

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.):	R590-127	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:
R590-127. Rate Filing Exemptions
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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. A portion of the Definitions section is being removed because it is an editorial aside that does not belong in the rule. The Penalties section is being removed because penalties are already provided for in statute. 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-19a-103	

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):	10/15/2021	
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):	10/22/2021
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):	08/30/2021
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R590. Insurance, Administration.

R590-127. Rate Filing Exemptions.

R590-127-1. Authority.

This rule is promulgated by the ~~[Insurance C]~~ commissioner pursuant to ~~[the general authority granted under]~~ Sections 31A-2-201 ~~[(3), to adopt rules for the implementation of the Utah Insurance Code, and pursuant to Section]~~ and 31A-19a-103 ~~[, which specifically authorizes the commissioner to exempt any market segment from any or all of the provisions of Chapter 19a of Title 31A].~~

R590-127-2. Purpose and Scope.

~~[Section 31A-19a-203 requires that all insurers and rate service organizations to which Chapter 19a applies file all rates and supplementary rate information, which includes any manual or plan of rates, classification, rating schedule, rating rule, and rate related underwriting rule, with the Insurance Commissioner within 30 days of the designated effective date. No exception is made in the statute for "(a) rates" or "refer to company" rates or rating plans for specialized or individual risks. All insurers using any of these types of rates or plans would be doing so in violation of the statute.~~

~~_____ The purpose of this rule is to define these rates and plans, to make certain exemptions with regards to the filing requirements of Section 31A-19a-203, and to establish certain procedures for that market segment which uses these types of rates or plans](1) The purpose of this rule is to:~~

- ~~_____ (a) identify permissible rates and plans under Section 31A-19a-203;~~
- ~~_____ (b) make exemptions for filing rates and plans under Section 31A-19a-203; and~~
- ~~_____ (c) establish procedures for the market segment that uses these types of rates or plans.~~
- ~~_____ (2) This rule applies to each insurer licensed in this state to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance, and workers' compensation insurance.~~

- ~~(3) This rule applies to:~~
- ~~(a) an (a) rate, including an (a) rate for:~~
- ~~(i) a class of risks that are so different from each other that no single manual rate could be representative of all of them;~~
- ~~(ii) a class of risks that does not develop enough experience to warrant credibility for ratemaking purposes; and~~
- ~~(iii) a risk that involves a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes; and~~
- ~~(b) the procedure for rating an exposure that does not have a published prospective loss cost or manual rate, termed (a) rating.~~

R590-127-3. [Scope.

~~This rule applies to all insurers licensed to write liability insurance, professional liability insurance, property insurance, vehicle liability and physical damage insurance and workers' compensation insurance, as defined in Section 31A-1-103.~~

R590-127-4.]Definitions.

~~[This rule is concerned with terminology which is commonly used in the insurance industry but for which no decisive definitions have been established. To promote understanding, some explanation is required.~~

~~Manual classifications, prospective loss costs and rates are developed by pooling vast amounts of statistical data. They are, by nature, average. For many types of risks there does not exist enough statistical data to develop credible prospective loss costs, manual rates and classifications. Over time the industry has developed ways of dealing with these unconventional risks. The procedure for rating an exposure that does not have a published prospective loss cost or manual rate is termed "(a) rating". The term is derived from the fact that the manual contains the symbol "(a)" or the words "refer to company" opposite the applicable code number instead of a specific dollar and cent rate. There are generally three types of situations which require (a) rates: (1) For a class in which the risks are so different from each other that no single manual rate could be representative of all of them; (2) where a class does not develop enough experience to warrant any credibility for ratemaking purposes; or (3) risks that involve a new product or coverage for which there is no past experience nor appropriate analogy to similar exposures for ratemaking purposes.~~

~~For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, Section 31A-19a-103, and in addition, the following] Terms in this rule are defined in Sections 31A-1-301 and 31A-19a-102. Additional terms are defined as follows:~~

~~(1) "(a) rate" means a rating rule or a rate expressed as the symbol "(a)" or the words "refer to company" listed opposite a classification code on the [manual] rule and rate pages of the Commercial Lines Manual.~~

~~(2) "(a) rating[;]" [special risk rating, means the procedure an underwriter uses] means a special risk rating underwriting procedure used for classifying and rating any risk [which] that presents a unique or unusual condition[s], exposure[s], or hazard[s] for which [he] the underwriter feels a [e] Commercial [H] Lines [m] Manual classification or rate is not appropriate.~~

~~(3) "Commercial Lines Manual" means the manual of rates, classifications, and underwriting rules for commercial lines insurance, including:~~

~~(a) [the plan known as] the Highly Protected Risk Plan, filed with the commissioner by the Insurance Services Office, Inc.; and~~

~~(b) [For the purpose of this rule, this term shall include] any similar rating plan, [or] manual[, including Highly Protected Risk Plans] or large risk property rating plan[s] filed with the commissioner by another rate service organization[s] or individual insurer[s].~~

~~(4) "Excess [H] insurance" means a coverage designed to be:~~

~~(a)(i) in excess over one or more primary coverages; or~~

~~(ii) a [S] self-[H] insured [R] retention; and [which]~~

~~(b) that does not pay a loss until the loss amount exceeds a certain sum.~~

~~(5) "Guide (a) [R] rate[s]" means an advisory (a) rate[s] that [have] has been developed by a rate service organization[s] or company home office underwriter[s]. They that represents a rough average and [are] is used as a guide[s] or signpost[s].~~

~~(6) "Guide (a) Manual" means a collection of [G] guide (a) [R] rates with rules and procedures for [their] use with (a) rates.~~

~~(7) "Increased [L] limits [F] factor" means a rating factor used to adjust a manual rate to a limit[s] higher than the basic manual limit[s].~~

~~(8) ["Individual Risk Filing" means a filing of the insurance policy of an individual risk which is submitted to the commissioner. It shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, the underwriter's explanation for the filing, premium development, and the appropriate filing transmittal forms and filing fee.~~

~~(9) ["Self-[H] insured [R] retention" means [that] the portion of a risk or potential loss [which is] assumed by an insured in an amount of at least \$50,000 and in the form of a deductible, self-insurance, or no insurance. It may be in the form of a deductible, self-insurance, or no insurance. For the purpose of this rule, "self insured retention" is limited to amounts of at least \$50,000 or more].~~

~~(10) "Umbrella [L] liability [H] insurance" means [a coverage basically affording high limit] insurance providing coverage in excess of the limits of [the] a primary [policies as well as] policy and additional basic liability coverages. These additional coverages are usually subject to a substantial self insured retention. The term "umbrella" is derived from the fact that it is a separate policy over and above any other basic liability policies the insured may have].~~

R590-127-[5]4. Filing of Procedures.

~~(1) Each insurer to which this rule applies shall maintain [on file with the commissioner] a general statement of company policies and procedures for underwriting and developing (a) rates and (a) rating. [This]~~

(2) The general statement shall include:

(a) a delineation of the extent of home office and branch office authority ~~[with regards to]~~ regarding the promulgation of (a) rates ~~[This statement should include any]~~; and

(b) formal guidelines ~~the insurer has established [by the insurer for these situations. Any changes in general policy made subsequent to this initial filing will be subject to filing at the time of the change]~~ for a situation described in Subsection (2)(a).

(3) The general statement shall be made available to the commissioner upon request.

R590-127-~~6~~5. (a) Rates.

(1) ~~[All]~~ An (a) rate[s] shall be exempt from the filing requirements of Section 31A-19a-203.

(2) When ~~[ever]~~ an (a) rate is used, the underwriting file shall contain full and supporting factual documentation verifying that ~~[it]~~ the rate is an (a) rate ~~[as defined]~~ and showing the development of the (a) rate assigned by the underwriter ~~[:]~~.

(a) If the insurer has a ~~[G]~~ guide (a) Manual, the underwriter ~~[must]~~ shall:

(i) start rate development with the ~~[G]~~ guide (a) ~~[R]~~ rate suggested in the manual ~~[If the underwriter feels adjustments to the suggested rate are appropriate, he shall]~~;

(ii) document the steps in the development of ~~[the]~~ an adjusted rate; and

(iii) show that ~~[he has followed]~~ the insurer's established procedure in the (a) rate development has been followed.

(b) If ~~[no]~~ the insurer does not have a ~~[G]~~ guide (a) ~~[R]~~ rate ~~[is available]~~, the underwriter shall document the steps in the development of the (a) rate, including: ~~[This development should contain]~~

(i) an analysis of ~~[such things as]~~ the specific definable loss potential characteristics ~~[:]~~;

(ii) a comparison to similar risks and their manual rates ~~[:]~~;

(iii) available loss frequency and severity data ~~[:]~~;

(iv) an analysis of current engineering reports ~~[:]~~; and

(v) a discussion of any other pertinent underwriting criteria.

~~[e]~~ (3) As individual risk experience and characteristics are considered by the underwriter in developing the (a) rate, the only rate modification factors that may be applied to an (a) rate are:

(a) ~~[I]~~ increased ~~[L]~~ limits ~~[F]~~ factors ~~[:]~~;

(b) package factors ~~[:]~~;

(c) premium size factors ~~[:]~~;

(d) expense modification factors; and

(e) deductible factors.

(4) If automated rating procedures automatically apply other modification factors, the underwriter should consider this fact ~~[should be considered in the development of]~~ when developing the initial rate.

~~[3]~~ (5) If an underwriter ~~[determines to use]~~ uses an ~~[I]~~ increased ~~[L]~~ limits ~~[F]~~ factor ~~[which]~~ that is different from the ~~[G]~~ guide (a) ~~[I]~~ increased ~~[L]~~ limits ~~[F]~~ factor ~~[s of]~~ in the Commercial Lines Manual, the underwriting file shall contain full and supporting factual data justifying the change in the ~~[G]~~ guide (a) ~~[I]~~ increased ~~[L]~~ limits ~~[F]~~ factor.

~~[4]~~ (6) (a) When ~~[ever]~~ an insurer renews a risk ~~[which]~~ that contains an (a) rate[s], the underwriting file shall contain the following documentation ~~[of]~~:

(i) the underwriter's reevaluation of the (a) rate assigned; and

(ii) justification for the continuation of the (a) rate or the development of any new (a) rate.

(b) If the (a) rate previously assigned is revised more than ~~[+/-]~~ plus or minus 25%, the ~~[underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of]~~ underwriter's file documenting the (a) rate development for the prior year and the development and explanation for the new (a) rate shall be made available to the commissioner upon request.

R590-127-~~7~~6. (a) Rating, Special Risk Rating.

(1) ~~[Rates that are]~~ A rate that is developed by an underwriter through an (a) rating process ~~[are]~~ is exempt from the filing requirements of Section 31A-19a-203.

(2) An underwriter is permitted to use (a) rating only in the following circumstances:

(a) ~~[When it can be]~~ when the underwriter can clearly demonstrate ~~[d]~~ that a risk described by specific classifications in the Commercial Lines Manual presents unique or unusual conditions of exposure or hazard such that the application of the normal manual rate for that classification does not produce a reasonable and equitable rate for the risk ~~[The]~~;

(i) the underwriter should bear in mind that a manual classification ~~[s are]~~ is understood to be general in nature and ~~[thus]~~ may not exactly describe the risk being considered ~~[For this reason]~~; and

(ii) an (a) rating is not to be used simply because the risk does not exactly match the manual classification description ~~[but must be substantially different]~~;

(b) ~~[When]~~ when the coverage to be written is broader or more restricted than ~~[that provided for by]~~ the coverage the manual definition of coverage provides as limited by applicable manual exclusions ~~[:]~~;

(c) ~~[When]~~ when the insurer has developed a program for ~~[types of risks or coverages that are]~~ a type of risk or coverage that is not included in the Commercial Lines Manual and for which there is limited statistical data for ratemaking purposes ~~[of]~~;

(d) ~~[When]~~ when a risk develops more than \$100,000 in annual manual basic limits unmodified premium for automobile liability,

general liability, glass, and theft insurance, individually, or \$250,000 in any combination ~~Boiler and machinery risks may be (a) rated provided]; or~~

~~(e) when the one-year deposit premium charged for the coverages afforded is \$50,000 or more for boiler and machinery risks.~~

~~(3)(a) When ~~ever~~ an underwriter uses (a) rating ~~(special risk rating)~~, the underwriting file shall contain the following:~~

~~(i) a full explanation showing that the risk fits one of the circumstances described in Subsection (2) ~~The file shall also contain]; and~~~~

~~(ii) full and supporting factual documentation showing the development of the rate[s] assigned by the underwriter ~~This development should contain] containing an analysis of ~~such things as~~];~~~~

~~(A) the specific definable loss potential characteristics];~~

~~(B) a comparison to similar risks and their manual rates, available loss frequency, and severity data];~~

~~(C) an analysis of current engineering reports]; and~~

~~(D) any other pertinent underwriting criteria.~~

~~(b) The underwriting file shall be made available to the commissioner upon request.~~

~~(4)(a) When ~~ever~~ an insurer renews a risk ~~which] that has been (a) rated according to ~~this section~~ Section R590-127-6, the underwriting file shall contain documentation of the underwriter's reevaluation of the (a) rating and justification for the continuation of the (a) rating. ~~Except for changes in premium basis, if]~~~~~~

~~(b) If the (a) rating produces a renewal premium ~~which] that varies more than ~~+/~~ plus or minus 25% from the expiring policy premium, ~~the underwriter shall submit an individual risk filing to the commissioner within 30 days of the effective date of the policy. This filing shall contain the underwriter's documentation of] the underwriting file documenting the rate development for the prior term and the renewal term, and an explanation for the change in premium, shall be made available to the commissioner upon request.~~~~~~

R590-127-~~8~~7. Commercial Excess and Umbrella Liability Insurance.

(1) Rates and rating plans for commercial excess insurance ~~and] or~~ umbrella liability insurance are exempt from the filing requirements of Section 31A-19a-203.

(2)(a) The underwriting files of ~~all] any~~ excess insurance ~~and] or~~ umbrella liability insurance risk[s] must contain full and supporting factual documentation justifying the rate and showing the development of the rate. ~~[This]~~

~~(b) The rate development documentation should ~~contain an analysis of such things as~~ analyze the specific definable loss potential characteristics ~~with regards to its] regarding the risk's excess exposure and any other pertinent underwriting criteria.~~~~

(3) When ~~ever~~ an insurer renews a commercial excess or umbrella liability policy, the underwriting file shall contain the following documentation ~~of]~~:

~~(a) the underwriter's reevaluation of the rate assigned; and~~

~~(b) justification for the continuation of the rate or the development of any new rate.~~

~~(4) The underwriting file shall be made available to the commissioner upon request.~~

R590-127-~~9~~9. Penalties.

~~Failure to comply with this rule and to maintain the documentation as outlined shall be deemed a violation of this rule. Pursuant to Section 31A-2-308, any person found to be in violation shall forfeit to the state not more than \$1,000 for each violation.~~

R590-127-~~10~~10. Separability]8. Severability.

~~[If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.] If any provision of this rule, Rule R590-127, 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 companies

Date of Enactment or Last Substantive Amendment: December 14, 1999

Notice of Continuation: August 20, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-19a-103