

State of Utah
Administrative Rule Analysis
 Revised December 2019

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.):	R590-278	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:		
Agency:	Insurance Department	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state, zip:	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:
Consent Requests Under 18 USC 1033(e)(2)
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The rule is being repealed because the Department is changing its process for handling consent requests under 18 USC 1033(e)(2).
4. Summary of the new rule or change:
The Department has determined that the process outlined in this rule is ineffective and time-consuming. The Department is repealing this rule and instituting a new internal process that will be more efficient and effective.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Department will likely see some small savings related to increased processing efficiency. These savings will come in the form of reduced wages due to less time spent processing consent requests, but the extent of the reduction is unknown. The Department expects that the savings will be fairly minimal.
B) Local governments:
There are no anticipated costs or savings to local governments. The repeal affects the Department's internal processes and will not affect any external entities.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings to small businesses. The repeal affects the Department's internal processes and will not affect any external entities.

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

There are no anticipated costs or savings to non-small businesses. The repeal affects the Department's internal processes and will not affect any external entities.

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 are no anticipated costs or savings to any other persons. The repeal affects the Department's internal processes and will not affect any external entities.

F) Compliance costs for affected persons:

There are no compliance costs for any persons. The repeal affects the Department's internal processes and will not affect any external entities.

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	FY2020	FY2021	FY2022
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, Todd E. Kiser, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

Todd E. Kiser, 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):

Subsection 31A-2-201(3)	Subsection 31A-23a-111(5)(b)	

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
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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): 06/01/2020

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): 06/08/2020

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	Date (mm/dd/yyyy):	04/03/2020
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[R590. Insurance Department, Administration:

R590-278. Consent Requests Under 18 USC 1033(e)(2).

R590-278-1. Authority:

— This rule is adopted pursuant to the following:

- (1) Subsection 31A-2-201(3) that authorizes the commissioner to make rules to implement the provisions of Title 31A; and
- (2) Subsection 31A-23a-111(5)(b) that authorizes the commissioner to act in compliance with the federal Violent Crime Control and Law Enforcement Act of 1994, 18 USC 1033.

R590-278-2. Request for Consent Made by Filing Request for Agency Action:

— (1) A request under 18 USC 1033(e)(2) for the commissioner's written consent to engage or participate in the business of insurance shall be made by filing a request for agency action. The form "Request for Agency Action Re: 18 USC 1033(e)(2)", available on the department's website, shall be used to make the request. The person making the request shall attach to the form all relevant documents that support the request. After completion, the form shall be filed as directed in Sections R590-160-5 or R590-160-6.

— (2) A request for agency action under this rule is a request for a formal adjudicative proceeding and is governed by the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4, and Section R590-160.

— (3) The provisions of R590-160 apply to proceedings under this rule.

R590-278-3. Hearing on Request for Agency Action:

— (1) A presiding officer shall conduct a hearing on the merits of a request for agency action under this rule.

— (2) After the hearing, the presiding officer shall submit to the commissioner the record of the proceeding, recommended findings of fact and conclusions of law, and a recommended order.

— (3) The commissioner shall consider the presiding officer's recommendations and then issue findings of fact and conclusions of law and an order which constitute final agency action.

— (4) A party may submit to the commissioner a written request for reconsideration of the final agency action. The request is governed by Section 63G-4-302 and must be submitted within 20 days of the date of the final agency action.

— (5) A party may seek judicial review of the final agency action as provided in the Utah Administrative Procedures Act, Title 63G, Chapter 4.

R590-278-4. Determining Request for Consent:

— Written consent may be granted if, in the commissioner's sole discretion, a preponderance of the evidence shows that the petitioner is trustworthy to engage or participate in the business of insurance. The petitioner bears the burden of production of evidence and the burden of persuasion. The following are relevant to determining whether written consent will be granted:

- (1) Any materially false or misleading statement or omission in the request for agency action;
- (2) The nature, severity, and number of the petitioner's crimes;
- (3) The petitioner's age at the time the crimes were committed;
- (4) The petitioner's punishment for the crimes;
- (5) The length of time since the petitioner's most recent conviction;
- (6) The petitioner's rehabilitation, including evidence of counseling, community service, completion of probation, and payment of restitution, fines, and interest if applicable;
- (7) Current reference letters;
- (8) The presence of any fact or circumstance in the petitioner's current life that may have motivated the petitioner to commit crime in the past;
- (9) Any unpaid judgment;
- (10) If the petitioner intends to apply for an insurance license, the duties of a holder of that type of license;
- (11) The extent to which the petitioner, if granted a license, will work under the supervision of another licensee or another person;
- (12) The petitioner's trustworthiness in employment, community service, or other endeavors since the most recent conviction;
- (13) Information received from the National Association of Insurance Commissioners and any insurance regulatory official;
- (14) Whether the petitioner has had any occupational or professional licenses, certifications, or designations revoked and, if so, the basis for the revocation; and
- (15) Whether the petitioner has previously requested written consent in any jurisdiction and, if so, the outcome of that request.

R590-278-5. 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.

KEY: insurance

Date of Enactment or Last Substantive Amendment: June 21, 2019

Authorizing and Implemented or Interpreted Law: 31A-23a-111(5)(b); 31A-2-201(3)