

**State of Utah**  
**Administrative Rule Analysis**  
Revised June 2021

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-121</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S. 2700 W.	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-121. Rate Modification Plan Rule
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
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.
<b>4. Summary of the new rule or change</b> (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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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. The Authority section is being moved to the beginning, the Purpose and Scope sections are combined into one section, 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**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<b>C) Small businesses</b> ("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.
<b>D) Non-small businesses</b> ("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**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</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 Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</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>\$0</b>	<b>\$0</b>	<b>\$0</b>

**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-2-203	Section 31A-19a-203

**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*):

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

<b>Issue, or version</b>	
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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*):

	<b>Second Incorporation</b>
<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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until</b> (mm/dd/yyyy):	11/01/2021	
<b>B) A public hearing (optional) will be held:</b>		
<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):

<b>10. This rule change MAY become effective on</b> (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.

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date</b> (mm/dd/yyyy):	09/08/2021
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**R590. Insurance, Administration.**

**R590-121. Rate Modification Plan Rule.**

**R590-121-1. [Purpose] Authority.**

~~[The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and to the reporting of pertinent information concerning the utilization of such plans, in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 31A-19a-201.]~~ This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-2-203, and 31A-19a-203.

**R590-121-2. [Authority].**

~~\_\_\_\_\_ This rule is promulgated by the insurance commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers; Section 31A-2-203, Examinations; Section 31A-2-204, Conduct of Examinations; Section 31A-2-205, Examination Expenses; Sections 31A-19a-201, 31A-19a-202 and 31A-19a-203, Rate Standards; and Section 31A-23a-402, Unfair Marketing Practices.~~

**R590-121-3. Scope.**

~~\_\_\_\_\_ 1. This rule applies to every authorized property and casualty insurer and every rate service organization required to file rates and supplementary information under Section 31A-19a-203.~~

~~\_\_\_\_\_ 2. This rule applies to those classes of insurance, monoline or packaged, commonly known as commercial vehicle, commercial general liability and commercial property, workers' compensation and employers' liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent to rate risks~~

~~submitted under Subsection 31A-19a-203(6).~~ **Purpose and Scope.**

(1) The purpose of this rule is to establish criteria for:

(a) ~~modifying manual rates through insurer rate modification plans; and~~

(b) ~~using rate modification plans to determine whether rates meet the standards under Section 31A-19a-201.~~

(2) This rule applies to:

(a) ~~a property and casualty insurer;~~

(b) ~~a rate service organization required to file rates and supplementary information under Section 31A-19a-203;~~

(c) ~~a commercial line of insurance, whether monoline or packaged;~~

(d) ~~workers' compensation insurance; and~~

(e) ~~employers' liability insurance.~~

(3) This rule does not apply to:

(a) ~~professional liability insurance;~~

(b) ~~inland marine risks, which, by general custom, are not written according to manual rules or rating plans; and~~

(c) ~~consent-to-rate risks submitted under Subsection 31A-19a-203(6).~~

### **R590-121-4]3. Definitions.**

~~[For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301 and 31A-19a-102, and in addition thereto the following.]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-19a-102. Additional terms are defined as follows:

~~[1-](1)~~ "Experience rating plan" means a ~~a~~ rating plan or system ~~[whereby-]where~~ a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

~~[2-](2)~~ "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

~~[3-](3)(a)~~ "Rate modification plan" means a rating plan or procedure ~~[which provides a listing of-]that lists~~ various risk characteristics or conditions and a range of modification factors ~~[which-]that~~ may be applied for those characteristics or conditions to the manual rate of a particular insurance risk~~[-The-], the effect of [the modification factor-]which~~ is to increase (debit) or decrease (credit) the manual rate.

(b) Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

### **R590-121-5]4. ~~[Rule]Rate Modification Justification.~~**

~~[1- Rate modification plans.~~

~~Rate modification plans,](1)~~ A rate modification plan, justified according to the standards herein, ~~[are allowed by the insurance code]is permitted.~~

(2) The commissioner ~~[has-]determined~~ that ~~[the use of-]using an~~ unjustified rate modification plan~~[s-is not-]is~~ unreasonable, is not ~~[objective]based on reasonable criteria~~, and is unfairly discriminatory.

(3) The use of ~~an~~ unjustified rate modification~~[s] plan[s]~~ in the rating of commercial property and casualty insurance risks located in Utah is prohibited.~~[Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Subsection 31A-19a-202(3). Any insurer subject to such an order may request a hearing pursuant to Subsection 63G-4-203 within 30 days of the date of the order.]~~

(4) The following elements shall be considered in determining whether ~~[or not-]a~~ rate modification plan is justified:

~~[a-](a)(i)~~ A rate modification plan~~[s]~~ must limit ~~[their-]its~~ application to maximum debits or credits of 25%. ~~[Modifications-]~~

(ii) A modification generated by loss experience or company expense experience ~~[are-]is~~ not subject to this limitation~~[s]~~.

~~[b-](b)~~ A rate modification plan~~[s]~~ must be based only on rating characteristics not already reflected in the manual rates~~[-The plans-], and the plan~~ must clearly indicate the objective criteria to be used~~[s]~~.

~~[e- any-](c)~~ A rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in ~~[such-]the~~ coverages~~[s]~~.

~~[d-](d)~~ A rate modification plan~~[s]~~ must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer of the factors ~~[which-]that~~ resulted in the adverse rating so that the insured or applicant will be fairly ~~[apprized-]apprised~~ of any corrective action that might be appropriate with respect to the insurance risk~~[s]~~.

~~[e-](e)(i)~~ An insurer's filing of changes or revisions to a rate modification plan~~[s]~~ it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer.

(ii) ~~[Changes-]A change~~ in an established debit~~[s]~~ or credit~~[s]~~ for a risk~~[s]~~ currently insured must be based on a change in the risk and not on a change in the provisions of a rate modification plan.

~~[f- All-](f)(i)~~ Any initial and succeeding filing of a rate modification plan~~[s]~~ must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made.~~[-To facilitate the commissioner's analysis of the rate modification plan, the-]~~

(ii) The filing must also include a letter or filing memorandum from the insurer ~~[which-]that~~ provides:

([1]A) a comparison of the proposed changes to any existing plan as currently filed;

([2]B) the reasons and justification for the proposed changes; and

~~\_\_\_\_\_~~ [(3)C] a statement of the estimated number of Utah insureds affected by the changes and the estimated Utah premium dollar impact of the changes.

~~[2.](5) [Application of rate modification plans.~~

~~\_\_\_\_\_~~]The following elements shall be considered in determining whether ~~[or not]~~ the application of a rate modification plan is justified~~[-~~  
~~The commissioner considers the misclassification of a risk to be a modification without justification]:~~

~~[a.](a) A rate modification plan[s] must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage[- or for any other purpose];~~

~~[b. once-](b)(i) Once a company has filed a rate modification plan, its use is mandatory.~~

~~(ii) The plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the plan results in a zero modification or no change in a previously applied modification[- applied];~~

~~[e. once-](c) Once a rate modification plan has been applied to a risk and a [credit or-]debit or credit has been established, no changes in the established [credit or-]debit or credit can be made without appropriate justification and documentation[;];~~

~~[d. individual-](d)(i) Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that supports each debit or credit.~~

~~(ii) This documentation must be present in the file to enable the commissioner to verify compliance with this rule, and may include:-~~  
~~Documentation may include, but is not limited to,-]~~

~~(A) inspection reports[;];~~

~~(B) photographs[;];~~

~~(C) agent observations and findings[;];~~

~~(D) insured's formal safety plans[;];~~

~~(E) premises evaluations[;]; and~~

~~(F) narrative reports covering other aspects of the risk[;];~~

~~[e.](e)(i) Individual underwriting files must [also-]contain documentation of the underwriter's evaluation of the risk under the rate modification plan[- This-] and shall consist of the following:~~

~~(A) a worksheet [which-]that describes [in some fashion-]the risk characteristics of the filed plan and the range of [credits or-]debts or credits allowed for each risk characteristic[- The completed worksheet shall contain-];~~

~~(B) any [the credits,-]debit[s], credit, or both, assigned to the risk characteristics by the underwriter and the sum of the [credits and]debts and credits assigned[- A narrative-];~~

~~(C) a description of the underwriter's evaluation process[- shall be included in the worksheet. The worksheet shall list-];~~

~~(D) the date of the initial and any subsequent evaluation; and~~

~~(E) the signature of the [person(s) making-]individual conducting the evaluation[(-s)].~~

~~(ii) A previous worksheet may be used [where-]when no change in the risk characteristics [are-]is indicated [as long as-]and a current date and signature are entered onto the worksheet.~~

~~(6) The commissioner determined that the misclassification of a risk is a modification without justification.~~

~~[3. Experience rating plans.~~

~~\_\_\_\_\_~~](7) Experience rating plans ~~[shall be-]are~~ calculated from at least the last three years' premium and loss data~~[- Premium-] using~~  
~~premium and loss [figures used in the calculation-]data that must be verifiable or justifiable.~~

~~[4. Reporting of pertinent information.~~

~~\_\_\_\_\_~~On the request of the commissioner, an insurer authorized to write any insurance in this state to which this rule applies-](8)(i) Upon  
~~request, an insurer shall submit data to the commissioner establishing the relationship of the aggregate premium[s] actually charged to~~  
~~policyholders [by the insurer-]for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's~~  
~~filed unmodified rates for that line of commercial insurance.~~

~~(ii) A rate service organization may file the data on behalf of the insurer.~~

~~[5. Rate compliance examinations.~~

~~\_\_\_\_\_~~](9) The commissioner may order an examination pursuant to Sections 31A-2-203, 31A-2-204, and 31A-2-205 to determine  
~~compliance with this rule[To determine compliance with this rule the commissioner may order a rate compliance examination be made of~~  
~~any insurer to which this rule applies. Any examination permitted under this rule shall be conducted pursuant to Sections 31A 2 203 and~~  
~~31A 2 204. All examinations and examination related expenses shall be paid by the insurer, as provided by Section 31A 2 205].~~

**R590-121-[6. Penalties.**

~~\_\_\_\_\_~~ Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture provisions of Section 31A 2 308.

**R590-121-7. Separability[5. Severability.**

~~[If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the~~  
~~remainder of the rule and the application of such provision shall not be affected thereby.][If any provision of this rule, Rule R590-121, 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]~~

**R590-121-8. Dissemination.**

~~Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation].~~

**KEY: insurance law**

**Date of Enactment or Last Substantive Amendment: 1994**

**Notice of Continuation: December 12, 2016**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-203; 31A-19a-201; 31A-19a-202; 31A-19a-203; 31A-23-302**