _____ (a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

- _____ (b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

- _____ (c) Section 31A-22 Part V, "Group Life Insurance;" and

- _____ (d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

- _____ (2) A group contract must be included with each certificate filing along with the master application and enrollment form.

- _____ (3) Actuarial Memorandum. An actuarial memorandum must be included in all group annuity filing describing the features of the contract and certifying compliance with applicable laws and rules.

- _____ (4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

- _____ (a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

- _____ (b) When a filing applies to multiple employer employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

~~(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.~~

~~(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.~~

~~(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:~~

~~(i) existence of a verifiable group;~~

~~(ii) that granting permission is not contrary to public policy;~~

~~(iii) the proposed group would be actuarially sound;~~

~~(iv) the group would result in economies of acquisition and administration which justify a group rate; and~~

~~(v) the group would not present hazards of adverse selection.~~

~~(c) Discretionary group filings that do not provide authorization documentation will be rejected.~~

~~(d) Any changes to an authorized discretionary group must be submitted to the department, such as: change of name, trustee, domicile state, within 30 days of the change.~~

~~(e) The commissioner may periodically re-evaluate the group's authorization.~~

R590-227-9. Additional Procedures for Variable Annuity Filings Procedures.

~~(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:~~

~~(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and~~

~~(b) R590-133, "Variable Contracts."~~

~~(2) A variable annuity contract must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.~~

~~(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.~~

~~(4) The description and the actuarial memorandum must:~~

~~(a) describe the type of accounts available in the contract; and~~

~~(b) identify those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.~~

~~(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.~~

~~(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:~~

~~(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;~~

~~(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:~~

~~(i) the guaranteed minimum interest rate; and~~

~~(ii) the maximum surrender charges and loads.~~

~~(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.~~

~~(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.~~

~~(9) A prospectus is not required to be filed.~~

R590-227-10. Classification of Documents.

~~(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:~~

~~(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:~~

~~(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and~~

~~(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or~~

~~(b) commercial information and non-individual financial information obtained from a person if:~~

~~(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and~~

~~(ii) the person submitting the information has a greater interest in prohibiting access than the public has in obtaining access.~~

~~(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Subsection 63G-2-309(1)(a)(i):~~

~~(a) The filer shall request protected classification for the specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and~~

~~(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.~~

~~(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2):~~

~~(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.~~

~~(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.~~

~~(c)(i) Despite the denial of protected classification, the commissioner shall treat the information as if it had been classified as protected until:~~

~~(A) the 30 day time limit for an appeal to the commissioner has expired; or~~

~~(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.~~

~~(ii) During the 30 day time limit to appeal or during the appeal process, the filer may withdraw:~~

~~(A) the filing; or~~

~~(B) the request for protected classification.~~

~~(d) If the filer combines, in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.~~

R590-227-11. Responses.

~~(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:~~

~~(a) provide an explanation identifying all changes made;~~
~~(b) include an underline and strikeout version for each revised document;~~

~~(c) a final version of revised documents that incorporate all changes; and~~

~~(d) for filing submitted in SERFF, attached the documents in Subsections R590-227-11(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.~~

~~(2) Response to an Order to Prohibit Use.~~

~~(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.~~

~~(b) Use of the filing must be discontinued no later than the date specified in the Order.~~

~~(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.~~

~~(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.~~

R590-227-12. Penalties.

~~Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-227-13. Enforcement Date.

~~The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.~~

R590-227-14. Severability.

~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~

R590-227-1. Authority.

~~This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-2-201.1.~~

R590-227-2. Purpose and Scope.

~~(1) The purpose of this rule is to establish procedures for submitting an annuity filing.~~

~~(2) This rule applies to an insurer offering an annuity contract, including a group annuity contract issued to a nonresident contract holder, when a Utah resident is provided coverage under the contract.~~

R590-227-3. Definitions.

~~Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Certification" means a statement that a submitted filing is compliant.~~

~~(2) "Compliant" means a filing that is complete and complies with Title 31A, Insurance Code, and Title R590, Administration.~~

~~(3) "Contract" means an annuity policy including attached endorsements and riders.~~

~~(4) "Data page" means the page or pages in a contract or certificate providing the specific data for the annuitant and detailing the coverage provided.~~

~~(5) "Discretionary group" means a group that is authorized by the commissioner under Section 31A-22-509.~~

~~(6) "Electronic filing" means a filing submitted using SERFF.~~

~~(7) "Eligible group" means a group that meets the requirements in Sections 31A-22-501.1 through 31A-22-508.~~

~~(8) "File and use" means a filing is used, sold, or offered for sale after it is filed with the department.~~

~~(9) "Filing objection letter" means a letter issued by the commissioner when a review of a filing determines the filing is not compliant and may require:~~

~~(a) correction of non-compliant items;~~

~~(b) clarification; or~~

~~(c) additional information related to the filing.~~

~~(10) "Letter of authorization" means a letter signed by an officer of the insurer giving authority to a third party to submit a filing on behalf of the insurer.~~

~~(11) "NAIC Product Coding Matrix" means a numerical coding system developed by the NAIC that provides uniform naming convention, uniform terminology, and uniform description for a type of insurance product in a filing.~~

~~(12) "Order to prohibit use" means an order issued by the commissioner prohibiting the use of a filing.~~

~~(13) "Qualified actuary" means an individual who is qualified to sign the applicable state of actuarial opinion in accordance with the American Academy of Actuaries qualification standards.~~

~~(14) "Rejected" means a filing is:~~

~~(a) not compliant;~~

~~(b) returned to the insurer stating the reason for rejection;~~

~~and~~

~~(c) not considered filed with the department.~~

~~(15) "Resubmission" means a correction, modification, or replacement of a previously rejected, withdrawn, or prohibited filing.~~

~~(16) "SERFF" means the System for Electronic Rate and Form Filing.~~

~~(17) "Type of insurance" or "TOI" means:~~

~~(a) a specific type of annuity product identified by the NAIC Product Coding Matrix including equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity; and~~

~~(b) a TOI that can be selected in SERFF when submitting a filing in Utah.~~

~~(18) "Utah filed date" means the date the department indicates a paper filing is accepted.~~

R590-227-4. General Filing Information.

~~(1)(a) A filing shall be accurate, consistent, complete, and contain all required documents.~~

~~(b) The commissioner may request additional information, as necessary.~~

~~(2)(a) An insurer is responsible for assuring that any document in a filing is compliant.~~

~~(b) A filing that is not compliant is subject to regulatory action.~~

~~(3)(a) A filing that is not compliant may be rejected.~~

~~(b) A rejected filing:~~

~~(i) may be resubmitted under a new filing; and~~

~~(ii) may not be reopened for purposes of resubmission.~~

~~(4) A prior filing will not be researched to determine the purpose of the current filing.~~

~~(5) The department does not review every filing.~~

(a) A filing may be reviewed:

- (i) when submitted;
- (ii) when a complaint is received;
- (iii) during a regulatory examination or investigation;
- (iv) when the department considers a review necessary.

(b) If a filing is reviewed and is found not compliant, the commissioner:

- (i) shall issue a filing objection letter or an order to prohibit use; and
- (ii) may require the insurer to disclose deficiencies in a form or a rating practice to each affected insured.

(6)(a) A correction to a filing in an open status may be made at any time.

(b) A correction to a filing in a closed status:

- (i) may not be made;
- (ii) requires a new filing; and
- (iii) shall reference the original filing in the filing description of the new filing.

(7) An insurer shall notify the department when discontinuing or withdrawing a previously filed form or supplementary information.

(8) If the Utah filed date is used for compliance with this rule, a complete copy with all subsequent amendments, including the Utah filed date, shall be attached as a supporting document.

R590-227-5. Filing Submission Requirements.

(1) General Filing Requirements.

(a) A filing shall be submitted:

- (i) electronically through SERFF; and
- (ii) using the NAIC Product Coding Matrix, including the:
 - (A) TOI; and
 - (B) sub-TOI.

(b) A filing may not include more than one:

- (i) TOI; or
- (ii) insurer.

(c) A cover letter may not be submitted with a filing.

(2) SERFF Filings.

(a) Filing Description. The filing description on the general information tab shall contain the following information, in the sequence listed.

- (i) Provide a summary, including:
 - (A) the intent of the filing; and
 - (B) the purpose of each document within the filing.
- (ii) Indicate if the filing:
 - (A) is a first-time filing;
 - (B) is a new form revising an existing form;
 - (C) is a new form that is substantially similar to an existing form;
 - (D) is a resubmission that includes a summary of the changes made and the previous filing's Utah filed date or SERFF tracking number;
 - (E) includes informational documents, referencing the Utah filed date or SERFF tracking number; or
 - (F) does not include the contract, and if so, provide the Utah filed date or SERFF tracking number of the contract and each amendment, summarizing the effect on the contract.
- (iii) Identify if any provision is unusual, innovative, controversial, or that was previously objected to or prohibited, and explain why the provision is included in the filing.
- (iv) List the range of minimum and maximum ages for which the contract will be issued.

(v) Indicate if the contract or associated forms have been submitted to the Interstate Insurance Product Regulation Commission.

(vi) Indicate and describe any market value adjustment feature.

(b) Filing Certification.

(i) The insurer shall certify that a filing and all related documents are compliant.

(ii) The following statement shall be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-227 AND IS COMPLIANT WITH APPLICABLE UTAH LAW."

(iii) The Utah Life and Annuity Filing Certification shall be attached to the supporting documentation tab.

(iv) A filing may be rejected if the certification is false, misleading, or incomplete.

(v) A false certification may subject the insurer to administrative action.

(c) Domiciliary Approval and Filing Status Information. A filing for a foreign insurer shall include on the supporting documentation tab:

- (i) filing status information, including:
 - (A) a list of states where a similar filing is submitted;
 - (B) the date of submission; and
 - (C) the disposition status or exemption; or
- (ii) if the filing is specific to Utah and only filed in Utah, include:
 - (A) the phrase "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE"; and
 - (B) the reason the filing is only filed in Utah.
- (d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing shall attach to the supporting documentation tab:
 - (i) a complete Utah Life and Annuity Group Questionnaire; or
 - (ii) a copy of the discretionary group authorization letter.
- (e) Letter of Authorization.
 - (i) A filing submitted by a third party shall have a letter of authorization from the insurer attached to the supporting documentation tab.
 - (ii) The insurer is responsible for the filing being compliant.
- (f) Variable Data.
 - (i)(A) Variable data is denoted by brackets, and is defined either by embedding the variable data in the form or in a separate form with a unique form number and an edition date.
 - (B) Variable data submitted as a separate form shall be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.
 - (ii) A certification statement of variability shall be attached to the supporting documentation tab and shall certify that:
 - (A) the final form will not contain brackets;
 - (B) the use of variable data is administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;
 - (C) the variable data is used on the referenced forms; and
 - (D) any changes to variable data shall be filed before implementation.
 - (iii) Any variation of the variable data shall be disclosed, for example "Deductible is \$(xxx.xx) in \$(xxx.xx) increments."

(iv) Variable data shall be reasonable, appropriate, and compliant.

(v) The use of unfiled variable data is prohibited.

(f) Items Submitted for Filing.

(i) A form shall be attached to the form schedule tab.

(ii) All supporting documentation, including actuarial memoranda, shall be attached to the supporting documentation schedule tab.

(iii) An actuarial memorandum required under Section R590-227-7 or R590-227-9 shall include a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary.

(iv) Underlining and Strikethrough. A resubmission or a new form revising an existing form shall include an underline and strikethrough version of the form and the final form on the form schedule tab.

R590-227-6. Procedures for Filings.

(1) Forms in General.

(a) A form is a file and use filing.

(b) A form shall be identified by a unique form number that may not be variable.

(c) A form shall be in final printed form and may not be submitted as a draft.

(d) Blank spaces within a form shall be completed to accurately represent the purpose and use.

(i) If the intended market is for a senior age market, the form shall be completed with data representative of senior annuitants.

(ii) Any data in a form, including the data page, shall be consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(2) Application Filing.

(a) An application or enrollment form may be submitted as a separate filing or filed with its related contract or certificate filing.

(b) If an application was previously filed or is filed separately, an informational copy of the application shall be included with the contract or certificate filing.

(c) The Utah filed date or SERFF tracking number for the application shall be included in the filing description.

(3) Contract Filing.

(a) Each TOI shall be filed separately.

(b) A contract filing consists of one contract form, including the application, data page, rider, endorsement, and actuarial memorandum.

(c) A contract data page shall be included with each contract filing.

(d) Only one contract filing for a single TOI may be filed.

(Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the filing description references each affected form.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is accident and health insurance and shall be filed under Rule R590-220.

(d) The filing description shall include:

(i) a list of each contract form number, title, and Utah filed date or SERFF tracking number;

(ii) a description of how each filed rider or endorsement affects the contract; and

(iii) a data page with data for the submitted form.

(e) Unrelated riders or endorsements may not be filed together.

R590-227-7. Additional Procedures for Fixed Annuity Filings.

(1) An insurer filing an annuity form shall comply with:

(a) Title 31A, Chapter 21, Contracts in General;

(b) Title 31A, Chapter 22, Part 4, Life Insurance and Annuities;

(c) Rule R590-93;

(d) Rule R590-96; and

(e) Rule R590-191.

(2) A filing of an annuity contract, rider, or endorsement shall include an actuarial memorandum that demonstrates compliance with Section 31A-22-409.

(3) Actuarial Memorandum.

(a) An actuarial memorandum shall be included in each fixed annuity contract filing;

(b) The actuarial memorandum shall:

(i) identify the specific subsections of the Utah nonforfeiture law that apply to the submitted annuity;

(ii) describe each contract provision in detail including any guaranteed and non-guaranteed elements that affect the value;

(iii) identify the guaranteed minimum interest crediting rate;

(iv) describe the methods of crediting interest, including:

(A) guaranteed fixed interest rates; and

(B) guaranteed interest terms;

(v) identify and describe each charge and fee, including loads, surrender charges, market value adjustments, or any other adjustment feature;

(vi) describe each account and factor used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values; and

(vii) include each formula used to calculate the minimum guaranteed values provided by the contract and each formula used to calculate the minimum guaranteed values required by nonforfeiture law.

(c) The actuarial memorandum shall include a demonstration of compliance with nonforfeiture law that shall:

(i) compare a minimum contract value with a minimum nonforfeiture value;

(ii) be based on a representative premium pattern and show values for:

(A) issue age 35 and age 60; and

(B) flexible premium contract, for a single premium and for a level premium; and

(iii) numerically demonstrate that the values based on the guaranteed minimum interest rate, the maximum surrender charges, fees, loads, and any other factor affecting the value, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests.

(d) The actuarial memorandum shall clearly identify the tests in Subsection (3)(c)(iii) and shall include the following:

(i) for the retrospective test:

(A) describe the net consideration and the interest rates used for the accumulation; and

(B) numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law; and

(ii) for the prospective test:

(A) identify the maturity value and the interest rate used for each respective year to determine the present value; and

(B) numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(e) The actuarial memorandum shall include:

(i) a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary;

(ii) a confirmation that the formulas used and values provided are compliant.

R590-227-8. Additional Procedures for Group Annuity Filings.

(1) A group annuity filing shall comply with:

(a) Title 31A, Chapter 21, Insurance Contracts in General;

(b) Title 31A, Chapter 22, Part 4, Life Insurance and Annuities;

(c) Title 31A, Chapter 22, Part 5, Group Life Insurance; and

(d) Rule R590-191.

(2) An insurer shall determine if a group is an eligible group or a discretionary group.

(a) Eligible Group.

(i) A filing for an eligible group shall include a Utah Life and Annuity Group Questionnaire.

(ii) A questionnaire shall be completed for each eligible group under Sections 31A-22-501.1 through 31A-22-508.

(iii) When a filing applies to more than one employer or employee group, only one questionnaire is required.

(b) Discretionary Group.

(i) If a group is not an eligible group, specific discretionary group authorization shall be obtained.

(ii) If a filing is submitted without discretionary group authorization, the filing shall be rejected.

(iii) To obtain discretionary group authorization, a compliant Utah Life and Annuity Request for Discretionary Group Authorization shall be submitted.

(c) A change to an authorized discretionary group shall be submitted to the department within 30 days of the change.

(d) The commissioner may periodically re-evaluate a group's authorization.

(e) An insurer shall file a separate discretionary group authorization to add another TOI to a previously authorized group.

R590-227-9. Additional Procedures for Variable Annuity Filings.

(1) An insurer submitting a variable annuity filing shall comply with:

(a) Section 31A-22-411; and

(b) Rule R590-133.

(2) An insurer submitting a variable annuity contract shall certify it has:

(a) a variable contract line of authority; and

(b) a separate account established in the state of domicile.

(3) Actuarial Memorandum.

(a) An actuarial memorandum shall be included in a variable annuity filing.

(b) An actuarial memorandum shall:

(i) describe the type of accounts available in the contract; and

(ii) identify the accounts that are separate accounts, including modified guaranteed annuities and general accounts.

(c) The actuarial memorandum shall describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the value.

(d) The actuarial memorandum shall include a demonstration of compliance with nonforfeiture law and shall:

(i) identify and describe all guaranteed factors that affect values, including:

(A) the guaranteed minimum interest rate for a fixed account, if applicable; and

(B) the maximum surrender charges and loads; and

(ii) numerically demonstrate compliance with:

(A) Section 31A-22-409 for a fixed interest general account; and

(B) Section 31A-22-411 for a variable annuity.

(e) An actuarial memorandum shall include a certification of compliance with applicable nonforfeiture and valuation laws by a qualified actuary.

(4) A rider or an endorsement that provides a benefit, such as a guaranteed minimum death benefit or guaranteed minimum withdrawal benefit, shall be filed and shall include an actuarial memorandum.

R590-227-10. Classification of Documents.

(1) A record submitted under this rule is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) A record may be classified as protected if:

(a) requested under Section 63G-2-309;

(b) the request in Subsection (2)(a) includes each required element of Subsections 63G-2-309(1)(a)(i)(A) and 63G-2-309(1)(a)(i)(B); and

(c) the department notifies the requester that the record has been classified as protected.

(3) A filing may not be reopened to reclassify a previously filed document.

(4) A pattern of requesting that non-qualifying documents be protected, including putting both protected and public information in one document, may violate this rule.

R590-227-11. Objection Letter and Disposition Procedures.

(1) Response to a Filing Objection Letter. A response to a filing objection letter shall:

(a) be provided in SERFF under the filing correspondence tab;

(b) address each objection;

(c) include an explanation identifying each change made;

(d) include an underline and strikeout version of each revised document;

(e) provide a final version of the revised document, incorporating all changes;

(f) attach each document under the appropriate tab; and

(g) reference any additional document attached under the supporting documentation tab if the content is not included in the response.

(2) Order to Prohibit Use.

(a) An order to prohibit use is final 15 days after the date of the order to prohibit use.

(b) A filing that is prohibited pursuant to an order to prohibit use shall be discontinued by the date specified in the order to prohibit use.

(c) To contest an order to prohibit use, the insurer shall request a hearing, in writing, no later than 15 days after the date of the order to prohibit use.

(d) Notwithstanding Subsection (c), an insurer may submit a resubmission that shall:

(i) make the requested changes addressed in the filing objection letter; and

(ii) reference the previously prohibited filing.

(3) Filing Rejection.

(a) An insurer may submit a resubmission.

(b) A resubmission shall reference the previously rejected filing.

R590-227-12. Severability.

If any provision of this rule, Rule R590-227, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: annuity insurance filings

Date of Last Change: 2023[March 23, 2016]

Notice of Continuation: March 14, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:	R590-228	Filing ID: 55264
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Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties (the old R590-228-11) and Enforcement Date (the old R590-228-12) sections, and update the Severability (the new R590-228-10) section to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-2-201.1	
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/27/2023
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R590. Insurance, Administration.

~~R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.~~

~~R590-228 1. Authority.~~

~~This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), 31A-22-807.~~

~~R590-228 2. Purpose and Scope.~~

~~(1) The purpose of this rule is to set forth the procedures for submitting:~~

~~(a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;~~

~~(b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and~~

~~(c) report filings as required.~~

~~(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.~~

~~R590-228 3. Definitions.~~

~~In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:~~

~~(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.~~

~~(2) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.~~

~~(3) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filing, SERFF.~~

~~(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.~~

~~(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.~~

~~(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.~~

~~(7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.~~

~~(8) "Filer" means a person who submits a filing.~~

~~(9) "Filing," when used as a noun, means an item required to be filed with the department including:~~

~~_____ (a) a policy;~~
~~_____ (b) a rate, rate methodologies;~~
~~_____ (c) a form;~~
~~_____ (d) a document;~~
~~_____ (e) an application;~~
~~_____ (f) a report;~~
~~_____ (g) a certificate;~~
~~_____ (h) an endorsement;~~
~~_____ (i) a rider; and~~
~~_____ (j) an actuarial memorandum, demonstration, and certification.~~

~~_____ (10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.~~

~~_____ (11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses~~

~~_____ (12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.~~

~~_____ (13) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.~~

~~_____ (14) "Market type" means the type of policy that indicates the targeted market such as individual or group.~~

~~_____ (15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.~~

~~_____ (16) "Rejected" means a filing is:~~
~~_____ (a) not submitted in accordance with applicable laws or rules;~~

~~_____ (b) returned to the licensee by the department with the reasons for rejection; and~~

~~_____ (c) not considered filed with the department.~~

~~_____ (17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.~~

~~_____ (18) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage.~~

~~_____ (19) "Utah Filing Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.~~

~~R590-228-4. General Filing Information.~~

~~_____ (1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.~~

~~_____ (2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.~~

~~_____ (3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:~~

~~_____ (a) is not considered filed with the department;~~
~~_____ (b) must be submitted as a new filing; and~~
~~_____ (c) will not be reopened for purposes of resubmission.~~

~~_____ (4) A prior filing will not be researched to determine the purpose of the current filing.~~

~~_____ (5) The department does not review or proofread every filing.~~

~~_____ (a) A filing may be reviewed:~~

~~_____ (i) when submitted;~~
~~_____ (ii) as a result of a complaint;~~
~~_____ (iii) during a regulatory examination or investigation; or~~
~~_____ (iv) at any other time the department deems necessary.~~

~~_____ (b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.~~

~~_____ (6) Filing Correction.~~

~~_____ (a) Filing corrections are considered informational.~~

~~_____ (b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.~~

~~_____ (c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.~~

~~_____ (7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-228-11 for instructions.~~

~~_____ (8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.~~

~~R590-228-5. Filing Submission Requirements.~~

~~_____ (1) All filings must be submitted as an electronic filing.~~

~~_____ (a) All filers must use SERFF to submit a filing.~~

~~_____ (b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2009, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.~~

~~_____ (2) A filings must be submitted by market type and type of insurance.~~

~~_____ (3) A filing may not include more than one type of insurance; or request filing for more than one licensee.~~

~~_____ (4) SERFF Filings.~~

~~_____ (a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below:~~

~~_____ (i) Provide a description of the filing including:~~

~~_____ (A) the intent of the filing; and~~
~~_____ (B) the purpose of each document within the filing.~~

~~_____ (ii) Indicate if the filing:~~

~~_____ (A) is new;~~

~~_____ (B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date;~~

~~_____ (C) includes documents for informational purposes; if so, provide the Utah Filed Date; or~~

~~_____ (D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.~~

~~_____ (iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.~~

~~_____ (iv) Explain any change in benefits or premiums that may occur while the contract is in force.~~

~~_____ (v) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.~~

_____ (vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

_____ (vii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

_____ (viii) Identify the intended market

_____ (ix) Identify the types and durations of loans to be insured.

_____ (x) Describe the methods of premium charge.

_____ (b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification" must be properly completed, signed, and attached to the Supporting Documentation tab. A false certification may subject the licensee to administrative action.

_____ (c) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

_____ (i) copy of domicile approval for the exact same filing; or

_____ (ii) filing status information which includes:

_____ (A) a list of the states to which the filing was submitted;

_____ (B) the date submitted; and

_____ (C) summary of the states' actions and their responses; or

_____ (iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC NOT SUBMITTED TO ANY OTHER STATE."

_____ (d) Letter of Authorization.

_____ (i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

_____ (ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

_____ (e) Statement of Variability.

_____ (i) A statement of variability must be attached to the Supporting documentation tab and certify:

_____ (A) the final form will not contain brackets denoting variable data;

_____ (B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

_____ (C) the variable data included in this statement will be used on the referenced forms;

_____ (D) any changes to variable data will be submitted prior to implementation.

_____ (ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

_____ (iii) Variable data must be reasonable, appropriate and compliant.

_____ (iv) Use of unauthorized variable data is prohibited.

_____ (f) Items being submitted for filing.

_____ (i) All forms must be attached to the form schedule tab.

_____ (ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

_____ (iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum and demonstration with sample rate calculations and a certification of compliance with Utah law are required in each filing. The memorandum must be currently dated and signed by the actuary.

_____ (5) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-228-6. Procedures for Filings.

_____ (1) Forms in General.

_____ (a) Forms are "File and Use" filings.

_____ (b) Each form must be identified by a unique form number. The form number may not be variable.

_____ (c) Forms must contain a descriptive title on the cover page.

_____ (d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

_____ (e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

_____ (f) All John Doe data in the forms, including the data page, premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule.

_____ (2) Policy Filings.

_____ (a) Each type of insurance must be filed separately.

_____ (b) A policy filing consists of one policy form, including its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

_____ (c) Only one policy filing for a single type of insurance may be filed.

_____ (3) Rider or Endorsement Filings.

_____ (a) Related riders or endorsements may be filed together.

_____ (b) A single rider or endorsement that affects multiple forms may be filed in the Filing Description and references all affected forms.

_____ (c) The filing must include:

_____ (i) a listing of the base policy form number, title and Utah Filed Dates;

_____ (ii) a description of how each rider or endorsement affects the base policy; and

_____ (iii) appropriate actuarial memorandum and rate schedule.

_____ (4) Application Filings.

_____ (a) Each application or enrollment form may be submitted as a separate filing or filed with its related policy or certificate filing.

_____ (b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with a policy or certificate filing.

_____ (5) Rates. Rates are considered "File for Approval".

R590-228-7. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

_____ (1) A Licensee filing Credit Life and Credit Accident and Health are advised to review the following code sections and rules prior to submitting a filing:

_____ (a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

_____ (b) Section 31A-22 Part IV, "Life insurance and Annuities;"

_____ (c) Section 31A-22 Part V, "Group Life Insurance;"

_____ (d) Section 31A-22 Part VI, "Accident and Health Insurance;"

_____ (e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

_____ (f) R590-91, "Credit Life and Disability;" and

_____ (g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

_____ (h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

_____ (2) A policy must be included with each certificate filing along with a master application and enrollment form.

~~(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate filing must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.~~

~~(a) Actuarial memorandum must include a description of the following:~~

~~(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;~~

~~(ii) types of loans to be insured, such as open end, closed end;~~

~~(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;~~

~~(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);~~

~~(v) rates per unit, rating and premium methodologies including:~~

~~(A) formulas used for each type of coverage and premium method; and~~

~~(B) sample calculations for each type of coverage and premium method;~~

~~(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;~~

~~(vii) demonstration of compliance with applicable code and rules;~~

~~(viii) refund methods and calculation including formulas for each type of coverage; and~~

~~(ix) reserve bases including methods used.~~

~~(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.~~

~~(4) Rate Schedules.~~

~~(a) Rate schedules must be included for each type of coverage and for representative durations.~~

~~(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.~~

~~(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.~~

R590-228-8. Insurer Annual Reports.

~~All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.~~

R590-228-9. Classification of Documents.

~~(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:~~

~~(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process that:~~

~~(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and~~

~~(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or~~

~~(b) commercial information and non-individual financial information obtained from a person if:~~

~~(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and~~

~~(ii) the person submitting the information has a greater interest in prohibiting access than the public has in obtaining access.~~

~~(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Subsection 63G-2-309(1)(a)(i).~~

~~(a) The filer shall request protected classification for the specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and~~

~~(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.~~

~~(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).~~

~~(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.~~

~~(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.~~

~~(c)(i) Despite the denial of protected classification, the commissioner shall treat the information as if it had been classified as protected until:~~

~~(A) the 30 day time limit for an appeal to the commissioner has expired; or~~

~~(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.~~

~~(ii) During the 30 day time limit to appeal or during the appeal process, the filer may withdraw:~~

~~(A) the filing; or~~

~~(B) the request for protected classification.~~

~~(d) If the filer combines, in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.~~

R590-228-10. Responses.

~~(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:~~

~~(a) provide an explanation identifying all changes made;~~

~~(b) include an underline and strikeout version for each revised document;~~

~~(c) include a final version of revised documents that incorporates all changes; and~~

~~(d) for filing submitted in SERFF, attach the documents in Subsections R590-228-10(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.~~

- ~~_____ (2) Response to an Order to Prohibit Use.~~
- ~~_____ (a) An Order to Prohibit Use becomes final 15 days after the date of the Order.~~
- ~~_____ (b) Use of the filing must be discontinued no later than the date specified in the Order.~~
- ~~_____ (c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.~~
- ~~_____ (d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.~~

R590-228-11. Penalties.

~~_____ Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-228-12. Enforcement Date.

~~_____ The commissioner will begin enforcing the revised provisions of this rule upon 15 days from the effective date of this rule.~~

R590-228-13. Severability.

~~_____ If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~

R590-228. Submitting Credit Life and Credit Accident and Health Insurance Filings.

R590-228-1. Authority.

~~_____ This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-2-201.1.~~

R590-228-2. Purpose and Scope.

~~_____ (1) The purpose of this rule is to establish procedures for submitting a credit life insurance or credit accident and health insurance filing.~~

~~_____ (2) This rule applies to an insurer offering credit life insurance or credit accident and health insurance, including group credit life insurance or group credit accident and health insurance issued to a nonresident policyholder, when a Utah resident is provided coverage under the policy.~~

R590-228-3. Definitions.

~~_____ Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-802. Additional terms are defined as follows:~~

- ~~_____ (1) "Certification" means a statement that a submitted filing is compliant.~~
- ~~_____ (2) "Compliant" means a filing that is complete and complies with Title 31A, Insurance Code, and Title R590, Administration.~~
- ~~_____ (3) "Electronic filing" means a filing submitted using SERFF.~~
- ~~_____ (4) "File and use" means a filing is used, sold, or offered for sale after it is filed with the department.~~
- ~~_____ (5) "File for approval" means a filing is used, sold, or offered for sale after receiving written confirmation that the filing is approved.~~
- ~~_____ (6) "Filing objection letter" means a letter issued by the commissioner when a review of the filing determines the filing is not compliant and may require:~~
 - ~~_____ (a) correction of non-compliant items;~~

~~_____ (b) clarification; or~~

~~_____ (c) additional information related to the filing.~~

~~_____ (7) "Letter of authorization" means a letter signed by an officer of the insurer giving authority to a third-party to submit a filing on behalf of the insurer.~~

~~_____ (8) "NAIC Product Coding Matrix" means a numerical coding system developed by the NAIC that provides uniform naming convention, uniform terminology, and uniform description for a type of insurance product in a filing.~~

~~_____ (9) "Order to prohibit use" means an order issued by the commissioner prohibiting the use of a filing.~~

~~_____ (10) "Qualified actuary" means an individual who is qualified to sign the applicable state of actuarial opinion in accordance with the American Academy of Actuaries qualification standards.~~

~~_____ (11) "Rejected" means a filing is:~~

~~_____ (a) not compliant;~~

~~_____ (b) returned to the insurer stating the reason for rejection; and~~

~~_____ (c) not considered filed with the department.~~

~~_____ (12) "Resubmission" means a correction, modification, or replacement of a previously rejected, withdrawn, or prohibited filing.~~

~~_____ (13) "SERFF" means the System for Electronic Rate and Form Filing.~~

~~_____ (14) "Type of insurance" or "TOI" means:~~

~~_____ (a) a specific credit life insurance or credit accident and health insurance product identified by the NAIC Product Coding Matrix including gross decreasing term, net decreasing term, level term, open end, closed end, single premium, or truncated coverage; and~~

~~_____ (b) a TOI that can be selected in SERFF when submitting a filing in Utah.~~

~~_____ (15) "Utah filing date" means the date the department indicates a paper filing is accepted.~~

R590-228-4. General Filing Information.

~~_____ (1)(a) A filing shall be accurate, consistent, complete, and contain all required documents.~~

~~_____ (b) The commissioner may request additional information, as necessary.~~

~~_____ (2)(a) An insurer is responsible for assuring that any document in a filing is compliant.~~

~~_____ (b) A filing that is not compliant is subject to regulatory action.~~

~~_____ (3)(a) A filing that is not compliant may be rejected.~~

~~_____ (b) A rejected filing:~~

~~_____ (i) may be resubmitted under a new filing; and~~

~~_____ (ii) may not be reopened for purposes of resubmission.~~

~~_____ (4) A prior filing will not be researched to determine the purpose of the current filing.~~

~~_____ (5) The department does not review every filing.~~

~~_____ (a) A filing may be reviewed:~~

~~_____ (i) when submitted;~~

~~_____ (ii) when a complaint is received;~~

~~_____ (iii) during a regulatory examination or investigation; or~~

~~_____ (iv) when the department considers a review necessary.~~

~~_____ (b) If a filing is reviewed and is found not compliant, the commissioner:~~

~~_____ (i) shall issue a filing objection letter or an order to prohibit use; and~~

~~_____ (ii) may require the insurer to disclose deficiencies in a form or a rating practice to each affected insured.~~

(6)(a) A correction to a filing that is in an open status may be made at any time.

(b) A correction to a filing that is in a closed status:

(i) may not be made;

(ii) requires a new filing; and

(iii) shall reference the original filing in the filing description.

(7) An insurer shall notify the department when discontinuing or withdrawing a previously filed form, rate, or supplementary information.

(8) If the Utah filed date is used for compliance with this rule, a complete copy with all subsequent amendments, including the Utah filed date, shall be attached as a supporting document.

R590-228-5. Filing Submission Requirements.

(1) General Filing Requirements.

(a) A filing shall be submitted:

(i) electronically through SERFF; and

(ii) using the NAIC Product Coding Matrix, including the:

(A) TOI; and

(B) sub-TOI.

(b) A filing may not include more than one:

(i) TOI; or

(ii) insurer.

(c) A cover letter may not be submitted with a filing.

(2) SERFF Filing.

(a) Filing Description. The filing description on the general information tab shall contain the following information, in the sequence listed.

(i) Provide a summary, including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is a first-time filing;

(B) is a new form revising an existing form;

(C) is a new form that is substantially similar to an existing form;

(D) is a resubmission that includes a summary of the changes made and the previous filing's Utah filed date or SERFF tracking number;

(E) includes informational documents, referencing the Utah filed date or SERFF tracking number; or

(F) does not include the policy, and if so, provide the Utah filed date or SERFF tracking number of the policy and each amendment, summarizing the effect on the policy.

(iii) Identify any provision that is unusual, innovative, controversial, or that was previously objected to or prohibited, and explain why the provision is included in the filing.

(iv) List the range of minimum and maximum ages for which the policy will be issued.

(v) Identify the type and duration of any loan to be insured.

(b) Filing Certification.

(i) The insurer shall certify that a filing and all related documents are compliant.

(ii) The following statement shall be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-228 AND IS COMPLIANT WITH APPLICABLE UTAH LAW."

(iii) The Utah Credit Life and Credit Accident and Health Filing Certification shall be attached to the supporting documentation tab.

(iv) A filing may be rejected if the filing certification is false, missing, or incomplete.

(v) A false certification may subject the insurer to administrative action.

(c) Domiciliary Approval and Filing Status Information. A filing for a foreign insurer shall include on the supporting documentation tab:

(i) filing status information including:

(A) a list of states where a similar filing is submitted;

(B) the date of submission; and

(C) the disposition status or exemption; or

(ii) if the filing is specific to Utah and only filed in Utah, include:

(A) the phrase "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE"; and

(B) the reason the filing is only filed in Utah.

(d) Letter of Authorization.

(i) A filing submitted by a third party shall have a letter of authorization from the insurer attached to the supporting documentation tab.

(ii) The insurer is responsible for the filing being compliant.

(e) Variable Data.

(i)(A) Variable data is denoted by brackets and is defined either by embedding the variable data in the form or in a separate form with a unique form number and an edition date.

(B) Variable data submitted as a separate form shall be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(ii) A certification statement of variability shall be attached to the supporting documentation tab and shall certify that:

(A) the final form does not contain brackets;

(B) the use of variable data is administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data is used on the referenced forms; and

(D) any changes to variable data shall be filed prior to implementation.

(iii) Any variation of the variable data shall be disclosed, for example "Deductible is \$(xxx.xx) in \$(xxx.xx) increments."

(iv) Variable data shall be reasonable, appropriate, and compliant.

(v) The use of unfiled variable data is prohibited.

(f) Items Submitted for Filing.

(i) A form shall be attached to the form schedule tab.

(ii) All rating documentation, including actuarial memoranda and rate schedules, shall be attached to the rate/rule schedule tab.

(g) Underline and Strikethrough. A resubmission or a new form revising an existing form shall include an underline and strikethrough version of the form and the final form on the form schedule tab.

R590-228-6. Procedures for Filings.

(1) Forms in General.

(a) A form is a file and use filing.

(b) A form shall be identified by a unique form number that may not be variable.

(c) A form shall be in final printed form and may not be submitted as a draft.

(d) Blank spaces within a form shall be completed to accurately represent the purpose and use.

(i) If the intended market is for a senior age market, the form shall be completed with data representative of senior insureds.

(ii) Any data in a form, including premium rates and benefits, shall be consistent with the actuarial memorandum and rate schedule.

(2) Application Filing.

(a) An application or enrollment form may be submitted as a separate filing or filed with its related policy or certificate filing.

(b) If an application was previously filed or is filed separately, an informal copy of the application shall be included with a policy or certificate filing.

(3) Policy Filings.

(a) Each TOI shall be filed separately.

(b) A policy filing consists of one policy form, including the application, certificate, rider, endorsement, actuarial memorandum, and rate schedule.

(c) Only one policy filing for a single TOI may be filed.

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the filing description references each affected form.

(c) The filing description shall include:

(i) a list of each policy form number, title, and Utah filed date or SERFF tracking number; and

(ii) a description of how each rider or endorsement affects the policy.

(d) Unrelated riders or endorsements may not be filed together.

(5) Rates. A rate is a file for approval filing.

R590-228-7. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) An insurer filing a credit life or a credit accident and health form shall comply with:

(a) Title 31A, Chapter 21, Insurance Contracts in General;

(b) Title 31A, Chapter 22, Part 4, Life Insurance and Annuities;

(c) Title 31A, Chapter 22, Part 5, Group Life Insurance;

(d) Title 31A, Chapter 22, Part 6, Accident and Health Insurance;

(e) Title 31A, Chapter 22, Part 7, Group Accident and Health Insurance;

(f) Title 31A, Chapter 22, Part 8, Credit Life and Accident and Health;

(g) Rule R590-91;

(h) Rule R590-191; and

(i) Rule R590-192.

(2)(a) A credit life or credit accident and health insurance policy, rider, or endorsement affecting a benefit shall be accompanied by a rate filing.

(b) A rate filing is not required if the form filing does not impact the rate, however the filing description shall explain the reason there is not a change in the rate.

(3) Actuarial Memorandum.

(a) An actuarial memorandum shall be included in a credit life and credit accident and health insurance rate filing.

(b) An actuarial memorandum shall demonstrate compliance with Section 31A-22-807.

(c) An actuarial memorandum shall include a description of the following:

(i) type of coverage, such as gross or net, level or decreasing, single or joint life, full term or truncated, or critical period;

(ii) type of loan to be insured, such as open end or closed end;

(iii) type of premium charge, such as single premium, monthly outstanding balance, or another method explained in detail;

(iv) duration of loan and duration of coverage;

(v) rates per unit, ratings, and premium methodologies, including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) refund method and calculation, including formulas for each type of coverage; and

(vii) reserve bases, including methods used.

(d)(i) An actuarial memorandum shall include certification of compliance with Section 31A-22-807 by a qualified actuary.

(ii) The certification shall confirm that the formulas and methods used produce rates that are compliant for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) A rate schedule shall be included for:

(i) each type of coverage; and

(ii) representative durations.

(b) Rates shall be identified as:

(i) prima facie rates;

(ii) deviated rates submitted pursuant to Section 31A-22-807; or

(iii) rates on nonstandard coverage pursuant to Subsection R590-91-6(1).

(5)(a) Each benefit shall be reasonable in relation to the premium charge.

(b) An insurer filing for approval of a rate higher than a prima facie rate shall comply with:

(i) Section 31A-22-807; and

(ii) Section R590-91-11.

(c) A demonstration that the rate is reasonable in relation to the benefit shall be included in the filing.

R590-228-8. Classification of Documents.

(1) A record submitted under this rule is subject to Title 63G, Chapter 2, Government Records and Access Management Act.

(2) A record may be classified as protected if

(a) requested under Section 63G-2-309;

(b) the request in Subsection (2)(a) includes each required element of Subsections 63G-2-309(1)(a)(i)(A) and 63G-2-309(1)(a)(i)(B); and

(c) the department notifies the requester that the record has been classified as protected.

(4) A filing may not be reopened to reclassify a previously filed document.

(5) A pattern of requesting that non-qualifying documents be protected, including putting both protected and public information in one document, may violate this rule.

R590-228-9. Objection Letter and Disposition Procedures.

(1) Response to a Filing Objection Letter. A response to a filing objection letter shall:

(a) be provided in SERFF under the filing correspondence tab;

(b) address each objection;

(c) include an explanation identifying each change made;

(d) include an underline and strikethrough version of each revised document;

(e) provide a final version of the revised document, incorporating all changes;

(f) attach each document under the appropriate tab; and

(g) reference any additional document attached under the supporting documentation tab if the content is not included in the response.

(2) Order to Prohibit Use.

(a) An order to prohibit use is final 15 days after the date of the order to prohibit use.

(b) A filing that is prohibited pursuant to an order to prohibit use shall be discontinued by the date specified in the order to prohibit use.

(c) To contest an order to prohibit use, the insurer shall request a hearing, in writing, no later than 15 days after the date of the order to prohibit use.

(d) Notwithstanding Subsection (2)(c), an insurer may submit a resubmission that shall:

(i) make the requested changes addressed in the filing objection letter; and

(ii) reference the previously prohibited filing.

(3) Filing Rejection.

(a) An insurer may submit a resubmission.

(b) A resubmission shall reference the previously rejected filing.

R590-228-10. Severability.

If any provision of this rule, Rule R590-228, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: credit insurance filings

Date of Last Change: 2023[March 23, 2016]

Notice of Continuation: March 14, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R590-283-6	Filing ID: 55256
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Agency Information

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129

Mailing address:		PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R590-283-6. Reporting

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed to allow insurers more time to file certain required reports, and to be consistent with other reporting dates.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The rule amendment changes two dates used by insurers when submitting certain required reports to the Department of Insurance (Department).

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The Department will still review the specified reports; it will just be done a month later.

B) Local governments:

There is no anticipated cost or savings to local governments. Local governments are not insurance companies, and so are not required to file reports with the Department.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to any other persons. Insurers will still submit the specified reports to the Department, just a month later.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to any other persons. Insurers will still submit the specified reports to the Department, just a month later.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. Insurers will still submit the specified reports to the Department, just a month later.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. Insurers will still submit the specified reports to the Department, just a month later.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0

Net Benefits	Fiscal	\$0	\$0	\$0
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H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-22-642	Section 31A-30-118
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	02/24/2023
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R590. Insurance, Administration.

R590-283. Defrayal of State-Required Benefits.

R590-283-6. Reporting.

(1) This rule incorporates by reference the Utah Health Information Network's (UHIN) "Adaptive Behavior Services/Applied Behavior Analysis (ABA) Billing Standard" version 3.1, which is available on the department's website at <https://insurance.utah.gov> or on UHIN's website at <https://uhin.org>.

(2) A carrier shall use the UHIN "Adaptive Behavior Services/Applied Behavior Analysis (ABA) Billing Standard" version 3.1 to identify and report state-required benefit claims subject to defrayal under Subsection R590-283-4(2)(c) and this section.

(3)(a) To project the state's defrayal payments, a carrier anticipating a defrayal payment shall submit to the commissioner on a quarterly basis the Mandate Defrayal Data template for the current reporting period.

(b) A report shall be filed:

(i) on or before ~~April~~ May 15 of each year for the period January 1 through March 31;

(ii) on or before August 15 of each year for the period January 1 through June 30;

- (iii) on or before ~~November~~ December 15 of each year for the period January 1 through October 31;
- (iv) on or before February 15 of each year for the period January 1 through December 31 of the previous year; and
- (v) for the purpose of Section R590-283-4, on or before September 1 of each year for the period January 1 through December 31 of the previous year.

(4) Reports shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

KEY: insurance

Date of Last Change: 2023~~October 24, 2022~~

Authorizing, and Implemented or Interpreted Law: 31A-30-118(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R650-407	Filing ID: 55260
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Agency Information

1. Department:	Natural Resources	
Agency:	Outdoor Recreation	
Street address:	1594 W North Temple, Suite 100	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
India Nielsen Barfuss	385-268-2570	indianielsen@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R650-407. Off-Highway Vehicle Advisory Council
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Division of Outdoor Recreation (Division) came into existence 07/01/2022 (H.B. 305 passed in the 2022 General Session). The Division is now officially filing rules. These rules previously existed under State Parks or the Governor's Office of Economic Opportunity.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This filing will take a rule that currently exists under the Division of State Parks (R651-407) and file it properly under the Division. There will also be slight updates

(already approved by the Outdoor Adventure Commission).

In 2022, the Utah Legislature passed and the Governor signed into law H.B. 305. Lines 3518-3523 of that bill (now codified as Subsection 79-2-206(2)(b)) provide administrative rules administered by the former Division of Parks and Recreation "remain in effect until modified by the appropriate entity with the Department of Natural Resources, except that the agency administering the rule shall be transferred to the appropriate entity with the Department of Natural Resources."

One of those rules is Rule R651-407, which was formerly administered by the Division of Parks and Recreation. That rule is now administered by the Division because the rule pertains to the OHV Advisory Council and Subsections 41-22-2(1) and 41-22-10(1) provide the Division is the agency statutorily authorized to "appoint and seek recommendations from the council."

Pursuant to its authority under Subsection 79-2-206(2)(b) to modify rules formerly administered by the Division of Parks and Recreation, the Division proposes the following changes from the original Rule R651-407 to the new Rule R650-407.

Repromulgating and renumbering the rule under R650, the Division of Outdoor Recreation's title of the Utah Administrative Code.

Replacing the word "board," which refers to the State Parks Board, with "Division of Outdoor Recreation." This change reflects the requirements of Subsection 41-22-10(1), which charges the Division with appointing the council.

The addition of language that clarifies the Division will appoint an employee of the Bureau of Land Management, the USDA Forest Service, and the Utah School and Institutional Trust Lands Administration to the OHV Advisory Council.

The addition of language that provides for the appointment of an employee of the Public Lands Policy Coordinating Office. The Division believes this change is beneficial in that it allows another state agency with expertise in OHV use on Utah's public lands to provide insight to the council and, in turn, recommendations regarding public land OHV use to the Division.

The addition of language that provides for the appointment of a member recommended by the Utah Sheriff Search and Rescue Association. The Division believes this change is beneficial in that it allows a Utah law enforcement entity with expertise in OHV search and rescue activities and programs to recommend appointment of a member to provide insight to the council and, in turn, recommendations regarding OHV search and rescue activities and programs to the Division.

The addition of language that clarifies one member of the council should have an interest in snowmobiling, one member should have an interest in motorcycles, one member should have an interest in all-terrain vehicle use, one member should have an interest in four-wheel drive use, and one member should have an interest in OHV safety.

The removal of language that provides for appointment of a youth member and a change that provides the number of at large members of the council is one instead of two. The Division believes the addition of members from the Public Lands Policy Coordinating Office and the Utah Sheriff Search and Rescue Association will provide the council with better OHV expertise than the youth member and at large member currently provide and, in turn, better position the council to provide recommendations to the Division of Outdoor Recreation.

(EDITOR'S NOTE: The proposed repeal of Rule R651-407 is under ID 55253 in this issue, March 15, 2023, of the Bulletin.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

B) Local governments:

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

C) Small businesses ("small business" means a business employing 1-49 persons):

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

No fiscal impact – this is a technical rule refiling to a proper administrative rule title due to legislative changes to the Division the OHV Program resides within.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection 41-22-10(1)		
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Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:	04/14/2023	

9. This rule change MAY become effective on:	04/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Jason Curry, Director	Date:	02/15/2023
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R650. Natural Resources, Outdoor Recreation. **R650-407. Off-Highway Vehicle Advisory Council.** **R650-407-1. Appointment and Description of Off-Highway Vehicle Advisory Council Membership.**

The Division of Outdoor Recreation will appoint a twelve-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following : one employee of the Bureau of Land Management; one employee of the USDA, Forest Service; one employee of the Utah School and Institutional Trust Lands Administration; one employee of the Public Lands Policy Coordinating Office; one member recommended by the Utah Sheriff Association with knowledge of and an interest in search and rescue activities and programs; one member with knowledge of and an interest in snowmobiling; one member with knowledge of and an interest in motorecycling; one member with knowledge of and an interest in all-terrain vehicle use; one member with knowledge of and an interest in four-wheel drive vehicle use; one member who is an off-highway vehicle dealer; one member with knowledge of and an interest in off-highway vehicle safety; and one member-at-large.

KEY: off-highway vehicles

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 41-22-10(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Rule or Section Number:	R651-407	Filing ID: 55253

Agency Information

1. Department:	Natural Resources
Agency:	State Parks

Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146001	
City, state and zip:	Salt Lake City, UT 84114-6001	
Contact persons:		
Name:	Phone:	Email:
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R651-407. Off-Highway Vehicle Advisory Council
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is moving from the Division of State Parks (Division) to the Division of Outdoor Recreation; therefore, this rule is being repealed from the State Parks Rules.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is moving from the Division to the Division of Outdoor Recreation; therefore, the rule is being repealed from the State Parks Rules.
(EDITOR'S NOTE: The proposed new Rule R650-407 is under ID 55260 in this issue, March 15, 2023, of the Bulletin.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The repeal of this rule does not affect the state budget. This rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.
B) Local governments:
The repeal of this rule does not affect the local governments. The rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.
C) Small businesses ("small business" means a business employing 1-49 persons):

The repeal of this rule does not affect the small businesses. The rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The repeal of this rule does not affect non-small businesses. The rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The repeal of this rule does not affect the non-small businesses. The rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

The repeal of this rule does not change compliance costs for affected persons. The rule is moving to the Division of Outdoor Recreation and will have no effect on the Division.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Subsection		
41-22-10(1)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 04/14/2023

9. This rule change MAY become effective on: 04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Jeff Rasmussen, Director	Date:	11/10/2022
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R651. Natural Resources, Parks and Recreation.

~~[R651-407. Off Highway Vehicle Advisory Council.~~

~~R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.~~

~~The board will appoint an twelve member off highway vehicle advisory council representing off highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycleing; all terrain vehicle usage; four wheel drive vehicle usage; off highway vehicle dealers; off highway vehicle safety; a youth member; and two members at large.~~

~~KEY: off-highway vehicles~~
~~Date of Last Change: July 23, 2012~~
~~Notice of Continuation: March 13, 2018~~
~~Authorizing, and Implemented or Interpreted Law: 41-22-10(1)~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R651-635	Filing ID: 55261
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Agency Information

1. Department:	Natural Resources	
Agency:	State Parks	
Street address:	1594 W North Temple, Suite 116	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146001	
City, state and zip:	Salt Lake City, Utah 84114-6001	
Contact persons:		
Name:	Phone:	Email:
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R651-635. Commercial, Privileged, and Special Uses of Division Manage Park Areas
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
There are very specific business activities that park visitors may request that are not necessarily recreation activities but under current administrative rules require the Division of State Parks (Division) provide written authorization for the activity, normally in the form of a Special Use Permit. This rule amendment allows the Division to move forward authorizing these specific non-recreational activities without being required to issue a Special Use Permit, saving some administrative time and providing better customer service to park visitors requesting these services.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendment enacts a new section of this rule that allows for certain limited commercial activities on State Parks without a need to obtain a Special Use Permit.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed rule amendment will have no budgetary impact to the state. It will save some administrative time, but the actual impact is negligible.

B) Local governments:

The proposed rule amendment will have no budgetary impact to the local governments because this rule does not regulate local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed rule amendment will have no appreciable budgetary impact to small businesses other than a small amount of time it will save them from having to obtain a Special Use Permit.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

The proposed rule amendment will have no appreciable budgetary impact to non-small businesses other than a small amount of time it will save them from having to obtain a Special Use Permit.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The proposed rule amendment will help provide better customer service to park visitors but is not anticipated to generate any significant savings.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no associated costs for affected persons as outlined in this proposed rule amendment.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 79-2-402(4)	Subsection 79-2-402(5)	Subsection 79-402-402(6)
Subsection 79-2-402(7)	Subsection 79-2-402(8)	Section 79-402-304

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023
9. This rule change MAY become effective on:	04/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Jeff Rasmussen, Director	Date:	02/27/2023
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R651. Natural Resources, State Parks.**R651-635. Commercial, Privileged, and Special Uses of Division Managed Park Areas.****R651-635-1. Commercial Activities, Privileged, or Special Uses in Park Areas Require a Permit.**

(1) Except as provided in Section R651-635-6, [N]no Commercial Activity, privileged, or Special Use may be conducted on division managed areas or property unless the division has provided a permit for that activity.

(2) Additionally, the following activities are prohibited without a permit:

- (a) collecting or cutting of firewood;
- (b) metal detecting, magnet fishing, prospecting, digging, or excavating, or any other forms of treasure, paleontological, archaeological, or antiquities hunting;
- (c) the use or possession of explosives, fireworks or firecrackers;
- (d) operation or use of a public address or any other high-volume audio devices;
- (e) camping in an undeveloped location of a park area;
- (f) leaving an animal unattended; and
- (g) technical rock-climbing or the installation of new or the removal of existing permanently installed technical rock-climbing equipment or hardware.

R651-635-2. Types of Permits and Forms.

(1) A permit may be in the form of a concession contract, Special Use Permit, lease, or other negotiated agreement.

(2) The division shall provide forms and documents that serve as permits for Commercial Activity, Special Uses, and other privileged uses of park areas managed or owned by the division.

R651-635-3. Requirements to Obtain a Permit.

(1) The person or group desiring a permit shall make a request to the local park manager, region or the division's main office at least 30 business days before the proposed Commercial Activity, privileged, or Special Use. Late requests may be accepted subject to the terms of Subsection (6).

(2) The division director or the director's designee shall have the discretion to grant or deny the request for permit.

- (3) No Commercial Activity, privileged, or Special Use:
 - (a) may substantially interrupt the safe and orderly operation of the park or facility;
 - (b) may interfere with fire, police, ambulance, or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto;
 - (c) may be reasonably likely to cause injury to persons or property; or
 - (d) may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah Criminal Code or in applicable local ordinances.

(4) Liability insurance may be required, co-insuring the division and meeting the minimum requirements set by the Utah Division of Risk Management.

(5) Conflicting Requests.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for Commercial Activity, privileged, or Special Uses, and those requests conflict as to time, place, or purpose, the division director or the director's designee shall evaluate the conflicting Commercial Activity, privileged, or Special Uses as to:

(i) the size of the proposed Commercial Activity, privileged, or Special Use;

(ii) the nature and purpose of the proposed Commercial Activity, privileged, or Special Use, considered in light of the historical or traditional use of the park or facility;

(iii) the date and time each conflicting request was received by the division;

(iv) the division support services required for the proposed Commercial Activity, privileged, or Special Use;

(v) possible alternative places or times for the conflicting requests; and

(vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the division in regulating the time, place, and manner of the conflicting requests.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the Subsection (5)(vi), the division director or the director's designee shall resolve the conflict:

(i) by the parties' agreement to change the requests to avoid conflicts and accommodate the public interest; or

(ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or

(iii) by exercising discretion to deny requests.

(6) Late Requests. When a request for permit is not timely made under Subsection (1), the request shall state the grounds for its untimeliness. If the division director or the director's designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

R651-635-4. Signature Requirements.

(1) ~~Regardless of any preceding activities, Other than a Special Use Permit that is signed by a park manager or program manager in accordance with Subsection (2), no contract, concession contract, lease, Special Use Lease, or other negotiated agreement is binding on the division until signed by the division director or the director's designee, and any other individual whose signature is required by state law or regulation.~~

(2) No ~~[contract, concession contract, lease, Special Use Permit, or other negotiated agreement]~~ is binding on the division until signed by the park manager or program manager of the park area where the activity to be carried out under the permit will occur.

R651-635-5. Revocation or Suspension of Special Use Permit or Permit for Other Privileged Use.

(1) A permit may be revoked or suspended for a time, from a minimum of seven days to a maximum of the duration of the permit by the division director or the director's designee if one or more of the following actions are found to have occurred, based on their severity:

(a) false or fictitious statements or qualifications were provided to obtain the permit;

(b) the terms or conditions of the permit were violated;

(c) the permit holder allowed the permit to be used by an unauthorized person; or

(d) the permit is found to be intentionally altered or changed.

R651-635-6. Limited Commercial Activities Not Requiring Permit.

(1) A park manager may allow a Commercial Activity to be conducted on division managed areas or property without issuance of a permit when the park manager determines:

(a) the Commercial Activity has been requested by a park visitor;

(b) the Commercial Activity is of time-limited duration and expected to last no longer than three days;

(c) the Commercial Activity does not conflict with an existing park concession contract or other permits; and

(d) the Commercial Activity is one of the following services:

(i) vehicle towing or wrecker services;

(ii) automobile, boat, RV, or OHV repair services;

(iii) taxi or ride share services;

(iv) emergency medical services; or

(v) food delivery services.

(2) If a park manager allows a Commercial Activity to be conducted on division managed areas or property without issuance of a permit, the park manager or park manager's designee may collect the following information before the commencement of the Commercial Activity:

(a) the name of the park visitor who requested the service;

(b) the name of the individual or business entity providing the service;

(c) the expected location and duration of the service; and

(d) the service provider's license plate number.

(3) If, pursuant to Subsection R651-635-6(1) and (2), a park manager allows a Commercial Activity to be conducted on division managed areas or property without issuance of a permit, the park shall not charge the provider of the Commercial Activity a fee to access the park area or property for purposes of conducting the allowed Commercial Activity.

KEY: parks

Date of Last Change: 2023[September 23, 2022]

Notice of Continuation: December 11, 2019

Authorizing, and Implemented or Interpreted Law: 79-2-402(4) and (5); 79-4-304; 79-2-402(6), (7), and (8)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:

R765-605

Filing ID: 55255

Agency Information

1. Department:	Higher Education (Utah Board of)
Agency:	Administration
Room number:	5th Floor
Building:	Board of Regents Building, The Gateway
Street address:	60 S 400 W
City, state and zip:	Salt Lake City, UT 84101

Contact persons:		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Alison Adams	801-643-5535	Alison.Adams@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R765-605. Higher Education Success Stipend Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Higher Education Success Stipend Program has been discontinued and the Utah Board of Higher Education has decided that this rule is no longer necessary.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is repealed in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
Because the Higher Education Success Stipend Program has been replaced by another program, the repeal of this rule will not affect the state budget.
B) Local governments:
Because this rule doesn't affect local governments, its repeal will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
Because this rule doesn't affect small businesses, its repeal will not affect local businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Because this rule doesn't affect non-small businesses, its repeal will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Because the Higher Education Success Stipend Program has been replaced by another program, this rule is no longer useful for any person. As a result, the repeal of this rule will not affect persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule relates to the Higher Education Success Stipend Program, which was a scholarship program that persons could voluntarily apply for. The program has been replaced by another program and this rule is no longer useful. Since the program is a voluntary program, the repeal of this rule will not cause any person to incur compliance costs.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0

Net Benefits	Fiscal \$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Board of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 53B-13a-104(10)	Subsection 53B-13a-104(3)(b)	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023

9. This rule change MAY become effective on:	4/21/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Kevin V. Olsen, Assistant Attorney General and Designee	Date:	02/22/2023
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R765. Higher Education (Utah Board of), Administration.

~~[R765-605. Higher Education Success Stipend Program.~~

~~R765-605 1. Purpose.~~

~~The purpose of this rule is to provide the rules and procedures for implementing the Higher Education Success Stipend Program.~~

~~R765-605 2. Authority.~~

~~This rule is authorized by Subsection 53B-13a-104(10).~~

~~R765-605 3. Definitions.~~

- ~~(1) "Board means Utah Board of Higher Education.~~
- ~~(2) "Eligible institution" means:~~
 - ~~(a) an institution in the Utah system of higher education that is described in Subsection 53B-2-101(1); and~~
 - ~~(b) a Utah private, nonprofit postsecondary institution which is accredited by a regional accrediting organization recognized by the board. For purposes of this section, the board recognizes the Northwest Association of Schools and Colleges as the accrediting organization.~~

~~(3) "FAFSA" means the financial reporting form known as Free Application for Federal Student Aid that is administered by the U.S. Department of Education to determine the need and eligibility of a college student for financial aid.~~

~~(4) "FWSP" means Federal Work Study Program.~~

~~(5) "Program" means Higher Education Success Stipend Program.~~

~~(6) "Program administrator" means the board's Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner for Student Financial Aid, under executive direction of the Commissioner of Higher Education.~~

~~(7) "HWSP" means HESSP Work Study Program.~~

~~R765-605 4. Award Year.~~

~~The award year for the program shall be the twelve month period coinciding with the state fiscal year beginning July 1 and ending June 30.~~

~~R765-605 5. Student Eligibility.~~

~~(1) To be eligible for grant or work study assistance from program funds, a student must:~~

~~(a) be a resident student of the state under Section 53B-8-102 and board policy R512 or exempt from paying the nonresident portion of total tuition under Section 53B-8-106.~~

~~(b) be unconditionally admitted and currently enrolled in an eligible institution on at least a half time basis as defined in federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty, except that this does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program;~~

~~(c) be maintaining satisfactory academic progress, as defined by the eligible institution, toward the degree, diploma, or certificate objective in which enrolled;~~

~~(d) meet all requirements of general eligibility for Title IV of the Higher Education Act, Student Financial Aid Programs, as defined in applicable U. S. Department of Education regulations and the current edition of the Department of Education Student Aid Handbook;~~

~~(e) have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the federal need analysis process for Title IV of the Higher Education Act, Student Financial Aid Programs; and~~

~~(f) in accordance with Subsection 53B-13a-104(3)(b), complete the FAFSA to the extent that it will benefit the student's ability to maximize financial aid opportunities, except that a student may opt out of this requirement due to:~~

~~(i) financial ineligibility for any potential grant or other financial aid;~~

~~(ii) personal privacy concerns; or~~

~~(iii) advice of the institution based on its assessment of the factors that may impact the student's ability to access maximum financial aid opportunities.~~

~~(2) To assist students with the FAFSA requirement, each institution shall ensure that:~~

~~(a) each institution advisor encourages, to the extent practicable, each student to annually complete the FAFSA; and~~

~~_____ (b) the staff and faculty who advise students on financial aid are properly trained on the benefits of completing the FAFSA.~~

~~R765-605-6. Determination of Funds Available for The Program.~~

~~_____ (1) Funds available for program allotments to eligible institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:~~

~~_____ (a) Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the board, funds appropriated in the line item shall be applied in the following priority order:~~

~~_____ (i) Funds shall be given first to matching funds for Utah system of higher education institutional awards from the federal government for campus-based Federal Supplemental Educational Opportunity Grant Program funds and partial matching for the FWSP.~~

~~_____ (ii) Any remaining funds shall be used for the program.~~

~~_____ (b) Any funds appropriated by specific legislation, or in a specific line item for the program, and any funds from other sources contributed for the program, shall be added together with funds available for the program pursuant to Subsection (1)(a), to determine the total amount available for the program.~~

~~R765-605-7. Allotment of Program Funds to Institutions.~~

~~_____ (1) Annually, the program administrator shall request Federal Pell Grant disbursement data by March 1st. The director of financial aid of an eligible institution shall demonstrate intention to continue participation in the program by submitting to the program administrator a certification, subject to audit, of~~

~~_____ (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution; and~~

~~_____ (b) the total dollar amount of Federal Pell Grant funds awarded specifically to students at the eligible institution who were resident students of the state under Section 53B-8-102 and board policy R512.~~

~~_____ (2) Failure to submit the certification required in Subsection (1) by the requested date shall constitute an automatic decision by an eligible institution not to participate in the program for the next fiscal year.~~

~~_____ (3) Allotment of program funds to participating institutions shall be in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating eligible institutions.~~

~~_____ (4) The program administrator shall send official notification of each participating eligible institution's allotment, together with a blank copy of the format for the institutional program performance report to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.~~

~~R765-605-8. Institutional Participation Agreement.~~

~~_____ Each participating eligible institution shall enter into a written agreement with the program administrator, or assigned designee, agreeing to abide by the program rules, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the distribution of awards.~~

~~R765-605-9. Use of Program Funds Received by the Institution.~~

~~_____ (1) The eligible institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to the eligible institution for the award year in a budget for student financial aid administrative expenses of the institution, and, except as provided in Subsection (6), shall expend any funds so budgeted before the end of the state fiscal year for which allotted.~~

~~_____ (2) For any award year, the eligible institution may, at its option, place all or any portion of its allotted program funds in a budget to be used only for payment of work study stipends to eligible students, for employment during the award year either in jobs provided under the FWSP regulations or in jobs provided in accordance with HWSP rules set forth in Subsection R765-605-13. In accordance with Subsection 53B-13a-104(2), need-based work study stipends must be given strong emphasis.~~

~~_____ (3) Work study payments from the eligible institution's program work study budget, for jobs under either FWSP regulations or program rules, shall be counted as program awards for purposes of Subsection R765-605-10(3).~~

~~_____ (4) All work study jobs provided using program funds from the budget pursuant to this Section (9), including work study programs established under FWSP regulations, shall be identified to the recipient as program work study awards. No portion of the institution's program allotment may be used as institutional match for FWSP allocations.~~

~~_____ (5) The eligible institution shall place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to Subsections (1) and (2), in a budget to be used only for payment of program grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget shall be identified to the recipient as Higher Education Success Stipend Grants.~~

~~_____ (6) The eligible institution may not carry forward or carry back from one fiscal year to another any of its program allocation for a fiscal year. Any exception to this rule must be approved in advance by the program administrator. The eligible institution shall inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year. Unused funds may be returned to the program administrator as directed. Returned funds shall be redistributed to the other eligible institutions as supplemental program allocations for disbursement during the same award year. The portion of program allocations budgeted for administrative expenses pursuant to Subsection (1) shall not be part of any carryover.~~

~~R765-605-10. Determination of Awards to Eligible Students.~~

~~_____ (1) Student Cost of Attendance budgets shall be established by the eligible institution, in accordance with federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act, for specific student categories authorized in the federal regulations, and providing for the total of costs payable to the eligible institution plus other direct educational expenses, transportation and living expenses.~~

~~_____ (2) Program work study or grant amounts shall be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who demonstrate the greatest financial need.~~

~~_____ (3) The total amount of any program grant and work study award to an eligible student in an award year shall not exceed \$5,000, and the minimum program grant and work study award to an eligible student shall be \$300, except that:~~

~~_____ (a) the minimum amount may be the amount of any funds remaining in the eligible institution's allotment for the award year in the case of the last eligible student receiving a program grant award for the year; and~~

~~_____ (b) an eligible student whose period of enrollment is less than the normally expected period of enrollment within the award year, such as two semesters, three quarters, nine months, or 900 clock hours, shall be awarded a minimum or maximum grant amount in proportion to the portion of the normally expected period of enrollment represented by the quarter, semester or other defined term for which the student is enrolled.~~

~~_____ (4) Program grants and work study stipends shall be awarded and packaged on an annual award year basis. Grants shall be paid one quarter or semester at a time, or in thirds, if applicable to some other enrollment basis such as total months or total clock hours, contingent upon the student's maintaining satisfactory progress as defined by the eligible institution in published policies or rules. Work study wages shall be paid regularly as earned, provided the student is continuing to make satisfactory progress.~~

~~_____ (5) Each award under the program shall be made without regard to an applicant's race, creed, color, religion, sex, or ancestry.~~

~~_____ (6) Students receiving financial aid under the program shall be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget. The student's signature on the FAFSA may satisfy this requirement.~~

~~_____ (7) If the eligible institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used program grant or work study funds for other purposes, the eligible institution shall disqualify the student from program eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.~~

~~_____ (8) In no case shall the eligible institution initially award program grants or work study stipends or both in amounts which, with Federal Direct, Federal PLUS, or Federal Perkins Loans or other financial aid from any source, both need and merit based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.~~

~~_____ (9) If, after the student's aid has been packaged and awarded, the student later receives other financial assistance, such as, for example, merit or program based scholarship aid, or the student's cost of attendance budget changes, resulting in a later over award of more than \$500, the eligible institution shall appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.~~

R765-605-11. Reports.

~~_____ The eligible institution shall submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program relevant information as the board may reasonably require.~~

R765-605-12. Records, Retention and Cooperation in Program Reviews.

~~_____ The eligible institution shall cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and shall maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is~~

~~pending resolution, the eligible institution shall retain records for the award year involved until the exception has been resolved.~~

R765-605-13. Program Work Study Program Rules.

~~_____ (1) If an eligible institution elects to utilize its program work study funds for the HWSP instead of in accordance with the FWSP regulations, the following rules shall apply:~~

~~_____ (a) The eligible institution may establish designated HWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions:~~

~~_____ (i) the job must be supplemental to, and not displace, any regularly established job held by a greater than half time institutional employee in the three months immediately prior to establishment of the HWSP institutional job;~~

~~_____ (ii) the hourly wage for the HWSP institutional job must be no less than the current federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system; and~~

~~_____ (iii) the eligible institution may pay up to one hundred percent of the hourly wage for the institutional job from its program work study budget established pursuant to Subsection (9)(a), provided the total wages paid to a student for the job from the program and any other institutional funds do not exceed the amount of the award to the student for the award year.~~

~~_____ (b) The eligible institution may establish designated HWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions:~~

~~_____ (i) the hourly wage for the HWSP school assistant job must be no less than the current federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system; and~~

~~_____ (ii) the eligible institution may pay up to one hundred percent of the hourly wage for the job from its program work study budget established pursuant to Subsection (b), provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.~~

~~_____ (c) The eligible institution may establish designated HWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions:~~

~~_____ (i) the hourly wage for the HWSP community service job must be no less than the current federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system; and~~

~~_____ (ii) the eligible institution may pay up to one hundred percent of the hourly wage for the job from its program work study budget established pursuant to Subsection (c), provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.~~

~~_____ (d) The eligible institution may establish designated HWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions:~~

~~_____ (i) the matching job shall not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political;~~

~~(ii) the matching job must be supplemental to, and not displace, any regularly established job held by a greater than half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the HWSP matching job;~~

~~(iii) the hourly wage for the HWSP matching job must be no less than the current federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system; and~~

~~(iv) the eligible institution may pay up to fifty percent of the hourly wage for the job from its program work study budget established pursuant to Subsection (d), provided the total wages, including the employer paid portion, paid to the student do not exceed the amount of the award to the student for the award year.~~

~~(e) An eligible institution shall place the student, whenever possible, in HWSP jobs which have a relationship to the student's field of study or training.~~

~~(f) An eligible institutions or the employing organization must pay the employer portion of required federal taxes, including FICA, FUI, and SUI, from institutional funds, for any student who is paid for a work study award.~~

~~(g) If an eligible institution employs any student in a work study job or other institutional job cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a program funded work study job, the eligible institution shall pay the costs of any such required employee benefits from institutional funds other than program allotted funds.~~

KEY: financial aid, higher education

Date of Last Change: August 19, 2021

Notice of Continuation: April 11, 2018

Authorizing, and Implemented or Interpreted Law: 53B 8-104(3)(b); 53B 13a-104(10)]

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends April 14, 2023.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through July 13, 2023, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE		
Rule or Section Number:	R414-520	Filing ID: 55021
Date of Previous Publication:	11/15/2022	

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R414-520. Admission Criteria for Medically Complex Children's Waiver
3. Reason for this change (Why is the agency submitting this filing?):
The purpose of this change is to clarify access requirements to become eligible for the Medically Complex Children's Waiver.
4. Summary of this change (What does this filing do?):
This amendment removes unnecessary provisions for the Department of Health and Human Services to make waiver eligibility determinations.
(EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the November 15, 2022, issue of the Utah State Bulletin, on page 113. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and

the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no impact as the original filing of this rule already accounts for appropriations that affect the state budget.

B) Local government:

There is no impact as the original filing of this rule already accounts for appropriations that affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as this change does not result in additional costs, fees, taxes, or revenue.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no impact on non-small businesses as this change does not result in additional costs, fees, taxes, or revenue.

E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no impact as the original filing of this rule already accounts for appropriations that affect children who qualify for the waiver along with their families.

F) Compliance costs for affected persons:

There are no compliance costs to a single person or entity as this change does not result in additional costs, fees, taxes, or revenue.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis.			
Businesses will not see additional costs, fees, taxes, or revenue.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26B-1-213	Section 26-18-3	Section 26-18-410

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	04/14/2023
9. This rule change MAY become effective on:	04/21/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	03/01/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.**R414-520. Admission Criteria for Medically Complex Children's Waiver.****R414-520-1. Introduction and Authority.**

(1) This rule outlines the criteria used to evaluate initial and ongoing eligibility for the Medically Complex Children's Waiver.

(2) Section 26-18-3 authorizes this rule. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-520-2. Definitions.

"Waiver" means the Medically Complex Children's Waiver.

R414-520-3. Eligibility Requirements.

(1) The Department uses the following criteria to determine waiver eligibility:

(a) an assessment of a child's ability to perform age-appropriate activities of daily living and that child's level of independence in the performance of the activity; and

(b) an evaluation to determine whether a child meets nursing facility level-of-care in accordance with Section R414-502-3.

(2) For a child who meets the criteria in Subsection (1), a point value is attributed to the initial application and annual re-evaluation that includes the following:

(a) current medical providers;

(b) condition or diagnosis;

(c) date of last medical visit;

(d) documentation of more than three months of dependence on medical devices, treatments, therapies, or subspecialty services to reach a minimum medical score; and

(e) an evaluation of the impact on the parent or guardian who has provided care to the child with complex medical needs during the last 12 months.

R414-520-4. Waiver Access.

(1) The Department periodically assesses funding for the waiver to determine the number of children it may serve. ~~—The Department also derives a point value associated with the criteria found in Subsections R414-520-3(2)(d) through (e) to determine which children to enroll. In the event of multiple applications with the same point value, the Department uses the point value derived from Subsection R414-520-3(2)(d) to make its determination.~~

(2) The Department enrolls applicants who meet the level-of-care requirements using the scoring process described in Subsection (1) until the waiver reaches the maximum number of children it may serve. Once the waiver reaches the maximum number of children it may serve, the Department uses a waitlist to monitor interest in the program and to enroll additional children when attrition

NOTICES OF CHANGES IN PROPOSED RULES

creates vacancies. The Department attributes a score to children who are enrolled and on the waitlist in accordance with Subsections R414-520-3(2)(d) through (e), and enrolls children based on the highest scores. In the event of multiple enrollees or applicants with the same point value derived from Subsection R414-520-3(2)(d), the Department enrolls children based on the order in which it receives applications until the maximum number of children the waiver may serve is reached.

(3) Each calendar quarter, the Department reviews level-of-care annual re-certifications of current enrollees that were completed in the preceding quarter to determine a new minimum qualifying score for entrance or continued enrollment in the waiver. Participants who no longer meet the minimum qualifying score are disenrolled from the waiver.

(4) An applicant who is not admitted to the waiver, or a child who is disenrolled from the waiver, may appeal the decision in accordance with 42 CFR 431 Subpart E.

R414-520-5. Service Coverage.

Services and limitations are found in the State Implementation Plan for the Medically Complex Children's Waiver.

KEY: Medicaid

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 26B-1-213; 26-18-3; 26-18-410

End of the Notices of Changes in Proposed 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 adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R746-8	Filing ID: 54064
Effective Date:	02/16/2023	

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
Contact persons:		
Name:	Phone:	Email:
Michael Hammer	801-530-6729	michaelhammer@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF)
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Public Service Commission (PSC) is granted jurisdiction to supervise and regulate every public utility in

the state and to ensure rates are reasonable and service is adequate, see Sections 54-3-1 and 54-4-1.

Section 54-8b-15 of the Utah Code establishes the Universal Public Telecommunications Service Support Fund (USF) and requires the PSC to establish rules to govern administration of the USF, which exists to allow qualifying carriers of last resort to obtain specific, predictable, and sufficient funds to deploy and manage networks capable of providing access lines, connections, or wholesale broadband internet access service.

Section 54-8b-10 requires the PSC to establish a program, Relay Utah, whereby deaf and speech impaired customers may obtain a telecommunication device capable of serving the customer at no charge beyond the rate for basic service.

Pursuant to these provisions, the PSC is statutorily required to continue this rule to facilitate administration of the USF and Relay Utah programs.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

As referenced in Box 3 above, the Utah Code requires the PSC to establish and maintain rules to administer the USF and Relay Utah programs. This rule is the mechanism by which the PSC fulfills these statutory obligations. Therefore, this rule should be continued.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Agency Authorization Information

Agency head or designee and title:	Thad LeVar, PSC Chair	Date:	02/16/2023
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Rule Number:	R765-605	Filing ID: 53591
New Deadline Date:	08/09/2023	

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Administration	
Room number:	5th Floor	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state and zip:	Salt Lake City, UT 84101	
Contact persons:		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

Alison Adams	801-643-5535	Alison.Adams@ushe.edu
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R765-605. Higher Education Success Stipend Program
3. Reason for requesting the extension:
The Utah Board of Higher Education (Board) is considering the repeal of Rule R765-605 and an extension will allow the Board time to make the repeal effective before this rule expires.

Agency Authorization Information

Agency head or designee and title:	Kevin V. Olsen, Assistant Attorney General and Designee	Date:	02/22/2023
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End of the Notices of Five-Year Review Extensions 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 Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Regulatory Services

No. 55127 (Amendment) R70-410: Grading and Inspection of Small Shell Egg Producers
Published: 01/01/2023
Effective: 02/27/2023

No. 55128 (Amendment) R70-530: Food Protection
Published: 01/01/2023
Effective: 02/27/2023

No. 55105 (Amendment) R70-580: Kratom Product Registration and Labeling
Published: 12/15/2022
Effective: 02/27/2023

No. 55106 (Amendment) R70-620: Enrichment of Flour and Cereal Products
Published: 12/15/2022
Effective: 02/27/2023

No. 55130 (New Rule) R70-640: Good Manufacturing Practices Certificate Program-Cosmetics
Published: 01/01/2023
Effective: 02/27/2023

No. 55053 (Amendment) R70-930: Method of Sale of Commodities
Published: 12/15/2022
Effective: 02/27/2023

Government Operations

Finance

No. 55179 (Amendment) R25-21: Medical Cannabis Payment Provider Standards
Published: 01/15/2023
Effective: 02/21/2023

Fleet Operations

No. 55168 (Amendment) R27-1: Definitions
Published: 01/15/2023
Effective: 02/21/2023

No. 55169 (Amendment) R27-3: Vehicle Use Standards
Published: 01/15/2023
Effective: 02/21/2023

No. 55170 (Amendment) R27-4: Vehicle Replacement and Expansion of State Fleet
Published: 01/15/2023
Effective: 02/21/2023

No. 55171 (Amendment) R27-5: Fleet Tracking
Published: 01/15/2023
Effective: 02/21/2023

No. 55172 (Amendment) R27-6: Fuel Dispensing Program
Published: 01/15/2023
Effective: 02/21/2023

No. 55173 (Amendment) R27-7: Safety and Loss Prevention of State Vehicles
Published: 01/15/2023
Effective: 02/21/2023

No. 55174 (Amendment) R27-8: State Vehicle Maintenance Program
Published: 01/15/2023
Effective: 02/21/2023

No. 55175 (Amendment) R27-10: Identification Markings for State Motor Vehicles
Published: 01/15/2023
Effective: 02/21/2023

NOTICES OF RULE EFFECTIVE DATES

Risk Management

No. 55178 (Amendment) R37-1: Risk Management
General Rules
Published: 01/15/2023
Effective: 02/22/2023

Health and Human Services

Administration (Health)
No. 55025 (New Rule) R380-350: Community Health
Worker Certification
Published: 11/15/2022
Effective: 03/02/2023

Center for Health Data, Health Care Statistics
No. 55112 (Amendment) R428-1: Health Data Plan and
Incorporated Documents
Published: 12/15/2022
Effective: 02/17/2023

Administration, Administrative Services, Licensing
No. 55022 (Amendment) R501-1: General Provisions for
Licensing
Published: 11/15/2022
Effective: 03/02/2023

Insurance

Administration
No. 55044 (Amendment) R590-225: Submission of
Property and Casualty Rate and Form Filings
Published: 12/01/2022
Effective: 03/10/2023

No. 55044 (Change in Proposed Rule) R590-225:
Submission of Property and Casualty Rate and Form Filings
Published: 02/01/2023
Effective: 03/10/2023

Lieutenant Governor

Elections
No. 55029 (New Rule) R623-8: Ballot Chain of Custody
Published: 12/15/2022
Effective: 02/21/2023

No. 55029 (Change in Proposed Rule) R623-8: Ballot
Chain of Custody
Published: 01/15/2023
Effective: 02/21/2023

Natural Resources

Oil, Gas and Mining; Non-Coal
No. 55149 (Amendment) R647-2-115: Reports
Published: 01/01/2023
Effective: 02/24/2023

No. 55154 (Amendment) R647-2-117: Mineral Exploration
Tax Credit
Published: 01/01/2023
Effective: 02/24/2023

Wildlife Resources

No. 55125 (Amendment) R657-5: Taking Big Game
Published: 01/01/2023
Effective: 02/14/2023

No. 55189 (Amendment) R657-19: Utah Prairie Dog
Published: 02/01/2023
Effective: 03/10/2023

No. 55126 (Amendment) R657-62: Drawing Application
Procedures
Published: 01/01/2023
Effective: 02/14/2023

Transportation

Operations, Traffic and Safety
No. 55183 (Amendment) R920-60: Amusement Ride
Safety
Published: 01/15/2023
Effective: 03/7/2023

Program Development

No. 55191 (Repeal and Reenact) R926-3: Class B and
Class C Road Funds
Published: 02/01/2023
Effective: 03/10/2023

End of the Notices of Rule Effective Dates Section