

UTAH STATE BULLETIN

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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.

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. 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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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2023-05

Declaring a State of Emergency Due to Flooding

WHEREAS, Utah received a record-breaking amount of snow this last winter season, with snowpack levels close to or exceeding 200% in much of the state;

WHEREAS, warming temperatures are melting the snowpack and creating significant runoff, which has resulted in flooding in some communities and may create risks of flooding throughout Utah in the coming months;

WHEREAS, these conditions have resulted in avalanches, landslides, mudslides, and rockslides in Utah and create risks of these and other dangerous conditions throughout Utah in the coming months;

WHEREAS, many communities have declared local states of emergency and have requested resources and support from Utah's departments and agencies to assist in preparing for and dealing with this emergency;

WHEREAS, the Utah Division of Emergency Management has activated the State Emergency Response Team and has deployed resources, including more than 1 million sandbags as of April 7, 2023, to aid communities in preparing for potential flooding;

WHEREAS, in the 2023 general legislative session, the Utah Legislature appropriated \$5 million for emergency management flood mitigation, and the appropriated funds are depleted from mitigation efforts;

WHEREAS, declaring a state of emergency will provide access to additional funding in the State Disaster Recovery Restricted Account;

WHEREAS, declaring a state of emergency will facilitate the protection of persons and property from the impacts of flooding and potential flooding and expedite the use of state resources, as well as support requests for federal and interstate resources, if required;

WHEREAS, declaring a state of emergency will also permit Utah to request and receive mutual aid assistance from other states through the Emergency Management Assistance Compact, if required;

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency;

WHEREAS, the Department of Natural Resources, by and through the Division of Forestry, Fire and State Lands has responsibility to control and prevent flooding pursuant to 65A-11-1 and, in coordination with local authorities and the Division of Emergency Management, is able to deploy or pre-position resources such as personnel, wildfire crews, and equipment at key locations in the state to assist in the filling of sand bags, and remove debris;

WHEREAS, these conditions meet the definition of a state of emergency described in the Disaster Response and Recovery Act, specifically in Utah Code § 53-2a-206(1); and

WHEREAS, Utah Code § 53-2a-206(1) authorizes the governor to declare a state of emergency by executive order;

NOW, THEREFORE, I, Spencer J. Cox, governor of the state of Utah, by the authority vested in me by the Constitution and laws of this state, hereby declare a state of emergency in the state due to the aforesaid circumstances.

THIS ORDER is effective immediately and shall remain in effect for 30 days, unless the legislature extends the state of emergency.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 18th day of April, 2023.

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

EXECUTIVE ORDER
2023-06

Directing the Chief Privacy Officer to Develop a Strategic Privacy Plan

WHEREAS, Utah recognizes the importance of maintaining the privacy and security of the personal information of Utahns;

WHEREAS, state agencies collect, use, maintain, share, and process personal information to fulfill their responsibilities and duties;

WHEREAS, there is a need to handle such personal information with appropriate privacy and security;

WHEREAS, under Utah Code § 67-1-17, the state has a chief privacy officer who is charged with reviewing state agencies' privacy practices and assisting state agencies on privacy matters;

WHEREAS, state agencies would benefit from coordinated efforts at establishing standard privacy practices;

NOW, THEREFORE, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order the following:

Purpose of Order. The purpose of this order is to direct the chief privacy officer to create a strategic privacy plan that contains recommended baseline privacy practices for state agencies to use to safeguard the privacy of the personal information of Utahns.

Application. This executive order applies to all executive branch state agencies, defined below.

Definitions. As used in this order:

a) "State Agency" means the same as that term is defined in Utah Code § 67-1-17(d).

b) "Personal data" and "personal information" means any information relating to an identified or identifiable individual and includes personally-identifying information.

c) "Privacy practice" means the acquisition, use, storage, or disposal of personal data and includes: 1) a technology use related to personal data; and 2) policies related to the protection, storage, sharing, and retention of personal data.

Strategic Privacy Plan

- 1) The chief privacy officer shall develop a proposed strategic privacy plan, including recommended baseline privacy practices for state agencies.
- 2) The chief privacy officer shall include the following in the strategic privacy plan:
 - a) Recommended baseline privacy practices and policies for state agencies;
 - b) Identification of the core components of an information privacy program;
 - c) Guidance for state agencies to design and implement an information privacy program, including roles and responsibilities, governance structure, and records management requirements;
 - d) Identification of targeted roles for special training in records management and information privacy, and recommendations for the training;
 - e) Identification of best practices regarding privacy and privacy practices;
 - f) In addition to the baseline recommended practices and policies described above, any additional recommended practices or policies for use by state agencies; and
 - g) Resources that the chief privacy officer will make available to assist state agencies.
- 3) The chief privacy officer shall consult with state agencies in developing the proposed strategic privacy plan.
- 4) The chief privacy officer shall deliver the proposed strategic privacy plan to the governor by August 1, 2023.

Responsibilities of State Agencies: State agencies shall, as requested by the chief privacy officer:

- 1) Assist in development of the proposed strategic privacy plan; and
- 2) Provide information regarding current privacy practices and policies.

THIS ORDER is effective immediately and shall remain in effect through Aug. 1, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 21st day of April, 2023.

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 01, 2023, 12:00 a.m., and April 14, 2023, 11:59 p.m. are included in this, the May 01, 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 May 31, 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 August 29, 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:	R58-18	Filing ID: 55320

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	
Contact persons:		
Name:	Phone:	Email:
Amanda Price	801-386-4189	amandaprice@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	amberbrown@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R58-18. Elk Farming
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The text in this rule needs to be updated to be consistent with the recent statute changes in H.B. 45, Elk Amendments, passed during the 2023 General Session, and to reflect current practices when the Department of Agriculture and Food (Department) quarantines animals with Chronic Wasting Disease (CWD).
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 Department has edited the rule text in Section R58-18-2 to be consistent with updated statutory definitions in Section 4-39-102. Notably, the definition of "commingled" and "CWD-exposed animal" have been changed to include only animals that have had physical contact with a CWD-positive animal in the prior 60 months.

Renewal licensing procedures and physical inventory records are clarified in Sections R58-18-4 and R58-18-6 with updates to ensure records requirements are consistent with the new statute.

CWD testing requirements related to elk slaughter are clarified in Section R58-18-8, and RFID identification requirements are added in Section R58-18-9 to make the rule consistent with the current statute.

In Section R58-18-11, import limitations are added that only allow international elk imports of male animals transported to an elk ranch for harvest in the same season.

In Section R58-18-12, the powers of the state veterinarian have been updated to be consistent with statutory changes related to the state veterinarian's ability to quarantine and requirements that they provide quarantined facilities with information regarding the status of any investigations within 30 days.

Finally, throughout the rule text and in Section R58-18-15, the conditions under which the Department may and shall deny or revoke a license are clarified to be consistent with statutory changes.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The updated text removes outdated processes, clearly defines current practices, and does not change the program's administration. The requirement for elk farms to purchase the RFID tag is \$2 per tag and will cover the Department's cost and shipping for the required tags. The Department anticipates breakeven with tag revenue and costs but will benefit from the animal inventories.
B) Local governments:
Local governments will not be impacted because the processes are being clarified, and the administration is not changing.
C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses will be impacted because of the cost of the RFID tag requirement. The anticipated price is \$2 per tag. Per the first round of inventories and RFID tag applications, the total annual cost is estimated to be around \$2,000 (for 1,000 animals at \$2 per tag), to be borne entirely by small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses will not be impacted because they do not operate as elk farms.

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**):

Other persons will not be impacted because the processes and definitions are being updated, and the program's administration is 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 be impacted because of the cost of the RFID tag requirement. The anticipated price is \$2 per tag. Per the first round of elk inventories conducted by the Department and RFID tag applications, the price is expected to be approximately \$2,000 annually.

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	\$2,000	\$2,000	\$2,000
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$2,000	\$2,000	\$2,000
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	\$(2,000)	\$(2,000)	\$(2,000)

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:

Section 4-39-106

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)	USDA Chronic Wasting Disease Program Standards
Publisher	USDA
Issue Date	May 2019
Issue or Version	2019 version

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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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:	04/04/2023
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R58. Agriculture and Food, Animal Industry.

R58-18. Elk Farming.

R58-18-1. Purpose and Authority.

(1) Promulgated under the authority of Section 4-39-106.

(2) This rule establishes procedures for the application[and], renewal of licenses, [standards and requirements, and] health requirements, and standards for operating a domesticated elk facility.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-109, 4-7-103, 4-24-102, 4-32-105, and 4-39-102, the following terms are defined for this rule:

~~[(1) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads, or streams, herds occupying a premises where Chronic Wasting Disease (CWD) was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.~~

~~[(2) "Affected herd" means a herd of Cervidae that includes an animal that has been diagnosed with CWD confirmed by an approved test, within the previous five years.]~~

~~[(3)1] "Animal identification" means a device or means of individual animal identification.~~

~~[(4)2] "Approved test" means [approved] diagnostic tests for Chronic Wasting Disease (CWD) surveillance [that shall be those laboratory or diagnostic tests] accepted [nationally] by the United States Department of Agriculture (USDA) and approved by the [S]tate [V]eterinarian.~~

~~[(5)3] ["Commingled" or "commingling" means animals that have had any contact with a CWD-positive animal or contaminated premises within the last five years, and:~~

~~— (a) have direct contact with each other;~~

~~— (b) have less than 10 feet of physical separation; or~~

~~— (c) share equipment, pasture, feed, water sources, or watershed.]~~

~~["Commingle" means maintaining animals where physical contact among animals could occur, including keeping animals in the same pasture or enclosure. "Commingle" does not include holding animals at a sale, during transportation, during artificial insemination, or in other circumstances involving limited contact among animals for a short period.~~

~~[(6)4] "Commissioner" means the commissioner of the Utah Department of Agriculture and Food.~~

~~[(7)5] "CWD-exposed animal" means an animal that [is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises] commingled with a CWD-positive animal within the previous [five years]60 months.~~

~~[(8)6] "CWD-exposed herd" means a herd in which a CWD-positive animal or a CWD-exposed animal has resided for any period within [five years]60 months before that animal's diagnosis as CWD-positive or exposure to CWD.~~

~~[(9)7] "CWD Herd Certification Program" means the Chronic Wasting Disease Herd Certification Program.~~

~~[(10)8] "CWD-positive animal" means an animal that has had a diagnosis of CWD confirmed by an official CWD test.~~

~~[(11)9] "CWD-positive herd" means a herd in which a CWD-positive animal resided [when it was diagnosed and which has not been released from quarantine]within the previous 60 months.~~

~~[(12) "CWD-suspect animal" means an animal for which it has been determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.]~~

~~[(13)0] "CWD-suspect herd" means a herd in which a [CWD-suspect animal resided that has not been released from quarantine]suspect domesticated elk resides.~~

~~[(14)1] "Destination Herd" means the intended herd of residence that shall be occupied by the animal [that is]proposed for importation.~~

~~[(15)2] "Department" means the Utah Department of Agriculture and Food.~~

~~[(16)3] "Domesticated elk" [as used in this chapter, in addition to the definition in Section 4-39-102, means any elk that has~~

~~been born inside of, and has spent its entire life within captivity]means an animal of the genus and species Cervus Elaphus, born and held in captivity and domestically raised for commercial purposes.~~

~~[(17) "Domesticated elk facility" means a facility where domesticated elk are raised or hunted and includes an elk ranch.~~

~~[(18) "Domesticated elk farm" means a facility where domesticated elk are raised.~~

~~[(19) "Elk" as used in this rule, means North American Wapiti or Cervus Elaphus nelsoni.]~~

~~[(20) "Elk ranch" means a facility where domesticated elk are harvested through typical hunting methods.~~

~~[(21) "Epidemiologically-linked herd" means that an investigation has determined that CWD-exposed animals have resided with a CWD-positive animal within five years before the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd and have since moved to or through other herds. Those herds are then considered epidemiologically-linked. An epidemiologically-linked herd can be a Trace back Epi-linked Herd, Trace forward Epi-linked Herd or Pass-through Epi-linked Herd.]~~

~~[(22)7] "Herd of Origin" means the herd that an imported animal has resided in, or does reside in, before importation.~~

~~[(23)18] "Official slaughter facility" means a place where the slaughter of livestock occurs that is under the authority of the state or federal government and receives state or federal inspection.~~

~~[(24) "Physical inventory" means an on-site inspection of every elk by a department employee where the RFID and visual tag number are collected and reconciled against department and producer records.~~

~~[(25)0] "Quarantine Facility" means a confined area where selected elk can be secured, contained, and isolated from any other elk and livestock.~~

~~[(26)1] "Raised" [as used in this rule,]means [any]possession of domesticated elk for any purpose other than hunting.~~

~~[(27) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.]~~

~~[(28)2] "Separate location" in addition to the definition in Subsection 4-39-203(5), means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.~~

~~[(29)3] "Suspect domesticated elk" means a domesticated elk for which the state veterinarian has determined that unofficial test results, laboratory evidence, or clinical signs suggest that the domesticated elk may be infected with a disease-spreading pathogen and official laboratory results are inconclusive or have not been conducted.~~

~~[(30)4] "Trace Back Herd" or "Source Herd" means a herd of Cervidae where an animal affected with CWD has formerly resided.~~

~~[(31)5] "Trace Forward Herd" means a herd of Cervidae that has received exposed animals that originated from a CWD-positive herd within five years before the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.~~

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license to operate a domesticated elk facility ~~[or elk farm]~~ shall submit a signed, complete, accurate, and legible application on a department issued form.

(2) In addition to the application, a general plot plan shall be submitted showing the location of the proposed ~~[farm]~~facility in conjunction with roads, towns, and other points of interest in the immediate area.

(3) A ~~[facility]~~premises identification number shall be assigned to an elk farm when a finished application is received by the department.

(4) A complete facility inspection ~~[and approval]~~ shall be:

~~(a)~~ conducted before the issuing of a license or entry of elk to any facility; ~~(b)~~

~~(a)~~b ~~[This inspection shall be]~~made by an approved department employee and a Division of Wildlife Resources (DWR) employee; ~~and (c)~~

~~(b)~~c ~~[It shall be]~~the responsibility of the applicant to request ~~[this inspection]~~at least three working days in advance.

(5) Upon receipt of an application, inspection ~~[and approval]~~ of the facility, completion of the facility approval form, and receipt of the license fee, a license shall be issued.

(6) Each license expires on July 1st in the year following the year of issuance.

(7) Elk may enter the facility only after a license is issued by the department ~~[and received by the applicant]~~.

R58-18-4. License Renewal.

(1) Each elk farm shall apply for license renewal to the department ~~[on the prescribed form]~~no later than April 30th, indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee. Any license renewal application received after April 30th will have a late fee assessed.

~~(2) [Any application received after]Any facility not applying for renewal before July 1st is delinquent, [and any animals on the premises shall be quarantined until due process of law against the current owner has occurred. This may result in any of the following:~~

- ~~(a) revocation of the license;~~
- ~~(b) loss of the facility number;~~
- ~~(c) closure of the facility; or~~
- ~~(d) removal of the elk from the premises.]~~

(3) If the application and fee for renewal are not received on or before July 1, the license shall not be renewed, and a new license shall be required.

(4) Any animals on the premises shall be quarantined until a new license is acquired or due process of law has occurred.

(5) An operator of a domesticated elk facility that has had their license expire or had their license revoked shall remove any elk from the facility within 30 calendar days by:

- (a) sending elk to an inspected facility for slaughter; or
- (b) selling elk to another facility.

(6) The department shall sell any elk remaining on the facility at the end of 30 days during a special sale conducted for that purpose.

~~(3)~~7 Before ~~[renewal of the license]~~ license renewal, the facility shall ~~[again]~~be inspected by a department employee.

~~(a)~~8 The employee shall inspect the facility within 60 days of license renewal and document that each fencing and facility requirement in Sections 4-39-201 and R58-18-5 is met. The applicant is responsible for arranging an appointment with the department for inspection, giving the department ample time to respond to a request.

~~(b)~~ The licensee shall provide a copy of the complete inventory sheet of live animals to the inspector when the elk farm is inspected.]

~~(e)~~9 ~~[The employee shall perform a physical inventory count of each elk on the premises.]Before renewal of the license, inventory, and other records provided by the licensee shall be reconciled with the records maintained by the department.~~

~~(i)~~ The individual animal identification numbers shall match with the inventory records received from the owner or manager of the elk facility and those maintained by the department.]

~~(d)~~10 ~~[The]~~A department employee shall perform a ~~[visual general health check of each animal.]physical inventory of each elk on the premises at least every three years. The records maintained by the department and the physical inventory shall match by at least 95%.~~

~~(e)~~ Each year, the employee shall perform an inventory of each elk by matching individual animal identification with the inventory records received from the owner or manager of the elk facility.

~~(f)~~ The physical inventory and bookkeeping inventory shall have at least a 95% match.]

(11) Annually, the department shall reconcile records received from the elk facility with those maintained by the department. Records from the elk facility include birth reports, death reports, harvest permits, and brand inspections.

(12) The inventory records provided by the facility and records maintained by the department shall have at least a 95% match.

(13) Failure to meet the 95% match may result in the revocation of the license.

(14) Failure to meet the 95% match for two consecutive years shall result in the revocation of the license.

(15) The facility shall meet the CWD testing requirements listed in Section R58-18-12.

R58-18-5. ~~[Facilities]~~Facility Requirements.

(1) No cervids other than domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

~~(1)~~2 Each perimeter fence and gate shall meet the minimum standard defined in Section 4-39-201.]

~~(a)~~ The perimeter fences and gates shall be constructed to prevent the movement of cervids, both captive and wild, into or out of the facility.

~~(2)~~3 Internal handling facilities shall be capable of humanely restraining an individual animal ~~[for the]~~to apply~~[ing]~~ or read~~[ing of any]~~ animal identification, ~~[the taking]~~take ~~[of]~~ blood or tissue samples, or conduct~~[ing]~~ other required testing~~[by an inspector or veterinarian]~~.

(a) The restraint shall be properly constructed to protect inspection personnel while handling the animals.

(b) Minimum requirements include a working pen, an alleyway, and a restraining chute.

~~(3)~~4 The licensee shall provide an isolation or quarantine holding facility that is adequate to contain the animals and provide proper feed, water, and other care necessary for the physical well being of the animal for the period ~~[necessary]~~required to separate the animal from other animals on the farm.

(5) The domesticated elk facility owner shall provide ample signage around the facility indicating that it is a domesticated elk facility so the public is notified that the animals are not wild elk.

(4)6 Each location of a licensed facility with separate perimeter fences shall have ~~[its]~~a ~~[own]~~separate loading facility. An exception to this section may be granted in cases where the same individual owns another licensed farm within 50 miles of the elk farm, that can be accessed in a reasonably short period.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of each elk on the facility.

(2) The inventory record of each animal shall include:

(a) name and address of the agent which the elk was bought from;

(b) official RFID tag [~~identification~~]-number[~~on a tamper-resistant ear tag or USDA metal tag~~];

(c) visual tag, "ranch" or "visible dangle tag number"[~~and the secondary identification number~~];

(~~[e]~~d) age;

(~~[d]~~e) sex;

(~~[e]~~f) date of purchase or birth;

(~~[f]~~g) date and method of death or change of ownership[~~],~~ with the name of new owner and address recorded and retained; and

(~~[g]~~h) Certificate of Veterinary Inspection if bought out of state.

[~~— (3) The inventory sheet may be one that is either provided by the department or may be a personal design of similar format.~~

[~~— (4) Any animal born on the property or transported into a facility shall be added to the inventory sheet within seven days.~~

[~~— (5) Any elk bought shall be shown on the inventory sheet within 30 days after acquisition, including source.~~

(~~[6]~~3) A death record of any elk 12 months of age and over that dies[~~;~~] or that [~~are~~]is otherwise [~~harvested,~~]slaughtered, killed, or destroyed shall be submitted to the department within [~~48 hours~~]seven days of the discovery of the death of the animal.

R58-18-7. Genetic Purity.

(1) Elk entering Utah, except those going directly to an official slaughter facility, shall have written evidence of genetic purity.

(2) Written evidence of genetic purity shall include:

(a) test charts from an approved lab that [~~have~~]has run [~~either~~]-a:

(i) blood genetic purity test; or

(ii) DNA genetic purity test[~~;~~];

(b) registration papers from the North American Elk Breeders Association; or

(c) herd purity certification papers issued by another state agency.

(3) Genetic purity records shall be kept on file and presented to the inspector [~~when elk are brought into the state~~]upon request.

(4) Any elk identified as having red deer genetic factor shall be destroyed, or immediately removed from the state.

R58-18-8. [~~Acquisition of or~~]Slaughter of Elk.

[~~— (1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.~~

[~~— (2) New elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal to verify that health, identification, and genetic purity requirements have been met. New animals may not commingle with any elk already on the premises until this verification is completed by the livestock inspector.~~

[~~— (3) Elk presented for slaughter at an official slaughter facility that have come from an out of state source, shall arrive on a day when no Utah raised elk or elk carcasses are present at the plant.~~

(1) Each licensed elk facility shall be required to submit both the obex portion of the brainstem and medial retropharyngeal lymph nodes of elk over 12 months of age that are slaughtered for

testing for CWD by an official test at an approved laboratory. A slaughter establishment may collect and submit the CWD samples.

(~~[4]~~2) Individual elk identification shall be maintained throughout slaughter and processing until [~~a time that~~]-CWD test results have been returned from the laboratory.

(~~[5]~~3) Out of state elk shall be tested for Brucellosis when slaughtered.

R58-18-9. Identification.

(1) Each elk shall have two forms of identification[~~attached to each animal~~] including[~~;~~]

(~~[2]~~a) [~~Each animal shall be permanently identified with~~]-a tamper-resistant [~~electronic radio frequency identification (~~RFID~~)~~]-tag[~~;~~]

[~~— (3) A reader shall be made available, by the owner, to the inspector when the animal is inspected to verify the electronic identification number. The RFID tag shall be placed in the right ear.~~

[~~— (4) Each newly purchased elk will not need to be re-tagged using the RFID tag if they already have this type of identification.~~

[~~— (5) Any purchased elk not already identified shall have the RFID tag applied within 30 days after arriving on the premises.~~

(i) placed in the right ear;

(ii) applied before arrival at the premises; and

(~~[6]~~iii) [~~Each calf shall have the RFID tag~~]-applied [~~within 15 days after weaning or in no case later than January 31st or~~]before or at the time of physical inventory or before leaving the premises where the[~~y~~] calf was [~~were~~]-born[~~;~~], if before physical inventory; and

(~~[7]~~b) [~~In addition to the RFID tag an additional form of identification either a metal tag with a number unique to the farm, or a~~]-a visible dangle ear tag placed;

(i) [~~within 15 days after weaning or in no case later than January 31st or~~]before or at the time of physical inventory;

(ii) before leaving the premises where they were born, if before physical inventory; or

(iii) [~~or within 30 days after arriving on~~]-upon arrival to the premises.

(2) Replacement RFID tags and the visual tag number shall be reported to the department within seven days of application.

R58-18-10. Brand Inspections.

[~~— (1) Each facility shall be inspected within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for inspection, giving the department ample time to respond to a request.~~

[~~— (2) Each elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.~~

(~~[3]~~1) Each elk [~~must~~]shall be inspected when there is any change of ownership[~~;~~] or movement out of state, when leaving the facility, or when slaughter occurs except as shown in Subsection R58-18-10(~~[3]~~1)(~~[f]~~e) or R658-18-10(1)(f).

(~~[a]~~2) It is the responsibility of the licensee to arrange for any inspection with the [~~local state livestock inspector~~]department's Domesticated Elk Program Manager.

(~~[b]~~3) At least 48 hours advance notice shall be given to the inspector.

[~~— (c) For the inspection, the licensee or their representative shall make available the records that will certify ownership, genetic purity, and animal health.~~

([d]4) Elk to be inspected shall be properly contained in facilities adequate to confine each ~~[individual]~~ animal for proper inspection.

(5) Each elk shall have its RFID tag and visual dangle tag recorded on the brand inspection.

~~[(c) Animals shall be inspected before being loaded or moved outside the facility.]~~

([f]6) Animals may ~~[moving]~~ move from one perimeter fence to another within the same facility without a brand inspection.

(7) ~~[or]~~ Elk moving from a licensed facility to another licensed facility owned by the same person within the state may move directly from one site to another site without a brand inspection, but shall be reported to the department within seven days of movement ~~[accompanied with a copy of the facility license].~~

([4]8) Any elk purchased or brought into the facility from an out of state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. Each requirement of Subsection R58-18-10(3) shall apply to the inspection of the animals.

([5]9) A Utah Brand Inspection Certificate shall accompany any ~~[shipment of elk]~~ elk shipment that ~~[are]~~ is to be moved from a Utah elk farm.

~~[(a)] Shed antlers are excluded from needing an inspection.~~

~~[(6) Proof of ownership and proper health papers shall accompany any interstate movement of elk to a Utah destination.~~

~~[(7) Proof of ownership may include:~~

~~[(a) a brand inspection certificate issued by another state;~~

~~[(b) a purchase invoice from a licensed public livestock market showing individual animal identification;~~

~~[(c) court orders;~~

~~[(d) registration papers showing individual animal identification; or~~

~~[(e) a notarized bill of sale.]~~

R58-18-11. Health Rules.

(1) Before the importation of elk, whether by live animals, gametes, eggs, sperm, or other genetic material into Utah, the importing party shall ~~[get]~~ obtain an import permit from the ~~[Utah S]~~ state ~~[V]~~ veterinarian's office. The import permit shall be:

(a) ~~[An import permit number shall be]~~ issued only if the destination is a licensed ~~[as an elk farm by the department]~~ elk facility or an official slaughter facility; or ~~[-]~~

(b) ~~[The import permit number for Utah shall be]~~ obtained from the department by the ~~[- local]~~ veterinarian conducting the official health inspection ~~[by contacting the department].~~

(2) Each elk imported into Utah shall be examined by an accredited veterinarian before importation and shall be accompanied by a valid Certificate of Veterinary Inspection that meets the following disease testing requirements. ~~[- health certificate, certifying a disease free status.]~~

(a) ~~[Minimum specific d]~~ Disease testing results ~~[or]~~ and health statements shall be included on the Certificate of Veterinary Inspection. ~~[Minimum d]~~ Disease testing requirements may be waived on elk traveling directly to an official slaughter facility.

(b) ~~[A negative tuberculosis test shall be within 60 days before entry into the state. A retest is also optional at the discretion of the State Veterinarian.]~~ Elk imported from a US herd have tested negative for tuberculosis within 90 days before entry unless enrolled in a tuberculosis herd monitoring accreditation program.

~~[(c) If animals do not originate from a tuberculosis accredited, qualified, or monitored herd, they may be imported only if accompanied by a certificate stating that the domestic Cervidae~~

~~have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days before the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.]~~

([d]c) Elk ~~[being]~~ imported from Canada ~~[shall test]~~ have tested negative for Tuberculosis within 90 days before entry and Brucellosis ~~[if six months of age or older, by at least two types of official USDA Brucellosis tests.]~~ within 30 days before entry.

(d) Elk imported from a Brucellosis Designated Surveillance Area participate in their state's Brucellosis surveillance program or have tested negative for Brucellosis within 30 days before entry as shown on a letter from their state veterinarian or the department stating their participation and their last herd test date.

(e) The Certificate of Veterinary Inspection shall include the signed statement: "To the best of my knowledge, the elk listed ~~[herein]~~ are not infected with John's Disease (Paratuberculosis), CWD or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The Certificate of Veterinary Inspection shall also contain the name and address of the shipper and receiver, the number, sex, age, and any individual identification on each animal.

(3) Domesticated elk imported from an international herd shall be:

~~[(a) male;~~

~~[(b) imported to an elk ranch for use in the elk ranch; and~~

~~[(c) harvested in the same season that the domesticated elk enters the state.~~

([3]4) Additional disease testing or quarantine may be required at the discretion of the ~~[S]~~ state ~~[V]~~ veterinarian ~~[before importation or]~~ when there is reason to believe other diseases, parasites, or other health concerns are present.

~~[(4) Imported or existing elk may be required to be quarantined at an elk farm when the State Veterinarian determines the need for and the length of a quarantine.~~

~~[(5) The USDA published documents "Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999" and "Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 2003" are incorporated by reference into this rule. Any movement of elk outside of a licensed elk farm shall comply with these documents.]~~

([6]5) Treatment of each elk for internal and external parasites is required within 30 days before entry, except for elk going directly to an official slaughter facility.

([7]6) Each elk imported into Utah shall originate from a state or province that requires that any ~~[suspected or confirmed cases of CWD,]~~ CWD-suspect domesticated elk, or CWD-positive domesticated elk be reported to the ~~[S]~~ state ~~[V]~~ veterinarian or regulatory authority. The state or province of origin shall have the authority to quarantine source herds and herds affected with or exposed to CWD.

([8]7) Based on the ~~[S]~~ state ~~[V]~~ veterinarian's approval, each elk imported into Utah shall originate from states that have implemented a CWD Herd Certification Program ~~[for Surveillance, Control, and Eradication of CWD in Domestic Elk].~~

(a) Each elk imported to Utah shall originate from herds that have been participating in a verified CWD ~~[surveillance]~~ Herd Certification ~~[p]~~ Program for at least five years and are "certified" in that program.

(b) Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(19)8) No elk originating from a CWD-positive ~~affected herd or involved in a trace for CWD~~ ~~trace back herd, source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD;~~ may be imported to Utah.

(14)9) Elk semen, eggs, or gametes require a Certificate of Veterinary Inspection verifying that the individual source animal has genetic purity and certifying that it has never resided on a premises where CWD has been identified or traced. An import permit obtained by the issuing veterinarian shall be listed on the Certificate of Veterinary Inspection.

R58-18-12. CWD Surveillance and Investigation.

(1) ~~The owner, veterinarian, or inspector of any elk that is suspected or confirmed to be infected with CWD~~ Any person or laboratory who suspects or diagnosed CWD in a domesticated elk in Utah shall ~~report that finding to~~ notify the [S]state [V]veterinarian immediately ~~upon finding~~.

(2) The [S]state [V]veterinarian shall promptly investigate any animals reported as ~~CWD-exposed, CWD-suspect, or CWD-positive animals~~ a CWD-positive domesticated elk or CWD-suspect domesticated elk.

(a) The [S]state [V]veterinarian may:

(i) conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect domesticated elk and exposed domesticated elk ~~animals~~ and that identifies animals to be traced;

(ii) conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out of state traces to the appropriate state promptly after receipt of notification of a CWD-positive animal; and

(iii) conduct tracebacks based on slaughter or other sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(b) Within 30 days of the date a suspect domesticated elk or positive domesticated elk is reported to the department, the state veterinarian shall provide written notice to an owner of a domesticated elk facility of:

(i) the status of the animal disease traceability investigation, including any findings; and

(ii) the owner's right to appeal.

(b)3) With the approval of the commissioner, the [S]state [V]veterinarian ~~shall place the facility under quarantine and any trace back or trace forward facility as needed~~ may place an elk facility under quarantine if a domesticated elk at the elk facility, within the previous 60 months:

(i) has tested positive for CWD;

(ii) is a suspect domesticated elk; or

(ii) has commingled with a CWD-positive elk in a quarantined domesticated elk facility.

(d) The state veterinarian may not place an elk facility under quarantine if there is no CWD-positive, CWD-suspect, or commingled domesticated elk residing at the domesticated elk facility.

~~(e) Any elk over 12 months of age that dies or is otherwise slaughtered or destroyed from a CWD-positive, CWD-exposed, and CWD-suspect herd shall have the brain stem, the obex portion of the medulla, and medial retropharyngeal lymph nodes collected for testing for CWD by an official test.~~

(i) ~~The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the State Veterinarian.~~

~~(ii) Carcasses and tissues from these animals shall be either secured by a state or federally inspected slaughter establishment until testing is finished.~~

~~(iii) Carcasses and tissues from animals testing positive shall be disposed of by incineration or other means approved by the State Veterinarian.~~

(3) Each licensed elk farm ~~licensed in Utah~~ shall be required to submit both the ~~brain stem~~ obex portion of the brainstem ~~medulla~~, and medial retropharyngeal lymph nodes of any elk over 12 months of age that die[s] or ~~is~~ are otherwise slaughtered or destroyed, for testing for CWD by an official test at an approved laboratory.

(a)4) The samples shall be collected by an ~~accredited veterinarian, an~~ approved laboratory, or a person ~~trained and approved by the [S]state [V]veterinarian.~~ Approved personnel shall have training on collecting, storing, handling, shipping, and identifying specimens for submission.

(b)5) ~~Farms owning 20 or more elk may be allowed up to a 10% error rate on samples each year; farms owning less than 20 elk shall not have an acceptable error rate.~~ At least 90% of elk shall have at least one sample be testable by the laboratory.

(6) Samples designated as "location," "unsuitable," or "insufficient follicles," and missing samples are considered untestable.

(7) Individuals with less than 90% of testable samples may lose their approval to collect samples and may be required to undergo additional training before being re-approved.

(8) The department may deny, revoke, or suspend a domestic elk farm license if a farm fails to submit at least one testable sample for 90% of elk.

~~(4) Each hunting park licensed in Utah shall be required to submit the brain stem, obex portion of the medulla, and medial retropharyngeal lymph nodes of each elk over 12 months of age that die, or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for CWD with an official test.~~

~~(a) The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian.~~

~~(b) Hunting parks may be allowed up to a 10% error rate on samples per year with consideration taken when elk are shot in an area of the elk that causes an unacceptable sample.~~

(5)9) The CWD surveillance samples from elk residing on licensed elk facilities ~~farms and elk hunting parks~~ shall be collected and preserved in formalin within 48 hours following the ~~death of the animal~~ animals' death and submitted within seven days to a laboratory approved by the [S]state [V]veterinarian. ~~Training of approved personnel shall include collection, storing, handling, shipping, and identification of specimens for submission.~~

(6)10) Laboratory fees and expenses incurred for the collection and shipping of samples shall be the responsibility of the participating elk farm ~~or hunting park~~.

(7)11) The designation and disposition of CWD-exposed, positive, or suspect ~~animals~~ domesticated elk or herds in Utah shall be determined by the [S]state [V]veterinarian.

R58-18-13. CWD Herd Certification [Status]Program.

(1) ~~Initial and subsequent status~~ Herds wishing to enroll in the Utah Herd Certification Program shall apply to the department.

~~(a) When a herd is first enrolled in the CWD Herd Certification Program, it shall be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the program, the newly enrolled herd shall have~~

the same status as the lowest status of any herd that provided animals for the new herd.

~~_____ (b) If the herd continues to meet the requirements of the CWD Herd Certification Program, each consecutive year, on the anniversary of the enrollment date the herd status will be upgraded by one year, to Second Year status, Third Year status, Fourth Year status, or Fifth Year status.~~

~~_____ (c) One year from the date a herd is placed in Fifth Year status, the herd status will be changed to "Certified" and the herd will remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section.]~~

(2) [Loss or suspension of herd status]Participating herds shall indicate annually that they wish to continue to be enrolled in the Utah Herd Certification Program.

~~_____ (a) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it shall immediately lose its program status and may only re-enroll after entering into an approved herd plan.~~

~~_____ (b) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it shall immediately be placed in Suspended status pending an epidemiologic investigation.~~

~~_____ (i) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd shall be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level or maintenance of Certified status.~~

~~_____ (ii) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd shall lose its program status and will be designated a CWD-exposed herd.~~

~~_____ (iii) If the epidemiological investigation cannot make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing, for example, because a trace animal from a known positive herd died and was not tested, or for other reasons, the herd status shall continue as Suspended until a herd plan is developed for the herd.~~

~~_____ (iv) If a herd plan is developed and implemented, the herd shall be reinstated to its former program status, and the time spent in Suspended status shall count toward its promotion to the next herd status level; Except that, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd shall be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status.~~

~~_____ (v) Any herd reinstated after being placed in Suspended status shall then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan:~~

~~_____ (A) shall require testing of any animals that die in the herd for any reason, regardless of the age of the animal;~~

~~_____ (B) may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question; and~~

~~_____ (C) may include other requirements found necessary to control the risk of spreading CWD.~~

~~_____ (e) If the department determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status shall be reduced to the status of the herd with which its animals commingled.]~~

(3) [Cancellation of enrollment by the department] Participating herds shall meet the requirements in the USDA Chronic

Wasting Disease Program Standards, May 2019 edition, which is incorporated by reference.

~~_____ (a)4) [The department may cancel the enrollment of an enrolled herd by giving written notice to the herd owner.]Participating herds who do not meet the CWD Program Standards for recordkeeping, surveillance, sampling, or herd additions may lose certification status.~~

~~_____ (b)5) [In the event of cancellation, the herd owner may not reapply to enroll in the CWD Herd Certification Program for five years from the effective date of the cancellation.]Participation in the Utah Herd Certification Program is voluntary.~~

~~_____ (c) The department may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is cancelled, the department shall inform the herd owner of the reasons for the proposed cancellation in writing.~~

~~_____ (d) Herd owners may appeal cancellation of enrollment, loss, or suspension of herd status by writing to the commissioner within 10 days after being informed of the reasons for the proposed action.~~

~~_____ (i) The appeal shall include the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action.~~

~~_____ (ii) The commissioner shall grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for the commissioner's decision.~~

~~_____ (iii) If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict.~~

~~_____ (iv) The cancellation of enrollment, loss, or suspension of herd status shall become effective pending final determination in the proceeding if the commissioner determines that the action is necessary to prevent the possible spread of CWD.~~

~~_____ (A) The action shall become effective upon oral or written notification, whichever is earlier, to the herd owner.~~

~~_____ (B) In the event of oral notification, written confirmation shall be given as promptly as circumstances allow.~~

~~_____ (v) This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review, unless otherwise ordered by the commissioner.~~

~~_____ (4) Herd status of animals added to herds.~~

~~_____ (a) A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.~~

~~_____ (b) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the sending herd.~~

~~_____ (c) If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.]~~

R58-18-14. [Herd Plan]Positive Herd Management.

(1) Each elk facility with an elk that has tested positive for CWD or commingled with an elk that has tested positive for CWD shall receive [A]a written herd plan [shall be]developed by the [S]tate [V]eterinarian with input from the herd owner, USDA, and other affected parties.

(2) The herd plan sets out the steps [to be taken]to [eradicate]manage CWD [from]in a CWD-positive herd[, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into another herd].

(3) A herd plan shall require:
(a) specified means of identification for each animal in the herd;

(b) regular examination of animals in the herd by a veterinarian for signs of disease;

(c) reporting to a state or USDA representative of any signs of central nervous system disease in herd animals; and

(d) maintaining records of the acquisition and disposition of any animals entering or leaving the herd, including the date of acquisition or removal, name, and address of the person from whom the animal was acquired or to whom it was disposed, and cause of death, if the animal died while in the herd.

(4) A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including:

(a) specifying the time for which a premises ~~[must]~~shall not contain cervids after CWD-positive, exposed, or suspect animals are removed from the premises;

(b) fencing requirements;

(c) ~~requirements related to~~ depopulation or selective culling of animals;

(d) restrictions on sharing and movement of possibly contaminated livestock equipment; and

(e) cleaning and disinfection requirements, or other biosecurity requirements.

(5) The ~~[S]~~state ~~[V]~~veterinarian shall approve any movement of cervids onto or off the facility.

(a) Movement restriction of cervids shall remain in place until the requirements of the herd plan have been met.

(b) Elk from a positive farm may be moved to an elk ranch or official slaughter facility as follows:

(i) movements comply with Section R58-18-10;

(ii) elk going to an elk ranch shall be harvested within the same calendar year they move to the elk ranch; and

(iii) elk going to an elk ranch or official slaughter facility shall be tested for CWD.

(6) The ~~[S]~~state ~~[V]~~veterinarian may review and revise a herd plan at any time in response to changes in ~~[the situation of]~~the herd or premises or improvements in understanding ~~[of]~~the nature of CWD epidemiology or techniques to prevent its spread.

R58-18-15. Grounds for Denial, Suspension, or Revocation of Licenses for Domestic Elk Facilities.

(1) ~~[A license to operate a domestic elk facility may be denied, suspended, or revoked by the department for any of the following reasons:~~

~~(a) unfinished application or incorrect application information;~~

~~(b) incorrect records or failure to maintain required records;~~

~~(c) not presenting animals for identification at the request of the department;~~

~~(d) failure to notify the department of movement of elk onto or off the facility;~~

~~(e) failure to identify elk as required;~~

~~(f) movement of imported elk onto facility without getting a Certificate of Veterinary Inspection that has an import permit number obtained from the department;~~

~~(g) importing animals that are prohibited or controlled as listed in Rule R657-3;~~

~~(h) failure to notify the department concerning an escape of an animal from a domestic elk facility;~~

~~(i) failure to maintain a perimeter fence that prevents escape of domestic elk or ingress of wild cervids into the facility;~~

~~(j) failure to notify the DWR that there are wild cervids inside a domestic elk farm or hunting park;~~

~~(k) failure to participate with the department and DWR in a cooperative wild cervid removal program;~~

~~(l) failure to have inventories match with at least a 95% match;~~

~~(m) failure to submit the acceptable rate of CWD test samples;~~

~~(n) failure to have the minimum proper equipment necessary to safely and humanely handle animals in the facility; or~~

~~(o) inhumane handling or neglect of animals on the facility as determined by the department.]The department shall deny, suspend, or revoke a license to operate a domestic elk facility if the licensee or applicant:~~

(a) fails, for two consecutive years, to:

(i) meet inventory requirements as required by the department;

(ii) submit testable CWD samples for at least 90% of mortalities over 12 months old; or

(iii) notify the department that there are wild cervids inside a domestic elk farm or elk ranch;

(b) fails to present animals for identification at the request of the department or allow the department to have access to facility records; or

(c) violates the import requirements of Section 4-39-303.

(2) [Once the department has notified the operator of a domestic elk facility of the denial, suspension, or revocation of a license to operate a domestic elk facility, the operator has 15 calendar days to request an appeal with the commissioner.]The department may deny, revoke, or suspend a license to operate a domestic elk facility if, after delivery of notice and an opportunity to correct, the licensee or applicant:

(a) provides:

(i) an unfinished application or incorrect application information; or

(ii) incorrect records or failure to maintain required records.

(b) fails to:

(i) notify the department of movement of elk onto or off from the facility;

(ii) identify elk as required;

(iii) notify the department concerning an escape of an animal from a domestic elk facility;

(iv) maintain a perimeter fence that prevents escape of domestic elk or ingress of wild cervids into the facility;

(v) participate with the department in a cooperative wild cervid removal program;

(vi) submit testable CWD samples for at least 90% of mortalities over 12 months old; or

(vii) have the minimum proper equipment necessary to safely and humanely handle animals in the facility.

(c) moves imported elk onto a facility without getting a Certificate of Veterinary Inspection that has an import permit number from the department;

(d) imports animals that are prohibited or controlled by the Division of Wildlife Resources; or

(e) handles animals in a manner that violates acceptable animal husbandry practices.

(3) The department will provide the facility with a written notice if they do not meet the requirements listed in Subsections R58-

18-15(1) and R58-18-15(2). The facility will be given 30 days to correct the deficiencies.

(4) Once the department has notified the operator of a domesticated elk facility of the denial, suspension, or revocation of a license to operate a domesticated elk facility, the operator has 15 calendar days to request an appeal with the commissioner.

([3]5) An operator of a domesticated elk facility that has had their license revoked shall remove any elk from the facility within 30 calendar days by:

(a) sending any elk to an inspected facility for slaughter; or

(b) selling elk to another facility.

([4]6) Any elk remaining on the facility at the end of 30 days shall be sold by the department during a special sale conducted for that purpose.

KEY: chronic wasting disease, elk, inspections

Date of Last Change: ~~October 24, 2022~~ 2023

Notice of Continuation: December 28, 2021

Authorizing, and Implemented or Interpreted Law: 4-39-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R58-20	Filing ID: 55321
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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	
Contact persons:		
Name:	Phone:	Email:
Amanda Price	801-386-4189	amandaprice@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	amberbrown@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R58-20. Domesticated Elk Hunting Parks

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

H.B. 45, Elk Amendments, was passed during the 2023 General Session. The text in this rule needs to be updated to be consistent and reflect current practices when the Department of Agriculture and Food (Department) quarantines animals with Chronic Wasting Disease (CWD).

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 definitions in Section R58-20-2 have been updated to be consistent with the definition of a domesticated elk ranch in the current statute. By removing the elk farm definition in this rule and having it listed in Rule R58-18, Elk Farming, both rules will be consistent with the statute.

In Sections R58-20-2 and R58-20-3, the license application and renewal process has been clarified for an elk ranch to be consistent with the current law. New language has been added to this rule to provide for transparent CWD surveillance and investigations processes, herd management guidelines, and terms for denial, suspension, or revoking a license for a domesticated elk facility.

Fiscal Information

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

A) State budget:

The updated text removes outdated processes, clearly defines current practices, does not change the program's administration, and will not affect the state budget.

B) Local governments:

Local government will not be impacted because the processes are being clarified, and the administration is not changing.

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

Small businesses will not be impacted because the processes for elk ranches are being clarified and the administration is not changing. Elk transported to an elk ranch should already have the necessary RFID tag and an elk ranch would not be impacted by the initial elk tag cost.

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

Non-small businesses will not be impacted because they do not operate as elk ranches.

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**):

Other persons will not be impacted because the processes and definitions are being updated, and the program's administration is 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 are not changing for elk ranches because the elk transported to the ranches should already have the necessary RFID tag. The administration of this program is not changing and processes and definitions are being clarified in the updated text.

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 the 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:

Section 4-39-106

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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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:	04/04/2023
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R58. Agriculture and Food, Animal Industry.

R58-20. ~~Domesticated~~ Elk ~~Hunting Parks~~ Ranches.

R58-20-1. Authority and Purpose.

~~[In accordance with the Domesticated Elk Act, and the provisions]~~ Promulgated under the authority of Section 4-39-106, Utah Code, this rule specifies:

- ~~(a) procedures for obtaining domesticated elk facility licenses;~~
- ~~(b) requirements for operating those facilities;~~
- ~~(c) standards for disposal/removal of animals within those facilities;~~
- ~~(d) health standards and requirements in such facilities;~~
- ~~(e) issuance of domesticated elk hunting permits;~~
- ~~(f) exchange of domesticated elk hunting permits; and~~
- ~~(g) refund of domesticated elk hunting permits.]~~ this rule establishes procedures for applying for and renewing licenses, health requirements, and standards for operating an elk ranch.

R58-20-2. Definitions.

In addition to terms used in Sections 4-39-102, and R58-18-2:

(1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.

~~_____~~ (2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.

~~_____~~ (3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.]

([4]2) "[~~Hunting Park~~]Elk ranch" means a [~~place~~]facility where domesticated elk are harvested through normal or typical hunting methods.

~~_____~~ (5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.

~~_____~~ (6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.]

R58-20-3. Application and Licensing Process.

(1) ~~[Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.]~~Each applicant for a license to operate an elk ranch shall submit a signed, complete, accurate, and legible application on a department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed [~~hunting park~~]elk ranch in conjunction with roads, town, [~~etc.~~]and other points of interest in the immediate area.

(3) A [~~facility~~]premises identification number shall be assigned to an elk [~~hunting park~~]ranch [at the time]when a [~~completed~~]finished application is received [at]by the [~~D~~]department[~~of Agriculture and Food building~~].

(4) A complete facility inspection and approval shall be conducted [~~prior to the~~]before issuing [~~of~~]a license or entry of elk to any facility. This inspection shall be made by an approved [~~Department of Agriculture and Food~~]department employee and a Division of Wildlife Resources employee. It shall be the [~~responsibility of the applicant~~]applicant's responsibility to request this inspection at least [~~72 hours~~]three business days in advance.

(5) Upon receipt of an application, inspection [~~and approval~~]of the facility, completion of the facility approval form, and receipt of the license fee, a license [~~will~~]shall be issued.

(6) [~~All~~]Each license[s for hunting parks] expires on July 1 in the year following the year of issuance.

(7) [~~No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant~~]Elk may enter the facility only after the department issues a license.

R58-20-4. License Renewal.

~~_____~~ (1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.]

(1) Each elk ranch shall apply for license renewal to the department no later than April 30th, indicating its desire to continue as an elk ranch. The required fee shall accompany this application. Any license renewal application received after April 30th will have a late fee assessed.

(2) Any facility that does not apply for renewal before July 1st is delinquent.

~~_____~~ (3) If the application and fee for renewal are not received on or before July 1, the license shall not be renewed, and a new license shall be required.

~~_____~~ (4) Any animals on the premises shall be quarantined until a new license is acquired or due process of law has occurred.

~~_____~~ (5) An operator of an elk ranch that has had their license expire or had their license revoked shall remove any elk from the facility within 30 calendar days by:

~~_____~~ (a) sending elk to an inspected facility for slaughter; or

~~_____~~ (b) selling elk to another facility.

~~_____~~ (6) Any elk remaining on the facility at the end of 30 days shall be sold by the department during a special sale conducted for that purpose.

~~_____~~ (7) A department employee shall inspect the facility before license renewal.

~~_____~~ (8) The employee shall inspect the facility and document that each fencing and facility requirement in Sections 4-39-201 and R58-18-5 is met.

~~_____~~ (9) This inspection shall be held within 60 days of license renewal.

~~_____~~ (10) The applicant is responsible for arranging an appointment with the department for inspection and giving the department reasonable time to respond to a request.

~~_____~~ (11) The employee shall determine if any domesticated elk remain on the elk ranch.

~~_____~~ (12) The department shall reconcile records received from the elk facility with those maintained by the department. Records obtained from the facility include death reports, harvest permits, and brand inspections.

~~_____~~ (13) Inventory records provided by the facility and records maintained by the department shall have at least a 95% match.

~~_____~~ (14) Failure to meet the 95% match may result in the revocation of the license.

~~_____~~ (15) Failure to meet the 95% match for two consecutive years shall result in the revocation of the license.

~~_____~~ (16) The facility shall meet chronic wasting disease (CWD) testing requirements described in Section R58-20-15.

R58-20-5. Facilities.

~~_____~~ (1) No cervids other than domesticated elk are allowed to enter and be kept on any elk ranch.

~~_____~~ ([4]2) [~~Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks~~]Each perimeter fence and gate shall meet the minimum standard defined in Section 4-39-201. The perimeter fences and gates shall be constructed to prevent the movement of cervids, both captive and wild, into or out of the facility.

~~_____~~ ([2]3) An [~~hunting park for domesticated elk~~]elk ranch may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills, and natural habitat, [~~etc.~~]to provide cover for the animals. [~~Hunting park~~]Elk ranch owners intending to operate facilities larger than 5,000 acres [~~must~~]shall obtain [~~prior~~]written approval [~~of~~]from the Elk Advisory Council, following studies, reviews, or assessments,~~[—etc.]~~ which the Council may [~~deem~~]consider necessary to undertake, [~~in order~~]to make an informed decision.

~~_____~~ ([3]4) [~~There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park~~]The elk ranch owner shall provide sufficient signage around the facility indicating that it is a domesticated elk facility, so the public is notified that the animals are not wild elk.

([4]5) Each location of a licensed facility with separate perimeter fences ~~[must]~~shall have a ~~[its own]~~ separate loading facility.

([5]6) To be licensed, the ~~[park]~~elk ranch ~~[must]~~shall include a handling ~~[and isolation]~~ facility ~~[which]~~ that can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this ~~[rule]~~section may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the ~~[hunting park]~~elk ranch ~~[which]~~ that can be accessed in a reasonably short period~~[of time]~~.

(7) Each requirement in Section 4-39-401 concerning the escape of domesticated elk applies to elk ranches.

(8) An elk ranch owner shall remove any wild big game animals before enclosing the elk ranch. If wild big game animals are found within the elk ranch after it has been licensed, the owner shall notify the department and Division of Wildlife Resources within 48 hours. The parties involved may design a cooperative removal program to remove the animals.

R58-20-6. Records.

(1) ~~[All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks]~~Licensed elk ranches shall maintain accurate and legible office records showing the inventory of each elk on the facility.

(2) The record of each animal shall include the following:
(a) name and address of the agent that the elk was bought from;

(b) official RFID tag number;

(c) visual tag number, "ranch" or "dangle" tag;

(d) age;

(e) sex;

(f) date of purchase;

(g) date and method of death;

(h) Certificate of Veterinary Inspection if bought out of state; and

(i) laboratory results.

(3) A death record of elk 12 months of age and over that die, are harvested, slaughtered, killed, or destroyed shall be submitted to the department within 30 days of discovering the animal's death. A harvest permit may serve as the death record.

R58-20-7. Genetic Purity.

(1) ~~[All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks]~~Elk entering Utah, except those going directly to an official slaughter facility, shall have written evidence of genetic purity.

(2) Written evidence of genetic purity shall include:

(a) test charts from an approved lab that has completed:

(i) a blood genetic purity test; or

(ii) a DNA genetic purity test;

(b) registration papers from the North American Elk Breeders Association; or

(c) herd purity certification papers issued by another state agency.

(3) Genetic purity records shall be kept on file and presented to the department upon request.

(4) Any elk identified as having red deer genetic factor shall be destroyed or immediately removed from the state.

~~R58-20-8. Acquisition of Elk.~~

~~(1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.]~~

R58-20-~~9~~18. Identification.

(1) ~~[All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.]~~Each elk shall have two forms of identification that includes:

(a) a tamper-resistant RFID tag; and

(i) The RFID tag shall be placed in the right ear.

(ii) Purchased elk must have an RFID tag applied before arrival at the premises.

(iii) Replacement RFID tags and the visual tag number shall be reported to the department within seven days of application.

(b) a visible dangle ear tag before arriving at the premises.

R58-20-~~10~~19. Inspections.

~~(1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.~~

~~(2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.]~~

~~([a]1) [All e]Elk [must]shall be removed from [hunting grounds]elk ranches by harvest or recapture by December 31 of each year[to ensure conclusive inventory].~~

(2) Any recaptured live domesticated elk going to different premises shall be reported to the department before leaving the elk ranch.

(3) Only US-raised elk may be recaptured and moved. Elk imported from international herds must be harvested within the same season they are imported.

~~(3) All live domestic elk must be brand inspected prior to entering or leaving the park.]~~

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed ~~[hunting park]~~elk ranch before being released into an area inhabited by other domesticated elk.

(5) The licensee is responsible for arranging any inspection with the domesticated elk program manager.

(6) A 48 hours notice shall be given to the inspector.

(7) Elk to be inspected shall be contained in facilities adequate to inspect each animal properly.

(8) Each elk shall have its RFID tag and visual dangle tag recorded on its brand inspection.

~~(5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting park including those which move from facility to facility within Utah.~~

~~(6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.]~~

(17) Pursuant to Section 4-39-207, ~~agricultural inspectors~~ the department may, at any reasonable time during regular business hours, have free and unimpeded access to inspect ~~all~~ any facilities, animals, and records where domesticated elk are kept.

R58-20-~~14~~10. Health Rules.

(1) ~~All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.~~ Before the importation of elk, whether by live animals, gametes, eggs, sperm, or other genetic material into Utah, the importing party shall obtain an import permit from the state veterinarian.

(2) An import permit number shall be issued only if the destination herd is a licensed elk facility or an official slaughter facility.

(3) The import permit number shall be obtained from the department by the veterinarian conducting the official health inspection.

(4) Each elk imported into Utah shall be examined by an accredited veterinarian before importation and shall be accompanied by a valid Certificate of Veterinary Inspection that meets the disease testing requirements listed in this rule.

(5) Disease testing results and health statements shall be included on the Certificate of Veterinary Inspection. Testing requirements may be waived on elk traveling directly to an official slaughter facility.

(6) Elk imported from a US herd shall test negative for tuberculosis within 90 days before entry unless enrolled in a tuberculosis herd monitoring accreditation program.

(7) Elk imported from Canada shall test negative for tuberculosis within 90 days before entry and brucellosis within 30 days before entry.

(8) Elk imported from a brucellosis Designated Surveillance Area shall participate in their state's brucellosis surveillance program or test negative for brucellosis within 30 days before entry. Herds participating in their state's surveillance program shall provide a letter from their state veterinarian or designee stating their participation and their last herd test date.

(9) The Certificate of Veterinary Inspection shall include the signed statement: "To the best of my knowledge, the elk listed herein are not infected with Johne's Disease (Paratuberculosis), CWD, or Malignant Catarrhal Fever and have never been east of the 100th meridian."

(10) The Certificate of Veterinary Inspection shall also contain the shipper's and receiver's name and address and the number, sex, age, and any individual identification on each animal.

(11) Domesticated elk being imported from an international herd shall be:

- (a) male;
- (b) imported to an elk ranch for use in the elk ranch;
- (c) harvested in the same season in which the domesticated elk enter the state; and

(d) an exception to this rule if approved by the state veterinarian which may require quarantine.

(12) Additional disease testing or quarantine may be required at the discretion of the state veterinarian when there is reason to believe other diseases, parasites, or other health concerns are present.

(13) Treatment of each elk for internal and external parasites is required within 30 days before entry, except for elk going directly to an official slaughter facility.

(14) Each elk imported into Utah shall originate from a state or province that requires that any CWD-suspect domesticated elk or CWD-positive domesticated elk be reported to the state veterinarian or regulatory authority. The state or province of origin shall have the authority to quarantine source herds and herds affected with or exposed to CWD.

(15) Each elk imported into Utah shall originate from a state or province implementing a CWD Herd Certification Program.

(16) Each elk imported to Utah shall originate from herds participating in a verified CWD surveillance program for at least five years and are considered "certified" in that program.

(17) Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(18) No elk originating from a CWD-positive herd or involved in a trace for CWD may be imported to Utah.

(19) Elk semen, eggs, or gametes require a Certificate of Veterinary Inspection verifying the source animal has genetic purity and certifying that it has never resided on premises where CWD has been identified or traced. An import permit obtained by the issuing veterinarian shall be listed on the Certificate of Veterinary Inspection.

R58-20-1~~2~~1. Meat.

(1) The selling of domesticated elk meat obtained from a licensed ~~hunting park~~ elk ranch ~~will not be~~ is not allowed. The meat may be ~~and~~:

(a) ~~Must be~~ consumed by either the hunter or ~~park~~ ranch owner or their immediate family members, ~~regular~~ employees or guests ~~or the meat shall be~~;

(b) ~~Donated~~ as a charitable food item in compliance with Section 4-34-103 ~~of the Utah Agriculture Code~~.

R58-20-1~~3~~2. Dissolution of an Elk ~~Hunting Park~~ Ranch.

(1) Before an elk ~~hunting park~~ ranch can be dissolved, ~~all elk must~~ any elk shall be removed from the premises.

(2) Any abandoned elk will be removed by the ~~Utah Department of Agriculture and Food~~ department or Division of Wildlife Resources using lethal means.

(a) Carcasses will be disposed of by either disposal in an approved landfill, incineration, or donated as a charitable food item in compliance with Section 4-34-103 ~~of the Utah Agriculture Code~~.

(b) Costs for the removal of abandoned elk ~~will~~ shall be charged to the owner of the elk ~~hunting park~~ ranch.

R58-20-1~~4~~3. Liability.

~~(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.~~

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

~~[(4)]~~ In accordance with ~~[the state's governmental immunity act, as found in]~~ Section 63G-7-101~~[-et seq.]~~, the granting of an ~~[hunting park]~~ elk ranch license or the imposing of a requirement to gain an owner's permission does not attach any liability to the ~~[state]~~ department for any accident, mishap, or injury that occurs on, adjacent to, or in connection with the ~~[hunting park]~~ elk ranch.

R58-20-1[5]4. ~~[Obtaining]~~ Domesticated Elk Harvest Permits.

~~(1)~~ Harvest season for domesticated elk begins August 1 and ends December 31.

~~(2)~~ Hunting hours shall be from 1/2 hour before sunrise to 1/2 hour after sunset.

~~(3)~~ No persons may hunt elk in an approved elk ranch without first being issued a Domestic Elk Harvest Permit from the owner. The permit shall be in the hunter's possession during hunting times.

~~(4)~~ The elk ranch owner shall fill out a Domestic Elk Harvest Permit at the time of harvest.

~~(5)~~ One copy of the permit shall be sent to the department, one copy shall go to the hunter, and one copy shall be kept on file at the facility.

~~(6)~~ Validated tags shall be attached to the carcass and the antlers before leaving the park and remain affixed during transportation to a residence, meat processor, taxidermist, or the destination.

~~(7)~~ Permits shall be sent to the department within 30 days of harvest.

~~[(1)]~~~~(8)~~ An owner of a licensed ~~[domesticated]~~ elk ~~[hunting park]~~ ranch may purchase domesticated elk harvest permits ~~[beginning July 1st] from the department.~~

~~(2)~~ Application for the domesticated elk harvest permits shall be made on forms approved by the Department.

~~(3)~~ Payment for harvest permits shall be received ~~[prior to]~~ before issuance of any harvest permits.

~~[R58-20-16. Harvest Permit Terms.~~

~~(1)~~ Harvest season for domesticated elk begins on August 1st and ends December 31st.

~~(2)~~ Permits are only valid for the hunting season for which they are issued.

R58-20-17. Exchanges of Harvest Permits.

~~[(1)]~~~~(2)~~ An owner of a licensed ~~[domesticated hunting park]~~ elk ranch may exchange a harvest permit issued to a hunter for a new permit without paying an additional fee ~~[for a permit] if the owner provides [provided] to the department:~~

~~(a)~~ an ~~[signed]~~ affidavit by the owner of the ~~[hunting park]~~ elk ranch stating that ~~[a domesticated elk was not harvested by]~~ the person listed on the permit did not harvest a domesticated elk; and

~~(b)~~ ~~[all] any~~ unused ~~[copies of the]~~ harvest permits ~~[are returned to the department before the replacement permit may be issued].~~

~~[R58-20-18. Refunds.]~~

~~[(1)]~~~~(10)~~ A refund for an unused domesticated elk harvest permit may be issued to the owner of an ~~[domesticated]~~ elk ~~[hunting park]~~ ranch if ~~[a domesticated elk harvest provided]~~ the owner of the facility:

~~(a)~~ submits an application for refund prior to May 1st; and

~~(b)~~ returns the unused harvest permit ~~[is returned unused] to the department.~~

R58-20-15. CWD Surveillance and Investigation.

(1) Any person or laboratory who suspects or diagnoses CWD in a domesticated elk in Utah shall notify the state veterinarian immediately.

(2) The state veterinarian shall promptly investigate any animals reported as CWD-positive domesticated elk or CWD-suspect domesticated elk.

(3) The state veterinarian may:

(a) conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect domesticated elk and exposed domesticated elk and that identifies animals to be traced;

(b) conduct tracebacks of CWD-positive animals and trace outs of CWD-exposed animals and report any out of state traces to the appropriate state promptly after receipt of notification of a CWD-positive animal; and

(c) conduct tracebacks based on slaughter or another sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(4) Within 30 days of the date a suspect domesticated elk or positive domesticated elk is reported to the department, the state veterinarian shall provide written notice to an owner of a domesticated elk facility of:

(a) the status of the animal disease traceability investigation, including any findings; and

(b) the owner's right to appeal.

(5) With the approval of the commissioner, the state veterinarian may place an elk facility under quarantine if a domesticated elk at the elk facility has, within the previous 60 months:

(a) tested positive for CWD; or

(b) commingled with a CWD-positive elk in a quarantined domesticated elk facility.

(6) The state veterinarian may not place an elk facility under quarantine if no CWD-positive, CWD-suspect, or commingled domesticated elk resided at the domesticated elk facility.

(7) Each licensed elk ranch shall be required to submit both the obex portion of the brainstem and medial retropharyngeal lymph nodes of any elk over 12 months of age that die or are otherwise harvested or destroyed for testing for CWD by an official test at an approved laboratory.

(8) The samples shall be collected by an approved laboratory or a person authorized by the state veterinarian. Approved personnel shall have training on collecting, storing, handling, shipping, and identifying specimens for submission.

(9) At least 90% of the elk shall have at least one sample be testable by the laboratory.

(10) Samples designated as "location," "unsuitable," or "insufficient follicles" and missing samples are considered untestable.

(11) Individuals with less than 90% testable samples may lose their approval to collect samples and may be required to undergo additional training before being re-approved.

(12) The department may deny, revoke, or suspend a domestic elk ranch license if the ranch fails to submit at least one testable sample for 90% of elk.

(13) The CWD surveillance samples from elk residing on elk ranches shall be collected and preserved in formalin within 48

hours following the animal's death and submitted within 30 days to a laboratory approved by the state veterinarian.

(14) Laboratory fees and expenses incurred for collecting and shipping samples shall be the responsibility of the participating elk ranch.

(15) The state veterinarian will determine the designation and disposition of CWD-exposed, positive, or suspect domesticated elk or herds in Utah.

R58-20-16. CWD-Positive Herd Management.

(1) Each domesticated elk ranch with an elk that tested positive for CWD or commingled with an elk that tested positive for CWD shall receive a written herd plan developed by the state veterinarian with input from the herd owner, USDA, and other affected parties.

(2) The herd plan identifies the steps to manage CWD in a CWD-positive herd.

(3) A herd plan shall require the following:

(a) specified means of identification for each animal in the herd;

(b) regular examination of animals in the herd by a veterinarian for signs of disease;

(c) reporting to a state or USDA representative of any signs of central nervous system disease in herd animals; and

(d) maintaining records of the acquisition and disposition of any animals entering or leaving the herd, including the date of purchase or removal, name and address of the person from whom the animal was acquired or to whom it was disposed of, and cause of death, if the animal died while in the herd.

(4) A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the condition of the herd and its premises, including specifying:

(a) the time for which premises shall not contain cervids after CWD-positive, exposed, or suspect animals are removed from the premises;

(b) fencing requirements;

(c) depopulation or selective culling of animals;

(d) restrictions on sharing and movement of possibly contaminated livestock equipment; and

(e) cleaning and disinfection requirements, or other biosecurity requirements.

(5) The state veterinarian shall approve any movement of cervids onto or off the facility.

(6) Movement restriction of cervids shall remain in place until the requirements of the herd plan have been met.

(7) Requirements to move elk from a positive CWD elk ranch to an official slaughter facility are as follows:

(a) comply with Section R58-20-10; and

(b) each elk shall be tested for CWD.

(8) The state veterinarian may review and revise a herd plan at any time in response to changes in the herd or premises or improvements in understanding the nature of CWD epidemiology or techniques to prevent its spread.

R58-20-17. Grounds for Denial, Suspension, or Revocation of Licenses for Domestic Elk Facilities.

(1) The department shall deny, suspend, or revoke a license to operate an elk ranch if the licensee or applicant:

(a) fails, for two consecutive years, to:

(i) meet inventory requirements as required by the department;

(ii) submit at least one testable CWD sample for at least 90% of mortalities over 12 months old; or

(iii) notify the department that there are wild cervids inside an elk ranch;

(b) fails to present animals for identification at the request of the department or allow the department to have access to facility records; or

(c) violates the import requirements of Section 4-39-303.

(2) The department may deny, revoke, or suspend a license to operate an elk ranch if, after delivery of notice and an opportunity to correct, the licensee or applicant:

(a) provides:

(i) an unfinished application or incorrect application information; or

(ii) incorrect records or failure to maintain required records.

(b) fails to:

(i) notify the department of the movement of elk onto or from the facility;

(ii) identify elk as required;

(iii) notify the department concerning an escape of an animal from a domesticated elk facility;

(iv) maintain a perimeter fence that prevents the escape of domesticated elk or ingress of wild cervids into the facility;

(v) participate with the department in a cooperative wild cervid removal program;

(vi) submit at least one testable CWD sample for at least 90% of mortalities over 12 months old; or

(vii) have the minimum proper equipment necessary to safely and humanely handle animals in the facility;

(c) moves imported elk onto a facility without getting a Certificate of Veterinary Inspection that has an import permit number from the department;

(d) imports animals that are prohibited or controlled by the Division of Wildlife Resources; or

(e) handles animals in a manner that violates acceptable animal husbandry practices.

(3) The department will provide the facility with a written notice if they do not meet the requirements listed in Subsections R58-20-17(1) and R58-20-17(2). The facility will be given 30 days to correct the deficiencies.

(4) Once the department has notified the operator of an elk ranch of the denial, suspension, or revocation of a license to operate an elk ranch, the operator has 15 calendar days to request an appeal with the commissioner.

(5) An operator of an elk ranch that has had their license revoked shall remove any elk from the facility within 30 calendar days by:

(a) sending any elk to an inspected facility for slaughter; or

(b) selling elk to another facility.

(6) Any elk remaining on the facility at the end of 30 days shall be sold by the department during a special sale conducted for that purpose.

KEY: elk, hunting permits, hunting parks, inspections

Date of Last Change: ~~July 22, 2019~~ 2023

Notice of Continuation: January 7, 2019

Authorizing, and Implemented or Interpreted Law: 4-39-106

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R68-27	Filing ID: 55325

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:
R68-27. Cannabis Cultivation
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Changes are needed to implement changes passed by the legislature during the 2023 General Session in S.B. 91. Changes are also needed to clarify product tag requirements and ensure tags contain information necessary for the Department of Agriculture and Food (Department) to manage the cannabis program.
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):
Changes to agent card requirements are made in Sections R68-27-2 and R68-27-8 based on statutory changes from S.B. 91 (2023). This includes clarifying the language to indicate that cards will be issued to individual agents rather than cannabis production establishments. Additionally, additional information is added to tag requirements in Section R68-27-7.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:			
A) State budget:			
These changes clarify existing requirements only and will not have a fiscal impact on the Department.			
B) Local governments:			
Local governments will not be impacted because they do not act as or regulate cannabis cultivators.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There should be no fiscal impact to small businesses because the changes are clarifying in nature and codify current requirements for product tags.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There should be no fiscal impact to non-small businesses because the changes are clarifying in nature and codify current requirements for product tags.			
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 <i>agency</i>):			
There should be no fiscal impact to other persons because the changes are clarifying in nature and codify current requirements for product tags.			
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 Department fees 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	\$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-103(5)		

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:	05/31/2023

9. This rule change MAY become effective on:	06/07/2023
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:	04/05/2023
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R68. Agriculture and Food, Plant Industry.**R68-27. Cannabis Cultivation.****R68-27-1. Authority and Purpose.**

[4]—]Pursuant to Subsections 4-41a-103(5), 4-41a-204(2)(e), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain a cannabis cultivation facility license.

R68-27-2. Definitions.

As used in this rule:

(1) "Applicant" means any person or business entity who applies for a cannabis cultivation facility license.

(2a) "Cannabis" means any part of a marijuana plant.

(b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.

(3) "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.

(4) "Cannabis[~~production establishment~~] cultivation facility agent registration card" means a registration card that the department issues that:

(a) authorizes an individual to act as a cannabis production establishment agent; and

(b) designates the type of cannabis production establishment for which an individual may act as an agent.

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

(6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

(7) "Lot" means the quantity of:

(a) flower 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.

(8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

(1) A cannabis cultivation facility license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.

(2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.

(3) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

(4) Before approving an application, the department may contact any applicant and request additional supporting documentation or information.

(5) Before issuing a cannabis cultivation facility license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

(6) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of cannabis cultivation facility licenses that will be issued.

(7) The cannabis cultivation facility license shall expire on December 31st.

(8) A cannabis production establishment license is not transferable or assignable. If the ownership of a cannabis production establishment changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed.

R68-27-4. Cannabis Cultivation Facility Requirements.

(1) A cannabis cultivation facility operating plan shall contain a blueprint or diagram of the facility containing the following information:

(a) for indoor cannabis cultivation, the square footage of the area where cannabis is to be propagated;

(b) for indoor cannabis cultivation, the square footage of the area where cannabis is to be grown;

(c) the square footage of the area where cannabis is to be harvested;

(d) the area where cannabis is to be dried, trimmed, and cured;

(e) the square footage of the area where cannabis is to be packaged for wholesale;

(f) the total square footage of the cultivation facility;

(g) the square footage and location of areas to be used as a storeroom;

(h) the location of the toilet facilities and hand washing facilities;

(i) the location of a break room and location of personal belonging lockers; and

(j) the location of the area to be used for loading and unloading of cannabis product for transportation.

(2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:

(a) the area where cannabis is to be propagated; and

(b) the area where cannabis is to be grown.

(3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.

(4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.

(5) A cannabis cultivation facility shall have written emergency procedures to be followed if:

(a) fire;

(b) chemical spill; or

(c) another emergency at the facility.

(6) A cannabis cultivation facility operating plan shall include:

(a) a pest management plan;

(b) a description of when and how fertilizers are to be applied during the production process;

(c) procedures for water usage and waste water disposal; and

(d) a waste disposal plan.

(7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.

(8) A cannabis cultivation facility shall use a standardized scale that is registered with the department when cannabis is:

(a) packaged for sale by weight;

(b) bought and sold by weight; or

(c) weighed for entry into the inventory control system.

(9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises, including ensuring proper and timely removal of litter and waste.

(10) A cannabis cultivation facility shall compartmentalize each area in the facility based on function.

(11) A cannabis cultivation facility shall limit access to the compartments to appropriate cannabis cultivation facility agents.

R68-27-5 Indoor and Outdoor Cannabis Cultivation Limitations.

(1) A cannabis cultivation facility that cultivates cannabis only indoors may use no more than 100,000 square feet for cultivation.

(2) A cannabis cultivation facility that cultivates cannabis only outdoors may use no more than four acres for cultivation.

(3) Pursuant to Subsection 4-41a-204(2)(e), a cannabis cultivation facility that uses a combination of indoor and outdoor cultivation shall be subject to the following formula:

(a) the cannabis cultivation facility may use no more than a total of two acres outdoors and 50,000 square feet indoors for cultivation; or

(b) the cannabis cultivation facility may use less than two acres outdoors or 50,000 square feet indoors for cultivation, but may not exceed the indoor or outdoor limit.

R68-27-6. Security Requirements.

(1) At a minimum, each cannabis cultivation facility shall have a security alarm system on each perimeter entry point and perimeter window.

(2) At a minimum, a licensed cannabis cultivation facility shall have a complete video surveillance system:

(a) with a minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and

(b) that retains footage for at least 45 days.

(3) Cameras at a cannabis cultivation facility shall be fixed, record continuously, and placement shall allow for the clear and certain identification of any person or activities in a controlled area.

(4) Controlled areas include:

(a) each entrance and exit, or ingress and egress vantage point;

(b) each area within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, or trimmed;

(c) each area where cannabis is stored; and

(d) each area where cannabis waste is being moved, processed, stored, or destroyed.

(5) If a cannabis cultivation facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(6) If a cannabis cultivation facility stores footage on a remote server, access shall be restricted to protect from employee tampering.

(7) Any gate or entry point must be lighted in low-light conditions.

(8) Visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility while on the premises of the facility.

(9) Cannabis cultivation facility visitors shall be escorted by a cannabis cultivation facility agent while in the facility.

(10) A cannabis cultivation facility shall keep and maintain a log showing:

- (a) the full name of each visitor entering the facility;
- (b) the badge number issued;
- (c) the time of arrival;
- (d) the time of departure[-]; and
- (e) the purpose of the visit.

(11) The visitor log shall be maintained by the cannabis cultivation facility for a minimum of one year.

(12) The cannabis cultivation facility shall make visitor log available to the department upon request.

R68-27-7. Inventory Control.

(1) Each cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through the phases of production.

(2) Each cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.

(3) Unique identification numbers cannot be reused.

(4) Each cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, cannabis product, test lot, harvest lot, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.

(5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris[-] and include the following information:

(a) unique identification number;

(b) batch or lot number;

(c) strain;

(d) facility name and license number; and

(e) date entered into the inventory control system.

(6) The following shall be reconciled in the inventory control system at the close of business each day:

(a) movement of seedling or clone to the vegetation production area;

(b) when plants are partially or fully harvested or destroyed;

(c) when cannabis is being transported to other facilities;

(d) samples used for testing and the testing results;

(e) a complete inventory of cannabis clones, plants, trim, or other plant material;

(f) the weight of harvested cannabis plants immediately after harvest;

(g) the weight and disposal of post-harvest waste materials;

(h) the identity of the individual who disposed of the waste and the location of waste receptacle; and

(i) theft or loss, or suspected theft or loss, of cannabis.

(7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.

(8) For plants under eight inches, the cultivation facility shall keep record of:

(a) the number of cannabis seeds or cuttings planted;

(b) the date they were planted;

(c) the date the plants were moved into the vegetation area and tagged;

(d) the strain of the seeds or cuttings;

(e) the number of plants grown to maturity;

(f) the number of plants disposed of; and

(g) the date of disposal.

R68-27-8. Cannabis Cultivation Facility Agents.

(1) A prospective cannabis cultivation facility agent shall apply to the department for a cannabis cultivation facility agent registration card on a form provided by the department.

(2) An application is not considered complete until the background check has been completed, ~~[and the facility has paid]~~ the registration fee has been paid, and the prospective agent has submitted the required training certificate.

(3) The cannabis cultivation facility agent registration card shall contain:

(a) the agent's full name;

~~[(b) the name of the cannabis cultivation facility;]~~

~~[(e)b] [the job title or position of the agent]~~ identifying information; and

~~[(e)c]~~ a photograph of the agent.

(4) A cannabis cultivation facility is responsible to ensure that each cannabis cultivation facility agent has received ~~[department approved training pursuant to Section 4-41a-301]~~ any task specific training as outlined in the operating plan submitted to the department.

(5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department while on the facility premises or while engaged in the transportation of cannabis.

(6) Each cannabis cultivation facility agent shall have their state issued identification in their possession to certify the information on their badge is correct.

~~(7) [Upon termination, the identification badge of an agent shall be immediately returned to the department by the cannabis cultivation facility.]~~ Each cannabis cultivation facility shall maintain a list of each employee that holds a cannabis cultivation facility agent registration card and provide the list to the department upon request.

R68-27-9. Pesticide and Fertilizer Use.

(1) A cannabis cultivation facility shall maintain:

(a) the material safety data sheet for any pesticide, fertilizer, or other agricultural chemical used in the production of cannabis which shall be accessible to any cannabis cultivation facility agent;

(b) the original label or a copy for each pesticide, fertilizer, or other agricultural chemical used in the production of cannabis; and

(c) a log of each pesticide, fertilizer, or other agricultural chemical used in the production of cannabis.

(2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.

(3) Each pesticide, fertilizer, and other agricultural chemical is to be stored in a separate location apart from cannabis.

(4) Pesticides shall be used consistent with the label requirements.

(5) Fertilizer registered with the department under Title 4, Chapter 13, the Utah Fertilizer Act, may be used in the production and handling of cannabis.

(6) Cannabis exposed to unauthorized pesticide, soil amendment, or fertilizer is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-10. Transportation.

(1) A printed transport manifest shall accompany each transport of cannabis.

(2) The manifest shall contain the following information:
(a) the cannabis production establishment address and cannabis production establishment license number of the departure location;

(b) the physical address and cannabis production establishment license number of the receiving location;

(c) the strain name, quantity by weight, and unique identification number of each cannabis material to be transported;

(d) the date and time of departure;

(e) the estimated date and time of arrival; and

(f) the name and signature of each cannabis production establishment agent accompanying the cannabis.

(3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.

(4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.

(5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amount received for each strain into the inventory control system.

(6) The receiving cannabis establishment shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

(7) During transport a cannabis cultivation facility shall ensure the cannabis is:

(a) shielded from the public view;

(b) secured; and

(c) temperature controlled if perishable.

(8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

(9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-11. Recall Protocol.

(1) The department may initiate a recall of cannabis or cannabis products if:

(a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis product;

(b) evidence exists that residual solvents are present on or in cannabis or cannabis product;

(c) evidence exists that harmful contaminants are present on or in cannabis or cannabis product; or

(d) the department believes or has reason to believe the cannabis or cannabis product is unfit for human consumption.

(2) A cannabis cultivation facility's recall plan shall include, at a minimum:

(a) designation of at least one member of the staff who serves as the recall coordinator;

(b) procedures for identifying and isolating product to prevent or minimize distribution to patients;

(c) procedures to retrieve and destroy product; and

(d) a communications plan to notify those affected by the recall.

(3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

(4) A cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

(5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

(6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-27-12. Minimum Requirements for the Storage and Handling of Cannabis.

(1) Storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.

(2) Stored cannabis shall be at least six inches off the ground.

(3) Cannabis shall be stored away from other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.

(4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately by physical barrier until it is destroyed.

R68-27-13. Cannabis Waste Disposal.

(1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state law~~[s and regulations]~~.

(2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state law~~[s and regulations]~~.

(3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

(4) Cannabis waste shall be ~~rendered~~ made unusable before leaving the cannabis cultivation facility.

(5) Cannabis waste not designated as hazardous, shall be ~~rendered~~ made unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least 50% non-cannabis waste by volume, or by other methods approved by the department before implementation.

(6) Materials used to grind with cannabis fall into two categories:

(a) compostable; or

(b) non-compostable.

(7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

(a) food waste;

(b) yard waste; or

(c) vegetable-based grease or oils.

(8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

(a) paper waste;

(b) cardboard waste;

(c) plastic waste; or

(d) soil.

(9) Cannabis waste includes:

(a) cannabis plant waste including roots, stalks, leaves, and stems;

(b) excess cannabis or cannabis products from any quality assurance testing;

(c) cannabis or cannabis products that fail to meet testing requirements; and

(d) cannabis or cannabis products subject to a recall.

R68-27-14. Change in Operation Plans.

(1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, before making any changes to:

- (a) ownership or financial backing of the facility;
- (b) the facility's name;
- (c) a change in location;
- (d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
- (e) change in square footage or acreage of cannabis intended to be cultivated.

(2) A cannabis cultivation facility may not implement changes to the approved operation plan without department approval.

(3) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

(4) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-27-15. Renewals.

(1) A cannabis cultivation facility shall submit a notice of intent to renew the cannabis cultivation facility license and the licensing fee to the department by December 1st.

(2) If the cannabis cultivation facility licensing fee and intent to renew the cannabis cultivation facility license are not submitted by December 31st the cannabis cultivation facility licensee may not continue to operate.

(3) Pursuant to Section 4-41a-03, the board shall renew a cannabis cultivation facility license unless they identify a significant violation of the applicable laws and rules of the state.

R68-27-16. Violations Categories.

(1) Public Safety Violations: \$3,000 - \$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

- (a) use of unapproved pesticide or unapproved agricultural soil amendment;
- (b) cannabis sold to an unlicensed source;
- (c) cannabis purchased from an unlicensed source;
- (d) refusal to allow inspection;
- (e) failure to comply with testing requirements;
- (f) a test result for high pesticide residue in the cannabis produced or cannabis product;
- (g) unauthorized personnel on the premises;
- (h) permitting criminal conduct on the premises; or
- (i) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments.

(2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules:

- (a) failure to maintain alarm and security systems;
 - (b) failure to keep and maintain records for at least two years;
 - (c) failure to maintain traceability;
 - (d) failure to follow transportation requirements;
 - (e) failure to follow the waste and disposal requirements;
 - (f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule; or
 - (g) failure to maintain standardized scales.
- (3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including:
- (a) an unauthorized change to the operating plan;

(b) failure to notify the department of changes to the operating plan;

(c) failure to notify the department of changes to financial or voting interests of greater than 2%;

(d) failure to follow the operating plan as approved by the department;

(e) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments; or

(f) failure to respond to violations.

(4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

(5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

KEY: marijuana, cannabis cultivation facility

Date of Last Change: ~~June 8, 2022~~ 2023

Authorizing, and Implemented or Interpreted Law: 4-41a-404(3); 4-41a-103(5); 4-41a-204(2)(e); 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R156-55c

Filing ID:
55326

Agency Information

1. Department: Commerce

Agency: Professional Licensing

Building: Heber M Wells Building

Street address: 160 E 300 S

City, state and zip: Salt Lake City, UT 84111-2316

Mailing address: PO Box 146741

City, state and zip: Salt Lake City, UT 84114-6741

Contact persons:

Name:

Phone:

Email:

Steve Duncombe

801-
530-
6628

sduncombe@utah.gov

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

General Information**2. Rule or section catchline:**

R156-55c. Plumber Licensing Act Rule

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

This filing is made by the Division of Professional Licensing (Division) in collaboration with the Plumbers Licensing Board and the Construction Services Commission in accordance with Executive Orders No.

2021-1 and 2021-12, to elucidate the educational planned program of training requirements, and make formatting changes to update and simplify this rule using logical, understandable, and concise language consistent with 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):

Subsection R156-55c-102(2) removes laborious and unnecessary language that is currently defined in Title 15A, State Construction and Fire Codes Act, and appropriately provides minor plumbing work to include residential type plumbing appurtenances and fixtures in addition to appliances.

Subsection R156-55c-302a(5) is amended pursuant to Section 58-1-203, to include the language "reputable and in good standing." This amendment makes clear the board's authority to consider and recommend to the Division out-of-state plumbing training programs that meet Utah's minimum standards.

Subsection R156-55c-302b(1) amends the examination requirements for master and residential master plumbers by removing antiquated theory exam and replacing it with the more apt "Law and Rule Exam." In order to maintain dialectal consistency with other exams.

Subsection R156-55c-302b(2) renames the journeyman and residential journeyman theory exam to the journeyman and residential journeyman written exam.

Additionally, Subsection R156-55c-302b(4) amends the time in which an applicant may retake an exam after a failed attempt from 90 to 120 days.

Fiscal Information

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

A) State budget:

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures. The requested changes reflect current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to

ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

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

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

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

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes so there is no fiscal impact.

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 changes are not expected to have any fiscal impact on affected persons. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met.

None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

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

As described above in Box 5E for other persons, the proposed changes are not expected to have any compliance costs for affected persons.

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 Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that the rule may have on businesses. I direct that my comments about the rule's fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action.

Comments:

The Division, in collaboration with the Plumbers Licensing Board and the Construction Services Commission, propose amendments to Rule R156-55c to update this rule to redefine the details of training relating to fire codes, allows out-of-state reciprocity, and amends the master plumber exam. Also, the Division has made formatting conformities throughout this rule to align with the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.

Small Businesses (less than 50 employees):

The proposed changes are not expected to have any fiscal impact on small businesses in the State of Utah. The amendments are minor updates to keep the rule current with industry standards as approved by the Plumber Licensing Board and Construction Services Commission. Further, the Division does not foresee any negative impact on small businesses from the grammar since the new rule was drafted to comport to the Utah Rulewriting Manual.

Regulatory Impact to Non-Small Businesses (50 or more employees):

The Division finds that the non-small businesses in the Utah will not suffer a negative fiscal impact from the proposed changes for the same rationale as described above for small businesses. Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-55-101
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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:	05/31/2023
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B) A public hearing (optional) will be held:

On:	At:	At:
05/05/2023	9:00 AM	160 E 300 S, Salt Lake City, UT - Conference Room 474 and also electronically via Google Meet. Note Google Meet link will be provided in rule hearing posting for 05/05/2023 on the

		Public Meeting Notice website.
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9. This rule change MAY become effective on:	06/07/2023
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:	Mark B. Steinagel, Division Director	Date:	04/13/2023
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R156. Commerce, ~~Occupational and~~ Professional Licensing.

R156-55c. Plumber Licensing Act Rule.

R156-55c-102. Definitions.

The following definitions supplement the definitions in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(1) "Immediate supervision" as used in Subsections 58-55-102(5) and (26) means:

(a) for non-residential plumbing work, the apprentice and the supervising plumber are physically present on the same project or jobsite but are not required to maintain a direct line of sight; and

(b) for residential plumbing work, the supervising plumber, when not physically present on the same project or jobsite as the apprentice, is available to provide direction, oversight, inspection, and evaluation of the apprentice's work to ensure that the end result complies with applicable standards.

(2)(a) "Minor plumbing work that is incidental" as used in Subsection 58-55-305(1)(k)(i) means[~~:-~~

~~(a)-] repair or replacement of [the following]-residential type Plumbing Appurtenances, Fixtures, or Appliances, provided that no modification is made to:~~

~~(i) existing culinary water, soil, waste, or vent piping; or~~

~~(ii) a gas appliance or combustion system.[-~~

~~(i) dishwashers;~~

~~(ii) refrigerators;~~

~~(iii) freezers;~~

~~(iv) ice makers;~~

~~(v) stoves;~~

~~(vi) ranges;~~

~~(vii) clothes washers;~~

~~(viii) clothes dryers; and~~

~~(b) repair or replacement of the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed \$300 in total value, including labor and materials, and including changes or additions to the contracted or agreed upon work:~~

~~(i) tub or shower trim;~~

~~(ii) tub or shower valve;~~

~~(iii) toilet flush valve;~~

~~(iv) toilet removal and reset;~~

~~(v) garbage disposal;~~

~~(vi) kitchen or lavatory sink P-trap;~~

~~(vii) kitchen or lavatory faucet rebuild and replacement;~~

~~(viii) supply line replacement after the fixture valve; and]~~

([3]b) "Minor plumbing work that is incidental[~~:-~~] as used in Subsection 58-55-305(1)(k)(i)[~~:-~~] does not include;

~~(i) installation or replacement of a water heater[~~:-~~]; or~~

~~(ii) work to include the initial installation of Plumbing Appurtenances, Fixtures, and Systems.~~

([4]3) "Plumbing Appliances, Appurtenances, Fixtures, and Systems" means the same as defined in Title 15A, State Construction and Fire Codes Act.

([5]4) "Unprofessional conduct" as defined in Title 58, Chapter 1, Division of Professional Licensing Act and Title 58, Chapter 55, Utah Construction Trades Licensing Act is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-55c-501.

R156-55c-302a. Qualification for Licensure - Education and Experience Requirements.

(1) A Master Plumber applicant:

(a) under Subsection 58-55-302(3)(a)(i)(A), shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Journeyman Plumber; or

(b) under Subsection 58-55-302(3)(a)(i)(B), shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the Council for Higher Education Accreditation (CHEA); and

(ii) have at least 2,000 hours of supervisory experience as a licensed Journeyman Plumber.

(2) A Residential Master Plumber applicant:

(a) under Subsection 58-55-302(3)(b)(i), shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Residential Journeyman Plumber; or

(b) under Subsection 58-55-302(3)(b)(ii), shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the CHEA; and

(ii) have at least 2,000 hours of supervisory experience as a licensed Residential Journeyman Plumber.

(3) A Journeyman Plumber applicant:

(a) under Subsection 58-55-302(3)(c)(i), shall have completed at least:

(i) 576 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) 8,000 hours of full-time work experience as a licensed Apprentice Plumber;

(b) under Subsection 58-55-302(3)(c)(ii), shall have completed at least 16,000 hours of lawful full-time work experience as an Apprentice Plumber; or

(c) under Subsection 58-55-302(3)(c)(iii), if licensed as a Residential Journeyman Plumber, shall have completed:

(i) at least 2,000 hours of full-time work experience in non-residential plumbing while licensed as an Apprentice Plumber; and

(ii) the fourth year, 144 hours, of a planned program of training that meets the requirements of Subsection (5).

(4) A Residential Journeyman Plumber applicant:

(a) under Subsection 58-55-302(3)(d)(i), shall have completed at least:

(i) 432 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) 6,000 hours of full-time work experience as a licensed Apprentice Plumber; or

(b) under Subsection 58-55-302(3)(d)(ii), shall produce satisfactory evidence, using a form provided by the Division, that the applicant:

(i) has completed at least 12,000 hours of full-time work experience in a maintenance or repair trade; and

(ii) that at least 9,000 of the required 12,000 hours directly involved the plumbing trade.

(5) ~~Under Subsection 58-1-203(1)(a) and Subsections 58-55-302(3)(c)(ii) and (d)(i), the~~ "planned program of training approved by the Division" ~~[pursuant to Subsections 58-55-302(3)(c)(i) and (d)(i), shall consist of formal classroom education in the plumbing trade.]~~ means a program of plumbing study that:

(i) ~~a~~ includes measures of competency and achievement level for each student;

~~(ii) is conducted by competent qualified staff;~~

~~(iii) is conducted by an entity approved by;~~

(b) is approved by ~~(A)~~ the Utah Board of Higher Education ~~;~~ or

~~(B)~~ if the program is out of state, is determined by the Division in collaboration with the Plumbers Licensing Board ~~[when the program is out of state] to be a reputable training program; and~~

~~(iv) includes at least 81 hours of classroom instruction per semester.~~

(c) is listed on the Division's website at dopl.utah.gov/pl.

(b) ~~(6)~~ "Completion" of a planned program of training under Subsections 58-55-302(3)(c) and (d) and this rule, means that the applicant:

(i) ~~a~~ attended a minimum of 72 classroom instruction hours each semester; and

(ii) ~~b~~ passed each class with a score of at least 75%.

(f) ~~7~~ On the job training and instruction shall include measurements of the apprentice's performance in the plumbing trade.

(7) ~~8~~ An applicant may earn up to 3,000 hours during a 12-month period.

(8) ~~9~~ As used in Subsections 58-55-302(3)(c) and (d) and this rule, "full-time training," "full-time experience," "work experience," and "full-time work experience" mean work experience that is lawfully performed preceding the date of application, in accordance with applicable licensing and supervision requirements, and may include work experience obtained while exempt from licensure.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

~~(4)~~ Under Subsection 58-55-302(1)(c), the exam requirements for licensure are established as follows:

(1) a Master Plumber or Residential Master Plumber applicant ~~or Journeyman Plumber applicant~~ shall ~~pass~~ ~~have obtained a passing score on:~~

~~(a)~~ the Utah Plumber ~~Theory~~ Law and Rule Exam with a score of at least 75% ~~;~~ and

~~(b) the Utah Plumber Practical Exam].~~

(2) Under Subsection 58-55-302(1)(e), a Residential Master Plumber applicant or Residential Journeyman Plumber applicant shall have obtained a passing score on:

~~(a) the Utah Residential Plumber Theory Exam; and~~

~~(b) the Utah Plumber Practical Exam.]~~

(2) a Journeyman Plumber applicant shall pass:

(a) the Utah Journeyman Plumber Written Exam with a score of at least 70%; and

(b) the Utah Plumber Practical Exam with a score of least 70%.

(3) a Residential Journeyman Plumber applicant shall pass:

(a) the Utah Residential Journeyman Plumber Written Exam with a score of at least 70%; and

(b) the Utah Plumber Practical Exam with a score of at least 70%.

~~(3)~~ ~~4~~ Admission to the exams is permitted after:

(a) the applicant has completed all requirements for licensure in Section R156-55c-302a; or

(b) the Journeyman Plumber applicant under Subsection R156-55c-302a(3)(a) has completed:

(i) the first semester of the fourth year of the planned program of training; and

(ii) at least 6,000 hours of the required full-time work experience.

~~(4) The passing score for each of the following exams is a minimum of 70%:~~

~~(a) the Utah Plumber Practical Exam;~~

~~(b) the Utah Plumber Theory Exam; and~~

~~(c) the Utah Residential Plumber Theory Exam.]~~

(5) An applicant who fails an exam may retake that exam:

(a) no sooner than 30 days following any failure, up to six failures; and

(b) no sooner than ~~90~~ 120 days following any failure thereafter.

KEY: occupational licensing, licensing, plumbers, plumbing

Date of Last Change: ~~July 14, 2022~~ 2023

Notice of Continuation: July 8, 2021

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-301	Filing ID: 55328
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Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-301. Educator Licensing

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

This rule is being amended to update licensing requirements.

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):

These amendments remove the "Eminence" designation option, clarify renewal requirements for local education agencies (LEA)-specific licenses, and update other licensing requirements.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The technical changes will not add administrative or personnel costs for the Utah State Board of Education (USBE) or other entities as they reflect current practice.

B) Local governments:

This rule change is not expected to have major fiscal impact on local government' revenues or expenditures. This rule change makes minor technical changes to licensing for pre-K teachers and removes the "Eminence" designation option. LEAs maintain flexibility to license teachers through the LEA-specific license option and USBE does not anticipate added costs for LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects USBE.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other 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 compliance costs for affected persons. LEAs maintain flexibility to appropriately license educators through the LEA-specific licensing options and there are no added costs for LEAs or USBE.

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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:**

Article X, Section 3	Section 53E-6-102	Section 53E-3-401
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.**R277-301. Educator Licensing.****R277-301-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of licenses and license areas of concentration available and the requirements and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

R277-301-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Currently enrolled" means:

(a) that an individual has been formally accepted into a Board-approved educator preparation program; and

(b) that the program considers the individual to be an active participant.

(3) "Educator preparation program" means the same as that term is defined in Section R277-303-2.

~~[(4) "Eminence" means the same as that term is defined in Section R277-303-9.]~~

~~[(5)]~~ (4) "Endorsement" means a designation on a license area of concentration earned through demonstrating required competencies established by the Superintendent that qualifies the individual to:

(a) provide instruction in a specific content area; or

(b) apply a specific set of skills in an education setting.

~~[(6)]~~ (5) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[(7)]~~ (6) (a) "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:

(i) Early Childhood;

(ii) Elementary;

(iii) Secondary;

(iv) School-Leadership;

(v) Career and Technical Education or "CTE";

(vi) School Counselor;

(vii) School Psychologist;

(viii) Special Education;

(ix) Pre-school Special Education;

(x) Deaf Education;

(xi) Speech-Language Pathologist;

(xii) Speech-Language Technician;

(xiii) School Social Worker; and

(xiv) Audiologist.

~~[(8)]~~ (7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

~~[(9)]~~ (8) "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.

~~[(10)]~~ (9) "NASDTEC Stage 2 Educator License" means a license issued to an individual who holds a bachelor's degree and has completed an approved program but has not met the jurisdiction-specific requirement for a Stage 3 license of a member jurisdiction.

~~[(11)]~~ (10) "Renewal" means reissuing or extending the length of a license consistent with Rule R277-302.

R277-301-3. License Structure.

(1) Utah educator licenses include the following licenses:

(a) Associate educator license;

(b) Professional educator license; and

(c) LEA-specific educator license.

(2) The Superintendent may only issue one single active Utah educator license to an individual.

(3) An educator license shall include at least one license area of concentration.

(4) License areas of concentration and endorsements shall have a designation of:

(a) associate;

(b) professional; or

(c) LEA-specific.

(5) An associate educator license may only include associate or LEA-specific license areas of concentration and endorsements.

(6) An LEA-specific educator license may only include LEA-specific license areas of concentration and endorsements.

(7) An educator may add a license area or endorsement to an existing license or license area of concentration by meeting the requirements for an associate, professional, or LEA-specific endorsement as established in this rule.

(8) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(9)(a) All licenses expire on June 30 of the year of expiration and a licensee may renew any time after January 1 of the same year.

(b) Notwithstanding Subsection (9)(a), an LEA-specific license may only renew after July 1 of the year of expiration.

([b]c) Responsibility for license renewal rests solely with the licensee.

R277-301-4. Associate Educator License Requirements.

(1) The Superintendent shall issue an associate educator license to an individual that applies for the license and that meets all requirements in this Section R277-301-4.

(2) An associate educator license, license area, or endorsement is valid for three years.

(3) The Superintendent may only renew an associate educator license if:

(a) the individual has less than three years of experience in a Utah public or accredited private school; or

(b) the individual is employed by a Utah public or accredited private school and the employer has requested a one year extension of the license.

(4) Notwithstanding Subsection (3), the Superintendent may not renew an associate license with a license area in special education or related services, if the educator has three years of experience with the associate license.

(5) The general requirements for an associate educator license shall include:

(a) completion of a criminal background check, including:

(i) review of any criminal offenses and clearance in accordance with Rule R277-214; and

(ii) continued monitoring in accordance with Subsection 53G-11-403(1);

(b) completion of the educator ethics review within one calendar year before the application;~~and~~

(c) one of the following:

(i) a bachelor's degree or higher from a regionally accredited institution;

(ii) current enrollment in a university-based Board-approved educator preparation program that will result in a bachelor's degree or higher from a regionally accredited institution; or

(iii) skill certification in a specific CTE area as established by the Superintendent~~[-]; and~~

(d) minimum competencies, as defined by the Superintendent.

(6) The content knowledge requirements for an associate educator license shall include:

(a) for an elementary license area, demonstration of the content competency criteria established by the Superintendent;

(b) for a secondary or CTE license area with a content endorsement, or for an endorsement being added to a professional license area, one of the following:

(i)(A) passage of a content knowledge test approved by the Superintendent, where required; or

(B) demonstration of the competency criteria established by the Superintendent if no content knowledge test is required;

(ii) a bachelor's degree or higher with a major in the content area from a regionally accredited university; or

(iii) enrollment in a program that will result in a degree described in Subsection (6)(b)(ii);

(c) for an early childhood license area, demonstration of the content competency criteria established by the Superintendent; and

(d) for a school leadership license area, enrollment in:

(i) a university-based Board-approved educator preparation program; or

(ii) an educator preparation program administered by the Superintendent.

(7) Notwithstanding, Subsection (5)(c)(ii);~~[-]~~

(a) an applicant for an associate educator license with the following license areas:

(i) special education (K-12);

(ii) pre-school special education;

(iii) deaf education;

(iv) audiologist;

(v) speech-language technician; or

(vi) speech-language pathologist;

(b) shall meet the following requirements for an associate educator license:

(i) demonstrate content knowledge competencies approved by the Superintendent;

(ii) complete a special education law and instruction training approved by the Superintendent;

(iii) earn a bachelor's degree in a field approved by the Superintendent; and

(iv) enroll in a preparation program as provided in Subsection (9).

(8)(a) For a special education or pre-school special education license area, an applicant for an associate educator license shall enroll in a:

(i) Board-approved non-university-based special education preparation program; or

(ii) a special education program at a regionally accredited institution that will yield a NASDTEC Stage 2 educator license.

(b) For a deaf education license area, an applicant shall enroll in a deaf education program at a regionally accredited institution that will yield a NASDTEC Stage 2 educator license.

(c) For a speech-language pathologist license area, an applicant shall enroll in a speech-language pathologist program at a regionally accredited institution of higher education that:

(i) results in a masters degree or higher in speech-language pathology; and

(ii) will yield a NASDTEC Stage 2 educator license.

(d) For a school counselor license area, an applicant shall enroll in a school counselor program at a regionally accredited institution of higher education that:

(i) results in a masters degree or higher in school counseling; and

(ii) will yield a NASDTEC Stage 2 educator license.

(e) For a speech-language technician license area, an applicant shall:

(i) enroll in a speech-language technician program that is:

(A) approved by the Board; or

(B) administered by the Superintendent; or

(ii) complete the requirements of certified speech-language pathology assistant through the American Speech-Language Hearing Association.

(f) For an audiologist license area, an applicant shall enroll in an audiology program at a regionally accredited institution of higher education that will yield a NASDTEC Stage 2 educator license.

(9) Notwithstanding Subsection (5)(c)(ii), an applicant for an associate educator license with a license area in school psychologist or school social worker shall meet the following requirements:

(a) demonstrate content knowledge competencies approved by the Superintendent;

(b) earn a Bachelor's degree; and

(c) complete all requirements for a regionally accredited master's level preparation program, except completion of capstone school-based clinical experience and any co-requisite coursework.

(10) Additional requirements for an associate educator license shall include:

(a) successful completion of professional learning modules created or approved by the Superintendent in:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction;

(iv) the Utah Effective Teaching Standards described in Rule R277-530; or

(b) enrollment in a university-based Board-approved educator preparation program.

(c) Notwithstanding Subsection (11)(a), the Superintendent may waive an individual module, if the module is not necessary given the preparation of an applicant.

(11) An educator that holds a professional license area of concentration and has met the competency criteria established by the Superintendent need not complete the requirements detailed in Subsection (6).

(12) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the associate educator license requirements.

(13) The Superintendent shall designate a panel of at least three Board staff members to review an appeal made under Subsection (12).

(14) An LEA that employs an individual that holds an associate educator license shall develop a personalized professional learning plan designed to support the educator in meeting the requirements for a professional educator license no later than 60 days after beginning work in the classroom, which shall:

(a) be provided to the Superintendent upon request;

(b) include a formal discussion and observation process no later than 30 days after beginning work in the classroom; and

(c) consider:

(i) previous education related experience; and

(ii) previous educational preparation activities.

(15) An educator with an associate educator license may upgrade to a professional educator license at any time before expiration of the associate educator license if the educator meets all requirements of Section R277-301-5.

R277-301-5. Professional Educator License Requirements.

(1) The Superintendent shall issue a professional educator license to an individual that applies for the license and meets all requirements in this Section R277-301-5.

(2) A professional educator license, license area, or endorsement is valid for five years.

(3) The general requirements for a professional educator license shall include:

(a) all general requirements for an associate educator license under Subsection R277-301-5(4);

(b) completion of:

(i) a bachelor's degree or higher from a regionally accredited institution; or

(ii) skill certification in a specific CTE area as established by the Superintendent;

(c) for an individual with an early childhood, elementary, ~~or special education~~, ~~or pre-school special education~~ license area of concentration, completion of a literacy preparation assessment; ~~and~~

(d) for an individual with a pre-school special education license area of concentration, demonstration of emergent literacy competencies, as defined by the Superintendent; and

~~(f)~~ (e) one of the following:

(i) a recommendation from a Board-approved educator preparation program; or

(ii) a standard educator license in the area issued by a licensing jurisdiction outside of Utah that is currently valid or is renewable consistent with Section 53E-6-307.

~~(f)~~ (e) Notwithstanding, Subsection (c), a license applicant in an APPEL program who has an established professional learning plan before August 31, 2022, need not complete a literacy preparation assessment.

(4) The content knowledge requirements for a professional educator license, license area, and endorsement shall include:

(a) all content knowledge requirements for an associate educator license under Subsection R277-301-4(5);

(b) demonstration of all content knowledge competencies as established by the Superintendent; and

(c) passage of a content knowledge test provided by the Superintendent, where required by the Superintendent.

(5) An applicant for a secondary or CTE content area endorsement that holds a bachelor's degree or higher with a major in the content area from a regionally accredited university need not complete the requirement described in Subsection (4)(c).

(6) The pedagogical requirements for professional educator license shall include:

(a) demonstration of all pedagogical competencies as established by the Superintendent; and

(b) when applicable to the license area, passage of a pedagogical performance assessment meeting standards:

(i) established by the Superintendent; and

(ii) approved by the Board.

(7) An individual holding a Utah level 1, level 2, or level 3 educator license on January 1, 2020 meets the pedagogical requirements described in Subsection (6).

(8) An individual holding a Utah level - APT educator license that is employed by a Utah LEA and an individual enrolled in ARL or a university-based Board-approved educator preparation program on January 1, 2020 may meet the content knowledge and pedagogical requirements described in this Section R277-301-6 by completing all requirements of the applicable program.

(9) An individual holding a Utah professional educator license and license area in early childhood education, elementary, secondary, CTE, special education, or deaf education is considered to have met the pedagogical performance assessment requirement of Subsection (5)(b) if applying to add any of the license areas in the subsection.

(10) An individual with an associate license with a speech-language technician license area who completes a school-based clinical experience meeting requirements established by the Superintendent meets the requirements for a professional license.

(11) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval or denial by the Superintendent to satisfy the professional educator license requirements.

(12) The Superintendent shall designate a panel of at least three individuals, including at least two Board licensed educators not employed by the Board, to review an appeal and make a recommendation to the Superintendent for the Superintendent's review and decision described in Subsection (11).

R277-301-6. Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the requirements of this rule.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical performance assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of this rule.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies from an applicant utilized by licensing jurisdictions outside of Utah that are reasonably equivalent to Utah competencies.

(5) An individual with one year of successful experience in a public or accredited private school under a standard license issued by another jurisdiction need not complete the content knowledge and pedagogical assessment requirements in the areas and subjects taught.

(6) An individual holding a standard license from another jurisdiction that was enrolled in a preparation program before January 1, 2020 and received the standard license before August 1, 2021 need not complete the requirements of Subsection R277-301-5(6)(b).

R277-301-7. LEA-specific Educator License Requirements.

(1) The Superintendent may issue an LEA-specific educator license to a candidate if:

- (a) the LEA requesting the LEA-specific educator license has an adopted policy, posted on the LEA's website, which includes:
 - (i) educator preparation and support:
 - (A) as established by the LEA; and
 - (B) aligned with the Utah Effective Teaching Standards described in Rule R277-530;
 - (ii) criteria for employing educators with an LEA-specific license; and
 - (iii) compliance with all requirements of this rule;

(b) an LEA governing board applies on behalf of the candidate;

(c) the candidate meets all the requirements in this Section R277-301-7; and

(d) within the first year of employment, the LEA trains the candidate on:

- (i) educator ethics;
- (ii) classroom management and instruction;
- (iii) basic special education law and instruction; and
- (iv) the Utah Effective Teaching Standards described in

Rule R277-530.

(2) An LEA-specific license, license area, or endorsement is valid only within the requesting LEA for the educator's current assignment.

(3) An LEA-specific license, license area, or endorsement is valid for three years.

(4) An LEA may not issue an LEA-specific license area of concentration to an educator for the following license areas:

- (a) special education;
- (b) pre-school special education;
- (c) deaf education;
- (d) school psychologist;
- (e) school social worker;
- (f) audiologist;
- (g) speech-language technician; ~~[-or]~~
- (h) speech-language pathologist ~~[-]; or~~
- (i) school counselor.

(5) An LEA may not issue an LEA-specific endorsement in drivers education.

(6) An LEA-specific license expires immediately if the educator's employment with the LEA that requested the license ends.

(7) An LEA may request renewal of an LEA-specific license if an educator meets professional learning requirements established by the Superintendent.

(8) The general requirements for an LEA-specific educator license shall include:

- (a) completion of a criminal background check, including:
 - (i) review of any criminal offenses and clearance in accordance with Rule R277-214; and
 - (ii) continued monitoring in accordance with Subsection 53G-11-403(1);

(b) completion of the educator ethics review within one calendar year before the application; and

(c) approval of the request by the LEA governing board in a public meeting no more than 60 days before the application, which includes the LEA's rationale for the request.

(9) The content knowledge and pedagogical requirements for an LEA-specific educator license shall be established by the LEA governing board.

(10) An LEA school that requests an LEA-specific license, license area, or endorsement shall prominently post the following information on each school's website:

- (a) disclosure of the fact that the school employs individuals holding LEA-specific educator licenses, license areas, or endorsements;
- (b) an explanation of the types of licenses issued by the board;
- (c) the percentage of the types of licenses, license areas, and endorsements held by educators employed in the school-based on the employees' FTE as reported to the Superintendent; and
- (d) a link to the Utah Educator Look-up tool provided by the Superintendent in accordance with Subsection R277-312-7(6).

R277-301-8. Eminence.

~~(1) The purpose of an eminence designation is to allow an individual with exceptional training or expertise, consistent with Section R277-301-2, to teach or work in the public schools on a limited basis.~~

~~(2) An LEA may request an eminence designation for an LEA specific license, license area, or endorsement for a teacher whose employment with the LEA is no more than 37% of a teacher's regular instructional load.~~

~~(3)(a) The Superintendent may approve or deny a request under Subsection (2).~~

~~(b) The Superintendent may require documentation of the exceptional training, skills, or expertise of a candidate for an eminence designation.~~

~~(4)(a) The Superintendent may approve or deny the renewal of an LEA specific license, license area, or endorsement with an eminence designation at the request of the LEA that requested the designation.~~

~~(b) Subsection (4)(a) supersedes Subsection R277-301-7(5) for a licensee with an eminence designation.~~

~~(c) If a request for an eminence designation or renewal of an eminence designation is denied by the Superintendent, the LEA may appeal the denial to the Board.~~

]

R277-301-9. Superintendent Annual Report to the Board.

(1) The Superintendent shall annually report to the Board on licensing, including:

- (a) educator licensing;
- (b) educator preparation; and
- (c) equitable distribution of teachers.

(2) The Superintendent shall use a process approved by the Board to:

(a) establish the content knowledge competency requirements required for associate and professional endorsements; and

(b) review, adopt, and establish passing standards for all assessments required for educator licensing.

(3) The Superintendent shall create an ethics review for all licensed educators based upon Rule R277-217, Educator Standards and Local Education Agency (LEA) Reporting.

(4) The Superintendent may correct identified errors in licensing information with notice to the license holder.

R277-301-10. Licensee Enrollment in FBI Rapback.

(1) An individual with an assignment in CACTUS or USIMS shall have a cleared background check an current enrollment in FBI Rapback in accordance with Section 53G-11-403.

(2) Notwithstanding Subsection (1), if an individual cannot enroll in FBI Rapback due to physiological limitations, the educator shall submit fingerprints and complete a new background check every two years.

(3) An LEA may not receive funding for an educator who is not in compliance with this section.

KEY: professional competency, educator licensing

Date of Last Change: 2023|July 15, 2022|

Notice of Continuation: November 5, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-102; 53E-3-401

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-312

Filing ID: 55329

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-312. Online Educator Licensure
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to clarify the length of time that an Online Educator License application will remain active.
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):
These amendments specify that an online application for a license transaction shall remain open for one year, at which time the Superintendent may delete the application if the license transaction is not complete.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This change simply clarifies procedures for unfinished applications.

B) Local governments:			
This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. This rule change only affects the Utah State Board of Education (USBE) and procedures for unfinished licensing applications.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects the USBE.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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):			
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other 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 compliance costs for affected persons. This simply clarifies USBE procedures for unfinished licensing applications.			
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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:		
Article X, Section 3	Subsection 53E-3-501(1)(a)	Subsection 53E-3-401(4)

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:	05/31/2023
9. This rule change MAY become effective on:	
06/07/2023	
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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.**R277-312. Online Educator Licensure.****R277-312-1. Authority and Purpose.**

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators; and
- (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained for online educator license transaction processes.

R277-312-2. Definitions.

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

(2) "License," for purposes of this rule, has the same meaning as described in 29 Subsection 53E-6-102(3).

(3) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent in CACTUS or USIMS.

(4) "License transaction" means the interactions between a license holder or applicant and the Superintendent that may result in issuance of:

- (a) a license;
- (b) a renewal of a license; or
- (c) a modification of a license or license record.

(5) "Online license transaction" means those license transactions that take place through ~~EdUconnect~~ CACTUS or USIMS.

(6)(a) "USIMS" or "Utah Schools Information Management System" means a comprehensive tool maintained by the Superintendent for collecting, processing, providing oversight, and reporting on education data for the state.

(b) USIMS is the successor to the CACTUS database, which maintains data on educator licenses and license applications, which may include:

- (i) personal directory information;
- (ii) educational background;
- (iii) endorsements;
- (iv) employment history;
- (v) professional development information;
- (vi) evidence of criminal background checks; and
- (vii) a record of disciplinary action taken by the Board against the educator.

(c) Information contained in an individual's license record may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.

(7) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.

R277-312-3. Procedures.

(1) Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to any license transaction, regardless of whether the transactions occur online or by other means.

(2)(a) Educators may receive an electronic or paper verification of a licensure transaction.

(b) A verification provided under Subsection (2)(a) is not an educator license.

(3) USIMSs shall be the final repository of educator information and credentials for LEAs and other authorized USIMS users.

(4) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other widespread online processes.

(5) The Superintendent shall conduct educator licensing transactions electronically.

(6) An online application for a license transaction shall remain open for one year, at which time the Superintendent may delete the application if the license transaction is not complete.

([6]7) Approved Utah educator preparation institutions, LEAs, and other CACTUS and USIMS users shall cooperate with the Superintendent by using the online tools and procedures provided by the Superintendent for transmission of information related to licensing.

([7]8)(a) An LEA shall maintain accurate records in CACTUS and USIMS.

(b) An LEA shall update the license record of a licensee with a change in employment status within two weeks of the change of status.

([8]9) The Superintendent may suspend access to CACTUS or USIMS for any user found negligent in maintaining accurate records until the user completes additional training.

R277-312-4. Monitoring by the Superintendent.

(1) The Superintendent shall establish a monitoring program that provides for review of online licensure transactions for:

- (a) accuracy;
- (b) reliability; and
- (c) completeness.

(2) The Superintendent may subject any licensure transaction to monitoring:

- (a) within one year without cause; or
- (b) at any time with cause.

(3) An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

(4)(a) Monitoring conducted under Subsection (2) may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction.

(b) In order to verify that the assertions made by a license holder were accurate, a license holder may be required to submit:

- (i) transcripts;
- (ii) records of participation in professional development activities;
- (iii) supervisor letters or endorsements; and
- (iv) other documentation requested by the Superintendent.

(5) If the Superintendent finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the Superintendent shall forward the information to UPPAC.

(6) The Superintendent may void a license transaction that was completed on the basis of inaccurate information at any time with notice to the license holder.

R277-312-5. License Applicant and License Holder Responsibilities.

(1) A license applicant or license holder shall supply accurate and complete information in all license transactions.

(2) A license applicant or license holder shall maintain files and documentation of the information provided in a license transaction for a period of one year after the completion of the license transaction.

(3) A license applicant or license holder that intentionally supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by UPPAC and the Board, consistent with Rule R277-215.

R277-312-6. Licensing Costs.

(1) The Superintendent shall maintain an automated and self-sustaining licensing process.

(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public, to the extent funds are available.

(3) The Superintendent shall maintain accurate records and documentation of:

- (a) the costs of online licensing; and
- (b) the costs of any Superintendent review responsibilities.

R277-312-7. Licensing Records.

(1) The Superintendent shall record documentation of online licensure transactions in CACTUS or USIMS.

(2)(a) A license applicant shall submit a social security number as part of the license application process.

(b) A license applicant's social security number shall be classified as private in accordance with Subsection 63G-2-302(2)(d).

(3) A license applicant or license holder shall update personal information in the educator's licensing record in a timely manner.

(4) The Superintendent may use licensing data for research and other valid educational purposes, consistent with Board data release policies.

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:

- (a) licenses issued by the Board;
- (b) endorsements on an educator's license;
- (c) an educator's current assignment;
- (d) an educator's assignment history in Utah public schools;
- (e) an educator's education background;
- (f) Board disciplinary action against an educator's license, which resulted in:
 - (i) a reprimand;
 - (ii) a suspension;
 - (iii) a revocation; or

- (iv) license reinstatement; and
- (g) an educator's voluntary surrender under Rule R277-216.

(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure

Date of Last Change: 2023[June 7, 2022]

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a); 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R277-492	Filing ID: 55330
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Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-492. Math and Science Opportunities for Students and Teachers (MOST) Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being repealed because legislative funding has been discontinued.
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:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. Legislative appropriations to the program have been discontinued.

B) Local governments:

This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. LEAs are aware that the legislature has discontinued the funding.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects the Utah State Board of Education (USBE).

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other 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 compliance costs for affected persons. The funding has been discontinued by the legislature so this rule no longer applies.

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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:**

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-2-505
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.

~~R277-492. Math and Science Opportunities for Students and Teachers (MOST) Program.~~

~~R277-492-1. Authority and Purpose.~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board;~~
 - ~~(b) Subsection 53E-3-401(4), which permits the Board to adopt rules to carry out its duties and responsibilities under the Utah Constitution and state law; and~~
 - ~~(c) Section 53F-2-505, which provides for funding to establish extended contracts for participating educators as part of the Math and Science Opportunities for Students and Teachers (MOST) program.~~
- ~~(2) The purpose of this rule is to establish:~~
 - ~~(a) conditions for the Superintendent to manage the MOST program;~~
 - ~~(b) standards and procedures for an LEA to submit a proposal for MOST funding to develop and create MOST programs to enhance the LEA's ability to retain participating educators, offer more opportunities for students, and use capital facilities more effectively; and~~
 - ~~(c) requirements associated with receiving MOST funding for a recipient LEA.~~

~~R277-492-2. Definitions.~~

- ~~(1) "LEA MOST proposal" means a written proposal, including components required by the Board, developed and submitted by an LEA applying for MOST funding.~~
- ~~(2) "MOST Program" means the grant program created in Section 53F-2-505.~~
- ~~(3) "Participating educator" means an educator who is qualified to teach mathematics or science in grades 7-12.~~
- ~~(4) "Regional Education Service Agency" or "RESA" means the same as that term is defined in Section 53G-4-410.~~
- ~~(5) "RESA MOST Proposal" means a written proposal, including components required by the Board, developed and submitted by a RESA applying for MOST base funds.~~

~~R277-492-3. MOST Proposal Criteria.~~

- ~~(1) An LEA MOST proposal shall include:~~
 - ~~(a) a description of the programming the LEA intends to use MOST funds for;~~
 - ~~(b) a description of the challenges the LEA's proposed programming is intended to solve;~~

~~(c) the intended benefits of the proposed MOST program, which shall align with the benefits described in Subsection 53F-2-505(2)(b);~~

~~(d) an evaluation methodology for determining the efficacy of the program in meeting the intended benefits;~~

~~(e) a signed statement of assurances, expressing the LEA's intent to adhere to MOST program statutory requirements; and~~

~~(f) additional information as requested by the Superintendent.~~

~~(2) During each grant cycle, the Superintendent shall allocate a base amount of funds to participating RESAs to achieve their proposed benefits on a regional scale.~~

~~(3) A RESA MOST proposal shall include:~~

~~(a) a description of the programming the RESA intends to use MOST funds for;~~

~~(b) a description of the challenges the RESA's proposed programming is intended to solve;~~

~~(c) the intended benefits of the proposed MOST program, which shall align with the benefits described in Subsection 53F-2-505(2)(b);~~

~~(d) an evaluation methodology for determining the efficacy of the program in meeting the intended benefits;~~

~~(e) a signed statement of assurances, expressing the RESA's intent to adhere to MOST program statutory requirements; and~~

~~(f) additional information as requested by the Superintendent.~~

~~R277-492-4. Superintendent Responsibilities.~~

~~(1) Subject to legislative appropriations, the Superintendent shall provide statewide supervision of the MOST program and budget, based on MOST intended benefits, and Board funding priorities.~~

~~(2) The Superintendent shall solicit proposals from LEAs and RESAs to participate in the MOST grant program.~~

~~(3)(a) In order to qualify for funding, an LEA or RESA shall submit a proposal to the Superintendent consistent with timelines established by the Superintendent.~~

~~(b) The Superintendent shall work with applicants that submit proposals early to improve proposals, to the extent of resource and time availability.~~

~~(4) The Superintendent shall receive all MOST proposals and rank them on an objective scale or rubric prepared by the Superintendent.~~

~~(5) The Superintendent may appoint a review panel, including representatives from Board staff and LEAs, to prioritize proposals and recommend proposals for funding.~~

~~(6) The review panel, the Superintendent, or both, shall consider the the unique circumstances of different rural, urban, large, small, growing and declining LEAs in recommending funding recipients.~~

~~(7) The Superintendent shall review recommendations, make final recommendations to the Board for funding, and notify applicants that they will receive funding no later than July 31 annually.~~

~~(8) The Superintendent shall provide funds to LEAs and RESAs consistent with Board distribution practices for grants.~~

~~R277-492-5. Final Decision-making and Reporting Requirements.~~

~~(1) The Board's decisions for MOST program funding are final.~~

~~(2)(a) A grant recipient shall provide requested data or information related to its MOST programming to the Superintendent each year by June 30.~~

~~(b) The Superintendent may request additional information if annual reports or student assessments indicate that MOST funding is being used ineffectively, for ineligible employees, or inconsistent with the proposal or the intent of the law or this rule.~~

~~(3) The Superintendent may interrupt MOST funding to LEAs or RESAs that do not meet the timelines or do not provide complete information or evaluations required under this rule.~~

KEY: science, technology, research, MOST

Date of Last Change: November 9, 2020

Notice of Continuation: July 13, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-505]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-609	Filing ID: 55331
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Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to Incorporate by Reference the updated Least Restricted Behavioral Interventions (LRBI) Technical Assistance 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):

The LRBI Technical Assistance Manual dated September 2015 has been updated to the 2023 Edition. In addition, an updated website link is provided.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The updated LRBI manual and link are included. Otherwise, there are no added costs to the Utah State Board of Education (USB).

B) Local governments:

This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. The changes to the LRBI manual update and reflect current practice and do not add costs for local education agencies (LEAs).

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects USB.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other entities. It simply updates the LRBI manual.

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 affected persons. The changes to the LRBI manual do not add costs for USBE or LEAs.

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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(b) (v)
Section 53E-3-509	Section 53G-8-202	Section 53G-8-702
Section 53G-8-302		

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)	Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual
Publisher	Utah State Board of Education
Issue Date	2023 Edition

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:	05/31/2023

9. This rule change MAY become effective on:	06/07/2023
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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.

R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.

R277-609-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (c) Subsection 53E-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control;
 - (d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers;

(f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards; and

(g) Section 53G-8-302, which describes the instances when a school employee may use reasonable and necessary physical restraint.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans, restorative practices, and related policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

- (a) imposed discipline; and
- (b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53G-8-205; and

(b) the conduct described in Subsection 53G-8-209(2)(b).

(3) "Electronic cigarette product" has the same meaning as that term is defined in Section 76-10-101.

(4)(a) "Emergency safety intervention" or "ESI" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(5) "Emergency safety intervention committee" or "ESI Committee" means an emergency safety intervention committee described in Section R277-609-7.

(6) "Evidence-based" means the same as defined in Section 53G-8-211.

(7) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(8) "Harassment and discrimination free learning" means a learning environment in which a student is treated fairly regardless of the student's characteristics including race, color, religion or sex, and in which a student's ability to participate in or benefit from the services, activities, or opportunities offered is not limited or interfered with by conduct that is physically threatening, harmful, or humiliating.

(9) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(10) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

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

(12) "Physical restraint" has the same meaning as the defined in Section 53G-8-301.

(13) "Plan" means an LEA and school-wide written model for prevention and intervention addressing:

- (a) student behavior management;
- (b) restorative practices;

(c) harassment and discrimination free learning; and

(d) discipline procedures for students.

(14) "Positive behavior interventions and support" means an implementation framework for maximizing the selection and use of evidence-based prevention practices along a multi-tiered continuum that supports the academic, social, emotional, and behavioral competence of a student.

(15) "Program" means an instructional or behavioral program including:

(a) contracted services offered by private providers under the direct supervision of public school staff;

(b) a program that receives public funding; or

(c) a program for which the Board has regulatory authority.

(16) "Policy" means standards and procedures that include:

(a) Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires training regarding:

(A) the prevention of hazing, bullying, cyber-bullying, and discipline among school employees and students; and

(B) the use of restorative practices, positive behavior interventions and supports, and emergency safety interventions;

(iv) provides for enforcement through employment action or student discipline;

(v) are informed and updated by data obtained by any regular safety or health related survey including a school's climate survey as described in Rule R277-623; and

(vi) other appropriate measurements.

(17) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(18) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(19) "Restorative practice" means the building and sustaining of relationships among students, school personnel, families and community members to build and strengthen social connections within communities and hold individuals accountable to restore relationships when harm has occurred.

(20) "School" means any public elementary or secondary school or charter school.

(21) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(22) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(23) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(24) "Self-Discipline" means developing the ability to take personal responsibility for one's actions.

(25) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, [~~dated September 2015~~2023 Edition, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a)

[<https://www.schools.utah.gov/safehealthyschools/programs/behavior-support?mid=5333&tid=2>]<https://www.schools.utah.gov/administrativerules/documentsincorporated>; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, school discipline, and restorative practices.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) An LEA shall include as part of the plan, parental outreach and education regarding the plan and how it can provide a discrimination and harassment free environment, through strategies promoting positive engagement between staff, students, and parents.

(4) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) social emotional skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) consistent processes to collect student discipline data and incident or infraction data, including collection of the number of days of student suspensions and data collected from the school's climate survey as described in Rule R277-623;

(g) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(h) an ongoing staff development program related to development of:

(i) student behavior expectations;

(ii) effective instructional practices for teaching and reinforcing behavior expectations;

(iii) effective intervention strategies; and

(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(i) procedures for ongoing training of appropriate school personnel in:

(i) crisis management;

(ii) emergency safety interventions; and

(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;

(j) policies and procedures relating to the use and abuse of alcohol, controlled substances, electronic cigarette products, and other harmful trends by students;

(k) policies and procedures for responding to possession or use of electronic cigarette products by a student on school property as required by Subsection 53G-8-203(3);

(k) policies and procedures, consistent with requirements of Rule R277-613, related to:

(i) bullying;

(ii) cyber-bullying;

(iv) hazing; and

(v) retaliation;

(l) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

(ii) prone, or face-down, physical restraint;

(iii) supine, or face-up, physical restraint;

(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

(A) protective or stabilizing restraints;

(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention, based on data analysis has been written into the plan and implemented;

(m) direction for dealing with bullying and disruptive students;

(n) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

- (o) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;
- (p) identification of individuals who shall receive notices of disruptive and bullying student behavior;
- (q) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor before referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;
- (r) strategies to provide for necessary adult supervision;
- (s) a requirement that policies be clearly written and consistently enforced;
- (t) notice to employees that violation of this rule may result in employee discipline or action;
- (u) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);
- (v) provisions that account for an individual LEA's or school's unique needs or circumstances, including:
 - (i) the role of law enforcement;
 - (ii) emergency medical services; and
 - (iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and
 - (iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:
 - (A) a mobile crisis outreach team, as defined in Section 80-1-102;
 - (B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 80-5-102;
 - (C) a youth court; or
 - (w) a comparable restorative justice program.
- (4) A plan described in Subsection (1) may include:
 - (a) Subsection 53E-3-509(2); and
 - (b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

- (1) When used consistently with an LEA plan under Subsection R277-609-4(1):
 - (a) a physical restraint must be immediately terminated when:
 - (i) a student is no longer an immediate danger to self or others; or
 - (ii) a student is in severe distress; and
 - (b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.
 - (2) If a public education employee physically restrains a student, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school as described in Section R277-609-10 to the student's parent.
 - (3) A public education employee may not use physical restraint on a student for more than the shortest of the following before stopping, releasing, and reassessing the intervention used:
 - (a) the amount of time described in the LEA's emergency intervention training program;
 - (b) 30 minutes; or
 - (c) when law enforcement arrives.
 - (4) A public education employee may not use physical restraint as a means of discipline or punishment.
 - (5) If a public education employee uses seclusionary time out, the public education employee shall:
 - (a) use the minimum time necessary to ensure safety;
 - (b) use release criteria as outlined in LEA policies;
 - (c) ensure that any door remains unlocked consistent with the fire and public safety requirements described in Rules R392-200 and R710-4;
 - (d) maintain the student within line of sight of the public education employee;
 - (e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and
 - (f) ensure that the enclosed area meets the fire and public safety requirements described in Rules R392-200 and R710-4.
- (6) If a student is placed in seclusionary time out, the school or the public education employee shall provide notice as soon as reasonably possible and before the student leaves the school to:
 - (a) the student's parent; and
 - (b) school administration.
- (7) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.
- (8) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than 15 minutes, the school or the public education employee shall immediately provide notice to:
 - (a) the student's parent or guardian; and
 - (b) school administration.
- (9) Seclusionary time out may only be used for maintaining safety.
- (10) A public education employee may not use seclusionary time out as a means of discipline or punishment.

- (a) use the minimum time necessary to ensure safety;
- (b) use release criteria as outlined in LEA policies;
- (c) ensure that any door remains unlocked consistent with the fire and public safety requirements described in Rules R392-200 and R710-4;
- (d) maintain the student within line of sight of the public education employee;
- (e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and
- (f) ensure that the enclosed area meets the fire and public safety requirements described in Rules R392-200 and R710-4.

R277-609-6. Implementation.

- (1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.
- (2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs before suspension or court referral.
- (3) An LEA shall implement positive behavior interventions, supports, and restorative practices as part of the LEA's continuum of behavior interventions strategies.

R277-609-7. LEA Emergency Safety Intervention (ESI) Committees.

- (1) An LEA shall establish an Emergency Safety Intervention (ESI) Committee.
- (2) An LEA's ESI Committee:
 - (a) shall include:
 - (i) at least two administrators;
 - (ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and
 - (iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;
 - (b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;
 - (c) shall determine and recommend professional development needs; and
 - (d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions; and

(e) shall ensure that each emergency incident where a school employee uses an emergency safety intervention is documented in the LEA's student information system and reported to the Superintendent through the Board's Utah Transcript and Record Exchange (UTREx) system.

R277-609-8. LEA Reporting.

(1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

(2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).

(3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

(4)(a) An LEA shall submit all required UTREx discipline data and incident or infraction data elements, and suspensions to the Superintendent no later than June 30 of each year.

(b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline data and incident or infraction data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exceptions to this Rule.

(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

(2) The Superintendent shall periodically review:

(a) all LEA special education behavior intervention, procedures, and manuals; and

(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent Notification and Court Referral.

(1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

(2) An LEA shall establish policies that:

(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:

(i) numbers of disruptions, suspensions, and timelines in accordance with Section 53G-8-210;

(ii) school resources available;

(iii) cooperation from the appropriate juvenile court in accessing student school records, including:

(A) attendance;

(B) grades;

(C) behavioral reports; and

(D) other available student school data; and

(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

(3)(a) When an emergency safety intervention is used to protect a student or others from harm, a school shall:

(i) provide notice to the student's parent as soon as reasonably possibly and before the student leaves the school;

(ii) provide notice to school administration; and

(iii) provide documentation of the emergency safety intervention to the LEA's ESI Committee described in Section R277-609-7.

(b) In addition to the notice described in Subsection (3)(a), if the use of an emergency safety intervention occurs for more than 15 minutes, the school shall immediately provide a second notification to:

(i) the student's parent or guardian; and

(ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during the use of the emergency safety intervention upon request of the parent or guardian.

(b) Within 24 hours of the school using an emergency safety intervention with a student, a school shall provide notice to a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during the use of the emergency safety intervention.

(c) A parent or guardian may request a time to meet with school staff and administration to discuss the use of an emergency safety intervention.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

Date of Last Change: ~~February 8,~~ 2023

Notice of Continuation: November 14, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(b)(v); 53E-3-509; 53G-8-202; 53G-8-702; 53G-8-302

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R277-800

Filing ID:
55332

Agency Information

1. Department: Education

Agency: Administration

Building: Board of Education

Street address: 250 E 500 S

City, state and zip: Salt Lake City, UT 84111

Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-800. Utah Schools for the Deaf and the Blind
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended to update provisions regarding the Utah State Instructional Materials Access Center (USIMAC) and remove outdate language on the Utah Schools for the Deaf and the Blind (USDB) Advisory Council.
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):
These amendments remove outdated language regarding the USDB Advisory Council and update processes for USIMAC.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The rule change gives flexibility to the USDB to use the USDB advisory council to fulfill the role of a school community council and does not add costs for USBE or USDB.
B) Local governments:
This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. This rule change only affects USDB.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule change only affects USBE.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other 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 compliance costs for affected persons. The changes simply allow USDB advisory council to act as the school community council.

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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-8-204
Section 53E-8-402	Section 53E-8-409	

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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.

R277-800. Utah Schools for the Deaf and the Blind.

R277-800-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53E-8-204 which authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind;

(c) Section 53E-8-402, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB;

(d) Section 53E-8-409, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources; and

(e) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

R277-800-2. Definitions.

(1) "Accessible media producer" means a company or agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:

- (a) Braille;
- (b) large print;
- (c) audio books; or
- (d) digital books.

(2)(a) "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing.

(b) An assessment may include the following areas of focus:

(i) a valid, reliable and appropriate assessment given to determine eligibility for placement and services by a team of qualified professionals and a student's parent or guardian;

(ii) a functional assessment accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and

(iii) academic evaluations as part of the Statewide School Accountability System, including an alternate assessment with appropriate accommodations as indicated on a student's IEP.

(3)(a) "Campus-based program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) Under a campus-based program, services are provided by qualified USDB staff at a USDB site.

(4)(a) "The Chafee Amendment to the Copyright Act" or the "Chafee Amendment" is a federal law, 17 U.S.C. 121, that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner.

(b) Authorized entities under the Chafee Amendment include governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

(5) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

(6) "Consultation" means a meeting for discussion or seeking advice.

(7) "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding

individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the IDEA.

(8) "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(9) "Deafness" is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

(10) "Educational Resource Center" or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum; and

(b) facilitates access to materials, information, and training for teachers and parents of children who are deaf, hard of hearing, blind, visually impaired, and deafblind.

(11) "Extension classroom" means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA's general education programs.

(12) "Hearing loss" is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance, but that is not included under the definition of deafness.

(13) "National Instructional Materials Access Center" or "NIMAC" is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalog[æ], and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

(14) "National Instructional Materials Accessibility Standard" or "NIMAS" means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

(15)(a) "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind.

(b) In an outreach program, services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

(16)(a) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with disability to benefit from special education.

(b) Related services may include:

- (i) speech-language pathology services;
- (ii) audiology services;
- (iii) interpreting services;
- (iv) psychological services;
- (v) physical and occupational therapy;
- (vi) recreation, including therapeutic recreation;
- (vii) early identification and assessment of disabilities in students;

(viii) counseling services, including rehabilitation counseling;

- (ix) orientation and mobility services;
- (x) health services and school nursing services;
- (xi) social work services in schools;
- (xii) parent counseling and training; or
- (xi) low vision services.

(17) "Section 504 accommodation plan" means a plan required by Section 504 of the Rehabilitation Act of 1973, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(18) "Technical assistance" means assistance to public education employees, licensed educators, parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

(19) "Utah State Instructional Materials Access Center" or "USIMAC" means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

(20)(a) "Visual impairment," is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) "Visual impairment" includes both partial sight and blindness that adversely affect a student's educational performance.

(21) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-800-3. Operation of USDB.

(1) Consistent with Section 53E-8-204, the Board is the governing board of the USDB.

(2) The USDB superintendent, appointed consistent with Subsection 53E-8-204(2), is subject to the direction of the Board and the Superintendent.

(3) The USDB superintendent shall serve subject to the following:

- (a) the USDB superintendent's term of office is for two years and until a successor is appointed;
- (b) the Board shall set the USDB superintendent's compensation for services;
- (c) the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board;
- (d) the USDB superintendent qualifications shall be established by the Board; and
- (e) the duties of the USDB superintendent shall be established by the Board.

(4) The Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

(5) The Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

(6) The Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(7) The Board shall approve the annual budget and expenditures of USDB.

(8)(a) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind.

(b) Qualifications of a USDB associate superintendent shall be aligned with the requirements of Section 53E-8-204.

(9)(a) The USDB superintendent and associate superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed for their specific assignments.

(10) In employment practices and decisions, the USDB superintendent shall maintain the accreditation of the USDB school and programs.

(11) The USDB superintendent and associate superintendents shall communicate regularly and effectively with the Board and provide a written report to the Board at least annually in adequate time ~~[prior to]~~before the November legislative interim meeting, or at such other time as requested by the Board.

(12) The USDB report shall include the data required by Subsection 53E-8-204(6).

(13) USDB shall ensure that each child or student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(14) USDB shall provide the Superintendent with a listing of past and current children or students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

(15) The USDB Advisory Council shall fulfill the role of a school community council in accordance with Section R277-477-3.

[R277-800-4. USDB Community Council.

~~(1) The USDB shall establish a community council to operate in a comparable manner to a school community council under Section 53G-7-1202 through 53G-7-1203 and Rule R277-491.~~

~~(2) The USDB school community council and election process shall be the same as for a district school in Section 53G-7-1202 and Rule R277-491.~~

~~(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students.]~~

R277-800-[5]4. USDB or Student's District of Residence/Charter School as Designated LEA.

(1) To be eligible to receive free services from the USDB, a student must meet the requirements of Section 53E-8-401.

(2)(a) A student's IEP or Section 504 accommodation plan shall determine a student's placement at the USDB, in a district school or charter school.

(b) USDB shall limit its services for students who are school-age to those on an IEP or Section 504 accommodation plan.

(3) Consistent with Subsection 53E-8-401(3), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf, or deafblind student consistent with Board Special Education Rules incorporated by reference in Section R277-750-2.

(4)(a) It is the responsibility of the student's district of residence or charter school to conduct Child Find, and to convene the initial IEP or Section 504 team meeting ~~[in order]~~to determine a student's placement.

(b) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(5)(a) If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

(6) If a district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB:

(a) may be designated by the team as a related service provider; and

(b) remains a required member of the student's IEP or 504 accommodation plan team.

(7) A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by a related service provider.

(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

(9) If a parent is dissatisfied with a student's placement at USDB, the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2

(10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, adopted by the Board in Section R277-750-2.

R277-800-[6]5. Assessment of USDB Students Served in LEAs of Residence.

(1) An appropriate specialist shall assess a student who may be deaf, hard of hearing, blind, visually impaired, or deafblind using statewide assessment results and in compliance with Board rule and state and federal law.

(2) The USDB shall establish an assessment policy and guidelines to implement required assessments, which address:

(a) appropriate, complete, and timely evaluations of students;

(b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;

(c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;

(d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and

(e) procedures to ensure appropriate interpretation and use of assessments and results for parents and USDB personnel.

R277-800-[7]6. Extension Classrooms.

(1) The USDB and an LEA may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in extension classrooms in locations other than the USDB campus.

(2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA shall provide:

- (a) classrooms;
- (b) basic instructional materials;
- (c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;
- (d) administrative support;
- (e) basic secretarial services;
- (f) special education and related services; and
- (g) IT support.

(3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the USDB shall provide:

- (a) classroom instructors, including aides; and
- (b) instructional materials specific to the disability of the students.

(4) An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA and the USDB.

(5) An LEA shall claim the state WPU if the LEA provides all items or services identified in Subsection (2).

R277-800-[8]7. USDB Fiscal Procedures.

(1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

(2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53E-8-203(3).

(3) The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53E-8-203.

(4)(a) The USDB shall prepare and present an annual budget to the Board that includes no more than a [five percent] 5% carryover of any one fund, including reimbursement funds from federal programs.

(b) The five percent carryover prohibition does not apply to funds received under Section 53F-2-404 and Section 12 of the Utah Enabling Act.

(5)(a) The Superintendent shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year.

(b) The Superintendent shall identify reimbursement amounts in the current year's budget, but in no event later than the subsequent year's budget.

(6)(a) The USDB shall use the revenue from the federal trust land grant designated for the benefit of the blind and the deaf, solely for the benefit of deaf, blind, and deafblind students.

(b) The recommended or designated use of federal trust land funds is subject to review by the Board.

R277-800-[9]8. Utah State Instructional Materials Access Center.

(1) ~~[The—]~~USIMAC shall produce core [instructional]educational materials, including print and digital textbooks and related core materials, in [alternative]accessible formats to ensure that all students [with print disabilities qualified]eligible under the Chafee Amendment receive their materials in a timely manner.

~~—(2) The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.]~~

~~[(3)]2~~ The Superintendent shall oversee the operations of the USIMAC.

~~[(4)]3~~ The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from ~~[the Utah Legislature and the Board]~~budgetary appropriations.

~~[(5)]4~~ An LEA may purchase or provide accessible [instructional]educational materials from another source using the LEA's own funding or request the production of accessible [instructional]educational materials in [alternate]accessible formats from~~—the~~ USIMAC in accordance with established~~—opt in~~ procedures to ensure timely access for eligible students~~—with print disabilities~~.

~~[(6)]5(a)~~ USIMAC shall provide a textbook and related core educational materials in an [alternate]accessible format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA.

~~(b) Notwithstanding Subsection (5)(a), if an LEA requests educational materials in braille, USIMAC will provide the first three volumes of a textbook by the beginning of the school year, and will provide additional volumes ahead of the pacing guide submitted by the LEA.~~

~~[(7)]6~~ The USDB ~~[ERC]~~Educational Resource Center shall serve as the repository and distribution center for~~—the~~ USIMAC.

~~[(8)]7~~ A student ~~[qualifies]~~is eligible for accessible [instructional]educational materials from—the USIMAC, including Braille, audio, large print, or ~~[digital formats]~~accessible PDFs, following an LEA determination that the student ~~[has a print disability]~~is eligible in accordance with:

- (a) the Chafee Amendment;
- (b) IDEA; or
- (c) Section 504 of the Rehabilitation Act.

~~[(2)]8(a)]~~ An LEA may request textbooks consisting of static text and images for [blind, vision impaired or deafblind]eligible students served by the USDB or the LEA consistent with a student's IEP or Section 504 accommodation plan.

~~—(b)(i) When an LEA requests a core instructional textbook the USIMAC shall conduct a search for the textbook within existing resources, and if the textbook is available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.~~

~~—(ii) If a textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.~~

~~—(iii) If a textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook using state acquired federal funds designated specifically for USIMAC materials and send the textbook to the ERC for distribution to the LEA.~~

~~—(iv) If a textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.~~

~~—(v) If a textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC, which shall then produce the textbook and send it to the ERC for distribution.]~~

(9) When an LEA requests a core instructional textbook, USIMAC may:

(a) provide the textbook to the LEA from its existing inventory;

(b) purchase the textbook and provide the textbook to the LEA from another source, which may include;

(i) the American Printing House for the Blind using state acquired federal funds designated specifically for USIMAC materials; or

(ii) another accessible media producer; or

(c)(i) provide a regular hard print copy of the textbook, or equivalent digital file in PDF format for digital print textbooks; and

(ii) produce and distribute the textbook in the needed accessible format.

(10)(a) An LEA or publisher shall send hard copy and digital textbooks and related core educational materials adopted by the LEA to the NIMAC in a valid XML-based NIMAS format for use in the production of accessible formats such as braille, large print, and digital text.

(b)(i) Teacher-created educational materials, other than textbooks and related educational materials approved by an LEA, are not eligible for submission to USIMAC.

(ii) An LEA is responsible to make materials described in Subsection (b)(i) accessible and to provide the materials to students in a timely manner.

([3]11)(a) All approved textbook and digital textbook contracts for the state of Utah for [instructional]educational materials, textbooks, and related core printed materials [published after August 2006] shall include a provision for making NIMAS file sets available through the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines.

(b) If ~~[the]~~USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and Board Instructional Materials Contract timelines, ~~[the]~~USIMAC may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without the benefit of the NIMAS file set; or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise publishers of the provisions of this Subsection (~~[3]~~11).

(d) The Utah Instructional Materials Commission created under Rule R277-469 may not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

([4]12)(a) An LEA may request and access audio books through ~~[the]~~USIMAC, as appropriate, or through other sources.

(b) Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

[R277-800-10. Effective Date.

~~This rule is effective July 1, 2021.]~~

KEY: educational administration

Date of Last Change: 2023[March 11, 2021]

Notice of Continuation: August 19, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-8-204; 53E-8-402; 53E-8-409

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-926

Filing ID: 55333

Agency Information

1. Department: Education

Agency: Administration

Building: Board of Education

Street address: 250 E 500 S

City, state and zip: Salt Lake City, Utah 84111

Mailing address: PO Box 144200

City, state and zip: Salt Lake City, Utah 84114-4200

Contact persons:

Name:

Phone:

Email:

Angie Stallings

801-538-7830

angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-926. Certification of Residential Treatment Center Special Education Program

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

This rule is being amended to require Residential Treatment Centers (RTCs) to notify the Superintendent if staff receive criminal charges or when law enforcement respond to the RTC to investigate health or safety concerns.

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):

These amendments specifically add a requirement pertaining to Certification Maintenance and General Monitoring, whereby an RTC is required to notify the Superintendent within 48 hours if: a) any staff member is charged with a felony or misdemeanor, other than a Class C violation of Title 41, Motor Vehicles; or b) a law enforcement agency or the Division of Child and Family Services initiates an investigation regarding a student health or safety concern.

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

This rule change is not expected to have fiscal impact on state government revenues or expenditures. These rule changes require residential treatment centers to notify the Utah State Board of Education (USBE) within 48 hours of staff criminal charges or student safety concerns. USBE does not anticipate any added costs associated with receiving the reports.

B) Local governments:

This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. This rule change only affects USBE and residential treatment centers.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. USBE does not anticipate major added costs for the residential treatment centers to notify USBE, staff charges, or student safety concerns.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for 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**):

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This does not add costs for any individuals or other 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 compliance costs for affected persons. USBE does not anticipate measurable increased costs for

residential treatment centers to make reports if staff are charged criminally or there are student safety concerns.

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 State Superintendent of the Utah State Board of Education, Sydnee Dickson, 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:**

Article X, Section 3	Subsection 53E-3-401(4)	
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Angie Stallings, Deputy Superintendent of Policy	Date:	04/14/2023
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R277. Education, Administration.

R277-926. Certification of Residential Treatment Center Special Education Program.

R277-926-1. Authority and Purpose.

(1) This rule is authorized by:

- (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; and
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and State of Utah law.

(2) The purpose of this rule is to provide a certification process and procedure for residential treatment centers where IEP teams place an in-state or out-of-state special education students for purposes of receiving a free and appropriate public education.

R277-926-2. Definitions.

(1) "Nonsectarian" means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility.

(2)(a) "Residential Treatment Center" or "RTC" means a private, or nonsectarian establishment that provides related services necessary for a student with special needs to benefit educationally from the student's IEP.

(b) "Residential Treatment Center" or "RTC" does not include an organization or agency that operates as a public agency or offers public service, including:

- (i) a state or local agency;
- (ii) an affiliate of a state or local agency including:

(A) a private, nonprofit corporation established or operated by a state or local agency;

- (B) a public university or college; or
- (C) a public hospital.

(3) "Qualified personnel" means an in-classroom staff member who:

- (a) provides assistance with a student's education;
- (b) has met requirements for federal and state certification and licensing requirements that apply to the area in which the staff

member is providing services, including board approved or Utah Department of Professional Licensing requirements; and

(c) actively adheres to the standards of professional practice established in federal and State of Utah law or regulation.

R277-926-3. Certification of a Residential Treatment Center.

(1) An RTC shall have the RTC's special needs program certified by the Superintendent before providing services for a free and appropriate public education to in-state or out-of-state students with special education needs and a current IEP from an LEA.

(2) An RTC seeking certification shall apply for an initial or renewal certification in a form prescribed by the Superintendent.

(3) An RTC's application shall include:

(a) a detailed description of the RTC's general and special education program provided, including:

(i) minimum instructional minutes for each grade level served;

(ii) specially designed instruction and related services;

(iii) evidence of age appropriate core curriculum that aligns with the Utah core standards or aligns with the core standards of the student's state of origin;

(iv) for grades K-8, evidence showing the use of at least one resource, including a textbook or curricular program, adopted by the student's state of origin or Utah for each core standard subject;

(v) for grades 9-12, evidence showing alignment of curriculum for core standard subjects with an LEA's curriculum in Utah or the student's state of origin;

(b) evidence, including educator licenses of qualified personnel for each subject area including:

(i) English language arts;

(ii) Math;

(iii) Science;

(iv) Special Education; and

(v) Related services.

(c) documentation of training implementation and supervision in a special education program of paraprofessionals as described by the Special Education Rules Manual incorporated by reference in Rule R277-750;

(d) an assurance that each student, aged 14 years and above, has a transition plan as described in Subsection R277-926-4(3)(b);

(e) evidence that an RTC is collaborating with a student's LEA of origin's fully constituted IEP team to:

(i) carry out the specific requirements of the student's IEP, including the general requirements described in Subsection R277-926-4(3)(b);

(ii) facilitate an annual IEP review; and

(iii) when necessary, participate in the student's triennial evaluation, including:

(A) an outlined process for the evaluation;

(B) the ability to allow on-site accessibility to third parties required for evaluation participation; and

(C) collaborate with the LEA of origin for the administration of the assessment.

(f) a description of the RTC's incident management process and procedures for a student, and reporting requirements described in Subsection R277-926-4(3)(c);

(g) evidence of how meaningful parental involvement is facilitated;

(h) documentation showing all staff at the RTC have been fingerprinted and have passed state and federal criminal background checks before being allowed to have contact with any student;

- (i) an assurance showing participation in the LEA of origin with federal Child Find mandates as outlined in 20 U.S.C. 1412(a)(3);
- (j) an assurance that the RTC is a nonsectarian RTC; and
- (k) if applicable, a copy of the Private School Affidavit filed with a student's state of origin.

(4) Except as provided in Subsection (7), an RTC may apply for an initial certification and receive notification of certification approval or denial within 60 days of an on-site review.

(5) An RTC shall apply for certification renewal no later than 60 days ~~[prior to]~~ before the expiration of the RTC's current certification.

(6) Except as provided in Subsection (7), the Superintendent shall provide the RTC notice of the Superintendent's approval or denial of the RTC's application for certification within 60 days of an on-site review.

(7) For an application received before January 1, 2020, the Superintendent shall notify an RTC of the Superintendent's approval or denial of the RTC's request for certification within 45 days.

(8) An RTC with a pending application shall be subject to an on-site review by the Superintendent within 60 days of the RTC submitting the RTC's application.

(9) An RTC's application for certification and on-site review shall be reviewed collectively by the Superintendent in considering approval or denial of certification.

(10) An RTC shall be informed of compliance errors at the time of the on-site review and will be provided six weeks to correct the compliance errors before a final certification decision is made.

(11) If approved, an RTC's certification lasts for two years from the date of approval and is subject to monitoring protocols as described in S~~ub~~section R277-926-4.

(12) If the Superintendent denies an RTC's application for certification, the Superintendent shall provide the reason for the denial in writing to the RTC.

(13) If an RTC operates a special needs program at more than one site, the RTC shall submit a separate certification application for each site.

R277-926-4. Certification Maintenance and General Monitoring.

(1) An RTC that has been certified is subject to periodic monitoring and review.

(2) An RTC shall ensure general compliance with the requirements of this rule, state law, and federal law by providing the Superintendent with:

- (a) documentation, including:
 - (i) applicable student and program records; and
 - (ii) information for which the Board is responsible;
- (b) access to on-site visits at any time; and
- (c) any combination of Subsections (a) and (b).

(3) An RTC that has been certified shall comply with all requirements of this rule, State of Utah law and federal law, including the following requirements:

- (a) collaborating with an LEA of origin to maintain and facilitate a plan for transition from the RTC to a less restrictive setting or from a less restrictive setting to an RTC;
- (b) collaborating with the LEA of origin on a student's IEP through:
 - (i) timely and appropriate IEP progress monitoring;
 - (ii) documentation of a student's specially designed instruction and related services such as:
 - (A) service provisions;
 - (B) treatment notes; and

- (C) service logs;
- (iii) post secondary transition plans for students age 14 and older including:

(A) a list of a relevant course of study related to needs and ability of the student;

(B) a list of all required transition assessments needed; and

(C) age of majority documentation;

(iv) sign-in or attendance sheets for each IEP meeting held for a student; and

(iv) adhering to all other applicable state and federal laws;

(c) when appropriate, establishing a discipline guide consistent with IDEA that includes a behavior intervention plan with the following minimum components:

(i) general behavior goals;

(ii) crisis de-escalation and restraint training and training frequency;

(iii) restraint and seclusion policies and procedures consistent with state and federal law; and

(iv) parental notification policies requiring notice within at least 24-hours.

(4) An RTC shall notify the Superintendent within 45 days if the RTC makes any material change to the RTC's special education program.

(5) An RTC shall notify the Superintendent within 48 hours if:

(a) any staff member is charged with a felony or misdemeanor, other than a Class C violation of Title 41, Motor Vehicles; or

(b) a law enforcement agency or the Division of Child and Family Services initiates an investigation regarding a student health or safety concern.

~~([5])~~ (6) If a certified RTC is found to be noncompliant with ~~a provision of~~ Rule R277-926, State of Utah law, or federal law, the Superintendent may suspend or revoke the RTC's certification as outlined in S~~ub~~section R277-926-5.

R277-926-5. Revocation of Certification.

(1) The Superintendent may revoke an RTC's certification at any time if the RTC fails to comply with the requirements of Rule R277-926, State of Utah law, or federal law.

(2) The Superintendent shall provide the reason for revocation of the RTC's certification in writing to the RTC and provide a 30-day cure period before revocation may occur.

(3) If an RTC does not correct identified non-compliance described in Subsection (2) within the 45-day correction period, the Superintendent shall revoke the RTC's certification.

(4) If an RTC's certification is revoked, the RTC:

(a) may not receive new students into the RTC's special education program; and

(b) may maintain the students currently attending the RTC's special education program.

(5) An RTC may reapply for certification within 12 months following the RTC's completed corrective action in response to the Superintendent's reasons for revocation described in Subsection (2).

R277-926-6. Request for Review.

(1) A public education agency that contracts with a certified RTC may request the Superintendent to review the status of the RTC's certification.

(2) The Superintendent shall establish a mechanism for referrals, complaints, and information related to the status of an RTC's certification.

(3) The Superintendent shall conduct a review pursuant to this in accordance with all requirements in Sections R277-926-4 and R277-926-5.

R277-926-7. RTC Appeal of Certification Application Denial or Certification Revocation.

(1) An RTC may file an appeal to the Board of an adverse decision of the Superintendent resulting in the denial of application or revocation of a certification.

(2) An appeal pursuant to this rule shall be an informal adjudication.

(3) An appeal described in Subsection (1) shall be made in writing and within 30 days of the date of the Superintendent's action.

(4) The Board may:

(a) review the appeal as a full board; or

(b) refer the appeal to the Board's audit committee to make a recommendation to the Board for action.

KEY: residential treatment centers, special education, certification

Date of Last Change: 2023~~March 11, 2021~~

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R317-101-3	Filing ID: 55327
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Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room number:	DEQ, 3rd Floor	
Building:	Multi Agency Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact persons:		
Name:	Phone:	Email:
Harry Campbell	385-501-9583	hcampbell@utah.gov
Judy Etherington	801-536-4344	Jetherington@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R317-101-3. Application and Project Initiation Procedures

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

This rule change is a response to H.B. 269 (passed in the 2022 General Session) requiring that the Utah State Board of Education (USBE) make rules to establish the elements of a capital asset management plan.

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 amendment states conditions when a wastewater service provider must adopt a capital asset management plan. It also provides the basic outline of an asset management plan. Formatting and style changes were also made to existing text to conform with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

This amendment should not affect the state budget since the state would not be requesting financial assistance from the Water Quality Board, and would not be required to comply with this new requirement.

B) Local governments:

Local governments are usually wastewater service providers. Each applicant for financial assistance may incur costs up to \$100,000 in the development of an asset management plan, depending on the size and complexity of the system.

There are many wastewater service providers that already practice asset management, so no additional cost would be incurred.

It is common for those that actively practice asset management to realize savings over time that exceed the initial costs.

Aggregate cost or savings are incalculable since it would depend on the number and complexity of the wastewater systems requesting financial assistance.

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

A wastewater service provider is by rule, if not a government entity, at least sponsored by a government entity. A small business may benefit from savings passed on to customers from a wastewater service provider who actively practices asset management. However, no direct cost or savings can be determined for small businesses since they would not be eligible for the financial assistance provided by the board and regulated by this rule.

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

A non-small business may benefit from savings passed on to customers from a wastewater service provider who actively practices asset management, but there would probably not be any direct cost or savings due to this amendment.

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**):

A person may benefit from savings passed on to customers from a wastewater service provider who actively practices asset management, but there would not be any direct cost or financial benefit expected with implementation of this amendment.

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

A capital asset management plan is only required for wastewater service providers who are receiving funding from the Water Quality Board for a wastewater project. Typically, wastewater construction projects begin with an identified issue which needs resolving. As part of the construction project, the whole facility is evaluated and a Facilities Plan is prepared to identify additional issues. During this evaluation, it is beneficial to the facility to add an asset management plan for long-term management and maintenance of the new and existing infrastructure. This would typically be done as an addition to the Facilities Plan engineering contract. Once created, the asset management plan would help staff to conduct appropriate preventative maintenance.

Development of a capital asset management plan would take several hours by staff or a consultant even for a small wastewater provider. After the plan is initially complete, it would need attention from time to time to be continuously operational. Maintenance of the plan would increase the time for performance of duties for staff by roughly 25%. However, some providers that currently practice capital asset management have noted that the reduced time spent on emergency responses has more than made up for higher maintenance and administrative costs because emergency activities are often high priced and very inefficient.

Cost of developing a capital asset management plan for a small wastewater provider are estimated to include staff time used, at 25% of an \$80,000 FTE, it would be \$25,000, calculated at \$20,000 for maintaining the plan through the year and \$5,000 for the initial time of putting together a very basic plan. This does not represent costs for medium or large wastewater providers, but many large wastewater providers already have an asset management plan. It would be easy to see development of an asset

management plan in the first-year jump to \$100,000 for a medium sized mechanical plant.

Newly incorporated preventative maintenance, coupled with an asset management plan, has a higher initial cost; but with time, the savings from longer life and fewer emergency breakdowns of plant facilities, results in savings that outweigh the costs. Asset management promotes activities that extend the life and value of assets. Aggregate cost or savings are incalculable since it would depend on the number and complexity of the wastewater systems requesting financial assistance.

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	\$100,000	\$2,000 (continuing year by year)
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$100,000	\$2,000
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$15,000	\$15,000 (continuing year by year)
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$15,000	\$15,000
Net Fiscal Benefits	\$0	(\$85,000)	\$13,000

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

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, 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 19, Chapter 5	Title 73, Chapter 10c	Title 11, Chapter 8, Part 2
FWPCA Section 603(d)(1)(E)		

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:	05/31/2023
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9. This rule change MAY become effective on: 06/28/2023

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:	John K. Mackey, PE, Director	Date:	04/14/2023
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R317. Environmental Quality, Water Quality.

R317-101. Utah Wastewater Project Assistance Program.

R317-101-3. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the [B]board:

A. It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare an effective and appropriate financial assistance agreement, including cost effectiveness evaluations of financing methods and alternatives, for consideration by the [B]board.

B. A completed application form, project engineering report as appropriate, and financial capability assessment are submitted to the [B]board. Any comments from the local health department or association of governments should accompany the application.

C. The staff prepares an engineering and financial feasibility report on the project for presentation to the [B]board.

D. The [B]board authorizes financial assistance for the project [on the]based[is] on [f] the feasibility report prepared by the staff, designates whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant, or any combination thereof, is to be entered into, and approves the project schedule see Section R317-101-14. The [B]board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Title 73, Chapter 10c, Water Development Coordinating Council, which loan is intended to provide direct financing of projects costs, then the [B]board shall

authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this subsection[paragraph] and for purposes of Subsection 73-10c-4(2), the term "loan" shall not include loans issued [in connection with]for interest buy-down agreements as described in Section R317-101-12 [hereof]or [in connection with]for any other interest buy-down arrangement.

E. Planning Advance Only - The applicant requesting a Planning Advance must:

1. attend a preapplication meeting;[s]
2. complete an application for a Planning Advance;[s]
3. prepare a plan of study;[s] and
4. submit a draft contract for planning services.

F. Design Advance Only - The applicant requesting a design advance must have completed an engineering plan which meets program requirements and submitted a draft contract for design services.

G. The project applicant must demonstrate public support for the project.

H. A [P]political subdivision[s] which receives assistance for a wastewater project under [these rules]this rule must agree to participate annually in the Municipal Wastewater Planning Program, commonly referred to as [C]MWPP[s].

I. A political subdivision which receives assistance for a wastewater project under this rule shall adopt a capital asset management plan. A capital asset management plan shall include:

1. goals for level of service;
2. an inventory of assets including location, condition, value, life, useful life;
3. an analysis of asset for criticality;
4. a plan for sustainable funding; and
5. a certification that the recipient has evaluated and will

be implementing water and energy conservation efforts as part of the plan.

J[F]. A [P]political subdivision[s] which receives assistance under [these rules]this rule and which owns a culinary water system must complete and submit a Water Conservation Plan, per Section 73-10-32.

K[F]. The project applicant's engineer prepares a preliminary design report[, as appropriate,] outlining detailed design criteria for submission to the [B]board.

L[K]. Upon approval of the preliminary design report by the [B]board, the applicant's engineer completes the plans, specifications, and contract documents for review by the [B]board.

M[L]. For financial assistance mechanisms when the applicant's bond is purchased by the [B]board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters, that the wastewater project obligation is a valid and binding obligation of the political subdivision, must be submitted to the [A]assistant [A]attorney [G]general for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to Section 11-14-201. For financial assistance mechanisms when the applicant's bond is not purchased by the [B]board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the wastewater project obligation is a valid and binding obligation of the political subdivision.

N[M]. Hardship Grant - The [B]board executes a grant agreement setting forth the terms and conditions of the grant.

Q[N]. The [D]director issues a Construction Permit and Plan Approval for plans and specifications, and concurs with~~[in]~~ bid advertisement.

P[O]. If a project is designated by the board to be financed by a loan or an interest buy-down agreement as described in Sections R317-101-12 through R317-101-13~~[-from the Board]~~ to cover any part of project costs, an account supervised by the applicant and the [B]board will~~shall~~ be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the [B]board in the form of a credit enhancement agreement as described in Section R317-101-11, [a]~~any~~ project funds will~~shall~~ be maintained in a separate account and a quarterly report of project expenditures will~~shall~~ be provided to the [B]board.

Q[P]. A copy of the applicant's Sewer Use Ordinance or Resolution and User Charge System must be submitted to the [D]division for review and approval to insure adequate provisions for debt retirement, operation and maintenance, or both.

R[Q]. A plan of operation must be submitted by the applicant to the [D]division for new treatment works, sewerage systems, and projects involving upgrades that add additional treatment, [e.g., for example], advanced treatment. The [P]plan must address: adequate staffing, with an operator certified at the appropriate level in accordance with Rule R317-10, training, and start up procedures to assure efficient operation and maintenance of the facilities. The plan must be submitted by the applicant in draft at initiation of construction and approved in final form [prior to]~~before~~ 50% of construction completion.

S[R]. An Operation and Maintenance Manual, commonly referred to as [c]~~Manual~~], which provides long-term guidance for efficient facility operations and maintenance is submitted by the applicant and approved in draft and final form [prior to]~~before~~, respectively, 50% and 90% of project construction completion. Existing Manuals [can]~~may~~ be submitted or amended if the existing Manual is relevant to the funded project.

T[S]. The applicant's contract with its engineer must be submitted to the [B]board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

U[T]. The applicant's attorney must provide an opinion to the [B]board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

V[U]. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The [B]board issues the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds as described in Sections R317-101-11 through R317-101-12.

W[V]. Credit Enhancement Agreement and Interest Buy-Down Agreement Only - The applicant sells the bonds on the open market and notifies the [B]board of the terms of sale. If a credit enhancement agreement is being utilized, the bonds sold on the open market shall contain the legend required by Subsection 73-10c-6(2)(a). If an interest buy-down agreement is being utilized, the bonds sold on the open market shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

X[W]. The applicant opens bids for the project.

Y[X]. Loan Only - The [B]board gives final approval to purchase the bonds and execute the loan contract as described in Section R317-101-13.

Z[Y]. Loan Only - The final closing of the loan is conducted.

AA[Z]. The [B]board gives approval to award the contract to the low responsive and responsible bidder.

BB[AA]. A preconstruction conference is held.

CC[BB]. The applicant issues a written notice to proceed to the contractor.

KEY: wastewater, water quality, loans, sewage treatment

Date of Last Change: ~~September 24, 2015~~**2023**

Notice of Continuation: **March 20, 2018**

Authorizing, and Implemented or Interpreted Law: **19-5; 73-10c; 11-8-2; FWPCA Section 603(d)(1)(E)**

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R414-9	Filing ID: 55340
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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:
R414-9. Federally Qualified Health Centers
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to implement by rule Medicaid policy for federally qualified health centers (FQHCs) and rural health clinics (RHCs) to add services,

and be reimbursed for added services that meet criteria as set forth in this rule.

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 amendment implements payment choices, prospective payments, and an alternate payment method for FQHCs. It further implements payment provisions for RHCs and details procedures for FQHC and RHC scope of service changes.

Fiscal Information

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

A) State budget:

There is a potential impact to the state budget, but the Department cannot predict an impact because it does not know what services the providers, if any, will choose to add.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is a potential impact on small businesses, but the Department cannot predict an impact because it does not know what services the providers, if any, will choose to add.

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

There is a potential impact on non-small businesses, but the Department cannot predict an impact because it does not know what services the providers, if any, will choose to add.

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 a potential impact to Medicaid providers, but the Department cannot predict an impact because it does not know what services the providers, if any, will choose to add.

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

There are potential costs to a single provider, but the Department cannot predict these costs because it does

not know what services the provider, if any, will choose to add.

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 may see a change in revenue, but that change is unknown at this time.

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 26B-3-108	
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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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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 S. Gruber, Executive Director	Date:	04/14/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.

R414-9. Federally Qualified Health Centers and Rural Health Clinics.

R414-9-1. Introduction and Authority.

~~[Federally qualified health centers and rural health clinics provide a scope of services for Medicaid recipients in accordance with the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.](1)~~ This rule establishes Medicaid payment methodologies for federally qualified health centers (FQHCs) and rural health clinics (RHCs).

(2) 42 CFR Subpart X, Section 26B-3-102, and Section 26B-3-104 authorize this rule.

R414-9-2. Definitions.

In addition to the definitions in Rule R414-1, the following definitions apply to this rule:

(1) "CLIA" means clinical laboratory improvement amendments.

(2) "Federally qualified health center" (FQHC) means a health center qualified under 42 CFR Subpart X.

(3) "HRSA" means health resources and services administration.

(4) "Rural health clinic" (RHC) means a health clinic qualified under 42 CFR Subpart X.

(5) "Scope of services change" (SSC) means having a change in services, intensity, amount, or duration of services.

R414-9-3. Payment Choices for FQHCs.

Payment choices for FQHCs must be in accordance with Pages 2, 2a, 2b, and 2c of Attachment 4.19-B of the Medicaid State Plan.

R414-9-4. Prospective Payment System (PPS).

Prospective payments to FQHCs must be in accordance with Pages 2b and 2c of Attachment 4.19-B of the Medicaid State Plan.

R414-9-5. Alternate Payment Method.

The alternate payment method for FQHCs must be in accordance with Pages 2b and 2c of Attachment 4.19-B of the Medicaid State Plan.

R414-9-6. Rural Health Clinics.

Payments to rural health clinics must be in accordance with Page 2c of Attachment 4.19-B of the Medicaid State Plan.

R414-9-7. Scope of Service Changes (SSC).

(1) A provider who wants an SSC rate consideration must provide required documentation, meet SSC requirements, and have a qualifying event. The provider must email documentation to MedicaidHealthCenter@utah.gov.

(2) Documentation must clearly detail the change in type, intensity, duration, and amount of services, and include additional documentation that the FQHC or RHC supports the request. An FQHC or RHC must also submit to the Department the Medicaid scope of services application.

(a) FQHCs or RHCs that submit retrospective cost information must submit a completed change in scope worksheet showing:

(i) costs by service type and totals with data from the most recently completed Medicare cost report;

(ii) calculation of total allowable billable visits with data from the Medicare cost report and detail of additional visits;

(iii) detail of costs and visits associated with the qualifying event; and

(iv) any additional cost information or documentation that the Department requests.

(b) For health centers that submit prospective cost information, a completed SSC worksheet showing:

(i) a budget for a future 12-month period that includes any prospective qualifying events;

(ii) a projection of total allowable billable visits;

(iii) documentation of additional costs associated with prospective qualifying events, with a description of how the estimates were determined to be reasonable; and

(iv) a narrative description of each qualifying event in the change in SSC.

(3) For health centers applying for their first SSC before January 1, 2025, qualifying events may include items from the previous eight years.

(4) For health centers applying for their first SSC after January 1, 2025, qualifying events may include items from the previous two years.

(5) For health centers that have already done an SSC, only qualifying events since the earlier approved change in scope may be submitted for consideration.

(6) The Department calculates an incremental cost for each visit by dividing incremental costs by total visits. The new PPS rate is calculated by adding the incremental cost for each visit to the current PPS rate. The Department applies other appropriate adjustments in accordance with the Medicaid State Plan.

(7) It is the responsibility of the FQHC or RHC to notify the Department of any increases or decreases in costs.

(8) General requirements for FQHCs or RHCs to complete an SSC change include the following:

(a) The Department must receive a complete request documentation package at least six months before the end of the FQHC and RHC fiscal year to change the next fiscal year's PPS rate. When an FQHC or RHC submits an SSC change without complete documentation, the request is returned without processing. The FQHC or RHC provider shall resubmit the entire request including the additional documentation. The date, in which a complete request with supporting documentation is received, is the submission date used for the SSC change.

(b) The effective date is the first day of the provider's fiscal year following the year in which the SSC is submitted, subject to the terms of Subsection (8)(a).

(c) The requested rate change from the SSC costs must exceed a 5% increase or decrease threshold from the current PPS Medicaid rate.

(d) The FQHC or RHC may not submit a request for an SSC change more than every two years. An exception may be allowed for the following:

(i) an HRSA-approved new access point; or

(ii) the SSC exceeds a 10% increase or decrease threshold.

(e) The Department shall deny requests to review SSC changes that go back more than eight years. Effective January 1, 2025, the Department shall deny requests to review SSC changes that go back more than two years.

(9) An FQHC or RHC must have a qualifying event to trigger an SSC change. The qualifying event may result in either an increase or decrease in services. The following are considered qualifying events if covered by Medicaid:

(a) increasing primary care and medical specialties such as cardiology and dermatology;

(b) adding or supplementing case management or care coordination for non-billable services;

(c) adding preventive dental or restorative dental surgery;

(d) x-ray that includes ultrasound, provided directly, but not through referral arrangement;

(e) medication-assisted treatment;

(f) behavioral health;

(i) adding behavioral health services and providers;

(ii) supplementing care team with behavioral health staff, such as community health workers and behaviorists who may not generate additional billable visits;

(g) substance use disorder treatment services;

(h) lab tests, in addition to rapid and CLIA-waived, including coronavirus rapid tests;

(i) obstetrical and gynecological services;

(j) distinct staff and services for social determinants of health interventions, such as non-medical factors that impact quality of life risks and health outcomes, which include food insecurities, housing instability, transportation barriers, and literacy levels;

(k) enabling services such as interpretation, financial counseling, diabetes, and education;

(l) providing direct optometry services;

(m) adding new or certified staff for chronic pain management;

(n) including clinical pharmacists;

(o) chiropractic care;

(p) physical therapy;

(q) complementary and alternative medicine; and

(r) an amendment to the Medicaid State Plan to remove a service that an FQHC or RHC has previously offered.

(10) Any increase or decrease in services under Subsection (9) may be a qualifying event.

(11) FQHC or RHCs that have a change in intensity, amount, or duration of the following services, if covered by Medicaid, would be considered a qualifying event:

(a) the provision of additional listed services or the deletion of a new type of service;

(b) telehealth;

(c) first-time implementation of an electronic medical record;

(d) new electronic medical record modules;

(e) remote patient monitoring;

(f) regulatory compliance through new rules and building a compliance infrastructure;

(g) population changes among groups such as the homeless, the elderly, and those with human immunodeficiency virus, acquired immunodeficiency syndrome, and other chronic diseases;

(h) an HRSA-approved change in the scope of project such as the addition of a new site;

(i) a mix of healthcare providers that includes treatment from a psychiatrist, infectious disease specialist, or other healthcare provider;

(j) public health emergencies;

(k) changing capital costs from a remodel, relocation, or establishing a new site;

(l) a new technological service or infrastructure that does not replace the current one; and

(m) costs associated with a teaching health center.

(12) The Department considers only the net cost of an SSC for payment if an SSC change is otherwise reimbursed.

KEY: Medicaid, facility, reimbursement

Date of Last Change: 2023[July 11, 2014]

Notice of Continuation: July 27, 2018

Authorizing, and Implemented or Interpreted Law: 26B-1-[5]213; [26-18-3]26B-3-108

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R414-517

Filing ID: 55319

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:
R414-517. Inpatient Hospital Provider Assessments
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to update new entity names in conjunction with the Department of Health and the Department of Human Services merger.
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 amendment updates the Department of Health and Human Services (Department) and Division names with the establishment of the Department and the Division of Integrated Healthcare. It also makes other technical changes.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget as the changes are only name and technical updates.
B) Local governments:
There is no impact on local governments as they neither fund nor provide services under the Medicaid program.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as the changes are only name and technical updates.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no impact on non-small businesses as the changes are only name and technical updates.
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 impact to other persons or entities as the changes are only name and technical updates.
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 to a single person or entity as the changes are only name and technical updates.

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 see neither costs nor revenue as the changes are only name and technical updates to this rule.			

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	Title 26B, Chapter 3

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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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 S. Gruber, Executive Director	Date:	04/10/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.

R414-517. Inpatient Hospital Provider Assessments.

R414-517-1. Introduction and Authority.

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26B, Chapter 3[66], Inpatient Hospital Assessment Act.

R414-517-2. Definitions.

The definitions in Section 26B-3[66]-[403]501 apply to this rule.

R414-517-3. Audit of Hospitals.

(1) For a hospital that does not file a Medicare cost report for the time frames outlined in Section 26B-3[66]-[205]507, the Division of ~~Medicaid and Health Financing~~ Integrated Healthcare (~~DMHF~~)DIH shall audit the hospital's records to determine the correct discharges for the assessment.

(2) A hospital subject to the assessment shall make its records available for reasonable inspection upon written request from ~~DMHF~~DIH. ~~DMHF~~DIH shall consider a hospital that fails to make its records available to be non-compliant, and subject to the penalties set forth in Section R414-517-6.

R414-517-4. Change in Hospital Status.

(1)(a) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26B-3[66]-[205]507, the hospital must submit in writing to ~~the Division of Medicaid and Health Financing~~ (~~DMHF~~)DIH a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health and Human Services
~~DMHF~~DIH, ~~BCRP~~OFS
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health and Human Services
~~DMHF~~DIH, ~~BCRP~~OFS
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(b) ~~DIH~~DMHF may identify a hospital that has changed status and will not include that hospital in the subsequent quarterly assessment.

(2) The following provisions apply for any period in which a hospital is no longer subject to the assessment and notice has been given under Subsection ~~R414-517-4~~(1)(a), or when the hospital is identified by ~~DIH~~DMHF under Subsection ~~R414-517-4~~(1)(b):

(a) ~~DIH~~DMHF shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment, as outlined in Section 26B-3[66]-[2]51[0]1, for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For state fiscal year 2020 and subsequent years, before the beginning of each state fiscal year, ~~DIH~~DMHF shall determine whether a new provider is subject to the assessment. ~~DIH~~DMHF will add a newly identified provider prospectively, beginning that new state fiscal year. For example, a May 2019 evaluation that identifies a new provider will result in that new provider being added July 2019.

R414-517-5. Intergovernmental Transfer Calculation and Schedule.

~~DIH~~DMHF shall calculate at a uniform rate for each hospital discharge, the non-state government hospital-intergovernmental transfer, as specified in Title 26B, Chapter 3[66], Inpatient Hospital Assessment Act. ~~DIH~~DMHF shall determine the uniform rate by using the total number of hospital discharges for non-state government hospitals, and shall apply uniformly any quarterly changes to the uniform rate to all non-state government hospitals.

R414-517-6. Penalties and Interest.

(1) If ~~DIH~~DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital required to file a Medicare cost report, but the hospital fails to provide its Medicare cost report within the timeline required, ~~DIH~~DMHF shall fine the hospital 5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If ~~DIH~~DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, ~~DIH~~DMHF shall fine the hospital 5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, ~~DIH~~DMHF shall fine the hospital 5% of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, ~~DIH~~DMHF shall fine the hospital 5% of the unpaid amount. The fine is payable within 30 days of invoice.

(5)(a) If a hospital fails to pay its assessment on or before the due date, ~~DIH~~DMHF shall suspend payments to the hospital until the assessment and any fines or penalties are paid in full.

(b) ~~DIH~~DMHF shall provide written notice before withholding payments.

(c) When ~~DIH~~DMHF rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

R414-517-7. Rule Repeal.

The Department shall repeal this rule in conjunction with the repeal of the Inpatient Hospital Assessment Act outlined in Section 26B-3[6b]-[244]512.

KEY: Medicaid

Date of Last Change: ~~2023~~~~July 1, 2020~~

Notice of Continuation: October 31, 2022

Authorizing, and Implemented or Interpreted Law: 26B-1-~~5~~~~213~~; 26-18-3; 26B-3[6b]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R432-31	Filing ID: 55310
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Agency Information

1. Department:	Health and Human Services	
Agency:	Health Facility Licensing	
Room number:	1st Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
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:
R432-31. Life with Dignity Order
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 and current industry standards and terms. Recodified statutory citations are

additionally updated in compliance with S.B.38, passed in the 2023 General Session.

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 Intellectual Disabilities Facility 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.

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 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 26B-2-202

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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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:** 03/31/2023

R432. Health and Human Services, ~~[Family Health and Preparedness, Health Facility Licensing.~~

R432-31. ~~[Life with Dignity Order]~~Provider Order for Life-Sustaining Treatment.

R432-31-1. Authority and Purpose.

(1) This rule is ~~[adopted pursuant to Utah Code Title 26, Chapter 21,]~~authorized by Sections 26B-2-202 and ~~[Section]~~75-2a-106.

(2) This rule establishes the forms and systems for ~~[Life with Dignity Orders]~~Provider Order for Life-Sustaining Treatment (POLST).

R432-31-2. Definitions.

(1) The definitions found in Sections ~~[UCA]~~26B-2-201[-2] and 75-2a-106 apply to this rule.~~[—In addition, "licensed health care facility" means a facility or entity licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.]~~

(2) "Qualified Provider" is a provider outlined in Subsection 75-2a-106(2).

R432-31-3. ~~[Life with Dignity Order]~~POLST Forms.

(1) Except as outlined in Section R432-2-10, a[A]n individual who desires to execute a ~~[Life with Dignity Order]~~POLST ~~[must]~~shall use a form or electronic format approved by the ~~[D]~~department. The form may not be altered in layout or style, including font style and size, without the express written permission of the ~~[D]~~department.

(2) Any person, health care provider, or health care facility licensee, may obtain a form from the ~~[D]~~department and, if made available by the ~~[D]~~department, from a website established for that purpose.

(3) A health care provider, licensed health care facility licensee, or Emergency Medical Services (EMS) provider ~~may~~ shall act upon a copy of a ~~[Life with Dignity Order]~~ POLST as if it were the original.

R432-31-4. Facility Policies and Procedures.

(1) A ~~h[H]~~ health care facility~~ies must~~ licensee shall establish and implement policies and procedures that conform to Section 75-2a-106.

(2) A ~~h[H]~~ health care facility~~ies~~ licensee shall ensure policies and procedures ~~[must assure that]~~ address the licensee responsibility to:

(a) ~~[the facility]~~ determine[s] upon admission whether each individual has a ~~[Life with Dignity Order]~~ POLST;

(b) the ~~[facility]~~ outline that they are ~~[is]~~ not required to offer ~~[all]~~ each individual[s] the opportunity to complete a ~~[Life With Dignity Order]~~ POLST;

(c) ~~[the facility determines which]~~ identify individuals who may be offered the opportunity to complete a ~~[Life with Dignity Order]~~ POLST, ~~[which]~~ that may include individuals who[s]:

(i) have a serious illness and are likely to face a life-threatening health crisis;

(ii) have specific preferences for end-of-life treatments;

or

(iii) have declining cognitive abilities and lack a surrogate or guardian to make decisions for them;

(d) ~~[the facility identifies]~~ identify circumstances under which an individual with a ~~[Life with Dignity Order]~~ POLST ~~[shall be]~~ is offered the opportunity to ~~[modify]~~ change the order;

(e) ~~[the facility]~~ maintain[s] the ~~[Life with Dignity Order]~~ POLST in the individual's medical record;

(f) ~~[the facility identifies]~~ identify circumstances under which ~~[it]~~ the facility would not follow a ~~[Life With Dignity Order]~~ POLST;

(g) only permit a qualified provider[s, as per Utah Code 75-2a-106(2)] to assist with the completion of a ~~[Life With Dignity Order]~~ POLST; ~~[- Qualified providers include;~~

~~(i) the physician, advanced practice registered nurse, or physician assistant of the person to whom the life with dignity order relates; or~~

~~(ii) a health care provider who is acting under the supervision of a person described in Subsection (2)(g)(i) and is a licensed nurse, physician assistant, or mental health professional.]~~

(h) ensure a ~~[Life With Dignity order]~~ POLST ~~[shall be]~~ is signed personally by the physician or APRN, or ~~[- subject to 75-2a-106(11);]~~ only by a physician assistant of the person to whom the ~~[life with dignity order]~~ POLST relates if done so in accordance with Subsection 75-2a-106(11); and

~~(i) [if the licensed health care facility's services do not include the supervision of a physician, physician assistant or advanced practice registered nurse, the facility shall] make a referral to the primary care provider to create, replace, or [modify] change a [Life With Dignity Order] POLST, if the licensee's services do not include the supervision of a physician, physician assistant, or advanced practice registered nurse.~~

R432-31-5. Training.

Each ~~[licensed health care facility]~~ licensee shall appropriately train relevant health care, quality improvement[s] and record keeping staff on the requirements of Section 75-2a-106. ~~[Title 75, Chapter 2a, the Advance Health Care Directive Act;]~~ this rule[s]

and the facility's policies and procedures established ~~[pursuant to]~~ in accordance with this rule.

R432-31-6. Transferability of ~~[Life with Dignity Orders]~~ POLST.

(1) ~~[(a)]~~ A ~~[Life with Dignity Order]~~ POLST is fully transferable between ~~[all]~~ any licensed health care facilities.

~~[(b)]~~ The health care providers assuming the individual's care at the receiving licensed health care facility shall read the ~~[Life with Dignity Order]~~ POLST.

~~[(e)]~~ The receiving provider ~~[must]~~ shall have policies and procedures to address ~~[the]~~ any circumstances under which the provider will not follow the instructions contained in the ~~[Life With Dignity Order]~~ POLST.

~~[(2)(a)]~~ A ~~[licensed health care facility]~~ licensee that discharges ~~[- but does not transfer to another licensed health care facility, an individual who has a Life with Dignity Order,]~~ a resident, shall provide a copy of the individual's ~~[Life with Dignity Order]~~ POLST to the individual. ~~[or, if]~~ If the individual lacks the capacity to make ~~[- a]~~ health care decisions, as defined in ~~[s]~~ Section 75-2a-104, the licensee shall also provide a copy to the individual's surrogate or guardian.

~~[(b)]~~ A ~~[licensed health care facility]~~ licensee that transfers an individual with a ~~[Life with Dignity Order]~~ POLST to another licensed health care facility shall provide a copy of the ~~[Life with Dignity Order]~~ POLST to the receiving ~~[- licensed health care]~~ facility.

~~[(3)]~~ A ~~[licensed health care facility]~~ licensee shall allow an individual to complete, amend[s] or revoke a ~~[Life with Dignity Order]~~ POLST at any time upon request.

R432-31-7. Presentation of ~~[Life with Dignity Orders]~~ POLST to EMS Personnel.

(1) Except for home health agencies, personal care agencies and home-based hospice agencies, a ~~[licensed health care facility]~~ licensee in possession of a ~~[Life with Dignity Order]~~ POLST ~~[must]~~ shall present the individual's ~~[Life with Dignity Order]~~ POLST to EMS personnel upon ~~[the]~~ arrival ~~[- of EMS personnel who are present]~~ to treat or transport the individual ~~[- and]~~.

(2) For an individual who resides at home, if the home health agency, personal care agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel ~~[must]~~ shall present the individual's ~~[Life with Dignity Order, upon the arrival of]~~ POLST to the EMS personnel ~~[- who are present to treat or transport the individual]~~.

R432-31-8. Home Placement of ~~[Life with Dignity Orders]~~ POLST.

(1) If an individual under the care of a home health agency, personal care agency or a hospice agency possesses a ~~[Life with Dignity Order]~~ POLST, the agency ~~[must]~~ shall ensure that a copy of the ~~[Life with Dignity Order]~~ POLST is left at the individual's place of residence.

(2) For an individual adult who resides at home, including an emancipated minor, ~~[it is recommended that]~~ the licensee shall ensure that a copy of the ~~[Life with Dignity Order]~~ POLST ~~[be]~~ is posted on the front of the refrigerator or over the individual's bed.

(3) For a minor who resides at home, it is recommended that a copy of the ~~[Life with Dignity Order]~~ POLST be placed in a ~~[tube]~~ container and placed on the top shelf of the door ~~[of]~~ inside the refrigerator.

R432-31-9. ~~Life with Dignity~~ POLST Bracelets and Necklaces.

~~_____ (1) The Department may contract with a vendor or vendors to provide an approved Life with Dignity bracelet or necklace.]~~

~~_____ (2) An individual with a ~~Life with Dignity Order~~ POLST may obtain an approved ~~Life with Dignity~~ POLST bracelet or necklace from a vendor approved by the ~~D~~ department. [The approved Life with Dignity bracelet or necklace identifies the individual to EMS or other health care providers as possessing a Life with Dignity Order.]~~

~~_____ (2) An approved POLST bracelet or necklace identifies the individual to EMS or other health care providers as possessing a POLST.~~

R432-31-10. Prior Orders and Out of State Orders.

(1) EMS and other health care providers may recognize as valid ~~all~~ any prior or out of state POLST forms or medical orders for life-sustaining treatment, including the national POLST form. This also includes ~~Life With Dignity and EMS/DNR orders, including~~ bracelets and necklaces, unless superseded by a subsequent ~~Life with Dignity Order or~~ POLST.

~~_____ (2) Licensed health care facilities must ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders to comply with current rule requirements by January 31, 2011.]~~

~~_____ (3) (2) Physicians ~~may~~ shall complete and sign a new ~~Life With Dignity Orders~~ POLST for individuals with prior forms who no longer have capacity to complete new orders, and who do not have a surrogate ~~or~~ guardian to authorize the new order. The physician ~~must~~ shall ~~indicate~~ state on the new order that the individual's preferences from the prior order are still applicable.~~

~~_____ (4) (3) A form that an individual executed while in another state may be honored as if it were executed in compliance with this rule and Section 75-2a-106 if it:~~

~~_____ (a) is substantially similar to a ~~Life with Dignity Order~~ POLST or a ~~Physician's Order for Life Sustaining Treatment~~ medical order for life-sustaining treatment; and~~

~~_____ (b) was executed according to the laws of that state.~~

R432-31-11. Signature Requirement.

(1) The patient or surrogate or guardian decision maker and a medical provider, including an MD, DO, PA, or APRN shall sign the POLST for it to be valid.

(2) For pediatric patients, two different medical providers shall sign the POLST to make it effective.

(3) Electronic signatures are acceptable for POLST forms.

(4) In the event the surrogate or guardian decision maker cannot sign in-person or electronically, a verbal signature may be noted if confirmed by two medical professionals caring for the patient.

(5) Photocopies and faxes of signed POLST forms are legal and valid.

KEY: POLST, do not resuscitate, Life with Dignity Order

Date of Last Change: 2023~~June 7, 2013~~

Notice of Continuation: January 24, 2022

Authorizing, and Implemented or Interpreted Law: ~~[26-21]~~26B-2-202; 75-2a-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number: **R495-881**

Filing ID:
55318

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration (Human Services)	
Building:	MASOB	
Street address:	195 N 1950 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:
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:**

R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation

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

Rule R495-881, Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation, is no longer necessary as the Department of Health and Human Services (Department) will be utilizing Rule R380-250, HIPAA Privacy Rule Implementation, for implementing HIPAA privacy in the Department's Administrative code.

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 Department proposes repealing Rule R495-881 in its entirety.

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

No impact on the state budget as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

B) Local governments:

No impact on local governments as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

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

No impact on small businesses as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

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

No impact on non-small businesses as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

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 impact on other persons as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

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 as this repeal will not impact existing operations or the Department's implementation of HIPAA privacy.

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:**

Section 26B-1-202		
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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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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 S. Gruber, Executive Director	Date:	04/10/2023
-------------------------------------------	----------------------------------------	--------------	------------

R495. Human Services, Administration.

~~[R495 881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation.~~

~~R495 881 1. Authority and Purpose.~~

~~(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Human Services.~~

~~(2) This rule is authorized by Section 62A-1-111.~~

R495-881-2. Definitions.

~~As used in this rule:~~

~~(1) "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.~~

~~(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1997 and its implementing regulations.~~

~~(3) "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.~~

R495-881-3. General Compliance.

~~(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.~~

~~(2) Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.~~

R495-881-4. Changes to Rule.

~~The Department reserves the right to alter this rule and its notices of privacy practices required by HIPAA.~~

R495-881-5. Sanctions, Retaliation.

~~(1) An employee of a covered entity may be disciplined for failure to comply with the HIPAA requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.~~

~~(2) An employee of a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by HIPAA or for opposing in good faith any act or practice made unlawful by HIPAA.~~

R495-881-6. Waiver of Rights Prohibited.

~~A covered entity may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.~~

R495-881-7. Complaints.

~~(1) An individual may seek a review of a covered entity's policies and procedures or its compliance with such policies and procedures through informal contact with the covered entity.~~

~~(2) An individual may file a formal complaint concerning a covered entity's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing a complaint with the Office of the Executive Director of the Department requesting an agency action meeting the requirements of the Utah Administrative Procedures Act or with the Office of Civil Rights, U.S. Department of Health and Human Services.~~

R495-881-8. Right to Request Privacy Protection.

~~(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.~~

~~(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.~~

R495-881-9. Individual Access to Protected Health Information.

~~(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.~~

~~(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.~~

R495-881-10. Amendment of Protected Health Information.

~~(1) An individual may request an amendment to the protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered entity.~~

~~(2) The decision whether to grant the request, the time frames for action by the covered entity, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.~~

R495-881-11. Accounting for Disclosures.

~~(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered entity.~~

~~(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.~~

KEY: HIPAA, privacy

Date of Last Change: July 23, 2008

Notice of Continuation: April 2, 2018

Authorizing, and Implemented or Interpreted Law: 62A-1-111]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:

R590-67

Filing ID:
55334

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:
R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers
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, and update the Severability (the new R590-67-15) 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
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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 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

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:	05/31/2023

9. This rule change MAY become effective on:	06/07/2023
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:	04/14/2023
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R590. Insurance, Administration.

~~R590-67. Proxy Solicitations and Consent and Authorization of Stockholders of Domestic Stock Insurers.~~

~~R590-67-1. Authority.~~

~~This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code.~~

~~R590-67-2. Application of Rule.~~

~~This rule is applicable to all domestic stock insurers having 100 or more stockholders; provided, however, that this rule may not apply to any insurer if 95% or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by fewer than 500 stockholders. A domestic stock insurer which files with the Securities and Exchange Commission forms of proxies, consents and authorizations complying with the requirements of the Securities and Exchange Act of 1934 and Rule X-14 of the Securities and Exchange Commission shall be exempt from the provisions of this rule.~~

~~R590-67-3. Proxies, Consents and Authorizations.~~

~~No domestic stock insurer, or any director, officer or employee of the insurer subject to Section 2, or any other person, may solicit, or permit the use of his name to solicit, by mail or otherwise,~~

~~any proxy, consent or authorization of any stock of the insurer in contravention of this rule. The following documents are available from the Insurance Department:~~

~~A. "Proxy Form A", entitled "Information Required in Proxy Statement,"~~

~~B. "Proxy Form B", entitled "Information To Be Included in Statement Filed by or on Behalf of a Participant, Other Than the Insurer, In a Proxy Solicitation in an Election Contest."~~

~~R590-67-4. Disclosure of Equivalent Information.~~

~~Unless proxies, consents or authorizations of a stock of a domestic insurer subject to Section 3 of this rule are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this rule and its schedules prior to any annual or other meeting, the insurer shall, in accordance with this rule or other rule, or both, as the commissioner may adopt, file with the commissioner and transmit to all stockholders of record, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.~~

~~R590-67-5. Definitions.~~

~~A. The definitions and instructions set out in Schedule SIS, as promulgated by the National Association of Insurance Commissioners, shall be applicable for purposes of this rule.~~

~~B. The terms "solicit" and "solicitation" for purposes of this rule shall include:~~

~~1. any request for a proxy, whether or not accompanied by or included in a form of proxy; or~~

~~2. any request to execute or not to execute, or to revoke, a proxy; or~~

~~3. the furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.~~

~~C. The terms "solicit" and "solicitation" may not include:~~

~~1. any solicitation by a person of a stock of which he is the beneficial owner;~~

~~2. action by a broker or other person in respect to stock carried in his name or in the name of his nominee in forwarding to the beneficial owner of the stock soliciting material received from the company, or impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy, or impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; and~~

~~3. the furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.~~

~~R590-67-6. Information to be Furnished to Stockholders.~~

~~A. No solicitation subject to this rule may be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Proxy Form.~~

~~B. If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A of this section shall be accompanied or preceded by an annual report, in preliminary or final form, to the stockholders containing the financial statements for the last fiscal year as are referred to in Schedule SIS under the heading "Financial Reporting to Stockholders." Subject to the foregoing requirements~~

with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

~~C. Two copies of each report sent to the stockholders pursuant to this section shall be mailed to the commissioner not later than the date on which the report is first sent or given to stockholder or the date on which preliminary copies of solicitation material are filed with the commissioner pursuant to Subsection A of Section 8, whichever date is later.~~

R590-67-7. Requirements as to Proxy.

~~A. The form of proxy:~~

~~1. shall indicate in boldface type whether or not the proxy is solicited on behalf of the management;~~

~~2. shall provide a specifically designated blank space for dating the proxy; and~~

~~3. shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management, or stockholders.~~

~~No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C of this section.~~

~~B. Means shall be provided in the proxy for the person solicited to specify by ballot a choice between approval or disapproval of each matter or group of related matters referred to in the proxy, other than elections to office. A proxy may confer discretionary authority with respect to matters where a choice is not so specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.~~

~~C. A proxy may confer discretionary authority with respect to other matters which may come before the meeting, provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided further that a specific statement to that effect is made in the proxy statement or in the form of proxy.~~

~~D. No proxy may confer authority:~~

~~1. to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement; or~~

~~2. to vote at any annual meeting other than the next annual meeting, or any adjournment of the annual meeting, to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.~~

~~E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B of this section, a choice with respect to any matter to be acted upon, the vote will be in accordance with the specifications so made.~~

~~F. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter with appropriate headings. All printed proxy statements shall be clearly and legibly presented.~~

R590-67-8. Material Required to be Filed.

~~A. Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently shall be filed with the commissioner at least ten days prior to the date definitive copies of the material are first sent or given to stockholders, or the shorter period prior to that date as the commissioner may authorize upon a showing of good cause.~~

~~B. Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days, exclusive of Saturdays, Sundays or holidays, prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to the date the commissioner may authorize upon a showing of good cause.~~

~~C. Two definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which this material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.~~

~~D. Where any proxy statement, form of proxy or other material filed pursuant to these rules is amended or revised, two of the copies shall be marked to clearly show the changes.~~

~~E. Copies of replies to inquiries from stockholders requesting further information and copies of communications, which do no more than request that forms of proxy solicited be signed and returned, need not be filed pursuant to this section.~~

~~F. Notwithstanding the provisions of Subsections A and B of this section and of Subsection E of Section 11, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the commissioner prior to use or publication. Definitive copies shall be filed with or mailed for filing to the commissioner as required by Subsection C of this section, not later than the date the material issued or published. The provisions of Subsections A and B of this section and Subsection E of Section 11 shall apply to any reprints or reproductions of all or any part of the material.~~

R590-67-9. False or Misleading Statements.

~~No solicitation subject to this rule shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements in the solicitation not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.~~

R590-67-10. Prohibition of Certain Solicitations.

~~No person making a solicitation which is subject to this rule may solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.~~

R590-67-11. Special Provisions Applicable to Election Contests.

~~A. Applicability. This section shall apply to any solicitation to this rule by any person or group for the purpose of opposing a solicitation subject to this rule by any other person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.~~

~~B. Participant or Participant in a Solicitation.~~

~~1. For purposes of this section the term "participant" and "participant in a solicitation" include:~~

~~(a) the insurer;~~

~~(b) any director of the insurer, and any nominee for whose election as a director proxies are solicited; and~~

~~(c) any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.~~

~~2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:~~

~~(a) a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;~~

~~(b) any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;~~

~~(c) any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the performance of his duties in the course of employment;~~

~~(d) any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates whose is not otherwise a participant; or~~

~~(e) any officer or director of, or any person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.~~

~~C. Filing of Information Required by Proxy Form.~~

~~1. No solicitation subject to this section may be made by any person other than the management of an insurer unless at least five business days prior to, or a shorter period as the commissioner may authorize upon showing of good cause, there has been filed with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Proxy Form and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders should be deferred until the commissioner's comments have been received and complied with.~~

~~2. Within five business days after a solicitation subject to this section is made by the management of an insurer, or longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer, and by or on behalf of each management nominee for director, a statement in duplicate containing the information specified by Proxy Form.~~

~~3. If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition to it, a statement in duplicate containing the information specified in Proxy Form shall be filed with the commissioner by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition to it.~~

~~4. If, subsequent to the filing of the statements required by Subsections A, B, and C of this section, additional persons become participants in a solicitation subject to this rule, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified by Proxy Form, within three business days after the person becomes a participant, or the longer period as the Department may authorize upon a showing of good cause.~~

~~5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.~~

~~6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the commissioner.~~

~~D. Solicitations Prior to Furnishing Required Written Proxy Statement.~~

~~Notwithstanding the provisions of Subsection A of Section 6, a solicitation subject to this section may be made prior to furnishing stockholders a written proxy statement containing the information specified in Proxy Form with respect to the solicitation, provided that:~~

~~1. the statements required by Subsection C of this section are filed by or on behalf of each participant in the solicitation;~~

~~2. no form of proxy is furnished to stockholders prior to the time the written proxy statement required by Subsection A of Section 6 is furnished to the persons provided that Subsection B of this section may not apply where a proxy statement then meeting the requirements of Proxy Form has been furnished to stockholders;~~

~~3. the information specified in Subsection 2 and 3 of C of this section, of the statements required by Subsection C of this section to be filed by each participant, or an appropriate summary of it, are included in each communication sent or given to stockholders in connection with the solicitation; and~~

~~4. a written proxy statement containing the information specified in Proxy Form with respect to a solicitation is sent or given to stockholders at the earliest practicable date.~~

~~E. Solicitations Prior to Furnishing Required Written Proxy Statement—Filing Requirements.~~

~~Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by Subsection A of Section 6 shall be filed with the commissioner in preliminary form at least five business days prior to the date definitive copies of the material are first sent or given to the persons, or shorter period as the commissioner may authorize upon a showing of good cause.~~

~~F. Application of This Section to Report.~~

~~Notwithstanding the provisions of Subsections B and C of Section 6, two copies of any portion of the report referred to in subsection two of section five which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the report are first sent or given to stockholders.~~

R590-67-12. Separability.

~~If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.]~~

R590-67. Proxy, Consent, and Authorization of a Domestic Stock Insurer.

R590-67-1. Authority.

~~This rule is promulgated by the commissioner pursuant to Section 31A-2-201.~~

R590-67-2. Purpose and Scope.

~~(1) The purpose of this rule is to establish requirements for:~~

~~(a) a proxy;~~

~~(b) a filing;~~

~~(c) a securities solicitation;~~

~~(d) information provided to a securities holder;~~

~~(e) a consent and authorization;~~

~~(f) a proposal;~~

~~(g) a false and misleading statement provision; and~~

(h) a provision related to an election contest.

(2)(a) This rule applies to a domestic stock insurer that has a class of equity securities held of record by 300 or more persons, directors, officers, or employees.

(b) This rule does not apply to an insurer if 95% or more of its equity securities are owned or controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than 500 persons.

(c) This rule does not apply to a domestic stock insurer that files with the Securities and Exchange Commission, with respect to a class of securities, forms of proxies, consents, and authorizations complying with the requirements of the Securities Exchange Act of 1934 and its applicable regulations, with respect to that class of securities.

(d) This rule applies to a proxy, consent, or authorization of a class of equity securities of a domestic insurer solicited by or on behalf of the management of the insurer from the holders of record of the securities and its schedules before any annual or other meeting of the security holders.

R590-67-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Associate" means a relationship with:

(a) a corporation or organization, other than the issuer or a majority owned subsidiary of the issuer, of which the person is:

(i) an officer or partner; or

(ii) directly or indirectly the beneficial owner of 10% or more of any class of equity securities;

(b) a trust or other estate in which the person:

(i) has a substantial beneficial interest; or

(ii) serves as a trustee or in a similar fiduciary capacity; or

(c) a relative or spouse of the person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the issuer or any of its parents or subsidiaries.

(2) "Beneficial owner" means a person who, directly or indirectly, through a contract, arrangement, understanding, relationship, or otherwise, has or shares:

(a) voting power, including the power to vote, or the power to direct voting of, a security; or

(b) investment power that includes the power to dispose of, or to direct the disposition of, a security.

(3) "Issuer" means the issuer of the security for which a proxy is solicited.

(4) "Last fiscal year" means the issuer's last fiscal year ending before the date of the meeting for which a proxy is solicited.

(5) "Officer" means a:

(a) president;

(b) secretary;

(c) treasurer;

(d) vice president in charge of a principal business function; or

(e) person who performs a similar policy-making function for an insurer.

(6) "Parent" means an affiliate controlling a person directly or indirectly through one or more intermediaries.

(7) "Proxy statement" means a statement required by Section R590-67-7, whether or not contained in a single document.

(8)(a) "Solicitation" or "solicit" means:

(i) a request for a proxy, whether or not accompanied by or included in a proxy form;

(ii) a request to execute, to not execute, or to revoke, a proxy; or

(iii) furnishing a proxy form or other communication to a security holder under a circumstance reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

(b) "Solicitation" or "solicit" does not mean:

(i) furnishing a proxy form to a security holder upon the unsolicited request of the security holder;

(ii) the performance by the issuer of an act required by Section R590-67-11; or

(iii) the performance by any person of a ministerial act on behalf of a person soliciting a proxy.

R590-67-4. Required Schedules.

(1) The following schedules shall be used by an insurer complying with this rule:

(a) Schedule A, Required Proxy Form Information;

(b) Schedule B, Required Solicitation Information; and

(c) Schedule C, Information Statement Requirements.

(2) The schedules listed in Subsection (1) are available on the department's website, <https://insurance.utah.gov>.

(3) A solicitation may not be made unless each person solicited is furnished with a written proxy statement containing the information specified in Schedule A.

(4) A solicitation may not be made by any person other than the issuer unless, at least five business days before, or a shorter period authorized by the commissioner, a statement, on behalf of each participant, is filed with the commissioner, in duplicate, containing the information specified by Schedule B.

(5) For any solicitation, a domestic insurer shall file with the commissioner, and transmit to each security holder who is entitled to vote, a written information statement containing the information specified in Schedule C.

R590-67-5. False or Misleading Statements.

A proxy statement, proxy form, notice of meeting, information statement, or other communication, written or oral, may not contain a statement that, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits a material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter that has become false or misleading.

R590-67-6. Solicitation.

(1) Sections R590-67-6 through R590-67-13 apply to any solicitation, except for a solicitation:

(a) not made on behalf of an insurer where the total number of persons solicited is ten or fewer;

(b) by a person regarding a security carried in the person's name or in the name of the person's nominee, other than as a voting trustee, or held in the person's custody, if the person:

(i) does not receive commission or remuneration for the solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

(ii) furnishes promptly to the solicited person a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who furnish copies thereof for that purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding the material; and

(iii) does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date;

(c) by a person regarding securities of which it is the beneficial owner;

(d) through a newspaper advertisement that informs security holders of a source where they may obtain copies of a proxy statement, proxy form, and other soliciting material, and only includes:

(i) the name of the issuer;

(ii) the reason for the advertisement; and

(iii) the proposal to be acted upon by security holders; and

(e) exempted from this rule by the commissioner.

R590-67-7. Information to be Provided to Security Holders.

(1) If a solicitation is made on behalf of the issuer and relates to an annual meeting of security holders where directors are elected, each proxy statement shall be accompanied or preceded by an annual report to security holders that meets the provisions of this subsection.

(a) The report shall contain, in comparative columnar form, financial statements for the last two fiscal years, prepared on a consistent basis, that in the opinion of the management, adequately reflect the financial position of the issuer at the end of each year and the results of its operations for each year.

(i) Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect the financial position and results of operations of the issuer and its subsidiaries, but in that case, the individual statements of the issuer may be omitted.

(ii) The commissioner may, upon the request of the issuer, permit the omission of financial statements for the earlier of the two fiscal years upon a showing of good cause.

(b) The financial statements for the last two fiscal years required by Subsection (1)(a) shall be prepared in a manner acceptable to the commissioner.

(c) The report shall include, in comparative columnar form, a summary of the issuer's operations, or the operations of the issuer and its subsidiaries consolidated, or both as appropriate, for each of the last five fiscal years of the issuer, or the life of the issuer and its predecessors, if less.

(d) The report shall contain a brief description of the business done by the issuer and its subsidiaries during the most recent fiscal year that will, in the opinion of management, indicate the general nature and scope of the business of the issuer and its subsidiaries.

(e) The report shall identify:

(i) each of the issuer's directors and officers;

(ii) the principal occupation or employment of each person; and

(iii) the name and principal business of the organization where each person is employed.

(f) The report shall identify the principal market in which securities of any class entitled to vote at the meeting are traded, stating the range of bid and asked quotations for each quarterly period during the issuer's two most recent fiscal years, and shall set forth each dividend paid during the two-year period.

(g) The report may be in any form suitable to management and the information required by Subsections (1)(c) through (1)(f)

may be presented in an appendix or other separate section of the report, if the attention of security holders is called to the presentation.

(2) Subsection (1) does not apply to a solicitation made on behalf of the management before the financial statements are available if:

(a) solicitation is being made at the time in opposition to the management; and

(b) the management's proxy statement includes an undertaking, in boldface type, to furnish the annual report to all persons being solicited at least 20 days before the date of the meeting.

(3) The report sent to security holders shall be filed with the commissioner, for the commissioner's information, no later than the later of:

(a) the date on which the report was first provided to security holders; or

(b) the date on which a preliminary copy of the solicitation material is filed pursuant to Section R590-67-10.

(4)(a) If securities of any class entitled to vote at a meeting where the issuer intends to solicit proxies, consents, or authorizations are held of record by a broker, dealer, bank, or voting trustee, or their nominees, the issuer shall inquire of the record holder at least 10 days before the record date for the meeting of security holders whether other persons are the beneficial owners of the securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply these materials to beneficial owners.

(b) The issuer shall supply the record holder in a timely manner with additional copies assembled in a form and at a place the record holder may reasonably request, in order to address and send one copy to each beneficial owner of securities so held and shall, upon the request of the record holder, pay its reasonable expenses for mailing the materials to the security holders to whom the material is sent.

R590-67-8. Proxy Requirements.

(1) A proxy form shall:

(a) indicate, in boldface type, whether a proxy is solicited on behalf of the insurer's board of directors and, if not, by whom it is solicited;

(b) provide a specifically designated blank space for dating the proxy; and

(c) clearly and impartially identify each matter or group of related matters to be acted upon, whether proposed by the insurer or by a security holder.

(2) A process affording the solicited person an opportunity to specify by ballot a choice between approval, disapproval, or abstention with respect to each matter to be acted upon, other than officer elections, shall be provided in a proxy form.

(a) A proxy may confer discretionary authority regarding matters where a choice is not specified provided the proxy states, in boldface type, how it intends to vote the shares represented by the proxy in each case.

(b) A proxy that provides both for the election of directors and for action on other specified matters shall be prepared clearly to provide, by a box or otherwise, a process by which the security holder may withhold authority to vote for any nominee as a director.

(c) The executed proxy by the security holder to grant authority to vote for the election of all nominees grants authority for all nominees for which a vote is not withheld, provided the proxy so states in boldface type.

(3) A proxy may confer discretionary authority to vote with respect to the following:

(a) a matter that the person making the solicitation does not know, a reasonable time before the solicitation, will be presented at the meeting, if a specific statement to that effect is made in the proxy statement or proxy form;

(b) approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at the meeting;

(c) the election of any person to any office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;

(d) a proposal omitted from the proxy statement and proxy form pursuant to Section R590-67-12; or

(e) a matter incident to the conduct of the meeting.

(4) A reference to a proposal where discretionary authority is given under Subsection (3) is not required.

(5)(a) A proxy may not confer authority to vote for the election of any person to an office for which a bona fide nominee is not named in the proxy statement, or to vote at an annual meeting, other than the next annual meeting, to be held after the date the proxy statement and proxy form are first sent or given to security holders.

(b) A person is not a bona fide nominee and may not be named as such unless the person consents to being named in the proxy statement and to serve if elected.

(6) A proxy statement or proxy form shall provide, subject to reasonable specified conditions, that the securities represented by the proxy will be voted and that where the person solicited specifies, by means of a ballot provided pursuant to Subsection (2), a choice with respect to any matter to be acted upon, the securities will be voted in accordance with the specifications made.

R590-67-9. Presentation of Information in Proxy Statement.

(1) The information included in a proxy statement shall:

(a) be clearly presented;

(b) be divided into groups according to subject matter; and

(c) for groups of statements, be preceded by appropriate headings.

(2)(a) A proxy statement shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting shall be received by the issuer for inclusion in the issuer's proxy statement and proxy form relating to that meeting.

(b) The date in Subsection (2)(a) shall be calculated under Subsection R590-67-12(2).

(c) If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the issuer shall, in a timely manner and by reasonable means, inform security holders of the change and the date by which proposals of security holders shall be received.

R590-67-10. Material Required to be Filed.

(1) A copy of the proxy statement, the proxy form, and any other soliciting material furnished to security holders with the proxy shall be filed with the commissioner at least 10 days before the date final copies of the material are first sent or given to security holders, or a shorter period authorized by the commissioner.

(2) A copy of any additional soliciting material relating to the same meeting or subject matter to be furnished to security holders after the proxy statement shall be filed with the commissioner at least two days before the date copies of the material are first sent or given

to security holders, or a shorter period authorized by the commissioner.

(3) A copy of the proxy statement, the proxy form, and any other soliciting material in the form the material is furnished to security holders, shall be filed with the commissioner no later than the date the material is first sent or given to any security holder.

(4) A copy of soliciting material in the form of a speech, a press release, or a radio or television script may be filed with the commissioner before use or publication.

(a) A definitive copy shall be filed with the commissioner no later than the date the material is used or published.

(b) Subsections (1) and (2), and R590-67-14(1) apply to a reprint or reproduction of the soliciting material.

(5) An amended or revised copy of a proxy statement, proxy form, or other material shall be filed and clearly marked to indicate the changes.

R590-67-11. Mailing Communications to Security Holders.

(1) The issuer shall mail or otherwise furnish to a security holder, as promptly as practicable after the receipt of the request:

(a) a statement of the approximate number of record owners and, to the extent known to the issuer, the approximate number of beneficial owners of any class of securities, any of whom have been or are to be solicited on behalf of the management, or any group of whom the security holder shall designate; and

(b) an estimate of the cost of mailing a specified proxy statement, proxy form, or other communication to the owners.

(2)(a) Copies of a proxy statement, a proxy form, or other communication furnished by the security holder shall be provided by the issuer to all security holders specified in Subsection (1)(a) as the security holder shall designate.

(b) The issuer is not required to mail or otherwise provide any material before the first day the solicitation is made on behalf of the issuer.

(c) The issuer is not responsible for the proxy statement, the proxy form, or other communication.

(d) The issuer may furnish promptly to a security holder a reasonably current list of the names and addresses of the record owners and the beneficial owners the security holder designates.

R590-67-12. Proposals of Security Holders.

(1) "Proponent," for the purposes of this subsection, means a security holder.

(2)(a) If a proponent notifies an issuer, in writing and no less than 90 days before the issuer's annual meeting, of the security holder's intention to present a lawful proposal for action at an upcoming meeting of the issuer's security holders and the proponent is entitled to vote at least 1% of the votes entitled to be voted on the proposal, the issuer shall:

(i) set forth the proposal in its proxy statement;

(ii) identify the proposal in its proxy form; and

(iii) provide for the specification of approval or disapproval of the proposal.

(b) The proxy statement shall also include the name and address of the proponent.

(3) If an issuer opposes a proposal received from a proponent, it shall, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal.

(4) The issuer may omit a proposal and any statement in support thereof from its proxy statement and proxy form if:

(a) the proponent submitted more than one proposal in connection with a particular meeting;
(b) the proposal is more than 300 words long;
(c) the proposal or the supporting statement is contrary to this rule or Schedules A, B, or C, including Section R590-67-5, which prohibits false or misleading statements in proxy soliciting materials;
(d) the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;
(e) the proposal deals with:
(i) a matter not significantly related to the issuer's business;
(ii) a matter beyond the issuer's power to effectuate;
(iii) a matter relating to the conduct of the issuer's ordinary business operations; or
(iv) an election to office;
(f) the proposal is counter to a proposal submitted by the issuer at the meeting, the proposal is moot, or the proposal relates to specific amounts of cash or stock dividends;
(g) the proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal is included in the management's proxy material for the meeting; or
(h) substantially the same proposal was submitted to security holders in the issuer's proxy statement and proxy form relating to any annual or special meeting of security holders held within the preceding five calendar years and received less than 5% of the total number of votes cast at the time of its most recent submission.
(5) If the issuer intends to omit a proposal from its proxy statement or proxy forms, or both, it shall notify the proponent in writing of its intention at least 10 days before the issuer's preliminary proxy material is filed under Subsection R590-67-10(1).

R590-67-13. Prohibition of Certain Solicitations.

A person making a solicitation may not solicit an undated or postdated proxy or a proxy that is dated as of a date subsequent to the date it is signed by the security holder.

R590-67-14. Special Provisions Applicable to Solicitations.

(1) This section applies to a solicitation by a person opposing a solicitation by another person with respect to the election or removal of directors at an annual or special meeting of security holders.
(2)(a) "Participant" or "participant in a solicitation," for purposes of this section, means:
(i) the issuer;
(ii) a director of the issuer or any nominee for whose election as a director proxies are solicited; and
(iii) a person acting alone or with one or more other persons, committees, or groups, in organizing, directing, or financing the solicitation.
(b) "Participant" and "participant in a solicitation" does not mean:
(i) a bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant;
(ii) a person or organization retained or employed by a participant to solicit security holders or a person who merely transmits proxy soliciting material or performs ministerial or clerical duties;
(iii) a person employed in the capacity of attorney, accountant, advertising, public relations, or financial adviser, whose

activities are limited to the performance of their duties in the course of employment;

(iv) a person regularly employed as an officer or employee of the issuer or any of its subsidiaries or affiliates who is not otherwise a participant; or

(v) an officer or director of, or any person regularly employed by, any other participant, if the officer, director, or employee is not otherwise a participant.

(3)(a) Within five business days after a solicitation is made by the issuer, or a longer period authorized by the commissioner, a statement, on behalf of each participant other than the issuer, shall be filed with the commissioner, in duplicate, containing the information specified by Schedule B.

(b) If any solicitation on behalf of the issuer or any other person has been made, or if proxy material is ready for distribution, before a solicitation subject to this section in opposition, a statement in duplicate containing the information specified in Schedule B shall be filed with the commissioner, by or on behalf of each participant in the prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition.

(c) After filing the statements under Subsections (1) through (3), if additional persons become participants in a solicitation, a statement shall be filed with the commissioner, by or on behalf of each such person, in duplicate, containing the information specified in Schedule B, within three business days after the person becomes a participant, or a longer period authorized by the commissioner.

(d) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the commissioner.

(4) Notwithstanding Subsection R590-67-7(1), a solicitation may be made before furnishing security holders a written proxy statement containing the information specified in Schedule A with respect to the solicitation, provided that:

(a) the statements required by Subsection R590-67-14(3) are filed by or on behalf of each participant in the solicitation;

(b) a proxy form is not furnished to security holders before the time the written proxy statement under Subsection R590-67-14(5) is furnished to security holders, however, this Subsection R590-67-14(4)(b) may not apply where a proxy statement meeting the requirements of Schedule A is furnished to security holders;

(c) the information, or an appropriate summary, under Subsection R590-67-14(3) is filed by each participant and included in each communication furnished to security holders in connection with the solicitation; and

(d) a written proxy statement containing the information specified in Schedule A regarding a solicitation is furnished to security holders at the earliest practicable date.

(5) Proposed soliciting material furnished to security holders before the furnishing of the written proxy statement required by Subsection R590-67-7(1) shall be filed with the commissioner in preliminary form at least five business days before the date definitive copies of the material are first furnished, or a shorter period the commissioner may authorize.

(6) Notwithstanding Subsection R590-67-7(2), any portion of the annual report that refers to any solicitation or to any participant in any solicitation, other than the solicitation by management, shall be filed with the commissioner as proxy material, in preliminary form, at least five days before the date copies of the report are first furnished to security holders.

R590-67-15. Severability.

If any provision of this rule, Rule R590-67, 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: insurance law

Date of Last Change: ~~2023~~¹⁹⁸⁹

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:	R590-68	Filing ID: 55335
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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:
R590-68. Insider Trading of Equity Securities of Domestic Stock Insurance Companies
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 redundant and unnecessary sections, add clarifying sections, and update the Severability (the new R590-68-26) 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-5-303	

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:	05/31/2023

9. This rule change MAY become effective on:	06/07/2023
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:	04/14/2023
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R590. Insurance, Administration.

R590-68. Insider Trading of Equity Securities of Domestic Stock Insurance Companies.

~~R590-68-1. Authority.~~

~~This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Subsection 31A-5-303(3)(a), which allows the commissioner to adopt a rule to "define terms and prescribe conditions regarding securities held in the ordinary course of business and incident to the establishment of maintenance of a primary or secondary market."~~

~~R590-68-2. Definition of Certain Terms.~~

~~A. "Insurer" means any domestic stock insurance company with an equity security subject to the provisions of Section 31A-5-303.~~

~~B. "Act" means the Federal Securities Exchange Act of 1934.~~

~~C. "Officer" means a president, vice president, treasurer, actuary, secretary, controller and any other person who performs for the insurer functions corresponding to those performed by the foregoing officers.~~

~~D. "Equity security" means any stock or similar security; or any voting trust certificate or certificate of deposit for a security; or any security convertible, with or without consideration, into a security; or carrying any warrant or right to subscribe to or purchase a security; or warrant or right.~~

~~E. Securities "held of record."~~

~~1. For the purpose of determining whether the equity securities of an insurer are held of record by 100 or more persons, securities shall be considered "held of record" by each person who is identified as the owner of securities on records of security holders maintained by or on behalf of the insurer, subject to the following:~~

~~(a) where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as an owner on these records if they had been maintained in accordance with accepted practice shall be included as a holder of record;~~

~~(b) securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person;~~

~~(c) securities identified as held of record by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person;~~

~~(d) securities held by two or more persons as co-owners shall be included as held by one person;~~

~~_____ (e) each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the insurer can establish that, if securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of person; and~~

~~_____ (f) Securities registered in substantially similar names where the insurer has reason to believe, because of the address or other indications, represent the same person and may be included as held of record by one person.~~

~~_____ 2. Notwithstanding Subsection E.(1) of this section:~~

~~_____ (a) securities held to the knowledge of the insurer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in these securities; provided however, that the insurer may rely in good faith on information received in response to its request from a nonaffiliated insurer of the certificates or evidences of interest; and~~

~~_____ (b) if the insurer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of the Act, the beneficial owners of securities shall be considered the record owners.~~

~~_____ E. "Class" means securities of an insurer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.~~

~~R590-68-3. Transactions Exempted From the Operation of Section 31A-5-303.~~

~~_____ Any acquisition or disposition of any equity security by a director or officer of an insurer within six months prior to the date on which the Act shall first become applicable with respect to the equity securities of the insurer shall not be subject to the operation of Section 31A-5-303.~~

~~R590-68-4. Filing of Statements.~~

~~_____ Initial statements of beneficial ownership of equity securities required by Section 31A-5-303 shall be filed on Form A, entitled "Initial Statement of Beneficial Ownership of Equity Securities." The statements shall be prepared and ownership required by Section 31A-5-303, and shall be filed on Form B, entitled "Statement of Changes in Beneficial Ownership of Securities." Statements of changes in a beneficial ownership shall be filed in accordance with the requirements of the applicable form. These forms are available from the Insurance Department.~~

~~_____ In determining, for the purpose of Section 31A-5-303, whether a person is the beneficial owner, directly or indirectly, of more than ten per cent of any class of any equity security, the class shall consist of the total amount of the class outstanding, exclusive of any securities of the class held by or for the account of the insurer or a subsidiary of the insurer; except that for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not outstanding securities have been so deposited. For the purpose of this section a person acting in good faith may rely on the information contained in the latest Convention Form Statement filed with the commissioner with respect to the amount of Securities of a class outstanding, or in the case of voting trust certificates or certificates of deposit, the amount issuable.~~

~~R590-68-5. Disclaimer of Beneficial Ownership.~~

~~_____ Any person filing a statement may expressly declare, for the purpose of the Act, that the filing of the statement shall not be construed as an admission that a person is the beneficial owner of any equity securities covered by the statement.~~

~~R590-68-6. Exemptions from Section 31A-5-303.~~

~~_____ A. During the period of 12 months following their appointment and qualification, securities held by the following persons shall be exempt from Section 31A-5-303:~~

- ~~_____ 1. executors or administrators of the estate of a decedent;~~
- ~~_____ 2. guardians or committees for an incompetent; and~~
- ~~_____ 3. receivers, trustees in bankruptcy, assignees for the benefit of creditors, conservators, liquidating agents, and other similar persons duly authorized by law to administer the estate or assets of other persons.~~

~~_____ B. After the 12 month period following their appointment or qualification, the foregoing persons shall be required to file reports with respect to the securities held by the estates which they administer under Section 31A-5-303, and shall be liable for profits realized from trading securities pursuant to Section 31A-5-303, only when the estate being administered is a beneficial owner of more than ten per cent of any class of equity security of an insurer subject to the Act.~~

~~_____ C. Securities reacquired by or for the account of an insurer and held by it for its account shall be exempt from Section 31A-5-303 during the time they are held by the insurer.~~

~~R590-68-7. Exemption From the Act of Securities Purchased or Sold by Odd Lot Dealers.~~

~~_____ Securities exempt from the provisions of the Act are purchased or sold by an odd lot dealer:~~

- ~~_____ (1) in odd lots so far as reasonably necessary to carry on odd lot transactions; or~~
- ~~_____ (2) in round lots to offset odd lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business.~~

~~R590-68-8. Certain Transactions Subject to Section 31A-5-303.~~

~~_____ The acquisition or disposition of any transferable option, put, call, spread or straddle shall be considered a change in the beneficial ownership of the security to which the privilege relates to require the filing of a statement reflecting the acquisition or disposition of the privilege. Nothing in this section, however, shall exempt any person from filing the statements required upon the exercise of the option, put, call, spread or straddle.~~

~~R590-68-9. Ownership of Securities Held in Trust.~~

~~_____ A. Beneficial ownership of a security for the purpose of Section 31A-5-303 shall include:~~

- ~~_____ 1. the ownership of securities as a trustee where either the trustee or members of his immediate family have a vested interest in the income or corpus of the trust;~~
- ~~_____ 2. the ownership of a vested beneficial interest in a trust; and~~
- ~~_____ 3. the ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of the beneficiaries.~~

~~_____ B. Except as provided in Subsection C., beneficial ownership of securities solely as a settlor or beneficiary of a trust shall be exempt from the provisions of Section 31A-5-303 where less than 20% in market value of the securities having a readily~~

ascertainable market value held by the trust, determined as of the end of the preceding fiscal year of the trust, consists of equity securities with respect to which reports would otherwise be required. Exemption is likewise accorded from Section 31A-5-303 with respect to any obligation which would otherwise be imposed solely by reason of ownership as settlor or beneficiary of securities held in trust, where the ownership, acquisition, or disposition of securities by the trust is made without prior approval by the settlor or beneficiary. No exemption pursuant to this subsection shall, be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in securities otherwise subject to the reporting requirements of Section 31A-5-303.

C. In the event that ten per cent of any class of any equity security of an insurer is held in a trust, that trust and the trustees shall be required to file the reports specified in Section 31A-5-303.

D. Not more than one report need be filed to report any holdings or with respect to any transaction in securities held by a trust, regardless of the number of officers, directors, or ten per cent stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed shall disclose the names of trustees, settlors and beneficiaries who are officers, directors or ten per cent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file a report so long as he relies in good faith upon an understanding that the trustee of a trust will file whatever reports might otherwise be required of the beneficiary.

E. As used in this section the "immediate family" of a trustee means:

1. a son or daughter of the trustee, or a descendant of either;
2. a stepson or stepdaughter of the trustee;
3. the father or mother of the trustee, or an ancestor of either;
4. a stepfather or stepmother of the trustee; and
5. a spouse of the trustee.

For the purpose of determining whether any of the foregoing relations exists, a legally adopted child of a person shall be considered a child of the person by blood.

F. In determining, for the purposes of Section 31A-5-303, whether a person is the beneficial owner, directly or indirectly, of more than ten per cent of any class of any equity security, the interest of a person in the remainder of a trust shall be excluded from the computation.

G. No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under Section 31A-5-303, with respect to his indirect interest in portfolio securities held by:

1. a pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan; and
2. a business trust with over 25 beneficiaries.

H. Nothing in this section shall impose any duties or liabilities with respect to reporting any transaction or holding prior to its effective date.

R590-68-10. Exemption for Small Transactions.

A. Any acquisition of securities shall be exempt from Section 31A-5-303 where:

1. the person effecting the acquisition does not, within six months after, effect any disposition than by way of gift of securities of the same class; and

2. the person effecting an acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of \$3,000 for any six months' period during which the acquisition occurs.

B. Any acquisition or disposition of securities, by way of gift, where the total amount of gifts does not exceed \$3,000 in market value for any six months' period, shall be exempt from Section 31A-5-303 and may be excluded from the computations prescribed in Subsection A.2.

C. Any person exempted by Subsection A. or B. of this section shall include in the first report filed by him, after a transaction within the exemption, a statement showing his acquisitions and dispositions for each six months' period or portion which has elapsed since his last filing.

R590-68-11. Exemption From Section 31A-5-303 of Transactions Which Need Not Be Reported Under Section 31A-5-303.

Any transaction which has been or shall be exempted from the requirements of Subsection 31A-5-303(1) shall, as it is otherwise subject to the provisions of Subsection 31A-5-303(2), be likewise exempted from Subsection 31A-5-303(2).

R590-68-12. Exemption From Section 31A-5-303 of Certain Transactions Effected in Connection With a Distribution.

A. Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of Subsection 31A-5-303(2), to the extent specified in this section as not included within the purpose of Section 31A-5-303, upon the following conditions:

1. the person effecting the transaction is engaged in the business of distributing securities and is participating in good faith in the ordinary course of business in the distribution of a block of securities;

2. the security involved in the transaction is:

(A) a part of a block of securities and is acquired by the person effecting the transaction with a view to distribution from the insurer or other person on whose behalf securities are being distributed, or from a person who is participating in good faith in the distribution of a block of securities; or

(B) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed, or to cover an over allotment or other short position created in connection with the distribution; and

3. other persons not within the purview of Section 31A-5-303, are participating in the distribution of a block of securities on terms at least as favorable as those on which a person is participating and to an extent at least equal to the aggregate participation of persons exempted from the provisions of Section 31A-5-303 by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions shall not preclude an exemption which would otherwise be available under this section.

B. The exemption of a transaction pursuant to this section, with respect to the participation of one party, shall not render the transaction exempt with respect to participation of any other party unless the other party also meets the conditions of this section.

~~R590-68-13. Exemption From Section 31A-5-303 of Acquisitions of Shares of Stock and Stock Options Under Certain Stock Bonus, Stock Option or Similar Plans.~~

Any acquisition of shares of stock, other than stock acquired upon the exercise of an option, warrant or right, pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan, or a stock option pursuant to an employee stock purchase plan by a director or officer of an insurer issuing a stock or stock option, shall be exempt from the operation of Subsection 31A-5-303(2) if the plan meets the following conditions:

A. The plan has been approved, directly or indirectly:

(1) by the affirmative votes of the holders of a majority of the securities of the insurer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State of Utah; or

(2) by the written consent of the holders of a majority of the securities of an insurer entitled to vote: provided, however, that if the vote or written consent was not solicited substantially in accordance with the proxy rules prescribed by the National Association of Insurance Commissioners in effect at the time of a vote or written consent, the insurer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by rules so prescribed and in effect at the time information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan, were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of:

(i) the date the Act first applies to insurer; or

(ii) the acquisition of an equity security for which exemption is claimed. Written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of the written information shall be filed with, or mailed for filing to, the commissioner not later than the date on which it is first sent or given to security holders of the insurer. For the purposes of this subsection, the term "insurer" includes a predecessor corporation if the plan or obligations to participate were assumed by the insurer in connection with the succession.

B. If the selection of any director or officer of the insurer to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to a director or officer or which may be covered by qualified, restricted or employee stock purchase plan stock options granted to any director or officer, is subject to the discretion of any person, then discretion shall be exercised only as follows:

1. with respect to the participation of directors:

(a) by the board of directors of the insurer, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(b) by, or only in accordance with the recommendations of a committee of three or more persons having full authority to act in the matter of the members of which committee are disinterested persons; or

(c) otherwise in accordance with the plan, if the plan:

(i) specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to qualified, restricted or employee stock purchase plan stock options

granted to directors and the terms upon which, and the times at which, or the periods within which, the stock may be acquired or the options may be acquired and exercised; or

(ii) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing, based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages outstanding from time to time, or similar factors.

2. with respect to the participation of officers who are not directors:

(a) by the board of directors of the insurer or a committee of three or more directors; or

(b) by, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, of the members of which committee are disinterested persons.

For the purpose of this subsection, a director or committee member shall be considered a disinterested person only if the person is not eligible at the time the discretion is exercised, and has not at any time within one year prior to this, been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted, or employee stock purchase plan stock options may be granted pursuant to the plan, or any other plan of the insurer, or any of its affiliates entitling the participants to acquire stock, or qualified, restricted, or employee stock purchase plan stock options of the insurer, or any of its affiliates.

3. The provisions of this subsection shall not apply with respect to any option granted, or other equity security acquired, prior to the date that Subsections 31A-5-303(1)(2) and (3) first became applicable with respect to any class of equity securities of any insurer.

C. As to each participant or as to participants the plan effectively limits the aggregate dollar amount or the aggregate number of shares of stock which may be allocated, or which may be subject to qualified, restricted, or employee stock purchase plan stock options granted, pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date, and may be determined either by fixed or maximum dollar amounts, or fixed or maximum numbers of shares or by formulas based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares, or percentages outstanding from time to time, or similar factors which will result in an effective and determinable limitation. These limitations may be subject to any provisions for adjustment of the plan or of stock allocable or portions outstanding to prevent dilution or enlargement of rights.

D. Unless the context otherwise requires, terms used in this section shall have the same meaning as in the Act and in Section 1 of this rule. In addition, the following definitions apply:

1. the term "plan" includes any plan, whether or not set forth in any formal written document or documents and whether or not approved in its entirety at one time.

2. The definition of the terms "qualified stock option" and "employee stock purchase plan" that are set forth in Sections 422 and 423 of the Internal Revenue Code of 1954, as amended, are to be applied to those terms where used in this section. The term "restricted stock option" as defined in Subsection 424(b) of the Internal Revenue Code of 1954, as amended, shall be applied to that term as used in this section, provided however, that for the purposes of this section an option which meets the conditions of that section, other than the date of issuance shall be considered a "restricted stock option."

~~R590-68-14. Exemption From Subsection 31A-5-303(2) of Certain Transactions in Which Securities Are Received by Redeeming Other Securities.~~

~~Any acquisition of an equity security, other than a convertible security or right to purchase a security, by a director or officer of the insurer issuing the security shall be exempt from the operation of Subsection 31A-5-303(2) upon condition that:~~

~~A. the equity security is acquired by way of redemption of another security of an insurer substantially all of whose assets, other than cash, or government bonds, consist of securities of the insurer issuing the equity security so acquired, and which:~~

~~1. represented substantially and in practical effect a stated or readily ascertainable amount of the equity security;~~

~~2. had a value which was substantially determined by the value of the equity security; and~~

~~3. conferred upon the holder the right to receive the equity security without the payment of any consideration other than the security redeemed.~~

~~B. no security of the same class as the security redeemed was acquired by the director or officer within six months prior to redemption or is acquired within six months after redemption; and~~

~~C. the insurer issuing the equity security acquired has recognized the applicability of Subsection (a) of this section by appropriate corporate action.~~

~~R590-68-15. Exemption of Long Term Profits Incident to Sales Within Six Months of the Exercise of an Option.~~

~~A. To the extent specified in Subsection B. of this section, the commissioner shall exempt as not included within the purposes of Subsection 31A-5-303(2) any transaction or transactions involving the purchase and sale, or sale and purchase, of any equity security where the purchase is pursuant to the exercise of an option or similar right either:~~

~~(1) acquired more than six months before its exercise; or~~

~~(2) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.~~

~~B. Regarding transactions specified in Subsection A., the profits inuring to the insurer shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within six months before or after the date of sale. Nothing in this section shall enlarge the amount of profit which would inure to the insurer in the absence of this section.~~

~~C. The commissioner also exempts, as not included within the purposes of Subsection 31A-5-303(2), the disposition of a security purchased in a transaction specified in Subsection A. of this section, pursuant to a plan or agreement for merger or consolidation, or reclassification of the insurer's securities, or for the exchange of its securities for the securities of another person which has acquired its assets, or which is in control, as defined in Subsection 368(e) of the Internal Revenue Code of 1954, of a person which has acquired its assets, where the terms of the plan or agreement are binding upon stockholders of the insurer except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.~~

~~D. The exemptions provided by this section shall not apply to any transaction made unlawful by Subsection 31A-5-303(3) or by any rules.~~

~~E. The burden of establishing market price of a security for the purpose of this section shall rest upon the person claiming the exemption.~~

~~R590-68-16. Exemption From Section 31A-5-303 of Certain Acquisitions and Dispositions of Securities Pursuant to Merger or Consolidations.~~

~~A. The following transactions shall be exempt from the provisions of Subsection 31A-5-303(2) as not included within the purpose of this section:~~

~~1. The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to merger or consolidation, owned 85% or more of the equity securities of companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;~~

~~2. The disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to merger or consolidation, owned 85% or more of the equity securities of companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;~~

~~3. The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidations as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.~~

~~4. The disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values prior to merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.~~

~~B. A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.~~

~~C. Notwithstanding the foregoing, if an officer, director or stockholder shall make any purchase, other than a purchase exempted by this section, of a security in any company involved in the merger or consolidation and any sale, other than a sale exempted by this section, of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this section shall be unavailable to the officer, director, or stockholder.~~

~~R590-68-17. Exemption From Section 31A-5-303(2) of Certain Securities Received Upon Surrender of Similar Equity Securities.~~

~~Receipt by a person from an insurer of shares of stock of a class having general voting power, upon the surrender by the person of an equal number of shares of stock of the insurer of a class which does not have general voting power, pursuant to provisions of the insurer's certificate of incorporation, for the purpose of an accompanied simultaneously or followed immediately by the sale of the shares so received, shall be exempt from the operation of Section 31A-5-303(2) as a transaction not included within the purpose of the section, if the following conditions exist:~~

~~A. The person receiving shares is not an officer or director, or the beneficial owner, directly or indirectly, immediately prior to the receipt of more than ten per cent of an equity security of the insurer;~~

~~B. The shares surrendered and the shares issued upon the surrender shall be of classes which are freely transferable and entitle the holders to participate equally per share in distributions of earnings and assets;~~

~~C. The surrender and issuance are made pursuant to provisions of a certificate of incorporation which require that the shares issued upon the surrender shall be registered upon issuance in the name of a person or persons, other than the holder of the shares surrendered, and may be required to be issued as of right only in connection with the public offering, sale and distribution of the shares and the immediate sale by the holder of the shares for that purpose, or in connection with a gift of the shares;~~

~~D. Neither the shares so surrendered, nor any shares of the same class, nor other shares of the same class as those issued upon the surrender, have been or are purchased, otherwise than in a transaction exempted by this section, by the person surrendering the shares within six months before or after the surrender or issuance.~~

R590-68-18. Exemption From Section 31A-5-303(2) of Certain Transactions Involving an Exchange of Similar Securities.

~~Any acquisition or disposition of securities made in an exchange of shares of a class or series of stock of an insurer for an equivalent number of shares of another class or series of stock of the same insurer, pursuant to a right of conversion under the terms of the insurer's charter or other governing instruments, shall be exempt from the operation of Section 31A-5-303(2) if:~~

~~A. the shares surrendered and those acquired in exchange, evidence substantially the same rights and privileges except that, pursuant to the provisions of the insurer's charter or other governing instruments, the board of directors may declare and pay a lesser dividend per share on shares of the class surrendered than on shares of the class acquired in exchange, or may declare and pay no dividend on shares of the class surrendered; and~~

~~B. the transaction was effected in contemplation of a public sale of the shares acquired in the exchange; provided, that this section shall not be construed to exempt from the operation of Section 31A-5-303(2), any purchase or sale of shares of the class surrendered, and any sale or purchase of shares of the class acquired in the exchange, otherwise than in the transaction of exchange exempted by this section, within a period of less than six months.~~

R590-68-19. Exemption of Certain Securities From Section 31A-5-303(3).

~~Securities shall be exempt from the operation of Section 31A-5-303(3) to the extent necessary to render lawful under the section the execution by a broker of an order for an account in which he has no direct or indirect interest.~~

R590-68-20. Exemption From Section 31A-5-303(3) of Certain Transactions Effected in Connection With a Distribution.

~~Securities shall be exempt from the operation of Section 31A-5-303(3) to the extent necessary to render lawful under this section any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, upon the following conditions:~~

~~A. the sale is represented by an over allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset the sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling or soliciting dealer group of which the dealer is a member at the time of the sale, whether or not~~

~~the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and~~

~~B. other persons not within the purview of Section 31A-5-303(3), are participating in the distribution of the block of securities on terms at least as favorable as those on which the dealer is participating and to an extent at least equal to the aggregate participation of persons exempted from the provisions of Section 31A-5-303(3) by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions shall not preclude an exemption which would otherwise be available under this section.~~

R590-68-21. Exemption From Section 31A-5-303(3) of Sales of Securities to Be Acquired.

~~A. Whenever any person is entitled, as an incident to his ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the security to be acquired shall be exempt from the operation of Section 31A-5-303(3), provided that:~~

~~(1) the sale is made subject to the same conditions as those attaching to the right of acquisition; and~~

~~(2) a person exercises reasonable diligence to deliver the security to the purchaser promptly after his right of acquisition matures; and~~

~~(3) a person reports the sale on the appropriate form for reporting transactions by persons subject to Section 31A-5-303(1).~~

~~B. This section shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when issued" or "when distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.~~

R590-68-22. Arbitrage Transactions under Section 31A-5-303(3).

~~It shall be unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of an insurer, unless he shall include the transaction in the statements required by Section 31A-5-303(1) and shall account to an insurer for the profits arising from the transaction, as provided in Section 31A-5-303(2). The provisions of Section 31A-5-303(3) shall not apply to arbitrage transactions. The provisions of the Act shall not apply to any bona fide foreign or domestic arbitrage transaction to the extent it is effected by any person other than the director or officer of the insurer.]~~

R590-68-1. Authority.

~~This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-5-303.~~

R590-68-2. Purpose and Scope.

~~(1) The purpose of this rule is to:~~

~~(a) define terms; and~~

~~(b) prescribe conditions regarding securities held in the ordinary course of business and incident to the establishment of maintenance of a primary or secondary market.~~

~~(2) This rule applies to a domestic stock insurance company.~~

R590-68-3. Definitions.

~~Terms used in this rule are defined in Sections 31A-1-301 and 31A-5-303. Additional terms are defined as follows:~~

(1) "Class" means all securities of an insurer that:
(a) are of substantially similar character; and
(b) provide substantially similar rights and privileges to the security holders.

(2) "Insurer," for purposes of this rule, means a domestic stock insurance company with an equity security subject to Section 31A-5-303.

(3) "Officer" means:

- (a) a president;
- (b) a vice president;
- (c) a treasurer;
- (d) an actuary;
- (e) a secretary;
- (f) a controller; or
- (g) any other person who performs a similar policy-making function for an insurer.

R590-68-4. Securities Held of Record.

(1) This section sets forth the method for determining whether the equity securities of an insurer are held of record by 100 or more persons.

(2) Securities are held of record by each person identified as the owner of the securities on records of security holders maintained by or on behalf of the insurer, subject to the following:

(a) where the records of a security holder are not maintained in accordance with an accepted practice, an additional person who is identified as an owner on the records if they are maintained in accordance with an accepted practice are included as a holder of the record;

(b) securities are held by one person if they are identified as held of record:

- (i) by two or more persons as co-owners;
- (ii) by a corporation;
- (iii) by a partnership;
- (iv) by a trust, whether or not the trustees are named;
- (v) by another organization;
- (vi) by one or more persons as trustees, executors, guardians, or custodians; or
- (vii) in other fiduciary capacities with respect to a single trust, estate, or account;

(c) each outstanding unregistered or bearer certificate is included as held of record by a separate person, except to the extent that the insurer can establish that, if the securities were registered, they are held of record, under this rule, by a lesser number of persons; and

(d) securities registered in substantially similar names where the insurer has reason to believe that the names represent the same person, because of the address or other indications, may be included as held of record by one person.

(3)(a) Notwithstanding Subsections (1) and (2):

(i) securities held, to the knowledge of the insurer, subject to a voting trust, deposit agreement, or similar arrangement, are included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of interest in the securities; and

(ii) if the insurer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq, the beneficial owners of the securities are the record owners.

(b) An insurer may rely in good faith on such information as is received in response to its request from a nonaffiliated insurer of the certificates or evidence of interest.

R590-68-5. Filing Statements.

(1) The following statements shall be used by an insurer when complying with this rule:

(a) Form A, Initial Statement of Beneficial Ownership of Equity Securities; and

(b) Form B, Statement of Changes in Beneficial Ownership of Securities.

(2) The forms listed in Subsection (1) are available on the department's website, <https://insurance.utah.gov>.

(3) An initial statement of beneficial ownership of an equity security under Section 31A-5-303 shall be filed on Form A.

(4) A statement regarding a change in beneficial ownership of equity securities shall be filed on Form B.

(a) A director or officer required to file a statement on Form B regarding a change in beneficial ownership of equity securities that occurs within six months after the director or officer became a director or officer of the insurer, or within six months after equity securities of the insurer are registered under Subsection 31A-5-303(1), shall include the information that caused the filing of the statement.

(b) A person who ceased to be a director or officer of an insurer with equity securities registered under Subsection 31A-5-303(1) shall file a statement on Form B regarding:

(i) a change in the person's beneficial ownership of equity securities of the insurer that occur on or after the date that the person ceased to be a director or officer; or

(ii) the date that the insurer ceased to have an equity security registered, if the change occurs within six months after any change in the beneficial ownership of the securities before that date.

(c) The statement on Form B shall be filed within 10 days after the end of the month in which the reported change in beneficial ownership occurs.

R590-68-6. Ownership of More Than 10% of an Equity Security.

(1)(a) To determine if a person is the beneficial owner, directly or indirectly, of more than 10% of a class of an equity security, the class consists of the total amount of the class outstanding, excluding any securities of the class held by or for the account of the insurer or a subsidiary of the insurer.

(b) Except for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class that may be deposited under the voting trust agreement or deposit agreement in question, whether all of the outstanding securities are deposited.

(c) A person acting in good faith may rely on the information contained in the latest annual statement filed with the commissioner with respect to the number of securities of a class outstanding or, in the case of voting trust certificates or certificates of deposit, the amount issuable.

(2)(a) To determine if a person is the beneficial owner, directly or indirectly, of more than 10% of a class of equity securities, the person is the beneficial owner of securities of a class that the person has the right to acquire through the exercise of presently exercisable options, warrants, or rights, or through the conversion of presently convertible securities.

(b) The securities subject to such options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the

class owned by that person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

(3) Subsection (2) does not relieve a person of a duty to comply with Section 31A-5-303 with respect to an equity security consisting of options, warrants, rights, or convertible securities that are subject as a class to Section 31A-5-303.

R590-68-7. Disclaimer of Beneficial Ownership.

A person filing a statement may expressly declare, under Section 31A-5-303, that the filing of the statement may not be construed as an admission that a person is the beneficial owner of an equity security covered by the statement.

R590-68-8. Exemptions from Subsections 31A-5-303(1) and 31A-5-303(2).

(1) During the 12-month period following their appointment and qualification, securities held by the following persons are exempt from Subsections 31A-5-303(1) and 31A-5-303(2):

- (a) an executor or administrator of the estate of a decedent;
- (b) a guardian or committee for an incompetent; and
- (c) a receiver, trustee in bankruptcy, assignee for the benefit of a creditor, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of other persons.

(2) After the 12-month period following the appointment or qualification, the persons in Subsection (1) shall file reports regarding the securities held by the estates they administer under Subsection 31A-5-303(1), and are liable for profits realized from trading securities pursuant to Subsection 31A-5-303(2), only when the estate being administered is a beneficial owner of more than 10% of a class of equity security of an insurer subject to Section 31A-5-303.

(3) Securities reacquired by or for the account of an insurer and held by it for its account are exempt from Section 31A-5-303 during the time the securities are held by the insurer.

R590-68-9. Transactions Exempted from Subsection 31A-5-303(2).

An acquisition or disposition of an equity security by a director or officer of an insurer within six months before the effective date of Section 31A-5-303 applicable to the equity securities of the insurer is exempt from Subsection 31A-5-303(2).

R590-68-10. Exemption From Section 31A-5-303 of Securities Purchased or Sold by Odd-Lot Dealers.

Securities purchased or sold by an odd-lot dealer in odd lots to carry on odd-lot transactions, or in round lots to offset odd-lot transactions, executed in the usual course of business are exempt from Section 31A-5-303 regarding participation by the odd-lot dealer.

R590-68-11. Certain Transactions Subject to Subsection 31A-5-303(1).

(1) The acquisition or disposition of a transferable option, put, call, spread, or straddle is a change in the beneficial ownership of a security to which the privilege relates and requires the filing of a statement reflecting the acquisition or disposition of the privilege.

(2) Subsection (1) does not exempt a person from filing a statement required upon the exercise of an option, put, call, spread, or straddle.

R590-68-12. Ownership of Securities Held in Trust.

(1)(a) "Immediate family of a trustee," as used in this section, means:

- (i) a son or daughter of the trustee, or a descendant of either;
- (ii) a stepson or stepdaughter of the trustee;
- (iii) a father or mother of the trustee, or an ancestor of either;
- (iv) a stepfather or stepmother of the trustee; and
- (v) a spouse of the trustee.

(b) When determining a relation under Subsection (5)(a), a legally adopted child of a person is a child of the person by blood.

(2) Beneficial ownership of a security under Subsection 31A-5-303(1) includes:

- (a) the ownership of securities as a trustee where either the trustee or a member of the trustee's immediate family has a vested interest in the income or corpus of the trust;
- (b) the ownership of a vested beneficial interest in a trust; and
- (c) the ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of the beneficiaries.

(3)(a) Except as provided in Subsection (4), beneficial ownership of securities solely as a settlor or beneficiary of a trust are exempt from Section 31A-5-303 where less than 20% in market value of the securities having a readily ascertainable market value held by the trust, determined as of the end of the preceding fiscal year of the trust, consists of equity securities where reports would otherwise be required.

(b) Section 31A-5-303 exempts an obligation that is imposed solely by reason of ownership as settlor or beneficiary of securities held in trust, where the ownership, acquisition, or disposition of securities by the trust is made without prior approval by the settlor or beneficiary.

(c) An exemption under this Subsection (3) may not be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in securities otherwise subject to the reporting requirements of Subsection 31A-5-303(1).

(4) If 10% of a class of an equity security of an insurer is held in a trust, that trust and the trustees shall file the reports specified in Section 31A-5-303.

(5)(a) Only one report is required to report any holdings or with respect to any transaction in securities held by a trust, regardless of the number of officers, directors, or 10% stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed discloses the names of trustees, settlors, and beneficiaries who are officers, directors, or 10% stockholders.

(b) A person having an interest only as a beneficiary of a trust is not required to file a report if the filer relies in good faith upon an understanding that the trustee of a trust will file the required reports of the beneficiary.

(6) To determine, for the purposes of Subsection 31A-5-303(1), whether a person is the beneficial owner, directly or indirectly, of more than 10% of any class of any equity security, the interest of a person in the remainder of a trust is excluded from the computation.

(7) A report is not required by any person, whether subject to the requirement of filing reports under Section 31A-5-303, regarding the person's indirect interest in portfolio securities held by:

(a) a pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan; and

(b) a business trust with over 25 beneficiaries.

R590-68-13. Exemption for Small Transactions.

(1) An acquisition of a security is exempt from Subsection 31A-5-303(1) if:

(a) the person effecting the acquisition does not, within six months after, effect any disposition other than by way of gift of a security of the same class; and

(b) the person effecting the acquisition does not participate in an acquisition or a disposition of a security of the same class having a total market value more than \$3,000 for any six-month period during which the acquisition occurs.

(2) An acquisition or disposition of a security, by way of gift, where the total amount of gifts does not exceed \$3,000 in market value for any six-month period, is exempt from Section 31A-5-303 and is excluded from the computations of Subsection (1)(b).

(3) A person exempted by Subsection (1) or (2) shall include in the first report filed, after a transaction within the exemption, a statement showing each acquisition and disposition for each six-month period or portion that elapsed since the last filing.

R590-68-14. Exemption From Subsection 31A-5-303(2) of Transactions That Need Not Be Reported Under Subsection 31A-5-303(1).

A transaction exempted from Subsection 31A-5-303(1), insofar as it is otherwise subject to the provisions of Subsection 31A-5-303(2), is likewise exempted from Subsection 31A-5-303(2).

R590-68-15. Exemption from Subsection 31A-5-303(2) of Certain Transactions in Connection With a Distribution.

(1) A transaction of purchase and sale, or sale and purchase, of a security in connection with the distribution of a substantial block of securities is exempt from Subsection 31A-5-303(2), to the extent specified in this section, upon the following conditions:

(a) the person carrying out the transaction is engaged in the business of distributing securities and is participating in good faith in the ordinary course of business in the distribution of a block of securities;

(b) the security involved in the transaction is:

(i) a part of a block of securities and is acquired by the person carrying out the transaction with a view to distribution from the insurer or other person on whose behalf securities are being distributed, or from a person who is participating in good faith in the distribution of a block of securities; or

(ii) a security purchased in good faith by or for the account of the person carrying out the transaction for the purpose of stabilizing the market price of securities of the class being distributed, or to cover an over-allotment or other short position created in connection with the distribution; and

(c) other persons not within the purview of Section 31A-5-303 are participating in the distribution of a block of securities on terms at least as favorable as those that a person is participating and to an extent at least equal to the aggregate participation of persons exempted from Section 31A-5-303.

(2) The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions does not preclude an exemption that is available under this section.

(3) The exemption of a transaction under this section regarding the participation of one party may not make the transaction exempt with respect to participation of any other party unless the other party also meets the conditions of this section.

R590-68-16. Exemption From Subsection 31A-5-303(2) of Acquisitions of Shares of Stock and Stock Options Under Certain Stock Bonus, Stock Option, or Similar Plans.

(1) For purposes of this section, the following terms apply:

(a) "Plan" means any plan, whether set forth in a formal written document and whether approved in its entirety at one time.

(b) "Qualified stock option" and "employee stock purchase plan" mean the same as those terms are defined in Sections 422 and 423 of the Internal Revenue Code.

(c) "Restricted stock option" means the same as that term is defined in Subsection 424(b) of the Internal Revenue Code.

(d) "Exercise of an option, warrant, or right" does not include:

(i) the making of an election to receive, under a plan, an award of compensation in the form of stock or credits, provided that the election is made before the making of the award and that the election is irrevocable until at least six months after termination of employment;

(ii) the subsequent crediting of such stock;

(iii) the making of an election as to a time for delivery of the stock after termination of employment, provided that the election is made at least six months before delivery;

(iv) the fulfillment of a condition to the absolute right to receive stock; or

(v) the acceptance of certificates for shares of stock.

(2)(a) An acquisition of shares of stock is exempt from Subsection 31A-5-303(2) if the plan complies with this section.

(b) Notwithstanding Subsection (2)(a), an acquisition of shares of stock is not exempt if it is:

(i) acquired upon the exercise of an option, warrant, or right, pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings, or similar plan;

(ii) an acquisition of a qualified or a restricted stock option pursuant to a qualified or a restricted stock option plan; or

(iii) a stock option pursuant to an employee stock purchase plan by a director or officer of an insurer issuing a stock or stock option.

(3)(a) The plan shall be approved, directly or indirectly, by:

(i) affirmative votes of the holders of a majority of the securities of the insurer present, or represented, and entitled to vote at a duly held meeting; or

(ii) written consent of the holders of a majority of the securities of an insurer entitled to vote.

(b) The insurer shall furnish the same information concerning the plan, in writing, to the holders of record of the securities entitled to vote for the plan, if:

(i) the vote or written consent was not solicited under the proxy rules of the NAIC in effect at the time of a vote or written consent; and

(ii) a proxy vote was solicited to approve or disapprove the plan.

(c) The information required by Subsection (2)(b) shall be furnished on or before the date of the first annual meeting of security holders held after the later of:

(i) the date Section 31A-5-303 first applies to the insurer; or

(ii) the acquisition of an equity security for which an exemption is claimed.

(d)(i) Written information may be furnished by mail to the last known address of the security holders of record within 30 days before the date of mailing.

(ii) The written information shall be filed with the commissioner no later than the date the written information is first provided to security holders of the insurer.

(e) "Insurer," for the purposes of this Subsection (3), includes a predecessor corporation if the plan or obligation to participate is assumed by the insurer in connection with the succession.

(4) Selection of a director or officer of the insurer may be subject to discretion if:

(a) the director or officer may be allocated stock;

(b) the director or officer may be granted qualified, restricted, or employee stock purchase plan stock options pursuant to the plan;

(c) a determination must be made regarding the number or maximum number of shares of stock that may be allocated to a director or officer, or that may be covered by qualified, restricted, or employee stock purchase plan stock options granted to a director or officer.

(5) If a selection in Subsection (4) is subject to discretion, the discretion shall be exercised as follows:

(a) with respect to the participation of a director:

(i) by the board of directors of the insurer, a majority of the board and a majority of the directors acting in the matter are disinterested persons;

(ii) by a committee of three or more persons having full authority to act in the matter, of the members of which are disinterested persons; or

(iii) in accordance with the plan if the plan:

(A) specifies the number or maximum number of shares of stock that directors may acquire or are subject to qualified, restricted, or employee stock purchase plan stock options granted to directors and the terms upon which, and the times at which, or the periods within which, the stock may be acquired or the options may be acquired and exercised; or

(B) sets forth, by formula or otherwise, effective and determinable limitations based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages outstanding from time to time, or similar factors; or

(b) with respect to the participation of officers who are not directors:

(i) by the board of directors of the insurer or a committee of three or more directors; or

(ii) by a committee of three or more persons having full authority to act in the matter, of the members of which are disinterested persons.

(c) For the purposes of this Subsection (5), a director or committee member is a disinterested person only if the person is not eligible at the time the discretion is exercised, and has not at any time within the past year, been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted, or employee stock purchase plan stock options are granted pursuant to the plan, or any other plan of the insurer, or any of its affiliates entitling the participants to acquire stock, or qualified, restricted, or employee stock purchase plan stock options of the insurer or any of its affiliates.

(d) This Subsection (5) does not apply to an option granted, or other equity security acquired, before the date that Subsections

31A-5-303(1) through 31A-5-303(3) first applied to a class of equity security of an insurer.

(6)(a) For a participant that a plan limits the aggregate dollar amount or the aggregate number of shares of stock that may be allocated, or are subject to qualified, restricted, or employee stock purchase plan stock options granted, pursuant to the plan, the limitations may be established on an annual basis, or for the duration of the plan, whether the plan has a fixed termination date, and may be determined either by fixed or maximum dollar amounts, or fixed or maximum numbers of shares, or by formulas based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares, or percentages outstanding from time to time, or similar factors that will result in an effective and determinable limitation.

(b) The limitations may be subject to a provision for adjustment of the plan or of stock allocable or portions outstanding to prevent dilution or enlargement of rights.

R590-68-17. Exemption from Subsection 31A-5-303(2) of Certain Transactions in Which Securities Are Received by Redeeming Other Securities.

An acquisition of an equity security, other than a convertible security or right to purchase a security, by a director or officer of the insurer issuing the security, is exempt from Subsection 31A-5-303(2) if:

(1) the equity security is acquired by way of redemption of another security of an insurer whose assets, other than cash or government bonds, consist of securities of the insurer issuing the acquired equity security and which:

(a) is a stated or readily ascertainable amount of the equity security;

(b) has a value that is determined by the value of the equity security; and

(c) confers upon the holder the right to receive the equity security without the payment of consideration other than the security redeemed;

(2) no security of the same class as the security redeemed is acquired by the director or officer within:

(a) six months before redemption; or

(b) six months after redemption; and

(3) the insurer issuing the equity security acquired recognizes the applicability of Subsection (1) by appropriate corporate action.

R590-68-18. Exemption of Long-Term Profits Incident to Sales Within Six Months of the Exercise of an Option.

(1) To the extent specified in Subsection (2), a transaction involving the purchase and sale, or sale and purchase, of an equity security, where the purchase is pursuant to the exercise of an option or similar right, is exempt if:

(a) acquired more than six months before its exercise; or

(b) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

(2)(a) The profits inuring to the insurer may not exceed the difference between the proceeds of the sale and the lowest market price of a security of the same class within six months before or after the date of sale.

(b) This Section R590-68-18 does not enlarge the amount of profit that inures to the insurer in the absence of this section.

(3) The disposition of a security purchased in a transaction under Subsection (1) is exempt from Section 31A-3-505, pursuant to a plan or agreement for merger or consolidation, or reclassification

of the insurer's securities, or for the exchange of its securities for the securities of another person that acquired its assets, or which is in control, as defined in Subsection 368(c) of the Internal Revenue Code, of a person who acquired its assets, where the terms of the plan or agreement are binding upon stockholders of the insurer except to the extent that dissenting stockholders are entitled, under statutory provisions or provisions contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

(4) The exemptions under this section do not apply to a transaction prohibited by Subsection 31A-5-303(3) or this rule.

(5) The burden of establishing market price of a security under this section is on the person claiming the exemption.

R590-68-19. Exemption From Subsection 31A-5-303(2) of Certain Acquisitions and Dispositions of Securities Pursuant to Merger or Consolidation.

(1) The following transactions are exempt from Subsection 31A-5-303(2):

(a) the acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company that, before merger or consolidation, owned 85% or more of the equity securities of a company involved in the merger or consolidation except, in the case of consolidation, the resulting company;

(b) the disposition of a security, pursuant to a merger or consolidation of an insurer that, before merger or consolidation, owned 85% or more of the equity securities of a company involved in the merger or consolidation except, in the case of consolidation, the resulting company;

(c) the acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company that, before merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values before the merger or consolidations as determined by reference to their most recent available financial statements for a 12-month period before the merger or consolidation; or

(d) the disposition of a security, pursuant to a merger or consolidation, of an insurer that, before merger or consolidation, held over 85% of the combined assets of the companies undergoing merger or consolidation, computed according to their book values before merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period before the merger or consolidation.

(2) A merger includes the sale or purchase of substantially all the assets of one insurer by another in exchange for stock that is then distributed to the security holders of the insurer that sold its assets.

(3) If an officer, director, or stockholder makes a purchase, other than a purchase exempted by this section, of a security in any company involved in the merger or consolidation and any sale, other than an exempted sale, of a security in any other company involved in the merger or consolidation within a period of less than six months during which the merger or consolidation took place, the exemption is unavailable to the officer, director, or stockholder.

R590-68-20. Exemption from Subsection 31A-5-303(2) of Certain Transactions Involving the Conversion of Equity Securities.

(1) An acquisition or disposition of an equity security involved in the conversion of an equity security that, by its terms or pursuant to the terms of the insurer's charter or other governing instrument, is convertible immediately or after a stated period into

another equity security of the same insurer, is exempt from Subsection 31A-5-303(2) if:

(a) a purchase of an equity security of the class convertible, including an acquisition of or change in a conversion privilege, and a sale is made of an equity security of the class issuable upon conversion; or

(b) a sale of an equity security of the class convertible and a purchase is made of an equity security issuable upon conversion, other than in a transaction involved in the conversion or in a transaction exempted under Subsection 31A-5-303(2), within a period of less than six months, including the date of conversion.

(2) An equity security may not be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with the conversion, of cash or other property, other than equity securities involved in the conversion, equal in value at the time of conversion to more than 15% of the value of the equity security issued upon conversion.

(3) An equity security is convertible if it is convertible at the option of the holder, some other person, or by operation of the terms of the security or the governing instruments.

R590-68-21. Exemption from Subsection 31A-5-303(2) of Certain Transactions Involving the Sale of Subscription Rights.

(1) For purposes of this section, the following terms apply:

(a) "Subscription right" means any warrant or certificate evidencing a right to subscribe to, or otherwise acquire, an equity security.

(b) "Beneficiary security" means a security registered, pursuant to Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., to the holders of which a subscription right is granted.

(c) "Subject security" means a security that is the subject of a subscription right.

(2) A sale of a subscription right to acquire a subject security of the same insurer is exempt from Subsection 31A-5-303(2) if:

(a) the subscription right is acquired, directly or indirectly, from the insurer without the payment of consideration;

(b) the subscription right, by its terms, expires within 45 days after issuance;

(c) the subscription right, by its terms, is issued on a pro rata basis to all holders of the beneficiary security of the insurer; and

(d) a registration statement under the Securities Act of 1933 is in effect as to each subject security, or the applicable terms of any exemption from registration are met with respect to each subject security.

(3) If a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this section is not exempted to the extent of such purchases within the six-month period preceding or following the sale.

R590-68-22. Exemption of Certain Securities From Subsection 31A-5-303(3).

A security is exempt from Subsection 31A-5-303(3) if necessary for the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

R590-68-23. Exemption From Subsection 31A-5-303(3) of Certain Transactions Effected in Connection With a Distribution.

(1) A security is exempt from Subsection 31A-5-303(3), if necessary for a sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, if:

(a) the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on the underwriter's behalf intends, in good faith, to offset the sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group that the dealer is a member of at the time of the sale, whether the security to be acquired is subject to a prior offering to existing security holders or some other class of persons; and

(b) other persons not within the purview of Subsection 31A-5-303(3) are participating in the distribution of the block of securities on terms at least as favorable as those on which the dealer is participating and to an extent at least equal to the aggregate participation of persons exempted from Subsection 31A-5-303(3).

(2) The performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing these functions may not preclude an exemption that is otherwise available under this section.

R590-68-24. Exemption From Subsection 31A-5-303(3) of Sales of Securities to Be Acquired.

(1) When a person is entitled, as an incident to ownership of an issued security and without the payment of consideration, to receive another security when issued or when distributed, the security to be acquired is exempt from Subsection 31A-5-303(3) if:

(a) the sale is made subject to the same conditions as those attaching to the right of acquisition;

(b) a person exercises reasonable diligence to deliver the security to the purchaser promptly after the right of acquisition matures; and

(c) a person reports the sale on the appropriate form for reporting transactions by persons subject to Subsection 31A-5-303(1).

(2) This section may not be construed as exempting a transaction involving both a sale of a security when issued or when distributed, and a sale of the security by virtue of which the seller expects to receive the security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received pursuant to the right of acquisition.

R590-68-25. Arbitrage Transactions Under Subsection 31A-5-303(3).

(1) A director or officer of an insurer may not effect a foreign or domestic arbitrage transaction in an equity security of an insurer unless the director or officer:

(a) includes the transaction in the statements required by Subsection 31A-5-303(1); and

(b) accounts to an insurer for the profits arising from the transaction as provided in Subsection 31A-5-303(2).

(2) Subsection 31A-5-303(3) does not apply to an arbitrage transaction.

(3) Section 31A-5-303 does not apply to any bona fide foreign or domestic arbitrage transaction effected by a person other than the director or officer of the insurer.

R590-68-26. Severability.

If any provision of this rule, Rule R590-68, 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: insurance law

Date of Last Change: ~~2023~~~~[1994]~~

Notice of Continuation: April 1, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-5-303

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R590-216	Filing ID: 55336
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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:**

R590-216. Standards for Safeguarding Customer Information

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 Determined Violation and Enforcement sections, and add a Severability (the new R590-216-7) section. 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-23a-417	
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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:	04/14/2023
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R590. Insurance, Administration.

R590-216. Standards for Safeguarding Customer Information.

R590-216-1. Authority.

~~[This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.] This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-23a-417.~~

R590-216-2. Purpose and Scope.

~~(1) [This rule establishes standards applicable to the department's licensees to assist them.] The purpose of this rule is to establish standards to assist a licensee in developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information[, pursuant to Sections 501, 505(b), and 507 of.] under the Gramm-Leach-Bliley Act, [codified at] 15 U.S.C. 6801, 6805(b), and 6807.~~

~~[(2) Section 501(a) provides that it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Section 501(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:~~

~~_____ (a) to ensure the security and confidentiality of customer records and information;~~

~~_____ (b) to protect against any anticipated threats or hazards to the security or integrity of such records; and~~

~~_____ (c) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer.~~

~~_____ (3) Under Section 505(b)(2) state insurance regulatory authorities are to implement the standards prescribed under Section 501(b) by rule with respect to persons engaged in providing insurance.~~

~~_____ (4) Section 507 provides, among other things, that a state rule may afford persons greater privacy protections than those provided by Subtitle A of Title V of the Gramm-Leach-Bliley Act. This rule requires that the safeguards established pursuant to the rule shall apply to nonpublic personal information, including nonpublic personal financial information and nonpublic personal health information that licensees of the department obtain from their customers.]~~

~~_____ (2) This rule applies to a licensee of the department that obtains any nonpublic information from a customer, including:~~

~~_____ (a) nonpublic personal financial information; or~~

~~_____ (b) nonpublic personal health information.~~

R590-216-3. Definitions.

~~[For purposes of this rule, the following definitions apply.] Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Customer" means a customer of the licensee as [the term customer is] defined in [Rule R590-206, Privacy of Consumer Financial and Health Information Rule, Subsection 4(9)] Section R590-206-4.~~

~~(2) "Customer information" [means] has the same meaning as "nonpublic personal information" as defined in [Subsection R590-206-4(19)] Section R590-206-4 about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the licensee.~~

~~(3) "Customer information system[s]" means [the] any electronic or physical method[s] used to access, collect, store, use, transmit, protect, or dispose of customer information.~~

~~(4) [a] "Licensee" means a licensee as [that term is] defined in [Subsection R590-206-4(17)(a), except that "licensee" shall not include.] Section R590-206-4.~~

~~_____ (b) "Licensee" does not mean:~~

~~_____ (i) a purchasing group;~~

~~_____ (ii) a manufacturer or seller warranty provider [and] or manufacturer or seller service contract provider exempted by [R590-210, Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contract] Section R590-206-2; or~~

~~_____ (iii) an unauthorized insurer [in regard to] regarding the excess line business conducted pursuant to Section 31A-15-103.~~

~~(5) "Service provider" means a person [that] who maintains, processes, or otherwise is permitted access to customer information through [its] the provision of services directly to the licensee.~~

R590-216-4. Information Security Program.

~~[Each-] (1) A licensee shall implement a comprehensive written information security program [that includes-] including administrative, technical, and physical safeguards [for the protection of] to protect customer information.~~

~~_____ (2) The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.~~

R590-216-5. Objectives of Information Security Program.

~~A licensee's information security program shall [be designed to]:~~

~~(1) [Ensure-] ensure the security and confidentiality of customer information;~~

(2) ~~[Protect-]~~protect against any anticipated ~~[threats or hazards-]~~threat or hazard to the security or integrity of the information; and

(3) ~~[Protect-]~~protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

R590-216-6. ~~[Examples of-]~~Methods of Development and Implementation.

~~[The actions and procedures described in this section are examples of methods of implementation of the requirements of Sections 4 and 5 of this rule. These examples are non-exclusive illustrations of actions and procedures that licensees may adopt to implement Sections 4 and 5 of this rule.]~~

(1) For purposes of risk assessment, ~~[the-]~~a licensee may:

(a) identify reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;

(b) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and

(c) assess the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.

(2) For purposes of risk management and control, ~~[the-]~~a licensee may:

(a) design its information security program to control the identified risks, ~~[commensurate-]~~consistent with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(b) train staff~~[, as appropriate,]~~ to implement the licensee's information security program; and

(c) regularly test or otherwise ~~[regularly-]~~monitor the key controls, systems, and procedures of the information security program~~[. The frequency and nature of these tests or other monitoring practices are-]~~, the frequency and nature of which shall be determined by the licensee's risk assessment.

(3) For purposes of service provider arrangement oversight, ~~[the-]~~a licensee may:

(a) exercise ~~[appropriate-]~~due diligence in selecting its service providers; and

(b) require its service providers to implement appropriate measures designed to meet the objectives of this rule, and, where indicated by the licensee's risk assessment, ~~[takes-]~~take appropriate steps to confirm that its service providers have satisfied these obligations.

(4) For purposes of program adjustment, ~~[the-]~~a licensee may monitor, evaluate, and adjust~~[, as appropriate,]~~ the information security program ~~[in light of any-]~~considering:

(a) any relevant change[s] in technology~~[,];~~

(b) the sensitivity of its customer information~~[,];~~

(c) any internal or external threat[s] to information~~[,];~~ and

(d) the licensee's ~~[own-]~~changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

(5) Subsections (1) through (4) are examples of implementation methods. A licensee may adopt other actions or procedures to implement Sections R590-216-4 and R590-216-5.

~~[R590-216-7. Determined Violation.~~

~~Violation of any provision of the rule will result in appropriate enforcement action by the department, which may include forfeiture, penalties, and revocation of license as provided in Section 31A-2-308.~~

~~R590-216-8. Enforcement Date.~~

~~The commissioner will begin enforcing the provisions of this rule 120 days from the effective date of the rule.]~~

~~R590-216-7. Severability.~~

If any provision of this rule, Rule R590-216, 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: insurance

Date of Last Change: 2023~~[September 26, 2002]~~

Notice of Continuation: August 17, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-23a-417; 15 U.S.C. 6801; 15 U.S.C. 6805; 15 U.S.C. 6807

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:

R590-220

Filing ID:
55341

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:

R590-220. Submission of Accident and Health 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 R590-220-18) section, and update the Severability (the new R590-220-19) 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	Section 31A-2-202
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Section 31A-2-212	Section 31A-22-605	Section 31A-22-620
Section 31A-22-1404	Section 31A-22-2006	Section 31A-30-106
Section 31A-30-106.1	Section 31A-43-304	Section 31A-45-103

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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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:	04/14/2023
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R590. Insurance, Administration.

R590-220. Submission of Accident and Health Insurance Filings.

[R590-220-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-22-1404, and Subsections 31A-2-201(3), 31A-2-202(2), 31A-2-212(5), 31A-22-605(4), 31A-22-620(3)(f), 31A-30-106(1) and (4), and 31A-30-106.1(13) and (14).

R590-220-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) accident and health filings required by Section 31A-21-201;

(b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;

(c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;

(d) long term care filings required by Section 31A-22-1404 and Rule R590-148; and

(e) health benefit plan filings required by Subsection 31A-2-212(5); Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and Rule R590-167.

(2) This rule applies to:

(a) all types of accident and health insurance products; and

(b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

~~R590-220-3. Documents Incorporated by Reference.~~

~~(1) The department requires that the documents described in this rule shall be used for all filings.~~

~~(a) Actual copies may be used or you may adapt them to your word processing system.~~

~~(b) If adapted, the content, size, font, and format must be similar.~~

~~(2) The NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix, effective January, 1, 2015, is hereby incorporated by reference and is available on the department's web site, www.insurance.utah.gov.~~

~~R590-220-4. Definitions.~~

~~In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.~~

~~(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.~~

~~(2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(2)(c).~~

~~(3) "Electronic filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.~~

~~(4) "Eligible group" means a group that meets the requirements in Section 31A-22-701.~~

~~(5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.~~

~~(6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.~~

~~(7) "File For Acceptance" 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 accepted.~~

~~(8) "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.~~

~~(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 policy;~~

~~(b) a rate, rate manual, or rate methodologies;~~

~~(c) a form;~~

~~(d) a document;~~

~~(e) a plan;~~

~~(f) a manual;~~

~~(g) an application;~~

~~(h) a report;~~

~~(i) a certificate;~~

~~(j) an endorsement or rider;~~

~~(k) an actuarial memorandum, demonstration, and certification;~~

~~(l) a licensee annual statement;~~

~~(m) a licensee renewal application;~~

~~(n) an advertisement;~~

~~(o) a binder; or~~

~~(p) an outline of coverage.~~

~~(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 of 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) "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) "Non 2014 PPACA compliant health benefit plan" means a health benefit plan that is either:~~

~~_____ (a) a grandfathered health plan as defined in 45 CFR 147.140(a); or~~

~~_____ (b) a transitional health benefit plan as outlined by the letter to Insurance Commissioners from the Centers for Medicare and Medicaid Services dated November 14, 2013 and extended by the Insurance Standards Bulletin Series, Extension of Transitional Policy through October 1, 2016 dated March 5, 2014. A transitional plan is also known as a grandmothers health plan.~~

~~_____ (16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.~~

~~_____ (17) "Rating methodology change" for the purpose of a non 2014 PPACA compliant health benefit plan means a:~~

~~_____ (a) change in the number of case characteristics used by a covered licensee to determine premium rates for health benefit plans in a class of business;~~

~~_____ (b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;~~

~~_____ (c) change in the method of allocating expenses among health benefit plans in a class of business; or~~

~~_____ (d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12 month period. If a covered licensee changes rating factors with respect to more than one case characteristic in a 12 month period, the licensee shall consider the cumulative effect of all such changes in applying the 10% test.~~

~~_____ (18) "Rejected" means a filing is:~~

~~_____ (a) not submitted in accordance with Utah laws and rules;~~

~~_____ (b) returned to the filer by the department with the reasons for rejection; and~~

~~_____ (c) not considered filed with the department.~~

~~_____ (19) "SERFF" means the System for Electronic Rate and Form Filings.~~

~~_____ (20) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long term care, Medicare supplement, income replacement, specified disease, or vision.~~

~~_____ (21) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a paper filing has been accepted. If the Utah Filed Date is used for compliance with any section of this rule, a complete copy of the paper filing with the filed date stamped on the filing must be attached as a supporting document. In addition, if the filing was amended at any time, the amendment filing must also be attached as a supporting document.~~

R590-220-5. 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 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 licensee 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. The filer shall include a description of the filing corrections.~~

~~_____ (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 and include a description of the filing corrections.~~

~~_____ (7) If responding to a Filing Objection Letter, an Order to Prohibit Use, or a Filing Rejection, review Section R590-220-17 for instructions.~~

~~_____ (8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.~~

R590-220-6. Filing Submission Requirements.

~~_____ (1) All filings must be submitted as an electronic filing.~~

~~_____ (2) A filing 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)(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 filing's Utah Filed Date or SERFF tracking number;~~

~~_____ (C) includes documents for informational purposes; if so, provide the Utah Filed Date or SERFF tracking number; or~~

~~(D) does not include the base policy; if so, provide the Utah Filed Date or SERFF tracking number for the base policy and all amendments 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 issue ages, which means the range of minimum and maximum ages for which a policy will be issued.~~

~~(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance 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;~~

~~(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) Group Questionnaire, Utah Bona Fide Employer Association Group Questionnaire, or Discretionary Group Authorization Letter. A group filing must have attached to the Supporting Documentation tab either a:~~

~~(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire;~~

~~(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter; or~~

~~(iii) signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.~~

~~(e) 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.~~

~~(f) Variable data.~~

~~(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; and~~

~~(E) all possible variations of the variable data are shown in the statement, such as "Deductible is \$(x-xxxx) in \$xx increments."~~

~~(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.~~

~~(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.~~

~~(h) Reports are exempt from the filing submission requirement listed in Subsections R590-220-6(4)(c), (d), and (f).~~

~~(i) Underline and Strikethrough Version. A filing submitted for a correction, modification, or replacement of existing language shall have an underline and strikethrough version of the form included with the corrected, modified, or replacement form on the Form Schedule tab.~~

~~(5) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.~~

~~(6) All filings must be submitted in SERFF correctly utilizing the NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix.~~

R590-220-7. Procedures for Form 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) A form must be in final form. A draft may not be submitted.~~

~~(d) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.~~

~~(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. Include the Utah Filed Date or SERFF tracking number for the application in the Filing Description.~~

~~(3) Policy Filing.~~

~~(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, outline of coverage, certificate, rider, endorsement, and actuarial memorandum.~~

~~(c) Only one policy filing for a single type of insurance may be filed, except as stated in Subsection R590-220-7(3)(d).~~

~~(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through N.~~

~~(4) Rider or Endorsement Only 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) The filing must include:~~

~~(i) a listing of all base policy form numbers, title and Utah Filed Dates or SERFF tracking numbers; and~~

~~(ii) a description of how each filed rider or endorsement affects the base policy.~~

~~(d) Unrelated riders or endorsements may not be filed together.~~

~~(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, rider, or an endorsement, the outline of coverage must be filed when the policy, rider or endorsement is filed.~~

~~R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.~~

~~(1) A filer submitting an individual accident and health filing is advised to review:~~

~~(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;~~

~~(b) Title 31A, Chapter 22, Part 6, Accident and Health Insurance;~~

~~(c) Rules R590-76, R590-85, R590-122, R590-126, R590-131, R590-192, R590-203, R590-215, and R590-218; and~~

~~(d) for health benefit plan submissions, additionally review:~~

~~(i) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and~~

~~(ii) Rules R590-167, R590-176, R590-194, R590-200, R590-233, R590-237, R590-247, R590-259, R590-261, R590-266, R590-269, R590-271 and R590-220-10.~~

~~(2) Rate and rate documentation filings.~~

~~(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.~~

~~(b) A rate revision filing is a File for Acceptance filing.~~

~~(3) An individual accident and health policy, rider, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.~~

~~(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.~~

~~(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rules R590-85, and R590-220.~~

~~(c) This subsection does not apply to a rate filing for a health benefit plan. A filer submitting a rate filing for a health benefit plan should review R590-220-10.~~

~~(4) A filer submitting a long term care filing, including an endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.~~

~~(5) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.~~

~~R590-220-9. Additional Procedures for Group Market Form Filings.~~

~~(1) A filer submitting a group accident and health filing is advised to review:~~

~~(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;~~

~~(b) Title 31A, Chapter 22, Parts 6 and 7;~~

~~(c) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and~~

~~(d)(i) Rules R590-76, R590-85, R590-122, R590-126, R590-131, R590-146, R590-148, R590-192, R590-203, and R590-215.~~

~~(ii) Filers submitting group health benefit plans should also review Rules R590-167, R590-176, R590-194, R590-200, R590-218, R590-233, R590-237, R590-247, R590-259, R590-261, R590-266, R590-271 and Section R590-220-10.~~

~~(2) A filer must determine if the group is an allowable group. An allowable group must meet the parameters of an eligible group or a discretionary group. All groups, except a group formed under a Taft Hartley trust in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, must be formed and maintained for purposes other than obtaining insurance.~~

~~(a) Eligible Group.~~

~~(i) A filing for an eligible group must include a signed and fully completed Utah Accident and Health Insurance Group Questionnaire.~~

~~(A) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507, and Subsection 31A-22-701(2).~~

~~(B) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.~~

~~(ii) A filing for an eligible Bona Fide Employer Association must include a signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.~~

~~(b) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.~~

~~(i) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.~~

~~(ii) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:~~

~~(A) the existence of a verifiable group;~~

~~(B) that granting permission is not contrary to public policy;~~

~~(C) the proposed group would be actuarially sound;~~

~~(D) the group would result in economies of acquisition and administration which justify a group rate; and~~

~~(E) the group would not present hazards of adverse selection.~~

~~(iii) A discretionary group filing that does not provide authorization documentation will be rejected.~~

~~(iv) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.~~

~~(v) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.~~

~~(vi) The commissioner may periodically re-evaluate the group's authorization.~~

~~(vii) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.~~

~~(3) A filer submitting a long term care filing, including a long term care endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.~~

~~(4) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.~~

~~R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.~~

~~This section contains instructions for health benefit plan filings subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act.~~

~~(1) Form Filing.~~

~~(a) A health benefit plan form filing must include in the Filing Description the SERFF tracking number for the form's applicable rate manual.~~

~~(b) Grandfathered and transitional plans must be filed separate from 2014 PPACA compliant health benefit plans.~~

~~(c) Provide documentation for the department's receipt of the form filing's corresponding rate filing.~~

~~(2) Rate Manual Filing for non-2014 PPACA Compliant Health Benefit Plans.~~

~~(a) A rate manual that does not request a change in rating methodology is a File Before Use filing.~~

~~(b) A change in rating methodology filing is a File for Approval filing.~~

~~(c) A new and revised rate manual must:~~

~~(i) include an actuarial certification signed by a qualified actuary;~~

~~(ii) be filed 30 days prior to use;~~

~~(iii) list the case characteristics and rate factors to be used;~~

~~(iv) be applied in the same manner for all health benefit plans in a class;~~

~~(v) contain specific area factors applicable in Utah;~~

~~(vi) include the method of calculating the risk load, including the method used to determine any experience factors;~~

~~(vii) include how the overall rate is reviewed for compliance with the rate restrictions;~~

~~(viii) include detailed description of all classes of business, as provided in Section 31A-30-105;~~

~~(ix) fully complete the Company Rate Information on the Rate/Rule Schedule tab; and~~

~~(x) comply with all information required by Section R590-167-6.~~

~~(3) Rate Filing for 2014 PPACA Compliant Health Benefit Plans.~~

~~(a) Rate filings shall be filed in accordance with the department's annual Bulletin to insurance carriers.~~

~~(b) Quarterly changes to a rate filing shall be filed in accordance with Bulletin 2015-3.~~

~~(c) Fully complete the Company Rate Information on the Rate/Rule Schedule tab.~~

~~(4) Actuarial Certification Report.~~

~~(a) All individual and small employer licensees who maintain a non-2014 PPACA compliant health benefit plan must file an actuarial certification as described in Sections 31A-30-106, 31A-30-106.1, and Subsection R590-167-11(1)(a).~~

~~(b) The report is due April 1 each year.~~

~~(c) Each report must be filed separately and be properly identified.~~

~~(d)(i) Except as provided in R590-220-10(4)(d)(ii), a health benefit plan report must be filed using a type of insurance of "H16I" or "H16G," and a filing type of "Report."~~

~~(ii) A Health Maintenance Organization must use "HOrg02I" or "HOrg02G" as the type of insurance and the filing type of "Report."~~

~~R590-220-11. Additional Procedures for Medicare Supplement Filings.~~

~~A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146.~~

~~(1) A Medicare supplement form filing that affects rates must be filed with all required rating documentation.~~

~~(2)(a) A licensee must file its Medicare Supplement Buyers Guide.~~

~~(b) If previously filed, indicate the Utah Filed Date or SERFF tracking number in the filing description.~~

~~3) Rates.~~

~~(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.~~

~~(b) A rate revision filing is a File for Acceptance filing.~~

~~(c) Medicare supplement rates must comply with Section 31A-22-602, and Rules R590-146 and R590-85.~~

~~(d) A licensee shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.~~

~~(e) A rate revision request may not be used to satisfy the annual filing requirements of Subsection R590-146-14.C.~~

~~(4) Annual Medicare Supplement Reports.~~

~~(a) Reports are due May 31 each year.~~

~~(b) Report of Multiple Policies.~~

~~(i) As required by Section R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the licensee has issued to a single insured.~~

~~(ii) The report is required each year listing each insured with multiple policies or must state "NO MULTIPLE POLICIES WERE ISSUED."~~

~~(c) Annual Filing of Rates and Supporting Documentation.~~

~~(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with Subsection R590-146-14.C.~~

~~(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.~~

~~(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.~~

~~(d) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to Subsection R590-146-14.B.~~

~~(e) Reports for Pre-Standardized Medicare supplement benefit plans and 1990 Standardized Medicare supplement benefit plans must be submitted together as one filing using a type of insurance of "MS06," and a filing type of "Report."~~

~~(f) Reports for 2010 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS09," and a filing type of "Report."~~

~~(g) If all Medicare supplement reports are not submitted together as one filing, the filing is considered incomplete and will be rejected.~~

R590-220-12. Additional Procedures for Combination Policies or Endorsements and Riders Providing Life and Accident and Health Benefits.

A filer submitting a health and life combination policy or a health endorsement or rider to a life policy is advised to review Rule R590-226.

(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:

- (i) an endorsement or rider; or
- (ii) 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 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 an endorsement or rider, the filing must be submitted to the appropriate division based on benefits provided in the endorsement or rider.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

- a) whole life policy with a long-term care benefit rider; or
- (b) major medical health policy that includes a life insurance benefit.

R590-220-13. Additional Procedures for Long Term Care Products.

A filer submitting long-term care product filings is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards and Rule R590-148.

(1) A long-term care form filing that affects rates must be filed with all required rating documentation.

2) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) A licensee shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(3) Annual Long-term Care Reports.

(a) All four long-term care reports required by Section R590-148-25 must be submitted together as one filing:

- (i) Replacement and Lapse Reporting Form;
- (ii) Claims Denial Reporting Form;
- (iii) Rescission Reporting Form; and
- (iv) Suitability Report Form.

(b) If all reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must state "NONE."

(d) Reports are due June 30 each year.

(e) All long-term care reports must be electronically filed using a type of insurance of "LTC06," and a filing type of "Report."

R590-220-14. Criteria for Adding or Terminating Participating Providers.

(1) Criteria for adding or terminating participating providers must be submitted electronically using a type of insurance of "H21" and a filing type of "Report."

(2) The Filing Description must state "Preferred Provider Agreement," as required by Subsection 31A-22-617.1(1)(c).

R590-220-15. Binders.

Binder filings for 2014 PPACA-compliant health benefit plans and certified stand-alone dental plans shall be in accordance with the department's annual Bulletin to insurance carriers.

R590-220-16. Classification of Documents.

(1) Except as provided in R590-167-12, the commissioner shall maintain as a protected record the records submitted under Sections 31A-30-106 and 31A-30-106.1.

(2) 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.

(3) The person submitting the information under Subsection (2)(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.

(4) 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.~~

R590-220-17. 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 incorporates all changes; and~~

~~(d) attach the documents in Subsections R590-220-17(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.~~

~~(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 by mail or electronic mail a written request for a hearing not 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.~~

~~(3) Response to a Filing Rejection. A Filing Rejection is not considered filed with the department. A filer may choose to submit as a new filing. The new filing must reference the previously rejected filing.~~

R590-220-18. Penalties.

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-220-19. 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.]~~

R590-220-1. Authority.

~~This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-2-201.1, 31A-2-202, 31A-2-212, 31A-22-605, 31A-22-620, 31A-22-1404, 31A-22-2006, 31A-30-106, 31A-30-106.1, 31A-43-304, and 31A-45-103.~~

R590-220-2. Purpose and Scope.

~~(1) The purpose of this rule is to establish procedures for submitting:~~

~~(a) an accident and health insurance filing including a stop-loss insurance filing; and~~

~~(b) a report filing.~~

~~(2) This rule applies to an insurer offering accident and health insurance, including a group accident and health insurance policy issued to a nonresident when a Utah resident is covered under the policy.~~

R590-220-3. Definitions.

~~Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103. 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 that complies with Title 31A, Insurance Code, and this rule.~~

~~(3) "Discretionary group" means a group that is authorized by the commissioner under Subsection 31A-22-701(1)(b).~~

~~(4) "Electronic filing" means a filing submitted using SERFF.~~

~~(5) "Eligible group" means a group that meets the requirements in Section 31A-22-701.~~

~~(6) "File and use" means a filing is used, sold, or offered for sale after it is filed with the department.~~

~~(7) "File before use" means a filing is used, sold, or offered for sale after it is filed with the department and a stated period of time elapses from the date filed.~~

~~(8) "File for acceptance" means a filing is used, sold, or offered for sale after receiving written confirmation that the filing is accepted.~~

~~(9) "File for approval" means a filing is used, sold, or offered for sale after receiving written confirmation that the filing is approved.~~

~~(10) "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.~~

~~(11) "Filing status information" means a list of states a similar filing was submitted to, the date submitted, and the action taken by each state, including their responses.~~

~~(12) "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.~~

~~(13) "Market type" means a policy that specifies a targeted market.~~

~~(14) "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.~~

~~(15) "Non-2014 PPACA compliant health benefit plan" means a health benefit plan that is:~~

~~(a) a grandfathered health plan under 45 CFR 147.140(a); or~~

~~(b) a transitional health benefit plan, also known as a grandmothered plan, under:~~

~~(i) the letter from the Centers for Medicare and Medicaid Services dated November 14, 2013; and~~

~~(ii) Subsection 31A-30-117(3).~~

~~(16) "Order to prohibit use" means an order issued by the commissioner prohibiting the use of a filing.~~

(17) "Change in rating methodology," for the purposes of a non-2014 PPACA compliant health benefit plan, means a change in:

(a) the number of case characteristics used by an insurer to determine premium rates in a class of business;

(b) the manner or procedures used to assign an insured into categories for the purpose of applying a case characteristic to determine premium rates in a class of business;

(c) the method of allocating expenses in a class of business;
or

(d) a rating factor, with respect to any case characteristic, if the change would produce a change in premium that exceeds 10% for an individual or small employer.

(18) "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.

(19) "Resubmission" means a correction, modification, or replacement of a previously rejected, withdrawn, or prohibited filing.

(20) "SERFF" means the System for Electronic Rates and Form Filings.

(21) "Stop-loss insurance" means insurance purchased by an employer for which the stop-loss insurer assumes all loss amounts of the employer's plan in excess of a stated amount, subject to the policy limit.

(22) "Type of insurance" or "TOI" means a specific accident and health insurance product identified by the NAIC Product Coding Matrix that can be selected in SERFF when submitting a filing in Utah.

(23) "Utah filed date" means the date the department indicates a paper filing is accepted.

R590-220-4. Documents Used in a Filing.

The documents designated in this rule are required for all filings.

(1) An actual copy or a created version may be used.

(2) If created, the content, size, font, and format shall be similar to the actual copy.

(3) The documents referenced in this rule are found on the department's website, <https://insurance.utah.gov>.

R590-220-5. 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 an 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, 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.

R590-220-6. 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 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 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) If any of the information required under Subsection (2)(a) is not available, provide a detailed explanation of why the information is not available.

(b) Filing Certification.

(i) The insurer shall certify that a filing and all related documents are complaint.

(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 R590-220 AND IS COMPLIANT WITH APPLICABLE UTAH LAW."

(iii)(a) The Utah Accident and Health Insurance Filing Certification shall be fully completed and attached to the supporting documentation tab.

(b) If an item on the Utah Accident and Health Insurance Filing Certification does not apply to the filing being submitted, mark the item as not applicable.

(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 "NO SIMILAR FILING HAS BEEN SUBMITTED TO ANY OTHER STATE"; and

(B) the reason the filing is only filed in Utah.

(d) Group Questionnaire or Authorization Letter. A group filing shall attach to the supporting documentation tab:

(i) a complete Utah Accident and Health Insurance Group questionnaire;

(ii) a copy of the discretionary group authorization letter; or

(iii) a copy of the bona fide employer association 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 complaint.

(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 unfiled variable data is prohibited.

(g) 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.

(h) A report is exempt from a filing submission requirement under:

(i) Subsections (2)(a)(ii) through (2)(a)(v);

(ii) Subsection (2)(c);

(iii) Subsection (2)(d); and

(iv) Subsection (2)(f).

(i) 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.

R590-220-7. Procedures for Form 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.

(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, outline of coverage, certificate, and rider or endorsement.

(c) Only one policy filing for a single TOI may be filed.

(d) Notwithstanding Subsections (3)(a) through (3)(c), a Medicare supplement filing may include more than one policy but is limited to only one of each of the Medicare supplement policies A through N.

(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) Outline of Coverage. If an outline of coverage is required to be issued with a policy, a rider, or an endorsement, the outline of coverage shall be filed when the policy, rider, or endorsement is filed.

R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.

(1)(a) An insurer filing an individual accident and health insurance filing shall comply with:

(i) Title 31A, Chapter 22, Part 6, Accident and Health Insurance;

(ii) Rule R590-85;

(iii) Rule R590-122;

(iv) Rule R590-126;

(v) Rule R590-131;

(vi) Rule R590-192;

(vii) Rule R590-203;

(viii) Rule R590-215; and

(ix) Rule R590-286.

(b) An insurer filing a health benefit plan filing shall comply with:

(i) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act;

(ii) Title 31A, Chapter 45, Managed Care Organizations;

(iii) Rule R590-167;

(iv) Rule R590-176;

(v) Rule R590-194;

(vi) Rule R590-200;

(vii) Rule R590-233;

(viii) Rule R590-237;

(ix) Rule R590-247;

(x) Rule R590-259;

(xi) Rule R590-261;

(xii) Rule R590-266;

(xiii) Rule R590-269;

(xiv) Rule R590-271;

(xv) Rule R590-277; and

(xvi) Rule R590-283.

(2) Rate Filings.

(a) A rate filing submitted with a new form filing is a file and use filing.

(b) A rate revision filing is a file for acceptance filing.

(c)(i) An individual accident and health insurance policy, rider, or endorsement affecting a benefit shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(ii) A rate filing is not required if the form filing does not impact the premium, however the filing description shall explain the reason there is not a change in the premium.

(3) A long-term care insurance filing, including an endorsement or rider attached to a life insurance policy, shall comply with:

(a) Title 31A, Chapter 22, Part 14, Long-Term Care Insurance Standards;

(b) Rule R590-148; and

(c) Sections R590-220-12, R590-220-13, and R590-220-15.

(4) A limited long-term care insurance filing shall comply with:

(a) Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act;

(b) Rule R590-285; and

(c) Sections R590-220-12, R590-220-14, and R590-220-15.

(5) A Medicare supplement filing shall comply with:

(a) Section 31A-22-620;

(b) Rule R590-85;

(c) Rule R590-146; and

(d) Sections R590-220-11 and R590-220-15.

R590-220-9. Additional Procedures for Group Market Form Filings.

(1) An insurer filing a group accident and health insurance filing shall comply with:

(a) Title 31A, Chapter 22, Part 6, Accident and Health Insurance;

(b) Title 31A, Chapter 22, Part 7, Group Accident and Health Insurance;

(c) Title 31A, Chapter 22, Part 14, Long-Term Care Insurance Standards;

(d) Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act;

(e) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act;

(f) Title 31A, Chapter 45, Managed Care Organizations;

(g) Rule R590-85;

(h) Rule R590-122;

(i) Rule R590-126;

(j) Rule R590-131;

(k) Rule R590-146;

(l) Rule R590-148;

(m) Rule R590-192;

(n) Rule R590-203;

(o) Rule R590-215;

(p) Rule R590-277;

(q) Rule R590-283; and

(r) Rule R590-285.

(2) An insurer filing a group health benefit plan filing shall comply with:

(a) Rule R590-167;

(b) Rule R590-176;

(c) Rule R590-194;

(d) Rule R590-200;

(e) Rule R590-233;

(f) Rule R590-237;

(g) Rule R590-247;

(h) Rule R590-259;

(i) Rule R590-261;

(j) Rule R590-266;

(k) Rule R590-271;

(l) Rule R590-277; and

(m) Section R590-220-10.

(3) 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 compliant Utah Accident and Health Insurance Group Questionnaire.

(ii) A questionnaire shall be completed for each eligible group under Section 31A-22-701.

(iii) When a filing applies to more than one employer or employee group, only one questionnaire is required.

(iv) A filing for a bona fide employer association shall include a compliant Utah Bona Fide Employer Association Group Authorization Questionnaire.

(v) A filing for a non-employer group shall comply with Rule R590-126.

(b) Discretionary Group.

(i) If a group is not an eligible group, specific discretionary group authorization shall be obtained.

(ii) If a form filing is submitted without discretionary group authorization, the filing shall be rejected.

(A) A filing may not include a rate or form filing before receiving discretionary group authorization.

(B) If a rate or form filing is submitted without discretionary group authorization, the filing shall be rejected.

(C) A discretionary group authorization filing may include a copy of the policy or certificate for informational purposes only, and such an inclusion does not satisfy a form filing requirement.

(iii) To obtain discretionary group authorization, a compliant Utah Accident and Health Insurance Request for Discretionary Group Authorization shall 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)(A) An insurer shall file a separate discretionary group authorization to add another TOI to a previously authorized group.

(B) The discretionary group authorization shall specify the TOI products that a discretionary group may offer.

R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.

(1) An insurer filing a health benefit plan filing shall comply with:

(a) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act;

(b) Title 31A, Chapter 45, Managed Care Organizations;

(c) Rule R590-167; and

(d) Rule R590-277.

(2) Form Filing.

(a) A non-2014 PPACA compliant health benefit plan form filing shall include the SERFF tracking number for the form's applicable rate manual filing.

(b) A grandfathered or transitional plan shall be filed separate from a 2014 PPACA compliant health benefit plan.

(3) Rate Manual Filing for a Non-2014 PPACA Compliant Health Benefit Plan.

(a) A rate manual filing that does not request a change in rating methodology is a file before use filing.

(b) A change in a rating methodology filing is a file for approval filing.

(c) A new or revised rate manual shall:

(i) include an actuarial certification signed by a qualified actuary; and

(ii) be filed 30 days before use.

(d) The company rate information on the rate/rule schedule tab shall be compliant.

(4) Rate Filing for a 2014 PPACA Compliant Health Benefit Plan.

(a) A rate filing shall be filed according to the department's annual bulletin to insurers.

(b) Quarterly changes to a rate filing shall be filed according to Bulletin 2015-3.

R590-220-11. Additional Procedures for Medicare Supplement Filings.

(1)(a) An insurer filing a Medicare supplement filing shall comply with:

(i) Section 31A-22-620;

(ii) Rule R590-85; and

(iii) Rule R590-146.

(b) A Medicare supplement form filing that affects rates shall include all required rating documentation.

(2) Rates.

(a) Rate and rate documentation submitted with a new form filing are a file and use filing.

(b) A rate revision filing is a file for acceptance filing.

(c) An insurer filing a Medicare supplement rate shall comply with:

(i) Section 31A-22-602;

(ii) Rule R590-85; and

(iii) Rule R590-146.

(d) An insurer may not use or change a premium rate for a Medicare supplement policy or certificate unless the rate, rating schedule, and supporting documentation are filed.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Rule R590-146.

R590-220-12. Additional Procedures for a Policy, Endorsement, or Rider Providing Life Insurance and Accident and Health Insurance Benefits.

(1) An accident and health insurance filing that includes a life insurance benefit or an accident and health insurance endorsement or rider to a life insurance policy shall comply with Rule R590-226.

(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.

R590-220-13. Additional Procedures for Long-Term Care Insurance Products.

(1)(a) An insurer filing a long-term care insurance filing shall comply with:

(i) Title 31A, Chapter 22, Part 14, Long-Term Care Insurance Standards; and

(ii) Rule R590-148.

(b) A long-term care insurance form filing that affects rates shall be filed with all required rating documentation.

(2) Rates.

(a) Rate and rate documentation submitted with a new form filing are a file and use filing.

(b) A rate revision filing is a file for acceptance filing.

(c) A long-term care insurance rate shall comply with Rule R590-148.

(d) An insurer may not use or change a premium rate for a long-term care insurance policy or certificate unless the rate, rating schedule, and supporting documentation are filed.

R590-220-14. Additional Procedures for Limited Long-Term Care Insurance Products.

(1)(a) An insurer filing a limited long-term care insurance filing shall comply with:

(i) Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act; and

(ii) Rule R590-285.

(b) A limited long-term care insurance form filing that affects rates shall be filed with all required rating documentation.

(2) Rates.

(a) Rate and rate documentation submitted with a new form filing are a file and use filing.

(b) A rate revision filing is a file for acceptance filing.

(c) A limited long-term care insurance rate shall comply with Rule R590-285.

(d) An insurer may not use or change a premium rate for a limited long-term care insurance policy or certificate unless the rate, rating schedule, and supporting documentation are filed.

R590-220-15. Reports.

(1) Health Benefit Plan Reports.

(a) Actuarial Certification Report.

(i) An individual or a small employer insurer maintaining a non-2014 PPACA compliant health benefit plan shall file an actuarial certification under Sections 31A-30-106 and 31A-30-106.1, and Subsection R590-167-11(1)(a).

(ii) The report is due annually on April 1.

(iii) Each report shall be filed by market type and shall be properly identified.

(iv) A report shall be submitted using the appropriate TOI and the filing type of "Report."

(b) Defrayal of State-Required Benefits Report.

(i) An insurer anticipating a defrayal of state-required benefits shall file a request under Section 31A-30-118 and Subsection R590-283-6(3).

(A) The report is due quarterly on February 15, May 15, August 15, and November 15.

(B) Each report shall be filed by market type and shall be properly identified.

(C) Reports shall be submitted using the appropriate TOI and the filing type of "Report."

(ii) An insurer seeking a defrayal of state-required benefits shall file a request under Section 31A-30-118 and Subsection R590-283-4(2).

(A) The report is due annually on September 1.

(B) Each report shall be filed by market type and shall be properly identified.

(C) The report shall be submitted using the appropriate TOI and the filing type of "Report."

(2) Medicare Supplement Reports.

(a) Annual Medicare Supplement Reports.

(i) The report is due annually on May 31.

(ii) The report shall include the sub-reports outlined in this subsection.

(A) Report of Multiple Policies.

(I) An issuer of a Medicare supplement policy shall submit a report of multiple policies issued to a single insured under Section R590-146-22.

(II) The report shall list each insured with multiple policies or state "NO MULTIPLE POLICIES WERE ISSUED."

(B) Annual Filing of Rates and Supporting Documentation.

(I) An issuer of Medicare supplement policies and certificates shall file its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, under Section R590-146-14.

(II) The NAIC Medicare Supplement Insurance Model Regulations Manual sets forth the requirements of the annual rate filing.

(III) An annual report submitted with a request or any type of reference to a rate revision shall be rejected.

(C) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the calculation of benchmark ratios since inception under Section R590-146-14.

(iii) A report for pre-standardized Medicare supplement benefit plans and 1990 standardized Medicare supplement benefit plans shall be submitted together as one filing using a TOI of "MS06" and a filing type of "Report."

(iv) A report for 2010 standardized Medicare supplement benefit plans shall be submitted together as one filing using a TOI of "MS09" and a filing type of "Report."

(v) If all Medicare supplement reports are not submitted together as one filing, the filing is considered incomplete and shall be rejected.

(b) Medicare Select Reports.

(i) An issuer offering a Medicare Select policy or certificate shall file a grievance report required under Section R590-14-10.

(A) The report is due annually on March 31.

(B) A report shall be filed by market type and shall be properly identified.

(C) The report shall be submitted using the appropriate Medicare Select TOI and a filing type of "Report."

(ii) An issuer offering a Medicare Select policy or certificate shall submit any change to the list of network providers under Section R590-146-10.

(A) The report is due within 30 days of the change.

(B) A report shall be filed by market type and shall be properly identified.

(C) The report shall be submitted using the appropriate Medicare Select TOI and a filing type of "Report."

(3) Long-Term Care Insurance Reports.

(a) The long-term care reports required under Section R590-148-25 shall be submitted together as one filing.

(b) If the reports are not submitted as one filing, the filing is considered non-compliant and shall be rejected.

(c) If there is no information to report, the form shall state "NONE."

(d) The report is due annually on June 30.

(e) All long-term care reports shall be filed using a TOI of "LTC06" and a filing type of "Report."

(4) Limited Long-Term Care Insurance Reports.

(a) Annual Limited Long-Term Care Report.

(i) The following limited long-term care reports required by Section R590-285-14 shall be submitted together as one filing.

(ii) If the reports are not submitted as one filing, the filing is considered non-compliant and shall be rejected.

(iii) If there is no information to report, the form shall state "NONE."

(iv) The report is due annually on June 30.

(v) The limited long-term care reports shall be filed using a TOI of "LTC06" and a filing type of "Report."

(b) Independent Review Organization Certification for a Limited Long-Term Care Insurance Report Under Section R590-285-25.

(i) The report is due annually on June 1.

(ii) The report shall be properly identified.

(iii) The report shall be filed using a TOI of "LTC06" and a filing type of "Report."

(5) Miscellaneous Reports.

(a)(i) Reporting criteria for adding or terminating participating providers shall be submitted using a TOI of "H21" and a filing type of "Report."

(ii) The filing description shall state "Preferred Provider Agreement" as required by Section 31A-45-304.

(b) Stop-Loss Certification of Compliance.

(i) An insurer making available a small employer stop-loss plan shall file an actuarial certification and experience report under Sections 31A-43-302 and R590-268-8.

(ii) The report is due annually on April 1.

(iii) The report shall be submitted using a TOI of "H12" and a filing type of "Report."

(c) All Other Reports Not Specified in This Rule.

(i) A report shall be filed by market type and properly identified.

(ii) Each report shall be submitted using the appropriate TOI and the filing type of "Report."

R590-220-16. Binders.

A binder filing for a 2014 PPACA compliant health benefit plan or a certified stand-alone dental plan shall be filed in accordance with the department's annual bulletin to an insurer offering a health benefit plan or stand-alone dental plan.

R590-220-17. Classification of Documents.

(1) A record submitted under this rule is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Notwithstanding Subsection (1), a record provided under 45 CFR 154.200(a)(1), 45 CFR 154.215(b)(1), or 45 CFR 154.215(b)(2) is classified as public.

(3) A record submitted under Section 31A-2-201.2, 31A-30-106, or 31A-30-106.1 is classified as protected.

(4) Notwithstanding Subsections (1) through (3), a record may be classified as protected if:

(a) requested under Section 63G-2-309;

(b) the request in Subsection (4)(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.

(5) A filing may not be reopened to reclassify a previously filed document.

(6) A pattern of requesting that non-qualifying documents be protected, including putting both protected and public information in one document, may violate this rule.

R590-220-18. Objection Letter and Disposition Procedures.

(1) Response to a Filing Objection Letter.

(a) A response to a filing objection letter shall:

(i) address each objection;

(ii) include an explanation identifying each change made;

(iii) include an underline and strikeout version of each revised document;

(iv) provide a final version of the revised document, incorporating all changes;

(v) attach each document under the appropriate tab; and

(vi) reference any additional document attached under the supporting documentation tab if the content is not included in the response.

(b) An attachment or separate letter as a response may not be filed.

(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.

R590-220-19. Severability.

If any provision of this rule, Rule R590-220, 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: health insurance filings

Date of Last Change: 2023~~March 23, 2016~~

Notice of Continuation: February 13, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-22-605; 31A-22-620; 31A-30-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:

R590-264

Filing ID:
55337

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:
R590-264. Property and Casualty Actuarial Opinion Rule
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, expand the definition of "qualified actuary," remove the Penalties (the old R590-264-8) section and Effective Date (the old R590-264-9) section, and update the Severability (the new R590-264-7) 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-4-113	
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Steve Gooch, Public Information Officer	Date:	04/14/2023
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R590. Insurance, Administration.

R590-264. Property and Casualty Actuarial Opinion Rule.

R590-264-1. Authority.

This rule is promulgated by the commissioner pursuant to [the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section]Sections 31A-2-201 and 31A-4-113.

[R590-264-2. Scope.

This rule applies to all property and casualty insurance companies doing business in this state.

R590-264-3. Purpose.

The purpose of this rule is:

1. Require all property and casualty companies doing business in Utah to prepare annually an Actuarial Opinion Summary providing details of the analysis performed by the Appointed Actuary.

2. Require all property and casualty companies domiciled in Utah to file the Actuarial Opinion Summary with the Utah Insurance commissioner.

3. Allow property and casualty companies doing business in Utah the ability to request confidentiality for the Actuarial Opinion Summary.]

R590-264-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) require a property and casualty insurer doing business in Utah to prepare annually an actuarial opinion summary providing details of the analysis performed by the appointed actuary; and

(b) require a property and casualty insurer domiciled in Utah to file the actuarial opinion summary with the commissioner.

(2) This rule applies to a property and casualty insurer doing business in Utah.

R590-264-[4]3. Definitions.

[In addition to the definitions in 31A-1-301 the following definitions shall apply for the purposes of this rule.]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Appointed [Actuary]actuary" means a qualified actuary appointed by the [insurance company's]insurer's board of directors or its equivalent, or by a committee of the board, to provide the actuarial opinion to be filed with the [company's]insurer's annual statement.

(2) "Qualified [Actuary]actuary" means a person who:
[(a) a member of the Casualty Actuarial Society](a)(i) meets the basic education, experience, and continuing education requirements of the American Academy of Actuaries;

(ii) has obtained and maintains an accepted actuarial designation specified by the NAIC Property and Casualty Annual Statement Instructions; and

(iii) is a member of a professional actuarial association that:

(A) requires adherence to the same code of professional conduct and U.S. qualification standards of the American Academy of Actuaries; and

(B) participates in the Actuarial Board for Counseling and Discipline when its association members are practicing in the U.S.; or

(b) is a member of the American Academy of Actuaries [who has been]approved as qualified [for signing]to sign casualty loss reserves opinions by the Casualty Practice Council of the American Academy of Actuaries.

(3) "Statement of [the Actuarial Opinion]actuarial opinion" means a statement prepared by the [Appointed Actuary]appointed actuary that:

(a) [setting]sets forth the actuary's opinion [relating to the company's]of the insurer's reserves; and

(b) is prepared in accordance with the [appropriate]NAIC Property and Casualty Annual Statement Instructions.

R590-264-[5]4. Actuarial Opinion Summary.

(1) [Every]A property and casualty [insurance company]insurer domiciled in this [states that is]state and required to submit a [Statement of Actuarial Opinion]statement of actuarial opinion shall annually file with the commissioner an [Actuarial Opinion Summary]actuarial opinion summary, prepared and signed by the [company's Appointed Actuary]insurer's appointed actuary.

~~[(2) This Actuarial Opinion Summary.]~~ (2) The actuarial opinion summary shall be prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions ~~[and shall be considered as]~~

(3) The actuarial opinion summary is considered a document supporting the ~~[Actuarial Opinion]~~ actuarial opinion.

~~[(3)]~~ (4) A property and casualty ~~[insurance company]~~ insurer licensed but not domiciled in this state shall provide the ~~[Actuarial Opinion Summary]~~ actuarial opinion summary upon request.

R590-264-~~[6]~~5. Actuarial Report.

~~[(1) Each Statement of Actuarial Opinion.]~~ (1) A statement of actuarial opinion submitted annually by a property and casualty ~~[insurance company]~~ insurer shall be supported by an ~~[Actuarial Report]~~ actuarial report prepared and signed by the ~~[company's Appointed Actuary]~~ insurer's appointed actuary.

(2) The ~~[Actuarial Report]~~ actuarial report required by Subsection R590-264-5(1) shall be:

(a) prepared in accordance with the ~~[appropriate]~~ NAIC Property and Casualty Annual Statement Instructions; and

(b) ~~[be available]~~ provided to the commissioner upon request.

(3) The commissioner may engage a qualified actuary at the expense of the ~~[company]~~ insurer to review the ~~[Actuarial Opinion]~~ actuarial opinion and the basis for the opinion, and prepare, if requested, the supporting ~~[Actuarial Report]~~ actuarial report or work papers if:

(a) the ~~[insurance company]~~ insurer fails to provide an ~~[Actuarial Report]~~ actuarial report to the commissioner upon request ~~[of the commissioner]~~; or

(b) the commissioner determines that the ~~[Actuarial Report]~~ actuarial report provided by the ~~[company]~~ insurer is otherwise unacceptable ~~to the commissioner~~ insurer is unacceptable.

R590-264-~~[7]~~6. Confidentiality.

(1) A property and casualty ~~[insurance company]~~ insurer filing an ~~[Actuarial Opinion Summary]~~ actuarial opinion summary with the commissioner ~~[shall]~~ may, at the time of the filing, request that all or a part of the ~~[Actuarial Opinion Summary]~~ it deems confidential ~~[actuarial opinion summary]~~ be classified as a protected record under Subsection 63G-2-305(1) or 63G-2-305(2).

(2) ~~[A company.]~~ An insurer making a confidentiality claim under Subsection R590-264-6(1) shall ~~[provide the commissioner with the filing information specified in]~~ comply with Section 63G-2-309.

~~[R590-264-8. Penalties.]~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~[R590-264-9. Enforcement Date.]~~

~~The commissioner will begin enforcing this rule on the effective date of this rule.~~

]

R590-264-~~[40]~~7. 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.]~~ If any provision of this rule, Rule R590-264, 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: property casualty insurance

Date of Last Change: 2023~~[July 13, 2012]~~

Notice of Continuation: June 30, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-4-113

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R590-266	Filing ID: 55388
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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:

R590-266. Utah Essential Health Benefits Package

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 R590-266-5) section, and update the Severability (the new R590-266-5) 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-2-212	
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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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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:	04/14/2023
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R590. Insurance, Administration.**R590-266. Utah Essential Health Benefits Package.****R590-266-1. Authority.**

This rule is promulgated by the commissioner pursuant to ~~[Subsections 31A-2-201(3)(a) and 31A-2-212(5) wherein the commissioner is directed to adopt a rule for purposes of designating the essential health benefits for Utah]~~ Sections 31A-2-201 and 31A-2-212.

R590-266-2. Purpose and Scope.

(1) The purpose of this rule is to designate an essential health benefits package ~~[in Utah]~~ as required by ~~[Section 1302 of the Patient Protection and Affordable Care Act of 2010, the Health Care Education Reconciliation Act of 2010, and related federal regulations and guidance (PPACA)]~~ PPACA.

(2) This rule applies to ~~[an]~~ a non-grandfathered individual ~~[and] or~~ small employer health benefit plan[s] issued or renewed on or after January 1, 2014.

R590-266-3. Definitions.

~~[In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purpose of this rule]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103. Additional terms are defined as follows:

(1) "Essential health benefits" means the following health care service categories ~~[that must be included in non-grandfathered individual and small employer health benefit plans beginning January 1, 2014]:~~

- (a) ambulatory patient services;
- (b) emergency services;
- (c) hospitalization;
- (d) pregnancy, maternity, and newborn care;
- (e) mental health and substance use disorder services, including behavioral health treatment;
- (f) prescription drugs;
- (g) rehabilitative and habilitative services and devices;
- (h) laboratory services;
- (i) preventive and wellness services and chronic disease management; and
- (j) pediatric services, including oral and vision care.

(2) "Grandfathered health plan" means an individual or small employer health benefit plan that:

(a) was in existence when the PPACA was enacted on March 23, 2010;

(b) has not had any significant changes that reduce benefits or increase costs to the consumer including:

(i) a significant cut or reduction in benefits ~~[such as excluding coverage for people with diabetes];~~

(ii) an increase in co-pays by more than \$5, adjusted annually for medical inflation, or a percentage equal to medical inflation plus 15%;

(iii) ~~[the]~~ an employer ~~[reduces]~~ reduction in contributions by more than five percentage points; or

(iv) ~~[reducing]~~ a reduction of annual dollar limits, or ~~[adding]~~ addition of a new limit; and

(c) the insured has received notification from the ~~[carrier]~~ insurer that their health benefit plan is a grandfathered plan.

(3)(a) "Habilitative" means health care services that help a person keep, learn, or improve skills and functioning for daily living.

(b) Habilitative services may include:

(i) physical therapy~~[-]~~;

(ii) occupational therapy~~[-]~~;

(iii) speech-language pathology~~[- and -]~~; or

(iv) other services.

(4) "Non-~~[G]~~grandfathered health plan" means an individual or small employer health benefit plan:

(a) that is issued after the PPACA was enacted on March 23, 2010; or

(b) a grandfathered health plan that has made significant changes that:

(i) reduce benefits or increase costs to the consumer ~~[s that has]; and~~

(ii) caused the plan to lose the grandfathered status as provided in Subsection (2)(b).

(5) "Rehabilitative" means the treatment of disease, injury, developmental delay, or other cause, by physical agents and methods to assist in the rehabilitation of normal physical bodily function, that is goal-oriented and where the person has potential for functional improvement and ability to progress.

(6) "Utah ~~[Essential Health Benefits Package]~~ essential health benefits package" means the benefits designated in this rule by the commissioner as essential health benefits ~~[in non-grandfathered plans for the purposes of the PPACA in Utah].~~

R590-266-4. Utah Essential Health Benefits.

(1)(a) The ~~[commissioner hereby designates the]~~ PEHP Utah Basic Plus 2013 plan is designated as the Utah ~~[Essential Health Benefits Package for purposes of the PPACA in Utah]~~ essential health benefits package.

(b) The PEHP Utah Basic Plus 2013 Plan ~~[as incorporated herein and]~~ is available at <https://insurance.utah.gov/consumer/health/reform>.

(c) The PEHP Utah Basic Plus 2013 Plan was issued on July 1, 2013 ~~[- Some -]~~, and some of the benchmark plan benefits may not comply with current state or federal requirements.

(2)(a) Except as provided in Subsections (2)(b) and (2)(c), an individual or small employer ~~[carrier]~~ insurer who issues or renews a non-grandfathered plan on or after January 1, 2014, must include at ~~[a minimum]~~ least the benefits of the Utah ~~[Essential Health Benefits Package]~~ essential health benefits package.

(b) ~~[A carrier]~~ An insurer may substitute coverage provided in the Utah ~~[Essential Health Benefits Package as long as substitutions are]~~ essential health benefits package if the substitution is actuarially equivalent and complies with ~~[the standards set forth in]~~ 42 CFR 457.431.

(c) A health benefit plan may exclude the pediatric dental essential health benefit if there is at least one ~~[carrier]~~ insurer offering a certified stand-alone dental plan that provides the pediatric dental essential health benefit in the PEHP Utah Basic Plus 2013 Plan.

(3) ~~[This rule does not prohibit an]~~ An individual or small employer ~~[earlier from offering]~~ insurer may offer a non-grandfathered plan with benefits in addition to the Utah ~~[Essential Health Benefits Package]~~ essential health benefits package.

R590-266-5. [Penalties.]

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-266-6. [Severability.]

~~[If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.] If any provision of this rule, Rule R590-266, 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: essential health benefit, insurance

Date of Last Change: 2023~~[January 10, 2018]~~

Notice of Continuation: October 14, 2022

Authorizing, and Implemented or Interpreted Law: 31A-30-201(3)(a); 31A-2-212(5)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R708-55	Filing ID: 55317
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Agency Information

1. Department:	Public Safety	
Agency:	Driver License	
Room number:	Suite 2600	
Street address:	4315 S 2700 W, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 144501	
City, state and zip:	Salt Lake City, UT 84114-4501	
Contact persons:		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Tara Zamora	801-964-4483	tarazamora@utah.gov
Britani Flores	801-884-8313	bflores@utah.gov

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

General Information

2. Rule or section catchline:

R708-55. Foreign Driver License Reciprocity

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

This rule is necessary to implement S.B. 95 that passed during the 2023 General Session.

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 establishes the process for a foreign country to enter into a reciprocity agreement with the Driver License Division (Division) to facilitate the exchange of driver licenses. This rule would allow qualified applicants from approved countries to be exempt from certain testing processes when applying for a driver license.

Fiscal Information

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

A) State budget:

This proposed rule is not expected to have any fiscal impact on state governments budget because there is no cost associated with entering into a reciprocity agreement or with the facilitation of the exchange of driver licenses by exempting certain testing requirements.

B) Local governments:

This proposed rule is not expected to have any fiscal impact on local governments because there is no cost associated with entering into a reciprocity agreement or with the facilitation of the exchange of driver licenses by exempting certain testing requirements. In addition, there are no local governments involved in the process this rule is implementing.

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

This proposed rule is not expected to have any fiscal impact on any small businesses because there is no cost associated with entering into a reciprocity agreement or with the facilitation of the exchange of driver licenses by exempting certain testing requirements. In addition, there are no small businesses involved in the process this rule is implementing.

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

This proposed rule is not expected to have any fiscal impact on any non-small businesses budgets because there is no cost associated with entering into a reciprocity agreement or with the facilitation of the exchange of driver

licenses by exempting certain testing requirements. In addition, there are no non-small businesses involved in the process this rule is implementing.

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 a direct non-fiscal benefit to persons other than small businesses, non-small businesses, state, or local governments. This rule filing will enable qualified individuals to exchange their foreign driver licenses with exemption from certain testing requirements. This will make the process easier for qualified applicants who are presenting a driver license from a foreign country who has entered into a reciprocity agreement with the Division.

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 affected persons to adhere to this rule.

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 Public Safety, Jess L. Anderson, 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 53-3-110		
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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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023a

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:	Christopher Caras, Director	Date:	04/06/2023
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R708. Public Safety, Driver License.

R708-55. Foreign Driver License Reciprocity.

R708-55-1. Purpose.

This rule establishes the process for a foreign jurisdiction to enter into and maintain a reciprocity agreement to facilitate the exchange of a driver license.

R708-55-2. Authority.

This rule is authorized by Section 53-3-110.

R708-55-3. Definitions.

(1) Terms used in this rule are defined in Section 53-3-102.

(2) In addition:

(a) "applicant" meant an applicant for a Utah driver license that possesses a driver license issued by a foreign jurisdiction with which the division has entered into a reciprocity agreement;

(b) "authorized agent" means an individual authorized to make and enter into a reciprocity agreement on behalf of the foreign jurisdiction;

(c) "foreign jurisdiction" means any jurisdiction outside of the United States and within a particular geographic territory in which a governing body has the power, right, and authority to promulgate laws, rules, regulations, and agreements;

(d) "program" means the process the division or foreign jurisdiction uses to educate and test applicants for driver licenses; and

(e) "program information" means:

(i) contact name and address of the department maintaining driver records;

(ii) driver license laws;

(iii) samples of driver licenses with a description of the security features;

(iv) identification requirements for driver license applicants;

(v) information contained on driver licenses;

(vi) certification of eligible driver status that shows no open or active withdrawals;

(vii) term of license validity;

(viii) medical standards;

(ix) minimum age requirements for driving;

(x) license classes and condition codes;

(xi) description of license classifications to be exchanged;

(xii) qualification requirements for professional driving instructors;

(xiii) graduated driver licensing program or equivalent;

(xiv) training requirements for beginner drivers;

(xv) qualifications for examiners including training and background checks;

(xvi) knowledge test overview;

(xvii) road test components and scoring criteria;

(xviii) a list of foreign driver's licenses that are accepted for exchange;

(xix) reciprocity law processes and requirements;

(xx) driver improvement programs;

(xxi) official driver's handbook; and

(xxii) a description of the driver education curriculum.

R708-55-4. Foreign Jurisdiction Request for Reciprocity.

(1) A foreign jurisdiction requesting a reciprocity agreement shall submit a request in writing to the division.

(2) A request for reciprocity shall:

(a) be signed by an authorized agent;

(b) contain the contact information for the authorized agent; and

(c) be sent by email to DPSDLReciprocity@utah.gov.

R708-55-5. Division Response to Request for Reciprocity.

(1) Upon receipt of a request for reciprocity, the division shall send an acknowledgment letter to the requesting party.

(2) The response shall include:

(a) contact information for the division official authorized to make and enter into a reciprocity agreement;

(b) a request for the foreign jurisdiction's program information for review by the division; and

(c) the division's program information for review by the foreign jurisdiction.

R708-55-6. Program Information Review.

(1) Upon receipt of the foreign jurisdiction's program information, the division official shall review the foreign jurisdiction's program information to ensure it meets or exceeds the division's program standards.

(2) The minimum standards for program approval include the following:

(a) students must have finished at least:

(i) 18 hours of in person classroom instruction; and

(ii) 6 hours of behind the wheel instruction.

(b) instructors and examiners must:

(i) be regulated and certified by the foreign jurisdiction's government licensing authority;

(ii) have met the educational and training standards to act officially on behalf of the foreign jurisdiction's licensing authority; and

(iii) have passed a criminal background check.

(3) The division official may opt to deny a program even if the minimum standards have been met if there are other aspects of the program that do not align with the division's mission to promote public safety.

R708-55-7. Driver License Reciprocity Agreement Approval.

(1) The division may enter into a reciprocity agreement with a foreign jurisdiction upon:

(a) approval of foreign jurisdiction's program; and

(b) approval of the division's program by the foreign jurisdiction.

(2) Upon approval of both the division and the foreign jurisdiction, a memorandum of understanding with the terms and conditions shall be sent by the division to the foreign jurisdiction's authorized agent to be signed.

(3) The reciprocity agreement shall be made effective upon receipt of the signed and returned memorandum of understanding from the foreign jurisdiction to the division.

R708-55-8. Changes to Program.

(1) Any changes to a previously approved program shall be communicated to the division by the foreign jurisdiction within 30 days of implementation.

(2) A reciprocity agreement shall be canceled if changes to a previously approved program make the program incompatible with the division's program standards.

R708-55-9. Applicant Exemption from Testing.

The division may exempt an individual applying for a driver license from certain testing processes if the applicant:

(1) presents a valid a non-commercial driver license from a foreign jurisdiction that has entered into a reciprocity agreement with the division; and

(2) has complied with the verification process outlined in Section R708-55-9.

R708-55-10. License Verification Process for Applicants.

(1) The division shall establish a verification process to ensure the validity of a driver license issued by a foreign jurisdiction with which the division has entered into a reciprocity agreement.

(2) An application for a driver license submitted by an applicant that possesses a driver license issued by a foreign jurisdiction with which the division has a reciprocity agreement shall:

(a) submit to the division;

(i) a Utah driver license application form;

(ii) a driving record issued by the foreign jurisdiction dated within 30 days from the date of application; and

(iii) a valid driver license issued by the foreign jurisdiction;

(b) provide documents necessary to establish identity and legal, lawful presence in the United States;

(c) pay applicable licensing fees;
 (d) pass any medical and vision evaluations; and
 (e) pass a written knowledge test.
 (3) Any documents submitted to the division shall be translated into English by a translator on the division's approved list. A list of approved translators may be found on the division's website.

KEY: foreign driver license, reciprocity

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 53-3-110

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R990-200-3	Filing ID: 55322
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Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact persons:		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information

2. Rule or section catchline:
R990-200-3. Definitions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this filing is to clarify the "good standing" definition and address feedback received from stakeholders regarding previous proposed changes.
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 change amends "good standing" by making the five-year requirement apply only to certain good-standing criteria rather than across the board.

It also requires applicants and recipients that have previously received multi-family allocations to be in good standing with the Utah Housing Corporation at the time of application.

Finally, it removes "voluntary relinquishment" from the Section R990-200-3 since that definition is not referenced anywhere in this rule.

Fiscal Information

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

A) State budget:

This rule change is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee this rule change. This rule change will not increase workload and can be carried out with existing budget. This rule change does not change the current available bond cap.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program does not rely on local governments for funding, administration, or enforcement.

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

This rule change is expected to have indirect positive fiscal impact on small businesses because it provides a more transparent process for an applicant ascertaining the viability of their application.

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

This rule change is expected to have indirect positive fiscal impact on non-small businesses because it provides a more transparent process for an applicant ascertaining the viability of their application.

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. This rule change requires no action or compliance by a person other than a business submitting an application to the Board of Review.

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 affected persons because this rule change does not create any new administrative fees.

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 Workforce Services, Casey Cameron, 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 35A-8-2104		
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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: 05/31/2023

9. This rule change MAY become effective on: 06/07/2023

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:	Casey Cameron, Executive Director	Date:	04/10/2023
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R990. Workforce Services, Housing and Community Development.

R990-200. Private Activity Bonds.

R990-200-3. Definitions.

Terms used in this rule are defined in Section 35A-8-2102. Terms not defined in that section or in this rule shall be defined as used in the Private Activity Bond Program - Policies and Procedures ("Policies"), adopted October 2022, which is incorporated by reference. In addition:

(1) "Affordable" means at least 20% of the residential units in the project are set aside for families whose incomes do not exceed 50% of Area Median Income (AMI), adjusted for family size; or at least 40% of the residential units in the project are set aside for families whose incomes do not exceed 60% of AMI, adjusted for family size.

(2) "Applicant" means a borrower or issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(3) "Available volume cap" means the unencumbered volume cap.

(4) "Application" means:

(a) the electronic federal Low-Income Housing Tax Credit consolidated application for multi-family applicants;

(b) the private activity bond authority manufacturing facility application for the manufacturing, redevelopment or exempt facility applicants; or

(c) the private activity bond authority application for single family or student loan applicants.

(5) "Closed" or "close" means the time at which bonds are exchanged for funds.

(6) "Good standing" means the applicant or recipient ~~for the immediately preceding five years~~:

(a) has timely remitted to the Board of Review all required fees and payments at the time of application;

(b) has timely submitted to the Board of Review all required reports at the time of application;

(c) for the five years preceding the submission of the request for an allocation or extension, has not failed to close any projects for which the Board of Review has made an allocation; and

(d) for the five years preceding the submission of the request for an allocation or extension, has not made to the Board of Review any misrepresentations about an application for allocation or any previous or current project.

(7) If an applicant or recipient has previously received an allocation from the Board of Review for one or more multi-family projects, "good standing" means the applicant or recipient meets the requirements of Subsection (6) and ~~[for the immediately preceding five years,]~~ the applicant or recipient:

(i) ~~a~~ has not exceeded rent or income limits at any time in the immediately preceding five years;

(ii) ~~b~~ has not converted any affordable unit into a market rate unit at any time in the immediately preceding five years; ~~and~~

(iii) ~~c~~ has rented designated affordable units only to qualified low and moderate income tenants for the immediately preceding five years; and

(d) is in good standing with the Utah Housing Corporation at the time of application.

(8) "Project" means the applicant's plan for which the private activity bonds are being sought.

(9) "Recipient" means a borrower or issuing authority that has been awarded an allocation of volume cap.

(10) "Low and moderate income" means a household whose income upon initial occupancy does not exceed 140% of AMI adjusted for family size.

(11) "Market rate" means housing units that are not affordable.

~~(12) "Voluntary relinquishment" means a recipient's decision, made of the recipient's own volition, to relinquish all or part of a previously awarded allocation.~~

KEY: allocation, private activity bond, volume cap

Date of Last Change: [February 7,] 2023

Authorizing, and Implemented or Interpreted Law: 35A-8-2104

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 May 31, 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 August 29, 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:	R590-283-6	Filing ID: 55256
Date of Previous Publication:	03/15/2023	

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. Reason for this change (Why is the agency submitting this filing?):
After filing the initial amendment, the Department of Insurance (Department) discovered an error in the reporting dates in the rule.
4. Summary of this change (What does this filing do?):
The change corrects the filing date and period for a report filed with the Department. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the March 15, 2023, issue of the Utah State Bulletin, on page 78. 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 anticipated cost or savings to the state budget. The report will still be filed with the Department and will still be reviewed by Department personnel.

B) Local government:

There is no anticipated cost or savings to local governments. This rule governs a relationship between the Department and its licensees, and does not involve local governments in any way.

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

There is no anticipated cost or savings to small businesses. The report must still be filed with the Department; this amendment just shifts the filing dates.

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 report must still be filed with the Department; this amendment just shifts the filing dates.

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 anticipated cost or savings to any other persons. This rule governs a relationship between the Department and its licensees, and does not involve other persons in any way.

F) Compliance costs for affected persons:

There is no anticipated cost or savings to affected persons. The report must still be filed with the Department; this amendment just shifts the filing dates.

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-22-642	Section 31A-30-118

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:	05/31/2023
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9. This rule change MAY become effective on:	06/07/2023
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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:	Steve Gooch, Public Information Officer	Date:	04/07/2023
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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 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 ~~December~~ November 15 of each year for the period January 1 through ~~October 31~~ September 30;

(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

Authorizing, and Implemented or Interpreted Law: 31A-30-118(4)

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Rule or Section Number:	R68-25	Filing ID: 55312
Effective Date:	04/04/2023	

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
Cody James	385-515-1485	codyjames@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:
R68-25. Industrial Hemp Program-Cannabinoid Product Processors
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Emergency changes are needed to clarify the allowances of a Tier Three and Tier Four processing licensee to ensure product safety, as well as to remove the requirement for licensees to participate in the FBI Rap Back program for background checks because the Department of Agriculture and Food's (Department) application to have hemp processors participate in this program was denied. The Department filed a previous emergency change but needs another one to extend the timing while the Department drafts permanent rule changes.

4. Summary of the new rule or change (What does this filing do?):

Rule R68-25 is updated to clarify that Tier Three licensees may receive bulk cannabinoid product rather than concentrate and to remove their ability to manufacture under their license. A change has also been made to clarify that a Tier Four licensee may only sell finished product to a retailer. Additionally, language is removed from Section R68-25-4 requiring licensees to participate in the FBI Rap Back program (referenced in Subsection 4-41-103.2(6)). The Department's application to have hemp processors participate in this program was denied and statutory language has been clarified to ensure the application is approved.

5A) The agency finds that regular rulemaking would:

- X cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

The licensing clarifications are needed to ensure that licensees are producing products that are safe for the public to consume and to address concerns that have arisen under the Department's management of the hemp program. The background check changes are needed to ensure the Department is not requiring processors to participate in a background check program that they are not allowed to participate in while still ensuring that adequate background checks are completed for those employees who interact with products with potential THC concentration above 0.3%.

Fiscal Information**6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The changes will not impact the state budget because they make this rule consistent with current Department practice or are clarifying changes only.

B) Local governments:

Local governments are not licensed under the industrial hemp program and will not be impacted by the changes.

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

Small businesses should not be impacted by this change because the changes are clarifying licensing requirements and the costs to participate in the program should not change. Background check costs will not change because licensees have not yet participated in the Rap Back program.

D) Persons other than 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**):

Other persons should not be impacted by this change because the changes are clarifying licensing requirements and the costs to participate in the program should not change. Background check costs will not change because licensees have not yet participated in the Rap Back program.

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

The fees charged by the Department and compliance requirements of the program will not be impacted by this rule change.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change will not have a fiscal impact on businesses. Craig W Butters, Commissioner

Citation Information**7. 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 4-41-103(4)		
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Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	04/04/2023
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R68. Agriculture and Food, Plant Industry.**R68-25. Industrial Hemp Program - Cannabinoid Product Processors.****R68-25-1. Authority and Purpose.**

Pursuant to Subsection 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Program for the processing and handling of cannabinoid products.

R68-25-2. Definitions.

- 1) "CBD" means cannabidiol (CAS #13956-29-1).
- 2) "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.
- 3) "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.

4) "Cannabinoid product" means a product that:

a) contains one or more cannabinoids;

b) contains less than the cannabinoid product THC level by dry weight; and

c) after December 1, 2022, contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content.

5) "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%.

6) "Community location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.

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

8) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert one cannabinoid into another.

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

10) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

11) a) "Key participant" means any person who has a financial interest in the business entity, including members of a limited liability company, sole proprietor, partners in a partnership, and incorporators or directors of a corporation.

b) "Key participant" includes an:

i) individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officer; and

ii) an operation manager, site manager, or any employee who may present a risk of diversion.

12) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period.

13) "Processing" means any action taken to prepare industrial hemp, or material derived from industrial hemp, for market.

14) "Processor" means a person licensed by the department to process industrial hemp or a material derived from industrial hemp.

15) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or cannabinoid products.

16) "Non-compliant material" means:

(a) a hemp plant or plant material that does not comply with this rule, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and

(b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.

17) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.

18) "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.

19) "Tetrahydrocannabinol" or "THC" means delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS #1972-08-3.

20) "Third-party laboratory" means a laboratory that has no direct interest in a grower or processor of industrial hemp or cannabinoid products that is capable of performing mandated testing utilizing validated methods.

R68-25-3. Industrial Hemp Processor Licenses.

1) The department shall issue the following industrial hemp processor licenses:

a) a Tier One license, which allows a licensee to receive, store, extract, transport, and sell raw plant material or raw concentrate, and manufacture finished cannabinoid product;

b) a Tier Two license, which allows a licensee to receive raw plant material and extract it into raw concentrate to store, sell, or transport;

c) a Tier Three license, which allows a licensee to receive ~~[cannabinoid concentrate under 0.3% THC concentration]~~ bulk cannabinoid product, and ~~[manufacture]~~ store, package, and label finished cannabinoid product; and

d) a Tier Four license, which allows a licensee to receive, store, transport, or sell raw concentrate, raw plant material, or sell finished cannabinoid product to a retailer, and perform minimal processing for storage only.

2) A Tier One processor may accept industrial hemp derived cannabinoid concentrate with greater than 0.3% THC concentration from another Tier One processor or a Tier two processor.

R68-25-4. Application Requirements.

1) The applicant shall be a minimum of 18 years old.

2) The applicant is not eligible to receive a license if they have been convicted of a drug-related felony or its equivalent.

3) An applicant seeking an industrial hemp processing license shall submit the following to the department:

a) a complete application form provided by the department;

b) a physical description of the processing facility;

c) a plan review of the building, facilities, and equipment;

d) a street address for each building or site where industrial hemp or cannabinoid products will be processed, handled, or stored;

e) the planned source of industrial hemp material; and

f) a statement of the intended end use or disposal for each part of the industrial hemp plant and hemp material.

4) Each applicant ~~[and key participant shall submit to a background check pursuant to the requirements of Subsection 4-41-103.2(6) and shall provide the department with an authorization form allowing the department to access their background information]~~ shall submit a nationwide criminal history from the FBI completed within three months of their application.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit the required information.

7) Each applicant for a Tier one, Tier Two, or Tier Three license shall be required to register as a food establishment under Section 4-5-301 pursuant to the requirements of Section R68-25-7.

R68-25-5. Processing Facility Restrictions.

- 1) A licensee shall not process or store ~~[leaf or floral]~~raw plant material or raw concentrate from industrial hemp in any structure that is used for residential purposes.
- 2) A licensee shall not process or store industrial hemp within 1,000 feet of a community location.
- 3) A licensee shall not process or handle industrial hemp or hemp material from any person who is not licensed by the department or the United States Department of Agriculture (USDA) or from a person outside the state who is not authorized by the laws of that state.
- 4) A licensee shall not permit a person under the age of 18 to access industrial hemp or cannabinoid products.
- 5) A licensee shall ~~[ensure that each key participant has submitted to a background check as required in Subsection 4-41-103.2(6) and authorized the department to access their background information within the first month of employment]~~submit a nationwide criminal history from the FBI to the department for each employee with access to material which contains, or may contain, over 0.3% THC within the first month of employment.
- 6) The licensee shall notify the department if a key participant separates from the licensee within two weeks following the separation.

R68-25-6. Extraction Methods.

- 1) In addition to the requirements of Section R68-25-4, an applicant seeking to engage in the extraction of cannabinoid concentrate from industrial hemp shall submit to the department a detailed description of the proposed extraction method.
- 2) The applicant shall describe the proposed process for the removal of any solvents added during the extraction process, if applicable.
- 3) The applicant shall describe the safety measures proposed to protect the public and employees from dangers associated with extraction methods.
- 4) The department may deny a license for methods that pose a significant risk to public health and safety.
- 5) Each licensee shall adhere to the following extraction guidelines:
 - a) ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least 99% purity;
 - b) use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present;
 - c) ensure that any carbon dioxide (CO₂) gas extraction system uses a professional grade closed loop CO₂ gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO₂ shall be at least 99% purity;
 - d) ensure that closed loop hydrocarbon, alcohol, or CO₂ extraction systems are commercially manufactured and bear a permanently affixed and visible serial number;
 - e) upon request, provide the department with documentation showing that the system is:
 - i) safe for its intended use; and
 - ii) commercially manufactured.
- 6) The applicant shall indicate whether they will be using derivative or synthetic cannabinoids and how they will produce or procure them.

R68-25-7. Processing Practices.

- 1) The department incorporates by reference 21 CFR 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements for a licensee engaged in processing a cannabinoid product intended for human consumption.
- 2) The department incorporates by reference 21 CFR 507, Current Good Manufacturing Practice, Hazard analysis, and Risk-Based Preventive Controls for Food for Animals for a licensee engaged in processing cannabinoid products for animal consumption.
- 3) A licensee that manufactures cannabinoid products for human consumption shall be registered with the Division of Regulatory Services within the department.
- 4) A licensee shall use a standardized scale that is registered with the department when industrial hemp or cannabinoid products are:
 - a) packaged for sale by weight; or
 - b) bought and sold by weight.
- 5) A licensee that also is a holder of a medical cannabis processing license shall adhere to the separation requirements of Section R68-28-5 to ensure physical separation of medical cannabis and industrial hemp in their facility.
- 6) A licensee that manufactures cannabinoid products shall ensure that the facility meets basic cleanliness standards, including:
 - a) buildings are of suitable size, design, and construction to permit unobstructed placement of equipment, orderly storage of materials, sanitary operation, and proper cleaning and maintenance;
 - b) floors, walls, and ceilings are constructed of smooth, easily cleanable surfaces and are kept clean and in good repair;
 - c) fixtures, ducts, and pipes are installed in such a manner that drip or condensate does not contaminate materials, utensils, contact surfaces of equipment, or finished products in bulk;
 - d) lighting and ventilation are sufficient for the intended operation and comfort of personnel;
 - e) water supply, washing and toilet facilities, floor drainage, and sewage system are adequate for sanitary operation and cleaning of facilities, equipment, and utensils, as well as to satisfy employee needs and facilitate personal cleanliness; and
 - f) adequate filth and pest controls are in place.

R68-25-8. Required Reports.

- 1) A licensee shall submit a completed Production Report on a form provided by the department by December 31st.
- 2) The failure to submit a timely completed form may result in the denial of a renewal license.

R68-25-9. Additional Records.

- 1) The licensee shall keep records of receipt for any industrial hemp material obtained including:
 - a) the date of receipt;
 - b) quantity received;
 - c) an identifying lot number created by the licensee; and
 - d) the seller's information including:
 - i) the seller's department license number;
 - ii) seller's contact information; and
 - iii) the address of the facility or growing area from which the industrial hemp material was shipped.
- 2) The licensee shall keep records that include the following information for each batch of industrial hemp material processed;

- a) the date of processing;
- b) the lot number of the material;
- c) the amount processed;
- d) the type of processing; and
- e) any lab test conducted on the industrial hemp material or product during the processing.

3) The licensee shall keep records of any derivative or synthetic cannabinoids procured or produced and the products they are used for.

4) The licensee shall keep records of any tests conducted with the identifying lot number.

5) A licensee processing a cannabinoid product for human consumption shall keep records required by 21 CFR 111 including:

- a) written procedures for preventing microbial contamination;
- b) documentation of training of employees;
- c) cleaning logs of equipment;
- d) procedures for cleaning the physical facility;
- e) documentation of your qualification of supplier; and
- f) documentation of calibration of machinery.

6) A licensee processing a cannabinoid product for animals shall keep records as required by 21 CFR 507 including:

- a) written procedures for preventing microbial contamination;
- b) documentation of training of employees;
- c) cleaning logs of equipment;
- d) procedures for cleaning the physical facility; and
- e) documentation of calibration of machinery.

7) The licensee shall keep records of any products they have manufactured and the disposition of any cannabinoid material that leaves the facility.

8) Records shall be maintained for a minimum of three years.

9) Records are subject to review by department officials at the time of inspection or upon request.

R68-25-10. Testing.

1) Cannabinoid products shall be tested for the following before being made available for retail sale:

- a) cannabinoid profile;
- b) solvents;
- c) pesticides;
- d) microbials;
- e) heavy metals; and
- f) foreign matter.

2) The testing shall be completed by a third-party laboratory.

3) The department shall conduct random testing of cannabinoid products and materials.

4) The sample taken by the department shall be the official sample.

R68-25-11. Inspections and Sampling.

1) The department shall have complete and unrestricted access to industrial hemp plants, seeds, and materials and any land, buildings, and other structures used to process industrial hemp.

2) Samples of industrial hemp or cannabinoid product may be randomly taken from the facility by department officials.

3) The department may review records kept in accordance with rule requirements.

4) The department shall notify a licensee of test results greater than 0.3% THC.

5) Any laboratory test with a result greater than 0.3% THC may be considered a violation of the terms of the license and may result in an immediate license revocation.

6) Any laboratory test of a final product with a result of 1% THC or greater shall be turned over to the appropriate law enforcement agency and revocation of the processor license shall be immediate.

7) The department shall notify the licensee of any solvents, metals, microbials, pesticides, or foreign matter found during testing.

8) The presence of deleterious or harmful substances may be considered a violation of the terms of the license and may result in a license revocation.

R68-25-12. Storage of Industrial Hemp and Cannabinoid Products.

1) A licensee may store hemp and cannabinoid products at their licensed facility provided:

- a) the licensee informs the department of the type and amount of the product being stored in the storage facility;
- b) the storage facility is outside of the public view; and
- c) the storage facility is secured with physical containment such as walls, fences, locks, and with an alarm system to provide maximum reasonable security.

2) A licensee may store a cannabinoid concentrate that exceeds 0.3% THC provided:

- a) the concentrate is kept in a secure room;
- b) the concentrate is kept separate from other hemp products;
- c) access to the concentrate is limited; and
- d) a record is kept of the amount of concentrate being stored and when it is being moved.

3) Storage facilities shall be maintained in accordance with the practice adopted in Section R68-25-7.

4) Storage facilities and records are subject to random inspection by department officials.

R68-25-13. Transportation of Industrial Hemp Material.

1) Each movement of industrial hemp material shall include a transport manifest that includes the following information:

- a) a copy of the COA for each batch included in the shipment;
- b) the location of the sending and receiving parties;
- c) proof of registration or licensure for the sending and receiving parties; and
- d) a bill of lading for the transported material.

R68-25-14. Restriction on the Sale and Transfer of Industrial Hemp Material.

1) A licensee shall not sell or transfer living plants, viable plants, viable seed, leaf material, or floral material to any person not licensed by the department or the USDA.

2) A licensee shall not sell or transfer living plants, viable seed, leaf material, or floral material to any person outside the state who is not authorized by the laws of that state or the USDA.

3) A licensee may sell stripped stalks, fiber, and nonviable seed to the general public provided the material's THC level is less than 0.3%.

R68-25-15. Renewal.

1) A licensee shall resubmit the documents required in Section R68-25-4, with updated information, before December 31st of the current year.

NOTICES OF 120-DAY (EMERGENCY) RULES

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-25-16. Violation.

1) It is a violation to process industrial hemp or industrial hemp material on a site not approved by the department.

2) It is a violation to process industrial hemp or industrial hemp material on a site within 1,000 feet of a community location.

3) It is a violation to process industrial hemp or industrial hemp material from a source that is not approved by the department.

4) A licensee shall not allow unsupervised public access to hemp processing facilities.

5) It is a violation to employ a person under the age of 18 in the processing or handling of industrial hemp or cannabinoid products.

6) It is a violation to sell a cannabinoid product to the general public or another licensee in violation of this section or state laws governing the final product.

7) It is a violation to add cannabinoids to a food product.

8) It is a violation to process raw concentrate without the appropriate industrial hemp processor license.

9) It is a violation to fail to keep records required by this rule or to fail to adhere to the notification requirements of this rule.

10) It is a violation to use derivative or synthetic cannabinoids in cannabinoid products without notifying the department.

11) It is a violation for a licensee to allow an employee that has been convicted of a drug-related felony or its equivalent access to hemp material or cannabinoid product that contains over 0.3% THC or has the potential to contain over 0.3% THC.

12) It is a violation to possess cannabinoid concentrate without an industrial hemp processing license.

13) It is a violation to store cannabinoid concentrate with greater than 0.3% THC concentration without following the requirements of Subsection R68-25-12(2).

14) It is a violation to store industrial hemp material without a processor license from the department or a cultivator license from the USDA.

15) It is a violation to possess non-compliant material.

16) It is a violation for a licensee to engage in practices outside of the scope of their license.

17) It is a violation to use an extraction method that is not authorized by Section R68-25-6.

18) It is a violation to employ a key participant without a background check for longer than 30 days.

19) It is a violation to operate a facility that does not meet current Good Manufacturing Practice requirements.

20) For holders of industrial hemp and medical cannabis processing licenses, it is a violation to operate a facility that does not adhere to the separation requirements of Section R68-28-5.

21) It is a violation to sell a cannabinoid product that has not been tested as required by Section R68-25-10.

22) It is a violation to deny the department the ability to take a sample of a cannabinoid product during an inspection or as part of an investigation.

23) It is a violation to deny the department access to an industrial hemp processing facility or industrial hemp processing facility records during regular business hours.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil

Date of Last Change: April 4, 2023

Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at 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:	R156-37c	Filing ID: 50265
Effective Date:	04/03/2023	

Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Lisa Martin	801-530-6628	lmartin@utah.gov

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

General Information

2. Rule catchline:
R156-37c. Utah Controlled Substance Precursor Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 58, Chapter 37c, provides for the licensure and regulation of distributors and purchasers engaged in regulated transactions of listed controlled substance precursor chemicals.

Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.

This rule was enacted to clarify the provisions of Title 58, Chapter 37c, with respect to controlled substance precursor distributors and purchasers.

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:

Since this rule was last reviewed in April 2018, the Division has received no written comments with respect to this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 37c.

This rule also provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning the requirements in Title 58, Chapter 37c. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	03/31/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R156-74	Filing ID:	50319
Effective Date:	04/03/2023		

Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Tracy Taylor	801-530-6628	trtaylor@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R156-74. State Certification of Court Reporters Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 58, Chapter 74, provides for the state certification and regulation of court reporters.
Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.
This rule was enacted to clarify the provisions of Title 58, Chapter 74, with respect to court reporters.
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:
Since this rule was last reviewed in April 2018, the rule has been amended one time in September 2019 as a result of legislation during the 2019 General Session which affected Title 58, Chapter 74. The Division has received no written comments with respect to this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it provides a mechanism to inform potential state certificate holders of the requirements for state certification as allowed under statutory authority provided in Title 58, Chapter 74.

This rule also provides information to ensure applicants for state certification are adequately trained and meet minimum certification requirements, and provides state certificate holders with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Mark B. Steinagel, Division Director	Date:	03/31/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R380-250	Filing ID:	50889
Effective Date:	04/10/2023		

Agency Information

Agency information:

1. Department:	Health and Human Services		
Agency:	Administration (Health)		
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 catchline:
R380-250. HIPAA Privacy Rule Implementation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 26B-1-213 grants the Department of Health and Human Services (Department) the power to adopt, amend, or rescind rules.

Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

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 Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it safeguards health information in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and because it allows members to request and access their protected health information (PHI), request to amend or restrict PHI, request an accounting of disclosures, and to file a complaint over a HIPAA violation. Therefore, this rule should be continued.

The Department anticipates amending this rule due to changes following consolidation and the recodification of the Department's statute.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/10/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R382-1	Filing ID:	54587
Effective Date:	04/06/2023		

Agency Information

1. Department:	Health and Human Services
Agency:	Children's Health Insurance Program
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 catchline:**

R382-1. Benefits and Administration

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 26B-1-213 grants the Department of Health and Human Services (Department) the power to adopt, amend, or rescind rules.

Section 26-40-103 requires the Department to administer and implement by rule the Children's Health Insurance Program (CHIP).

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 Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary it sets forth benefits, limitations, enrollment, reimbursement, cost sharing, and the fair-hearing process under CHIP. Therefore, this rule should be continued.

The Department anticipates amending this rule to update any outdated citations following the recodification of the Department's statute.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R382-10	Filing ID:	52938
Effective Date:	04/10/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Children's Health Insurance Program	
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 catchline:
R382-10. Public Health Emergency Provisions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26B-1-213 grants the Department of Health and Human Services (Department) the power to adopt, amend, or rescind rules.
Section 26-40-103 requires the Department to administer and implement by rule the Children's Health Insurance Program (CHIP).
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 Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it sets forth eligibility requirements for children to receive CHIP coverage. Therefore, this rule should be continued.
The Department anticipates an amendment to this rule following the recodification of the Department's statute.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/10/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R414-52	Filing ID:	51011
Effective Date:	04/06/2023		

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 catchline:
R414-52. Optometry Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health and Human Services (Department) to implement by rule vision services for eligible Medicaid members.
42 CFR 440.60 allows Medicaid to cover vision services performed by a licensed optometrist.
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 Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it implements optometry services for Medicaid members as described in the Vision Care Services Provider Manual and in the Medicaid State Plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R414-53	Filing ID:	51022
Effective Date:	04/06/2023		

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 catchline:
R414-53. Eyeglasses Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health and Human Services (Department) to implement by rule vision services for eligible Medicaid members.

42 CFR 440.120(d) defines eyeglasses in relation to Medicaid coverage.

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 Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because it implements eyeglasses services for Medicaid members as described in the Vision Care Services Provider Manual and in the Medicaid State Plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R523-16	Filing ID:	51257
Effective Date:	04/06/2023		

Agency Information

1. Department:	Health and Human Services		
Agency:	Substance Abuse and Mental Health		
Building:	Cannon Health Building		
Street address:	288 N 1460 W, 3rd Floor		
City, state and zip:	Salt Lake City, UT 84116		
Contact persons:			
Name:	Phone:	Email:	
Thom Dunford	801-819-4280	tdunford@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 catchline:
R523-16. Certification of Essential Treatment Examiners and Case Managers

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Subsection 62A-15-105 that allows the establishment, by rule, minimum standards for local substance abuse authorities and local mental health authorities, and is required by 62A-15-1202.

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:

No comments have been received over the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Office of Substance Use and Mental Health (OSUMH) has determined that this rule is necessary to comply with statute. Therefore, this rule should be continued.

OSUMH has reviewed this rule for changes and compliance with the Utah Rulewriting Manual, and is submitting an amendment to the Office of Administrative Rules for publication and comment.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	04/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R805-2	Filing ID:	54190
Effective Date:	04/14/2023		

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	University of Utah, Administration	
Room number:	309	
Building:	Park Building	
Street address:	201 South Presidents Circle	
City, state and zip:	Salt Lake City, UT 84112	
Contact persons:		
Name:	Phone:	Email:
Rebekah Bradway	801-585-7002	rebekah.bradway@legal.uta.edu
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule catchline:**

R805-2. Government Records Access and Management Act Procedures

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Subsections 63A-12-104(2) and 63G-2-204(3), and Section 63G-3-201. Section 63A-12-104 permits governmental entities to designate at which level the requirements of that chapter are undertaken, and Subsection 63G-2-204(3) permits a governmental entity to adopt rules specifying where and to whom requests for access shall be directed.

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 University of Utah is not aware of any written comments received during the specified time period.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes the process for a person to submit a records request to the University of Utah under the Government Records Access and Management Act (GRAMA), including where and to whom a records request for access shall be directed. This information is not set forth in the Utah Code and, without this information, there is no mechanism for ensuring that records requests are directed or submitted to the department within the University of Utah with the ability to fulfill the request. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Phyllis Vetter, General Counsel	Date:	04/12/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R895-4	Filing ID:	53717
Effective Date:	04/14/2023		

Agency Information

1. Department:	Government Operations		
Agency:	Technology Services		
Street address:	4315 S 2700 W		
City, state and zip:	Taylorsville, UT 84129		

Contact persons:		
Name:	Phone:	Email:
Stephanie Weteling	801-599-7870	stephanie@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R895-4. Sub-Domain Naming Conventions for Executive Branch Agencies
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is issued by the Chief Information Officer (CIO) under the authority of Section 63A-16-205 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act.
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:
No written comments were received during and since the last five-year review of this rule from interested parties supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule establishes the use of "utah.gov" sub-domain name for executive branch agency websites. The ".gov" sub-domain identifier is controlled by the Federal .gov domain registrar, thereby protecting state interests.
The State of Utah, CIO's office is responsible for issuance of all "utah.gov" sub-domains, further protecting the integrity of the identifier. The "utah.gov" identifier offers immediate recognition to constituents for developing credibility and confidence through a consistent interface. The "utah.gov" sub-domain simplifies constituent access to state agency services.
Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Alan Fuller, Chief Information Officer	Date:	04/14/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R895-6	Filing ID: 53729
Effective Date:	04/14/2023	

Agency Information

1. Department:	Government Operations	
Agency:	Technology Services	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Contact persons:		
Name:	Phone:	Email:
Stephanie Weteling	801-599-7870	stephanie@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R895-6. IT Plan Submission Rule for Agencies
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is issued by the Chief Information Officer (CIO) under the authority of Subsection 63A-16-205-1(ii) of the Technology Governance Act, in accordance with Section 63G-3-201 of the Utah Rulemaking Act.
Also required by Section 63A-16-203, Agency Information Technology Plans.
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:
No written comments were received during and since the last five-year review of this rule from interested parties supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required by Subsection 63A-16-205-1(ii) of the Technology Governance Act and is necessary to specify the detail and format required in an agency information technology plan submitted in accordance with Section 63A-16-203. Therefore, this rule should be continued.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Agency Authorization Information

Agency head or designee and title:	Alan Fuller, Chief Information Officer	Date:	04/14/2023
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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:	R495-881	Filing ID: 51175
New Deadline Date:	07/31/2023	

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration (Human Services)	
Building:	MASOB	
Street address:	195 N 1950 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:
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

General Information

2. Rule catchline:
R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation
3. Reason for requesting the extension:
This extension will grant the Department of Health and Human Services enough time to repeal this rule as it is no longer necessary following consolidation and the existence of Rule R380-250, HIPAA Privacy Rule Implementation.

Agency Authorization Information

Agency head or designee and title:	Nate Winters, Deputy Director	Date:	03/31/2023
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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

Animal Industry

No. 55241 (Amendment) R58-1: Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals
Published: 03/01/2023
Effective: 04/13/2023

No. 55243 (Amendment) R58-3: Brucellosis Vaccination Requirements
Published: 03/01/2023
Effective: 04/07/2023

No. 55254 (Amendment) R58-22: Equine Infectious Anemia (EIA)
Published: 03/15/2023
Effective: 04/21/2023

No. 55228 (Amendment) R58-23: Equine Viral Arteritis (EVA)
Published: 03/01/2023
Effective: 04/07/2023

Plant Industry

No. 55227 (Amendment) R68-26: Cannabinoid Product Registration and Labeling
Published: 03/01/2023
Effective: 04/07/2023

No. 55257 (Amendment) R68-29: Quality Assurance Testing on Cannabis
Published: 03/15/2023
Effective: 04/21/2023

No. 55258 (Amendment) R68-37: Industrial Hemp Cannabinoid Product Testing
Published: 03/15/2023
Effective: 04/21/2023

No. 55259 (New Rule) R68-38: Cannabis Licensing Process

Published: 03/15/2023
Effective: 04/21/2023

Regulatory Services

No. 55202 (Amendment) R70-101: Bedding, Upholstered Furniture and Quilted Clothing
Published: 02/15/2023
Effective: 04/04/2023

Education

Administration

No. 55245 (Amendment) R277-115: LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts
Published: 03/01/2023
Effective: 04/07/2023

No. 55246 (Amendment) R277-303: Educator Preparation Programs
Published: 03/01/2023
Effective: 04/07/2023

No. 55247 (Repeal) R277-463: Class Size Average and Pupil-Teacher Ratio Reporting
Published: 03/01/2023
Effective: 04/07/2023

No. 55249 (Amendment) R277-600: Student Transportation Standards and Procedures
Published: 03/01/2023
Effective: 04/07/2023

No. 55250 (Repeal) R277-617: Smart School Technology Program
Published: 03/01/2023
Effective: 04/07/2023

NOTICES OF RULE EFFECTIVE DATES

Environmental Quality

Environmental Response and Remediation

No. 55229 (Amendment) R311-200: Petroleum Storage

Tanks: Definitions

Published: 03/01/2023

Effective: 04/14/2023

No. 55230 (Amendment) R311-202: Federal Underground Storage Tank Regulations

Published: 03/01/2023

Effective: 04/14/2023

No. 55231 (Amendment) R311-206: Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms

Published: 03/01/2023

Effective: 04/14/2023

Waste Management and Radiation Control, Radiation

No. 55240 (Amendment) R313-16-230: Registration of Radiation Machines

Published: 03/01/2023

Effective: 04/17/2023

Health and Human Services

Disease Control and Prevention, Environmental Services

No. 55242 (Repeal and Reenact) R392-100: Food Service Sanitation

Published: 03/01/2023

Effective: 04/25/2023

No. 55237 (Repeal and Reenact) R392-510: Utah Indoor Clean Air Act

Published: 03/01/2023

Effective: 04/25/2023

Health Care Financing, Coverage and Reimbursement Policy
No. 55225 (Amendment) R410-14: Administrative Hearing Procedures

Published: 02/15/2023

Effective: 03/30/2023

No. 55226 (New Rule) R414-24: Claims and Adjustments for the Provider Reimbursement Information System

Published: 02/15/2023

Effective: 04/03/2023

No. 55223 (Amendment) R414-301: Medicaid General Provisions

Published: 02/15/2023

Effective: 03/30/2023

Insurance

Administration

No. 55262 (Repeal and Reenact) R590-226: Submitting Life Insurance Filings

Published: 03/15/2023

Effective: 04/21/2023

No. 55263 (Repeal and Reenact) R590-227: Submitting Annuity Filings

Published: 03/15/2023

Effective: 04/21/2023

No. 55264 (Repeal and Reenact) R590-228: Submitting Credit Life and Credit Accident and Health Insurance Filings

Published: 03/15/2023

Effective: 04/21/2023

No. 55232 (Amendment) R590-229: Annuity Disclosure

Published: 03/01/2023

Effective: 04/07/2023

No. 55233 (Amendment) R590-244: Individual and Agency Licensing Requirements

Published: 03/01/2023

Effective: 04/07/2023

No. 55234 (Amendment) R590-252: Use of Senior-Specific Certifications and Professional Designations

Published: 03/01/2023

Effective: 04/07/2023

Natural Resources

State Parks

No. 55261 (Amendment) R651-635: Commercial, Privileged, and Special Uses of Division Manage Park Areas

Published: 03/15/2023

Effective: 04/25/2023

Transportation

Program Development

No. 55244 (Amendment) R926-12: Share the Road Bicycle Support Restricted Account

Published: 03/01/2023

Effective: 04/11/2023

End of the Notices of Rule Effective Dates Section