

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment ___; Repeal <u>x</u> ; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-231	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Workers' Compensation Market of Last Resort
3. Purpose of the new rule or reason for the change (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?):
The rule is being repealed in response to SB92 which was passed by the Legislature during the 2017 General Session. The Workers Compensation Fund (WCF) was named in statute as the carrier of last resort until the passage of SB92.
4. Summary of the new rule or change:
The UID is currently going through a request for proposal process to find a replacement. WCF will remain carrier of last resort until December 31, 2020 and the contract for the replacement will begin January 1, 2021. There will be no procedural changes between WCF and its replacement. The only change may be the company that will act as the carrier of last resort that employers can use when purchasing workers compensation insurance.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. WCF was not compensated by the UID during its tenure as carrier of last resort, and the contract with the carrier selected through the RFP process will have the same arrangement.
B) Local governments:
There is no anticipated cost or savings to local governments. The rule merely sets a carrier of last resort that employers can use when purchasing workers compensation insurance. The rule will be replaced by a contract that will have similar terms.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings for small businesses. The rule merely sets a carrier of last resort that employers can use when purchasing workers compensation insurance. The rule will be replaced by a contract that will have similar terms.

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

There is no anticipated cost or savings for non-small businesses. The rule merely sets forth a carrier of last resort that employers can use when purchasing workers compensation insurance. The rule will be replaced by a contract that will have similar terms.

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 for any other persons. The rule merely sets a carrier of last resort that employers can use when purchasing workers compensation insurance. The rule will be replaced by a contract that will have similar terms.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons.

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	FY2021	FY2022	FY2023
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

H) Department head approval of regulatory impact analysis:

The head of the Insurance Department, Tanji J. Northrup, 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.

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

Tanji J. Northrup, Interim 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):

Section 31A-2-201	Section 31A-19a-404	Section 31A-20-103
Section 31A-22-1010		

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	

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. 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): 01/14/2021

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): 01/21/2021

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.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	12/01/2020
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[R590. Insurance, Administration.

R590 231. Workers' Compensation Market of Last Resort.

R590 231 1. Authority.

_____ This rule is promulgated pursuant to the following statutes:

- _____ (1) 31A 19a 404, rulemaking authority for the recording and reporting of statistical data and experience rating data;
- _____ (2) 31A 20 103, rulemaking authority to define lines and classes of insurance;
- _____ (3) 31A 22 1010, rulemaking authority for reporting requirements for workers' compensation deductible policies; and
- _____ (4) 31A 2 201, rulemaking authority to implement the provision of Title 31A.

R590 231 2. Findings and Interpretation.

_____ (1) ~~The commissioner finds that the legislature intended that the Workers' Compensation Fund created under Title 31A, Chapter 33, was to provide workers' compensation insurance for Utah employers who are not able to obtain such insurance in the voluntary marketplace.~~

_____ (2) ~~Based upon this finding, the commissioner interprets Section 31A 22 1001 to mean that the Workers' Compensation Fund, created under Title 31A, Chapter 33, is the insurer that provides workers' compensation insurance for the market of last resort in Utah.~~

R590 231 3. Purpose and Scope.

_____ (1) The purpose of this rule, regarding the workers' compensation market of last resort, is to:

- _____ (a) define the workers' compensation market of last resort;
 - _____ (b) provide eligibility criteria;
 - _____ (c) provide requirements for designation of existing insured employers; and
 - _____ (d) provide reporting requirements to the department and the designated rate service organization.
- _____ (2) This rule applies to the insurer for the market of last resort.

R590 231 4. Definitions.

_____ (1) "Insurer for the market of last resort" means the Workers' Compensation Fund.

_____ (2) "Market of Last Resort" means the workers' compensation class of risk that cannot be placed with a voluntary workers' compensation insurer because of certain underwriting restrictions or class codes.

_____ (3) "Voluntary workers' compensation insurer" means an admitted workers' compensation insurer actively seeking workers' compensation business in Utah, including the Workers' Compensation Fund.

R590 231 5. Eligibility.

_____ (1) To be eligible for the workers' compensation market of last resort, an employer must meet the underwriting and rating criteria established by the insurer for the market of last resort.

_____ (2) An employer being insured by the insurer for the market of last resort remains eligible for the market of last resort until the employer obtains workers' compensation insurance from a voluntary workers' compensation insurer.

R590 231 6. Underwriting and Rating.

_____ (1) The insurer for the market of last resort shall file separate underwriting and rating criteria for the market of last resort or a separate rating plan for the market of last resort.

_____ (2) Underwriting criteria for eligibility in the market of last resort shall include:

- _____ (a) premium size;
- _____ (b) class code and risk characteristics; and
- _____ (c) loss and payroll experience.

_____ (3) Policy files for employers eligible for the market of last resort must include the underwriting criteria or follow underwriting protocols used for placement in the market of last resort.

R590 231 7. Designation and Reporting.

_____ (1) Because the Workers' Compensation Fund is a voluntary workers' compensation insurer, and the insurer for the market of last resort, the Workers' Compensation Fund shall:

_____ (a) Designate its existing insured employers as insured in the voluntary workers' compensation market or in the market of last resort; and

_____ (b) Such designation can be done:

- _____ (i) immediately; or
- _____ (ii) as each employer renews; or
- _____ (iii) at the time a new application is made for workers' compensation coverage.

_____ (2) The insurer for the market of last resort shall report its data, including market of last resort data to the designated rate service organization. Such reporting shall be timely and consistent with the designated rate service organization's reporting requirements for all workers' compensation insurance carriers operating in Utah.

_____ (3) Upon request, the insurer for the market of last resort shall make available to the Insurance Department, information about the market of last resort. Requested information may include the market of last resort data reported to the designated rate service organization.

~~R590-231-8. Enforcement Date.~~

~~_____The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule.~~

~~R590-231-9. Severability.~~

~~_____If any provision or clause 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 shall not be affected.~~

~~KEY: workers' compensation insurance~~

~~Date of Enactment or Last Substantive Amendment: May 20, 2005~~

~~Notice of Continuation: April 29, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-19a-404; 31A-20-103; 31A-22-1010]~~