

State of Utah
Administrative Rule Analysis
 Revised November 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.):	R590-157	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:
R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee
3. Purpose of the new rule or reason for the change (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.
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 If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):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. Other changes make the language of the rule more clear, and update the Severability section to use the department's current language. The Penalties section is being removed because penalties are already provided for in statute, and the Enforcement Date section is being removed because the rule is already in force. A late fee \$10 minimum is being codified to align with current practice. 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-3-303	Section 31A-15-103	

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): 03/03/2022

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): 03/10/2022

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):	01/10/2022
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R590. Insurance, Administration.

R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.

R590-157-1. Authority.

This rule is promulgated by the commissioner pursuant to [~~Subsections:~~

~~_____ (1) 31A-3-303(2) which requires the commissioner by rule to prescribe accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax; and~~

~~_____ (2) 31A-15-103(11)(d) which requires the commissioner by rule to specify the stamping fee amount and how it is to be collected]~~ Sections 31A-3-303, and 31A-15-103.

R590-157-2. Purpose and Scope.

[~~A.~~](1) The purpose[s] of this rule [~~are-~~]is to prescribe:

(1)[~~a~~]a the amount of the stamping fee[~~-and~~];

(2)[~~b~~]b the accounting and reporting forms and procedures to be used in calculating the surplus lines premium tax[es] and the stamping fee[s]; and[~~-~~]

(3)[~~c~~]c the [~~authorized-~~]entities authorized to examine [~~the-~~]a surplus lines transaction and collect and receive the surplus lines premium tax and the stamping fee.

[~~B.~~](2) This rule applies to:

(1)[~~a~~]a a surplus lines insurer[s], a surplus lines producer[s], and a policyholder[s who are jointly and severally liable for the payment of the-]required to pay a premium tax[es] and stamping fee;

(2)[~~b~~]b the advisory organization authorized to examine surplus lines transactions; and

(3)[~~c~~]c the commissioner's authorized agent [~~to-~~]responsible for:

(i) collecting the stamping fee and premium tax; and

 (ii) remitting the premium tax to the commissioner.

R590-157-3. Definitions.

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

~~[A.]~~(1) "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

~~[B.]~~(2) "Courtesy filing fee" means a fee charged by ~~[the]~~ a resident surplus lines producer for ~~[doing]~~ a courtesy filing ~~[for a resident or non-resident producer whose licensure does not include a surplus lines line of authority]~~.

~~[C.]~~(3) "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required ~~[in]~~ under Subsection 31A-15-103(11).

~~[D.]~~(4) "Surplus Line Association" or "Association" means the Surplus Line[s] Association of Utah.

~~[E.]~~(5) "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers ~~[in accordance with]~~ pursuant to Section 31A-15-103.

~~[F.]~~(6) "Surplus lines insurer" means an unauthorized foreign or alien insurer that is:

 (a) subject to ~~[the limitations and requirements of]~~ Section 31A-15-103~~[-]~~;

 (b) doing business in this state through surplus lines producers~~[-]~~; and

 (c) included on the commissioner's ~~[]~~ recognized~~[]~~ list of surplus lines insurers.

~~[G.]~~(7) "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

~~[H.]~~ "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4 1/4% of gross surplus lines premiums, less 4 1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

~~[I.]~~(8) "Surplus lines transaction" means:

 (a) the placement ~~[with a surplus lines insurer]~~ of an insurance policy or certificate of insurance with a surplus lines insurer; and ~~[It also means]~~

 (b) any cancellation, endorsement, audit, or other adjustment to ~~[the]~~ a surplus lines insurance policy that affects the premium.

R590-157-4. Stamping Fee Amounts.

~~[A.]~~ The surplus lines stamping fee is .18 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d)~~(1)~~. Pursuant to Subsection 31A-15-103(11)(d), the stamping fee for the examination of a surplus lines transaction is 0.18% of the policy premium payable.

~~[B.]~~(2) A late surplus lines stamping fee payment[s] may be subject to late fees of:

 (a) 25% of the stamping fee due; ~~[plus]~~

 (b) ~~[1 1/2]~~ 1.5% per month from the time of default until ~~[full payment of the fee]~~ the stamping fee is paid in full; and

 (c) a minimum of \$10 if the amounts in Subsections (2)(a) and (2)(b) total less than \$10.

~~[C.]~~(3) A courtesy filing fee ~~[is not]~~ may not be included as a surplus lines premium ~~[for the purpose of]~~ when computing premium taxes and stamping fees.

R590-157-5. Authorized Agency.

~~[A.]~~(1) The commissioner ~~[hereby]~~ authorizes the Surplus Line Association ~~[of Utah]~~ to act as ~~[his]~~ the commissioner's agent for:

~~[1]~~a) collecting and remitting the premium tax imposed ~~[by]~~ under Section 31A-3-301 on an insurance transaction ~~[s described in]~~ subject to Sections 31A-15-103, 31A-15-104, and 31A-15-106;

~~[2]~~b) examining surplus lines transactions under Section 31A-15-111~~[-and]~~

~~[3]~~c) collecting the stamping fee authorized under Section 31A-15-103(11); and

 (d) prescribing the forms and procedures that surplus lines producers may use.

~~[B.]~~(2) The Surplus Line Association shall remit all premium taxes it collects ~~[in accordance with the procedures of]~~ according to Section R590-157-6.

R590-157-6. Accounting Procedures.

~~[A.]~~(1) Within 60 days of the effective date of a surplus lines transaction, the surplus lines producer ~~[must]~~ shall file with the Surplus Line Association:

 (a) a copy of the insurance policy, binder, certificate, endorsement, or other documentation sufficient to identify the subject of the insurance;

 (b) the coverage, conditions, and term of insurance;

 (c) the type of transaction;

 (d) the effective date;

 (e) the premium charged;

 (f) the premium taxes payable;

 (g) the ~~[name and address of the]~~ policyholder's name and address; and

~~(h) the surplus lines insurer's name and address.~~

~~[B. The Surplus Line Association may prescribe the forms and procedures to be used by surplus lines producers in fulfilling Section R590-157-5.~~

~~C. F](2) For each surplus lines producer, the Surplus Line Association shall prepare a monthly statement of surplus lines transactions reported during the preceding 30 days[for each surplus lines producer. This statement shall list] that lists:~~

~~(a) [the]each transaction[s] and premium amount[s] reported[;];~~

~~(b) the surplus lines premium taxes due under Section 31A-3-301[;]; and~~

~~(c) the stamping fee due under Subsection 31A-15-103(1)(d).~~

~~[D.](3) The monthly statement shall be mailed to [the]each surplus lines producer[s] by the [5th]first day of each month.~~

~~[E. By the 25th day of each month the](4) A surplus lines producer shall [remit payment in full]pay to the Surplus Line Association, by the 25th day of each month, the amounts due shown on the monthly statement.[-P]~~

~~(5) A surplus lines producer shall hold, in trust, any premium taxes and stamping fees [shall be held in trust by the surplus lines producer]until the premium taxes and stamping fees are remitted to the Surplus Lines Association.~~

~~[F.](6) [Within three days of the date received, t]The Surplus Line Association shall deposit, in a qualified depository approved by the Office of the State Treasurer, for the credit of the Utah Insurance Department, [all]any funds received as payment of the surplus lines premium tax within three days of receipt.~~

~~[G. For tax credits for return premiums, which are not offset by charges in the monthly statement, the Surplus Line Association shall submit a request for payment to the Insurance Department. A reimbursement will be issued to the designated person by the Insurance Department pursuant to the Division of Finance's policies and procedures.](7)(a) The Surplus Line Association shall submit a request for payment to the department for premium tax credits for return surplus lines premiums that are not offset by charges in the monthly statement.~~

~~(b) The department will, pursuant to the Division of Finance's policies and procedures, issue a reimbursement to the designated person.~~

~~[H.](8) The Surplus Line Association shall prepare the following reports for the [benefit of the commissioner.]commissioner's benefit:~~

~~([1]a) [A]a monthly report[shall be prepared listing], submitted by the 15th of the subsequent month, that lists:~~

~~(i) the name of each surplus lines producer[reporting] that reported surplus lines premiums written during the month[and];~~

~~(ii) the amount of [the]each surplus lines producer's reported surplus lines premiums, taxes, and fees[reported. The report shall also list];~~

~~(iii) the name[s] of each surplus lines insurer[s and]; and~~

~~(iv) the amount of written surplus lines premium attributed to [them]each surplus lines insurer for the month[. This report shall be submitted by the 15th of the subsequent month.];~~

~~([2]b) [A]an annual report[shall be prepared on the basis of both surplus lines producers and surplus lines insurers and shall list], submitted by January 31 of each year, that lists:~~

~~(i) all surplus lines premiums reported during the previous year; and~~

~~(ii) all premium taxes paid during the previous calendar year[. This report shall be submitted to the commissioner by January 31 of each year.]; and~~

~~([3]c) [A]an annual financial report[including], submitted within 30 days after the Surplus Line Association's fiscal year ends, that includes the Association's:~~

~~(i) income[and];~~

~~(ii) expenses; and~~

~~(iii) balance sheet[for the Surplus Lines Association shall be submitted to the commissioner within 30 days of the end of the Association's fiscal year].~~

R590-157-7]-Penalties.

~~A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

R590-157-8. Enforcement Date.

~~The commissioner will begin enforcing the revised provision of this rule effective January 1, 2009.~~

R590-157-9]. 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 the provision to other persons or circumstances shall not be affected thereby.]If any provision of this rule, Rule R590-157, 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 fee, taxes

Date of Enactment or Last Substantive Amendment: January 1, 2018

Notice of Continuation: January 4, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-3-303; 31A-15-103

