

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.):	R590-70	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:
R590-70. Insurance Holding Companies
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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-16-116	

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):	08/26/2021
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R590. Insurance, Administration.

R590-70. Insurance Holding Companies.

R590-70-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-16-116[adopted pursuant to:
 _____ (1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the Insurance Code; and
 _____ (2) Section 31A-16-116, which authorizes the commissioner to make rules pertaining to an insurer subject to Title 31A, Chapter 16].

R590-70-2. Purpose and Scope.

(1)(a) The purpose of this [regulation is to set forth rules and procedural requirements which] rule is to establish procedures that are [the commissioner deems] necessary to carry out [the provisions of] the National Association of Insurance Commissioners[; NAIC;] Insurance Holding Company System Regulatory Act and Title 31A, Chapter 16, Insurance Holding Companies[Sections 31A-16-101 through 31A-16-119, hereinafter referred to as "the Act"].

(b) The commissioner declares that the information called for by [these regulations is hereby declared to be] the Act and Title 31A, Chapter 16, Insurance Holding Companies, is necessary and appropriate, in the public interest, and for the protection of the policyholders in [the State of Utah] this state.

(2) This rule applies to a person that is a member of an insurance group within an insurance holding company system.

R590-70-3. Definitions.

Terms used in this rule are defined in [The definitions in] Section 31A-1-301 and Title 31A, [Part 16 apply to this rule.] Chapter 16, Insurance Holding Companies. Additional terms are defined as follows:

(1) The "Act" means the NAIC Insurance Holding Company System Regulatory Act.

(2) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the [foregoing officers under whatever title] officers listed above under any other title.

([2]3) "NAIC" means the National Association of Insurance Commissioners.

(4) "Ultimate controlling person" means [that person which] a person that is not controlled by any other person.

R590-70-4. Forms -- General Requirements.

(1)(a) Form A, Form B, Form C, Form D, Form E₂ and Form F are intended to be guides [in the preparation of the] for preparing statements required by Sections 31A-16-103, 31A-16-105, and 31A-16-106.

(b) The~~[y]~~ forms listed in Subsection (1)(a) are ~~[not intended to be]~~ blank forms ~~[which]~~ that are not intended to be filled in.

(c) ~~[The]~~ Each statement~~[s]~~ filed shall contain the numbers and captions of ~~[all]~~ each item~~[s]~~, ~~[but]~~ except that the text of the items may be omitted ~~[provided]~~ if the answers ~~[thereto are prepared in such a manner as to indicate]~~ clearly indicate the scope and coverage of the items.

(d) ~~[All]~~ Any instructions~~[, whether]~~ appearing under the items of the form or elsewhere ~~[therein, are to]~~ shall be omitted.

(e) Unless ~~[expressly provided]~~ otherwise required, if any item is inapplicable or the answer ~~[thereto]~~ to the item is in the negative, a ~~[n appropriate]~~ statement shall be made to that effect ~~[shall be made]~~.

(2)(a) Each statement₂ including exhibits and ~~[all]~~ any other ~~[papers and]~~ documents filed as a part ~~[thereof]~~ of the statement, shall be filed with the commissioner in a secure electronic form ~~[by secure means]~~.

(b) Each statement shall be signed in the manner prescribed on the form. ~~[-]~~ If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of ~~[such]~~ the power of attorney or other authority shall ~~[also]~~ be filed with the statement.

(3) If an applicant requests a consolidated hearing ~~[on a consolidated basis]~~ under Subsection 31A-16-103(10), the applicant shall file in electronic form:

(a) [in addition to filing] the Form A with the commissioner; and

(b) [the applicant shall file] a copy of the Form A with the NAIC [in electronic form].

(4)(a) ~~[S]~~ Each statement~~[s]~~ should be prepared electronically.

(b) ~~[S]~~ Each statement~~[s]~~ shall be easily readable and suitable for review and reproduction.

(c) ~~[Debits in credit categories and credits in debit categories shall be designated so as to be]~~ A debit in a credit category and a credit in a debit category shall be clearly distinguishable.

(d) ~~[S]~~ Each statement~~[s]~~ shall be in the English language.

(e) Monetary value~~[s]~~ shall be stated in United States currency. ~~[If any]~~

(f) Any exhibit or other document filed with the statement ~~[is]~~ in a foreign language~~[, it]~~ shall be accompanied by an English language translation ~~[into the English language and any]~~.

(g) Any monetary value shown in a foreign currency normally shall be converted into United States currency.

(5) Form~~[s]~~ A, Form B, Form C, Form D, Form E, and Form F can be obtained from the ~~[Utah Insurance D]~~ department's website at ~~[www.]~~ https://insurance.utah.gov.

R590-70-5. Forms -- Incorporation by Reference, Summaries and Omissions.

(1)(a) Information required by any item of Form A, Form B, Form D, Form E₂ or Form F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E₂ or Form F, provided the document is filed as an exhibit to the statement.

(c) ~~[Excerpts of documents]~~ An excerpt of a document may be filed as an exhibit~~[s]~~ if the document~~[s are]~~ is extensive.

(d) ~~[D]~~ A document~~[s]~~ currently on file with the ~~[Utah Insurance D]~~ department ~~[which were]~~ that was filed within three ~~[(3)]~~ years need not be attached as an exhibit~~[s]~~.

(e) A reference~~[References]~~ to information contained in an exhibit~~[s]~~ or in a document~~[s]~~ already on file with the department shall:

(i) clearly identify the material; and

(ii) ~~[shall]~~ specifically indicate that ~~[such]~~ the material is to be incorporated by reference in answer to the item.

(f) Matter ~~[shall]~~ may not be incorporated by reference ~~[in any case where the incorporation would render]~~ if incorporating by reference makes the statement incomplete, unclear, or confusing.

(2)(a) ~~[Where]~~ When an item requires a summary or outline of the provisions of any document, only a brief statement of the document's pertinent provisions shall be ~~[made as to the pertinent provisions of the document]~~ summarized or outlined.

(b) ~~[In addition to the statement, the]~~ The summary or outline may incorporate by reference ~~[particular]~~ parts of any exhibit or document currently on file with the commissioner ~~[which]~~ that:

(i) was filed within three years; and

(ii) may be qualified in its entirety by ~~[such]~~ the incorporated reference.

~~[(b)c]~~ ~~[In any case where]~~ When two or more documents required to be filed as exhibits are substantially identical in all material respects, except ~~[as to]~~ for the parties ~~[thereto]~~ to the document, the dates of execution, or other details, a copy of only one of the documents need be filed ~~[with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from~~

~~the documents, a copy of which is filed]~~

~~(d) The document referenced in Subsection (2)(b) to be filed shall be accompanied by a schedule that:~~

~~(i) identifies the omitted documents; and~~

~~(ii) provides material details regarding the differences between the documents.~~

R590-70-6. Forms -- Information Unknown or Unavailable and Extension of Time to Furnish.

~~(1) [If]A request for extension of time shall be filed with the commissioner when it is impractical to furnish any required information, document, or report at the required time[it is required to be filed, there shall be filed with the commissioner a separate document].~~

~~(2) A request for extension of time shall:~~

~~(a) identify[ing] the information, document, or report in question;~~

~~(b) [stating]state why [the filing thereof]it is impractical to furnish the information, document, or report at the time required[is impractical]; and~~

~~(c) request[ing] an extension of time [for filing]to file the information, document, or report [to]by a specified date.~~

~~(2)3) [The]A request for extension shall be [deemed]granted unless the commissioner enters an order denying the request within 60 days after receipt [thereof enters an order denying the request]of the request.~~

R590-70-7. Forms -- Additional Information and Exhibits.

~~(1) In addition to the information [expressly]required to be included in Form A, Form B, Form C, Form D, Form E, and Form F, the commissioner may request [such further material]additional information[, if any, as-] that may be necessary to [make]ensure the information contained [therein]in the form is not misleading.~~

~~(2) The person filing the form may also file [such]any other exhibit[s as it may desire-]in addition to [those expressly]the exhibits required by the statement.~~

~~(3) [The]Any additional exhibit[s] shall be [so-]clearly marked [as-]to indicate [clearly-]the subject matter[s] to which [they refer]the exhibit refers.~~

~~(3)4) [Changes-]Any change to Form A, Form B, Form C, Form D, Form E, [and]or Form F shall include:~~

~~(a) the phrase "Change No. (insert number) to" at the top of the cover page; and~~

~~(b) the date the form was changed and not the original filing date[on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing].~~

R590-70-8. Subsidiaries of Domestic Insurers.

The authority to invest in [subsidiaries-]a subsidiary under Subsection 31A-16-102.5(2) is in addition to any authority to invest in [subsidiaries which-]a subsidiary that may be contained in [any other provision of]Title 31A, Insurance Code.

R590-70-9. Acquisition of Control -- Statement Filing (Form A).

~~(1) A person required to file a statement [pursuant to-]under Section 31A-16-103[] shall furnish the required information on Form A.~~

~~(2) [Such-]The person in Subsection (1) required to file a Form A shall also furnish the required information on Form E, as described in Section R590-70-[13]12.~~

R590-70-10. Amendments to Form A.

~~[The-](1)(a) An applicant shall promptly [advise-]notify the commissioner of any change[s] in the information furnished on the Form A arising [subsequent to-]after the date the applicant furnished the information to the commissioner.~~

~~(b) The applicant shall notify the commissioner of the change in information prior to the commissioner's final decision regarding the application[upon which the information was furnished but prior to the commissioner's disposition of the application].~~

R590-70-11. Acquisition of Subsection 31A-16-103(1)(f)(i)[-] Insurers.

~~(1) If [the-]a person being acquired is [deemed to be-]a "domestic insurer" [solely because of the provisions of-]under Subsection 31A-16-103(1)(f)(i), the name of the domestic insurer on the cover page should be indicated as "ABC Insurance Company, a subsidiary of XYZ Holding Company."~~

~~(2) [Where-]When a Subsection 31A-16-103(1)(f)(i) insurer is being acquired, references to "the insurer" contained in the Form A shall refer to [both-]the domestic subsidiary insurer and the person being acquired.~~

R590-70-12. Pre-acquisition Notification (Form E).

~~(1) If a domestic insurer, including any person controlling a domestic insurer, [is proposing-]proposes a merger or acquisition [pursuant to-]under Subsection 31A-16-103(1), that person shall file a Form E pre-acquisition notification form[, Form E].~~

~~(2)(a) If a non-domiciliary insurer licensed to do business in this state [is proposing-]proposes a merger or acquisition [pursuant to-]under Section 31A-16-104.5, that person shall file a Form E pre-acquisition notification form[, Form E].~~

~~(b) No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 31A-16-104.5 as set forth in Subsection 31A-16-104.5(2)(b).~~

~~(3) In addition to the information required by Form E, the commissioner may [wish to-]require an expert opinion [as to-]regarding~~

the competitive impact of the proposed acquisition.

R590-70-13. Annual Registration of Insurers -- Statement Filing (Form B).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 shall furnish the required information on Form B.

R590-70-14. Summary of Registration -- Statement Filing (Form C).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 ~~is also required to~~ shall furnish the required information ~~required~~ on Form C.

R590-70-15. Amendments to Form B.

(1) An amendment to Form B shall be filed within ~~fifteen~~ 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) An amendment[s] shall be filed in the Form B format ~~with~~ reporting only those items ~~which~~ that are being amended ~~reported~~.

(3) ~~Each~~ An amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)", and shall ~~indicate~~ provide the date of the change and not the original filing date ~~of the original filings~~.

R590-70-16. Alternative and Consolidated Registrations.

(1)(a) Any authorized insurer may file a registration statement on behalf of any affiliated insurer ~~or insurers which are~~ that is required to register under Section 31A-16-105.

(b) A registration statement may include information not required by the Act and Title 31A, Chapter 16, Insurance Holding Companies, regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

~~(b)~~ (c) In lieu of filing a registration statement on Form B, ~~the~~ an authorized insurer may file a copy of the required registration statement or similar report ~~which it is required to file in its~~ in the insurer's state of domicile, provided that:

(i) the statement or report contains substantially similar information required to be furnished on Form B; and

(ii) the filing insurer is the principal insurance company in the insurance holding company system.

~~(2) [The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.]~~ An insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts that substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any ~~of the procedures which could be done by an authorized insurer under R590-70-16~~ procedure that an authorized insurer may follow under Subsection (1).

(4) Any insurer may ~~take advantage of the provisions of~~ use the procedures in Subsections 31A-16-105(8) or 31A-16-105(9) without ~~obtaining~~ the commissioner's prior approval ~~of the commissioner~~.

(5) The commissioner ~~, however, reserves the right to~~ may require individual filings if the commissioner ~~deems such~~ determines that the filings are necessary ~~in the interest of~~ for clarity, ease of administration, or the public good.

R590-70-17. Disclaimers and Termination of Registration.

(1) A disclaimer of affiliation ~~pursuant~~ or a request for termination of registration claiming that a person does not control any other person, or that a person will not control any other person upon the taking of some proposed action ~~, control any other person~~, hereinafter the "other person" referred to as the "subject", shall contain the following information:

(a) the number of the subject's authorized, issued, and outstanding voting securities ~~of the subject~~;

(b) ~~with respect to~~ regarding the person ~~whose~~ denying control ~~is denied~~ and ~~all affiliates of such~~ the person's affiliates:

(i) the number and percentage of the subject's shares of ~~the subject's~~ voting securities ~~which~~ that are held of record or known to be beneficially owned; ~~and~~

(ii) the number of ~~such~~ the subject's shares ~~concerning~~ held of record or beneficially owned in which there is a right to acquire, directly or indirectly; and

(iii) information ~~as to~~ regarding all transactions in any voting securities of the subject ~~which were effected~~ effected by the person denying control or the person's affiliates during the past six months ~~by such persons~~.

(c) all material relationships and bases for affiliation between the subject and the person ~~whose~~ denying control ~~is denied~~ and ~~all~~ the person's affiliates ~~of such person~~; and

(d) a statement explaining why ~~such~~ the person ~~should~~ denying control does not ~~be considered to~~ control the subject ~~; and~~.

(2) A request for termination of registration shall be ~~deemed to have been~~ granted unless the commissioner notifies the registrant that the request is denied ~~;~~ within ~~thirty~~ 30 days after receipt of the request ~~, notifies the registrant otherwise~~.

R590-70-18. Transactions Subject to Prior Notice -- Notice Filing.

(1) An insurer required to give notice of a proposed transaction pursuant to Section 31A-16-106 shall furnish the required information on Form D.

- (2) An agreement[s] for cost sharing services and management services shall at a minimum and as applicable:
- (a) identify the person providing services and the nature of ~~[such]~~ the services;
 - (b) ~~[set forth]~~ provide the methods used to allocate costs;
 - (c) require timely settlement, not less frequently than on a quarterly basis, and in compliance with the requirements in the Accounting Practices and Procedures Manual;
 - (d) prohibit ~~[advancement of]~~ the insurer from advancing funds ~~[by the insurer]~~ to the affiliate except to pay for services defined in the agreement;
 - (e) state that the insurer will maintain oversight for ~~[functions]~~ services provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
 - (f) define the insurer's books and records ~~[of the insurer]~~ to include all books and records developed or maintained under or related to the agreement;
 - (g) specify that ~~[all]~~ the insurer's books and records ~~[of the insurer]~~ are and remain the property of the insurer and are subject to the insurer's control ~~[of the insurer]~~;
 - (h) state that all of the insurer's funds and invested assets ~~[of the insurer]~~ are the insurer's exclusive property ~~[of the insurer]~~, held for the insurer's benefit ~~[of the insurer]~~, and are subject to the insurer's control ~~[of the insurer]~~;
 - (i) include standards for ~~[termination of]~~ terminating the agreement with and without cause;
 - (j) include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
 - (k) specify that, if the insurer is placed in receivership or seized by the commissioner under Title 31, Chapter 27a, Insurer Receivership Act:
 - (i) all of the insurer's rights ~~[of the insurer]~~ under the agreement shall extend to the receiver or the commissioner; ~~and,~~
 - (ii) all books and records will immediately be made available to the receiver or the commissioner; ~~and,~~
 - (iii) all books and records shall immediately be turned over to the receiver or the commissioner ~~[immediately]~~ upon the receiver or the commissioner's request;
 - (l) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 31, Chapter 27a, Insurer Receivership Act; and
 - (m) specify that the affiliate will continue to maintain any system[s], program[s], or other infrastructure notwithstanding a seizure by the commissioner under Title 31, Chapter 27a, Insurer Receivership Act, and will make ~~[them]~~ any system, program, or other infrastructure available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

R590-70-19. Enterprise Risk Report.

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Subsection 31A-16-105(12)[-] shall furnish the required information on Form F.

R590-70-20. Extraordinary Dividends and Other Distributions.

- (1) ~~[Requests]~~ A request for approval of an extraordinary dividend[s] or any other extraordinary distribution to shareholders shall include the following:
- (a) the amount of the proposed dividend;
 - (b) the date established for payment of the dividend;
 - (c) a statement as to whether the dividend is to be in cash or other property ~~[and if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation];~~
 - (d) for dividends in property, the statement referenced in Subsection (1)(c) shall include:
 - (i) a description of the property;
 - (ii) the cost of the property;
 - (iii) the fair market value of the property; and
 - (iv) an explanation of the basis for the valuation of the property;
 - (~~[d]~~e) [a copy of the] a work paper that shall include the following information:
 - (i) the calculations used to determine ~~[determining]~~ that the proposed dividend is extraordinary; ~~[The work paper shall include the following information:]~~
 - (ii) the amounts of the proposed dividend; ~~[and]~~
 - (iii) the date of the proposed dividend; ~~[and]~~
 - (iv) the form of payment of all dividends or distributions, including regular dividends ~~[but excluding]~~, except for distributions of the insurer's own securities ~~[and]~~ that are paid within ~~[the period of twelve consecutive months ending]~~ a consecutive 12-month period that:
 - (A) ends on the date fixed for payment of the proposed dividend for which approval is sought; and ~~[commencing]~~
 - (B) begins on the day after the same day of the same month in the last preceding year;
 - (~~[v]~~v) surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;
 - (~~[vi]~~vi) ~~[if the insurer is]~~ for a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
 - (~~[vii]~~vii) ~~[if the insurer]~~ for an insurer that is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(viii) ~~[if the insurer]~~for an insurer that is not a life insurer, the dividends paid to stockholders in the preceding two calendar years, excluding distributions of the insurer's own securities~~[in the preceding two calendar years]~~;

~~(e)f~~ a balance sheet and income statement ~~[of income]~~for the period ~~[intervening from]~~beginning on the date the last annual statement was filed with the commissioner and concluding at the end of the month preceding the month in which the request for dividend approval is submitted; and

~~(f)g~~ a brief statement ~~[as to]~~regarding the proposed dividend's effect~~[of the proposed dividend]~~ upon:

(i) the insurer's surplus and reasonableness of surplus in relation to the insurer's outstanding liabilities; and

(ii) the adequacy of the insurer's surplus relative to the insurer's financial needs.

(2)a Subject to Subsection 31A-16-106(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within ~~[fifteen]~~15 business days ~~[following the declaration thereof, including the same]~~of declaring the dividend or other distribution.

(b) The report to the commissioner in Subsection (2)(a) shall include the information required by [R590-70-20]Subsection (1)(d)e.

R590-70-21. Adequacy of Surplus.

~~(1) [The factors set forth in Subsection 31A-16-106(4) are not intended to be an exhaustive list.~~

~~(2)]In determining the adequacy and reasonableness of an insurer's surplus, [no single factor is necessarily controlling. The]the commissioner [instead]will consider the net effect of [all of these factors plus]the factors set forth in Subsection 31A-16-106(4) and any other factors [bearing on the]that, alone or in combination, bear upon the insurer's financial condition[of the insurer].~~

~~(3)]2 In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each [of these factors]factor set forth in Subsection 31A-16-106(4) varies from company to company[and in].~~

~~(3) In determining the quality and liquidity of an insurer's investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow [its]the subsidiary's valuation [to the extent that]if warranted by the individual investments[so warrant].~~

R590-70-22. Severability.

[If any 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 R590-70, 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 law

Date of Enactment or Last Substantive Amendment: January 10, 2017

Notice of Continuation: January 9, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-201