

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-171

Filing ID: Office Use Only

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	
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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 persons listed above.

General Information

2. Rule or section catchline:

R590-171. Surplus Lines Procedures Rule

3. Purpose of the new rule or reason for the change:

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Penalties section, and update the Severability 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	FY2024	FY2025	FY2026
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	FY2024	FY2025	FY2026
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 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-15-103	Section 31A-15-111

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

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*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

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*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	

Issue or Version	
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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:		01/17/2024
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.		

9. This rule change MAY become effective on:	01/24/2024
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

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	11/28/2023

R590. Insurance, Administration.
R590-171. Surplus Lines Procedures Rule.
R590-171-1. Authority.

This rule is promulgated by the commissioner pursuant to ~~the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111~~ Sections 31A-2-201, 31A-15-103, and 31A-15-111.

R590-171-2. Purpose and Scope.

~~[(A)-(1)]~~ (1) The purpose of this rule is to:
~~[(1) to](a)~~ (a) recognize ~~[The]~~the Surplus Line Association of Utah as the advisory organization of surplus lines producers;
~~[(2) to](b)~~ (b) authorize ~~[The]~~the Surplus Line Association of Utah to conduct the examination of surplus lines transactions;
~~[(3) to](c)~~ (c) authorize ~~[The]~~the Surplus Line Association of Utah to collect a stamping fee;
~~[(4) to](d)~~ (d) require that ~~[each person licensed as]~~a surplus lines producer ~~[in Utah]~~be a member of the advisory organization;
~~[(5) to](e)~~ (e) regulate access and exceptions to the surplus lines market~~[, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge]; and~~
~~[(6) to](f)~~ (f) prescribe procedures for the placement of insurance with a surplus lines ~~[insurers]~~insurer.
~~[B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.]~~ (2) This rule applies to a person placing insurance with a surplus lines insurer on a risk located in Utah.

R590-171-3. Definitions.

~~[_____ For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:~~
~~_____ A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.]~~
~~_____ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~
~~[B.](1)(a)~~ (a) "Exempt ~~[Commercial Purchaser]~~commercial purchaser" means ~~[any]~~a person purchasing commercial insurance from the surplus lines market that~~[, at the time of placement,]~~ meets the following requirements:
~~[(i) The](i)~~ (i) the person employs or retains a qualified risk manager to negotiate insurance coverage;
~~[(ii) The](ii)~~ (ii) the person ~~[has]~~paid aggregate nationwide commercial property and casualty insurance premiums ~~[in excess]~~of more than \$100,000 in the immediately preceding 12 months; and
~~[(iii) The](iii)~~ (iii) the person meets ~~[at least]~~one or more of the following criteria:
~~[(A) The](A)~~ (A) the person possesses a net worth ~~[in excess]~~of more than \$20,000,000 as ~~[such amount is]~~adjusted ~~[pursuant to]~~under Subsection (1)(b);

~~[(B) The]~~(B) the person generates annual revenues ~~[in excess]~~ of more than \$50,000,000 as ~~[such amount is]~~ adjusted ~~[pursuant to]~~ under Subsection (1)(b);

~~[(C) The]~~(C) the person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

~~[(D) The]~~(D) the person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000 as ~~[such amount is]~~ adjusted ~~[pursuant to]~~ under Subsection (1)(b); or

~~[(E) The]~~(E) the person is a municipality with a population ~~[in excess]~~ of more than 50,000 persons.

~~[(b) Effective on January 1, 2015, and each fifth January occurring thereafter, the amounts in R590-171-3.B (a)(iii)(A), (B), and (D) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, 15 U.S.C. 8206(5)]~~(b) The amounts in Subsections (1)(a)(iii)(A), (1)(a)(iii)(B), and (1)(a)(iii)(D) are adjusted each fifth January beginning January 1, 2015, to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

~~[_____ C. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-1-301-91.]~~

~~_____ (2) "Export list" means a list, published and determined by the commissioner, of coverages and classes of insurance for which no general market exists with an admitted insurer.~~

~~[_____ D. "Surplus lines producer" means a licensee as defined in Section 31A-23a-106(2)(b) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.]~~

~~_____ [E.]~~(3) "Surplus lines insurer" means a non-admitted insurer that may place business~~[, pursuant to Title 31A, Chapter 15, Part 1 and this rule,] in Utah~~ with a surplus lines producer.

~~_____ (4) "Surplus lines producer" means a licensee holding a license type described in Subsection 31A-23a-106(2)(b).~~

~~_____ [F.]~~(5) "Surplus lines transaction" means:

~~_____ (a) the solicitation, negotiation, procurement, or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance~~~~[. It also means any]; or~~

~~_____ (b) a renewal, cancellation, endorsement, audit, or other adjustment to~~ ~~[the]~~an insurance contract.

R590-171-4. Surplus Line Association of Utah.

~~[A.]~~(1) The Surplus Line Association of Utah is recognized as the advisory organization of surplus lines producers ~~[authorized by]~~ under Section 31A-15-111.

~~[B. Each person licensed as a]~~(2) A licensed surplus lines producer ~~[in Utah must]~~ shall be a member of the Surplus Line Association of Utah.

~~[C.]~~(3) The Surplus Line Association of Utah is authorized to:

~~[(1) to]~~(a) facilitate and encourage compliance by its members with:

~~_____ (i) the laws of Utah; and~~

~~_____ (ii) the rules of the commissioner~~ ~~[relative]~~related to surplus lines insurance~~[and to];~~

~~_____ (b) act in other matters~~ ~~[as]~~ specified by Section 31A-15-111;

~~[(2) to]~~(c) conduct the examination of a surplus lines ~~[transactions required]~~ transaction under Subsection 31A-15-103(11);

~~[(3) to make a determination that]~~(d) determine if a surplus lines transaction ~~[is in compliance]~~ complies with Subsection 31A-15-103(11) and with Sections R590-171-6 and R590-171-7~~[of this rule]; and~~

~~[(4) to]~~(e) collect the stamping fee ~~[prescribed by]~~ under Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

~~[A.]~~(1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with a surplus lines ~~[insurers]~~ insurer.

~~[(2)]~~(a) The commissioner ~~[may consider]~~ considers the following in determining the insurance coverages and classes to be ~~[listed]~~ included on the export list:

~~[(a)]~~(i) the current marketplace;

~~[(b)]~~(ii) information from the Surplus Line Association ~~[Board of Directors]~~ of Utah's board of directors;

~~[(c)]~~(iii) information from admitted and surplus lines insurers doing business in Utah;

~~[(d)]~~(iv) information from other sources, including producers and consumers; and

~~[(e) any]~~(v) other relevant information ~~[the commissioner deems relevant].~~

~~[(3) Any]~~(b)(i) A person may request, in writing, that ~~[, at the next publication of the list,]~~ the commissioner add or remove a coverage or a class of insurance from the export list.

~~_____ (ii) The person~~ ~~[must]~~ shall provide evidence of market conditions to substantiate the request.

~~[B.]~~(2) The export list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with a Surplus Lines ~~[Insurers]~~ Insurer.

Placement of insurance with a surplus lines ~~[insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below]~~ insurer is subject to Subsections (1) through (3). All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon request.

~~[A.]~~(1) Insurance coverages and classes included on the export list may be placed with a surplus lines ~~[insurers]~~ insurer.

~~[B.]~~(2)(a) Insurance coverages and classes not included on the export list may be placed with a surplus lines ~~[insurers only]~~

~~under the following conditions]~~insurer only if:

~~[(1) A-](i) a good faith effort [must be]is made to place the insurance with an admitted [insurers-]insurer that the producer [has reason to believe will consider writing-]believes will write the type of coverage or class of insurance involved[-. If that effort shows that-] consistent with the following:~~

~~_____ (A) the insurance cannot be obtained [because of-]due to underwriting reasons, or the insured requires specific terms and conditions of coverage [which-]that are unavailable through an admitted [insurers-]insurer;[-, the insurance may be placed with surplus lines insurers- Placement-]~~

~~_____ (B) placement with [the-]a surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive [as defined in-]under Subsection 31A-19a-201(2)[-]; and~~

~~_____ (2)The-](C) the inability to place [the-]insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer[-]; and~~

~~_____ (3)The-](ii) the producer [must-]documents [his-]the good faith efforts made to place the insurance with an admitted [insurers-]insurer.~~

~~_____ (b)(i) The good faith effort documentation [must-]in Subsection (2)(a)(ii) shall include [the-]a record of the efforts made to place the insurance [and-]together with a written explanation confirming that the effort [as being-]is made in good faith.~~

~~_____ (ii) The good faith effort documentation shall be maintained in the surplus lines producer's and the originating producer's files for at least three years from the inception date of coverage or renewal.~~

~~[C-](3) An exempt commercial purchaser[-, that, at the time of placement, meets the requirements as defined in R590-171-3(B)-] may purchase commercial insurance from the surplus market.~~

~~[D-] All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.]~~

R590-171-7. Conditions for Marketing Insurance with a Surplus Lines [Insurers]Insurer.

~~[A- Producers-]A producer may not solicit business on behalf of a surplus lines insurer[-. However-] except as allowed in this section.~~

~~_____ (1) Producers-](1) A producer may advertise the availability of an insurance [products-]product for the insurance coverages and classes included on the export list to potential insureds and other producers.~~

~~_____ (2) Surplus-](2)(a) A surplus lines [producers-]producer may advertise [their-]its services and product lines to other producers.~~

~~_____ (3) Such advertisements-](b) A surplus lines producer advertisement:~~

~~_____ (i) shall identify [the fact-]that the insurance will be placed with a surplus lines insurer[-. The advertisements must-];~~

~~_____ (ii) may not identify the insurer by name[-. nor-];~~

~~_____ (iii) may not act as a solicitation on behalf of any surplus lines insurer[-. The advertisements shall-]; and~~

~~_____ (iv) may not identify specific rates or specific policy provisions.~~

~~[B-](3) Once negotiations over the available terms and conditions for specific coverages and classes begin, [at least-]the producer shall disclose, in writing, [following facts must be disclosed in writing-]to the potential insured:~~

~~_____ (4)(a) that the insurance will be placed through a surplus lines insurer[-. and-];~~

~~_____ (b) the name of the insurer;~~

~~_____ (2)(c) that the producer is not a producer of the potential insurer because surplus lines insurers are not permitted to appoint producers;~~

~~_____ (3)(d) that the surplus lines market is a specialty market [that has-]with limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and~~

~~_____ (4)(e) that no protection is [afforded-]given under any Utah guaranty fund [mechanism]association.~~

~~[C-](4) Subject to [the general provisions of-]Section 31A-23a-501, a surplus lines producer may:~~

~~_____ (a) originate surplus lines insurance[-. or-];~~

~~_____ (b) accept [applications-]an application for surplus lines insurance from [any other-]a producer [duly-]licensed as to the kinds of insurance involved[-. The surplus lines producer may-]; and~~

~~_____ (c) compensate the originating producer involved in the transaction.~~

~~[D-](5)(a) Only [that-]the portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer.~~

~~_____ (b) If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer.~~

~~_____ (c) If a full amount is placed with a surplus lines insurer under Subsection (5)(b), an[An] explanation [must-]shall be provided in the submission documentation outlined in Section R590-171-8.~~

R590-171-8. Reporting and Examination.

~~[A-](1) No later than 60 days after the effective date of a policy or a certificate of insurance [that has been-]placed with a surplus lines insurer, the surplus lines producer [must-]shall file with the Surplus Line Association of Utah a complete copy of the policy or certificate [and-]of insurance together with justification for placement with a surplus lines insurer[-. with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a)].~~

~~[B-]~~(2) Justification for placement with a surplus lines insurer shall include:

~~[(1)]~~(a) for insurance ~~[exposures-]~~placed pursuant to ~~[R590-171-6.A, consist of]~~ Subsection R590-171-6(1), identification of the specific coverage or class on the export list;~~[-or]~~

~~[(2)]~~(b) for insurance ~~[exposures-]~~placed pursuant to ~~[R590-171-6.B, consist of a copy of the]~~ Subsection R590-171-6(2), a record of the effort to place the insurance with an admitted ~~[insurers required by R590-171-6.B(3); or]~~ insurer under Subsection R590-171-6(2)(a)(ii);

~~[(3)]~~(c) for insurance placed pursuant to ~~[R590-171-6.C, consist of a copy of]~~ Subsection R590-171-6(3), an affidavit signed by the insured;~~[-and]~~

~~[(4)]~~(d) if applicable, ~~[consist of the]~~ an explanation required by ~~[R590-171-7.D]~~ Subsection R590-171-7(5)(c); and

~~[(5) consist of]~~(e) any other information or documentation pertinent to the surplus lines placement.

~~[C-]~~(3) The Surplus Line Association of Utah shall provide submission forms ~~[to be used for complying with R590-171-8.B]~~ for compliance with Subsection (2).

~~[D. If the contract]~~(4) If a policy or certificate of insurance is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by ~~[R590-171-8B must]~~ Subsection (2) shall be filed with the Surplus ~~[Lines-]~~ Line Association of Utah.

~~[E. If the]~~(5)(a) If, during an examination performed by the Surplus Line Association of Utah, it determines that ~~[the placement of]~~ a person placing a policy or certificate of insurance with a surplus lines insurer is ~~[not in compliance-]~~ noncompliant with ~~[Section-]~~ Subsection 31A-15-103(11)(a) or this rule, the Surplus Line Association of Utah shall take ~~[such-]~~ corrective action against the person ~~[as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.]~~

(b)(i) The board of directors of the Surplus Line Association of Utah shall determine what corrective action is appropriate.

(ii) The corrective action is subject to the review of the commissioner.

(c) The Surplus Line Association of Utah shall inform the commissioner of all corrective action cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of ~~[this rule-]~~ Rule R590-171 to every surplus lines producer and shall instruct ~~[all-]~~ the surplus lines producers ~~[as to its scope and operation]~~ of the scope, purpose, and operation of the rule.

~~[R590-171-10. Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

R590-171-~~[11]~~10. Severability.

~~[If a 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 R590-171, 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: 2024~~[January 22, 2013]~~

Notice of Continuation: May 23, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-15-103; 31A-15-111

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