

State of Utah
Administrative Rule Analysis
Revised June 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-114	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	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 person(s):		
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:
R590-114. Letters of Credit
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule is being changed as a result of 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 (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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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 the rule text more in line with current rulewriting standards. Others are changes to make the language of the rule more clear, and the Severability section is being updated 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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

6. A) 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	FY2022	FY2023	FY2024
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			
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

B) Department head approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

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:

Section 31A-2-201	Section 31A-17-404	

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

Issue, or version	
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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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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

A) Comments will be accepted until (mm/dd/yyyy): 11/01/2021

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

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

10. This rule change MAY become effective on (mm/dd/yyyy): 11/08/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

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.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	09/10/2021
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R590. Insurance, Administration.

R590-114. Letters of Credit.

R590-114-1. Authority.

This rule is ~~adopted~~ promulgated by the commissioner pursuant to ~~[Section]~~ Sections 31A-2-201~~(3), which authorizes rules to implement the Insurance Code, and Section]~~ and 31A-17-404~~(3), which provides for a rule to determine the form of letters of credit used as security to protect a ceding insurer in a transaction of reinsurance]~~.

R590-114-2. Purpose and Scope.

~~[A-]~~(1) The purpose of this rule is to determine, in accordance with ~~[the guidelines of Section 31A-17-404(3)]~~ Subsection 31A-17-404~~(10)(c)(ii), the form of letter of credit security [which will be acceptable] to protect a ceding insurer in a reinsurance transaction[-of reinsurance in which the alternative security factors of Section-] if:~~

~~(a) the requirement in Subsection 31A-17-404(3) or the alternative security factors in Subsection 31A-17-404(6) are not present; and[-funds of]~~

~~(b) the ceding insurer retains the reinsurer's funds [-are retained by the ceding insurer-] in the form of a letter of credit.~~

~~(2) Security for a reinsurance transaction is maintained [in order that-] because the ceding insurer's reinsurance credit [for the reinsurance-] may be allowed [the ceding insurer as either-] as an asset or a deduction from liabilities.~~

~~(3) The allowance or disallowance of credit in a reinsurance transaction[s] may be used to determine [compliance-] if the transaction complies with other financial requirements of [the-] Title 31A, Insurance Code.~~

~~[B-]~~(4) This rule ~~[shall apply to all-] applies to any person[s] transacting insurance under [the Utah-] Title 31A, Insurance Code.~~

R590-114-3. Definitions.

~~[In addition to the definitions of Section 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:

~~[A.](1) "Clean" [shall refer to] means a letter of credit [which] that does not require the presentation of any document[s] other than a sight draft for a draw upon available funds.~~

~~[B.](2) "Evergreen clause" [shall refer to] means a provision in a letter of credit [which] that prevents [expiration of the letter unless advance notice is given by the issuer] the letter from expiring unless the issuer provides advance notice.~~

R590-114-4. Rule.

~~[A. Letter of Credit requirements.](1) A letter of credit issued to comply with [Section 31A-17-404(3)(c)(iii),] Subsection 31A-17-404(10)(c)(ii) shall meet the [following] requirements in this Section.~~

~~(2) A letter of credit that takes the form of the "Model Letter of Credit", available upon request from the department, complies with this rule[- Full compliance with this rule shall be accomplished if the letter of credit takes the form of the "Model Letter of Credit", which is available from the Insurance Department].~~

~~(3) A letter [Letters-] of credit shall:~~

~~1. Shall-(a) be issued by a bank or trust company [which] that is a member of the Federal Reserve system;~~

~~2. Shall-(b) name the ceding insurer as the sole beneficiary;~~

~~3. Shall-(c) be ["clean", as defined];~~

~~4. Shall-(d) be unconditional and not subject to any qualifications outside the letter of credit;~~

~~5. May not contain references to any other agreements, documents or entities;~~

~~6. Shall-(e) be irrevocable[-, and may not be reduced or revoked without the written consent of the beneficiary];~~

~~7. Shall-(f) contain an ["evergreen clause", as defined];~~

~~8. Shall-(g) have a term of not less than one year[- and shall];~~

~~(h) be automatically extended for not less than one additional year, unless the issuer[-, not less than 30 days prior to expiration, notifies both the ceding insurer and the reinsurer that the letter will not be renewed] notifies the ceding insurer and the reinsurer that the letter will not be renewed at least 30 days before the letter expires;~~

~~9. Shall-(i) state that [the obligation of the bank-] a bank's obligation is not contingent upon reimbursement;~~

~~10. Shall-(j) state whether [it-] the letter of credit is subject to the laws of this state; and~~

~~11. Shall-(k) provide that [all] any draft[s] drawn be presentable at a bank office in the United States[.];~~

~~(4) A letter of credit may not:~~

~~(a) contain references to any other agreement, document, or entity; or~~

~~(b) be reduced or revoked without the written consent of the beneficiary.~~

~~12. May-(5)(a) A letter of credit may contain a boxed reference section with the applicant's name [of the applicant-] and other appropriate information for internal identification[- only, not to-].~~

~~(b) The information contained in the boxed reference section may not affect the terms of the letter or the obligations of the bank.~~

~~[B. Nonrenewal or withdrawal of a letter of credit. In the event of nonrenewal or withdrawal of a letter of credit,](6) When a letter of credit is not renewed or is withdrawn, the ceding insurer [shall be able to-] may:~~

~~(a) withdraw the balance of the letter of credit; and~~

~~(b) place the resulting sum[s] in trust to secure continuing obligations under the reinsurance contract until [it receives-] the ceding insurer receives the following:~~

~~(i) a renewal letter of credit; or~~

~~(ii) an alternative form of security [which meets the standards of-] that complies with this rule [or the-] and Title 31A, Insurance Code.~~

~~[C. Inspection.](7) A letter of credit used as security under this rule shall be [readily-] available for inspection by the commissioner or [his-] the commissioner's designee upon request.~~

R590-114-5. Separability.

~~[If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.] If any provision of this rule, Rule R590-114, 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 Enactment or Last Substantive Amendment: 1994

Notice of Continuation: January 9, 2017

Authorizing, and Implemented or Interpreted Law: 31A-17-404