

**State of Utah**  
**Administrative Rule Analysis**  
 Revised December 2019

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New <u>  x  </u> ; Amendment <u>  </u> ; Repeal <u>  </u> ; Repeal and Reenact <u>  </u>		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-284</b>	<b>Filing No. (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>		
<b>Agency:</b>	Insurance Department	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N. State St.	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
Corporate Governance Annual Disclosure Rule.
<b>3. Purpose of the new rule or reason for the change</b> (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
During the 2019 General Session, the Legislature enacted the Corporate Governance Annual Disclosure Act. The Act requires domestic insurers to provide to the Insurance Commissioner information about their corporate governance. The Act authorizes the Commissioner to promulgate rules that specify the types of information to be provided. This proposed rule identifies that information. The Act and the rule aid in the financial regulation of insurers because proper corporate governance promotes solvency. In order to be accredited by the National Association of Insurance Commissioners, the Utah Insurance Department must have the Act and this rule in force.
<b>4. Summary of the new rule or change:</b>
The rule describes the process for submitting a corporate governance disclosure report. It identifies specific information that must be disclosed in the following categories: governance framework and structure; governance policies and practices of the Board and its committees; policies and practices for governing senior management; oversight and management of critical risk areas that affect business.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The Department's financial analysts estimate that it will take a minimal amount of effort to review the information in the corporate governance report. Therefore, the amendments have no fiscal impact on the Department.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The rule describes the relationship between the Department and its licensees and does not involve 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 rule describes the relationship between the Department and the insurance companies that are licensed by it. These insurance companies are all large businesses.

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

Many insurers currently provide a good portion of the required corporate governance information in other submissions to the Department. Those insurers may simply reference the other submissions, rather than duplicate them, in their corporate governance disclosure reports. Depending on the amount of information that has already been provided, the Department estimates that it will take an average of 4 hours at \$50 per hour for a total cost of \$200 to complete the initial report. Because the report includes information that will not likely change from year-to-year (number of directors and board meetings, length of director terms, standards for evaluating management), updates in future years will require less time and fewer resources. To reduce costs further, the Department will issue a suggested form or outline to assist an insurer in drafting a report.

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

There are no anticipated costs or savings for any other persons. The rule describes the relationship between the Department and its licensees and does not involve any other persons.

**F) Compliance costs for affected persons:**

Many insurers currently provide a good portion of the required corporate governance information in other submissions to the Department. Those insurers may simply reference the other submissions, rather than duplicate them, in their corporate governance disclosure reports. Depending on the amount of information that has already been provided, the Department estimates that it will take an average of 4 hours at \$50 per hour for a total cost of \$200 for each insurer to complete the initial report. Utah has 45 domestic insurers, which will result in a total fiscal impact of \$9,000. Because the report includes information that will not likely change from year-to-year (number of directors and board meetings, length of director terms, standards for evaluating management), updates in future years will require less time and fewer resources. The Department expects that future years will require only 1 hour for each insurer to review and submit previous reports, for a total fiscal cost of \$2,250. To reduce costs further, the Department will issue a suggested form or outline to assist an insurer in drafting a report.

**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**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$9,000	\$2,250	\$2,250
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$9,000</b>	<b>\$2,250</b>	<b>\$2,250</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$(9,000)</b>	<b>\$(2,250)</b>	<b>\$(2,250)</b>

**H) Department head approval of regulatory impact analysis:**

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this rule may have on businesses:**

The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses. Since most of the information in the new report can be compiled from other reports that are already provided to the Department, it is expected that compliance costs for insurers will be minimal.

**B) Name and title of department head commenting on the fiscal impacts:**

Todd E. Kiser, Insurance Commissioner

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

31A-2-201(3)(a)	31A-16b-104	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 03/02/2020

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

**10. This rule change MAY become effective on** (mm/dd/yyyy): 03/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Steve Gooch	<b>Date</b> (mm/dd/yyyy):	01/13/2020
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**R590. Insurance, Administration.**

**R590-284. Corporate Governance Annual Disclosure Rule.**

**R590-284-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a), which authorizes rules to implement the Insurance Code, and Section 31A-16b-104, which authorizes rules to implement the Corporate Governance Annual Disclosure Act at Title 31A, Chapter 16b.

**R590-284-2. Purpose.**

This rule sets forth the filing procedures and the content requirements for the Corporate Governance Annual Disclosure (CGAD) required by Title 31A, Chapter 16b.

**R590-284-3. Definitions.**

(1) The definitions in Section 31A-1-301 apply to this rule.

(2) "Senior Management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Procurement Officer, Chief Legal Officer, Chief Information Officer, Chief Technology Officer, Chief Revenue Officer, Chief Visionary Officer, or any other "C" level executive.

**R590-284-4. Filing Procedures.**

(1) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by these regulations. The insurer or insurance group has discretion to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

(2) An insurer or insurance group may comply with this rule by referencing other existing documents, for example, ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, foreign regulatory reporting requirements, if the documents provide information that is comparable to the information described in R590-284-5. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

(3) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

**R590-284-5. Contents of the CGAD.**

(1) The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, because these may provide a means to demonstrate the strengths of their governance framework and practices.

(2) The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following.

(a) The insurer's board of directors (Board) and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs, for example, ultimate control level, intermediate holding company, legal entity. The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and

(b) The duties of the Board and each of its significant committees and how they are governed, for example bylaws, charters, informal mandates, as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

(3) The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following:

(a) how the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group;

(b) how an appropriate amount of independence is maintained on the Board and its significant committees;

(c) the number of meetings held by the Board and its significant committees over the past year as well as information on director attendance;

(d) how the insurer or insurance group identifies, nominates and elects members to the Board and its committees including, for example:

(i) whether a nomination committee is in place to identify and select individuals for consideration;

(ii) whether term limits are placed on directors;

(iii) how the election and re-election processes function;

(iv) whether a Board diversity policy is in place and if so, how it functions;

(e) the processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any Board or committee training programs that have been put in place.

(4) The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

(a) any processes or practices, for example, suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(i) identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(ii) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;

(b) the insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(i) compliance with laws, rules, and regulations; and

(ii) proactive reporting of any illegal or unethical behavior;

(c) the insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of:

(i) the general objectives of significant compensation programs;

(ii) what the programs are designed to reward;

- (iii) how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking, including a discussion of:
  - (A) the Board's role in overseeing management compensation programs and practices;
  - (B) the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
  - (C) how compensation programs are related to both company and individual performance over time;
  - (D) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
  - (E) any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;
  - (F) any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees;
- (d) the insurer's or insurance group's plans for CEO and Senior Management succession.
- (5) The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
  - (a) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;
  - (b) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;
  - (c) How reporting responsibilities are organized for each critical risk area.
- (i) The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board.
  - (ii) This description may include, for example, the following critical risk areas of the insurer:
    - (A) risk management processes, such as an ORSA Summary Report pursuant to Title 31A, Chapter 16a;
    - (B) actuarial function;
    - (C) investment decision-making processes;
    - (D) reinsurance decision-making processes;
    - (E) business strategy/finance decision-making processes;
    - (F) compliance function;
    - (G) financial reporting/internal auditing; and
    - (H) market conduct decision-making processes.

**R590-284-6. 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.

**KEY: corporate governance disclosure**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-16b-104**