**R907. Transportation, Administration.**

**R907-1. Agency Actions, Administrative Procedures.**

**R907-1-1. Authority and Purpose.**

(1) Authority. Subsection 72-1-201(1)(h) grants the Department authority to make rules for the administration of the Department, state transportation systems, and programs. In addition, Subsection 63G-3-201(2) of the Administrative Rulemaking Act and Subsections 63G-4-102(6) and 63G-4-203(1) of the Administrative Procedures Act (UAPA) authorizes agencies to make rules governing adjudicative proceedings. Finally, Section 57-12-9 grants the Department authority to make rules relating to financial assistance claims under the Utah Relocation Assistance Act, Title 57, Chapter 12 or 42 U.S.C Sections 4601-4655.

(2) Purpose. This rule creates procedures the Department follows to initiate, conduct, and review agency actions.

**R907-1-2. General Provisions.**

(1) The Department will process every application, Request for Agency Action, Notice of Agency Action, and review request as an informal adjudicative proceeding according to Sections 63G-4-202 and 63G-4-203 of UAPA unless another rule specifically designates a proceeding as formal. Any party may ask the Presiding Officer to convert the proceeding to a formal adjudicative proceeding. The Presiding Officer may convert the proceeding to a formal proceeding if the Department determines it is in the public interest and does not prejudice a party's rights.

(2) The Presiding Officer will only conduct an evidentiary hearing as part of a formal proceeding. However, the Presiding Officer may conduct a meeting of the parties to discuss settlement, clarify issues, hear oral argument, or review evidence. Adjudicative proceedings are only subject to agency review under Section 63G-4-301 or when a statute or rule explicitly provides for review.

(3) This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA).

**R907-1-3. Appointment of the Presiding Officer and Hearing Record.**

(1) The Executive Director or a deputy director will appoint a Presiding Officer to oversee an informal hearing as follows:

(a) the Director of Operations, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the Deputy Director of Engineering and Operations or a designee if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Director of Project Development or a designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsection (a), (b), or (c), and this rule or a statute does not specify a specific appellate procedure;

(2) The Presiding Officer will record a hearing from beginning to end.

(3) For relocation assistance matters valued at more than $50,000. The Executive Director will appoint an Administrative Law Judge (ALJ) to act as a Presiding Officer over challenges to decisions related to relocation assistance valued more than $50,000 under Title 57, Chapter 12, Utah Relocation Assistance Act or the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, Sections 42 U.S.C. 4601-4655.

(a) If the Executive Director appoints an ALJ, the Executive Director will hire a stenographer to record and transcribe the hearing.

(b) The Executive Director will procure the services and pay the costs of the ALJ and stenographer.

(4) For matters that do not involve relocation assistance. The Executive Director or a deputy director may appoint an ALJ to preside over a matter if they determine that doing so serves the interests of the Department, the state, or a party.

(a) If the Executive Director or a deputy director appoints an ALJ, the Executive Director or a deputy may hire a stenographer to record and transcribe the hearing.

(b) The Executive Director or a deputy director may procure the services and pay the costs of the ALJ and a stenographer.

**R907-1-4. Commencement by Department -- Notice of Agency Action -- Procedures.**

(1) The Department will begin an adjudicative proceeding by issuing a Notice of Agency Action. The Department will deliver a Notice of Agency Action to the person or persons against whom it is taking action. In addition, the Department will publish the Notice of Agency Action if required by a statute or rule.

(2) A Notice of Agency Action will include the following information:

(a) the names and mailing or email addresses of the Respondents and other persons to whom the Department serves the notice;

(b) the Department's file number or another reference number;

(c) a name or caption of the adjudicative proceeding, for example, Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Department delivered the Notice of Agency Action to the Respondents;

(e) a statement that, if the person requests an appeal of the agency action, the Department will conduct the adjudicative proceeding informally according to this rule unless either the Department or the Respondent requests the proceedings converted to a formal proceeding and the Presiding Officer grants the request;

(f) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(g) the name, title, mailing and email address, and telephone number of the office initiating the Notice of Agency Action and the Presiding Officer;

(h) the purpose for the adjudicative proceeding and, to the extent known, the questions the Presiding Officer will review;

(i) the amount of the fine or penalty the Department proposes to assess, and a summary of the evidence supporting the proposed amount; and

(j) a statement that the Respondent is entitled to agency review if they file a Request for Agency Review with the Department within 30 days from the date the Department delivers the Notice of Agency Action.

(3) A Respondent should file a written response to the Notice of Agency Action.

(a) Should a Respondent fail to file a written response to the Notice of Agency Action, the Department will order stating the Respondent is in default.

(b) If a defaulting Respondent is the only Respondent, the Notice of Agency Action will become the Department's Final Order. Accordingly, the initiating division, or Presiding Officer will revise the Notice of Agency Action to effect this change, captioning the notice as the Final Order and affixing the proper signature and the new date.

(4) The Department may not make substantive changes to the Final Order. However, the Final Order must include a provision that notifies the Respondent of the right to judicial review. The Department must then deliver a copy of the Default Order and the Final Order to the Respondent in default.

(5) If the defaulting party is not the sole Respondent, the initiating division, office, or the Presiding Officer will mail the Default Order to every party. The adjudicative proceeding may continue, and the Department may determine the issues in the proceeding, including those affecting the defaulting party.

(6) A defaulting party may seek agency review of a Default Order by sending a written request for review to the Presiding Officer. If the Presiding Officer issued the Default Order, the defaulting party must seek reconsideration of the Default Order according to Section R907-1-8.

(7) The only issue the Presiding Officer may consider in a Request for Reconsideration is whether entering default was appropriate.

**R907-1-5. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action, Requests for Agency Review -- Default.**

(1) A public member may begin an agency action by filing a Request for Agency Review with the Department.

(2) If the Department denies an application or Request for Agency Action entirely or in part, and that action is subject to agency review, the region, division, or office issuing the denial will send the applicant a written denial notice as promptly as possible. The denial notice will summarize the reasons for the decision and list the statutes or rules the division or office interpreted or relied upon as authority for it, along with the Department's file or reference number. The Department's denial notice will advise the applicant of their right to request agency action seeking review by filing a written request with the initiating region, division, or office within 30 days after the Department issues the denial notice. In addition, the denial notice will inform the applicant that the written request for review must include any supporting documents, including legal memoranda, that the Department should consider. Finally, the denial notice will constitute the proposed order of the division or office making the decision and must so indicate. If there is no request for agency action seeking review within 30 days, the denial notice will become the Department's Final Order.

(3) The Department will evaluate a Request for agency action seeking review to determine if it meets Subsection 63G-4-301(1) requirements. The request must include the requester's signature, state the grounds for the request, the relief sought, and state the date the requester mailed or delivered the request. A Request for Agency Review should also indicate HEARING REQUESTED on the first page of the request if the applicant wants the Department to schedule a hearing. The Department will return the request to the requester if it does not meet the statutory requirements, the requirements of this rule, or is untimely. The Department must explain the reason for the return.

(4) If the request meets the requirements and is timely, the region, division, or office will promptly forward the material and a copy of any relevant material in its files to the Presiding Officer.

(5) Within 30 business days after receipt of a Request for Agency Review, a party, including the region, division, or office that issued the challenged decision, may submit additional documentation, which may include legal briefs, to the Presiding Officer. The Presiding Officer may grant a party a reasonable extension of time. The Presiding Officer will issue a written decision after the parties submit their responses. The Presiding Officer may meet with the parties if needed. This meeting is not a hearing as contemplated under the Administrative Procedures Act, Title 63G, Chapter 4.

(6) Absent filing a timely Request for Agency Review, the Department will issue an order that the Respondent is in default. If the defaulting party is the sole Respondent, the Presiding Officer will dismiss the Request for Agency Action. The Department will provide a copy of the Default Order and the dismissal order to the person who requested the action.

(7) If the defaulting party is not the sole requester, the initiating division, office, or the Presiding Officer will mail the Default Order to every party. The adjudicative proceeding may continue, and the Presiding Officer may determine every issue in the proceeding, including those affecting the defaulting party.

(8) A defaulting party may seek agency review of a Default Order by sending the Presiding Officer a Request for Agency Review. If the Presiding Officer issued the Default Order, the defaulting party might seek reconsideration of the Default Order according to Section R907-1-8. The sole issue for the Presiding Officer to decide is whether entering default was appropriate.

**R907-1-6. Agency Review -- Procedures.**

(1) Informal adjudicative proceedings will follow the procedures outlined in Section 63G-4-203 and Section 63G-4-209, and Section R907-1-6 or Section R907-1-9 for Motor Carrier actions only, where applicable.

(2) Formal adjudicative proceedings will follow the procedures outlined in Sections 63G-4-204 through 63G-4-209 and Sections R907-1-10 through R907-1-15.

(3) The Presiding Officer will ensure that any order resulting from informal or formal adjudicative proceedings complies with applicable state and federal law, including, without limitation, restrictions on the use of federal financial assistance or other entitlement programs.

**R907-1-7. Procedures for Informal Adjudicative Proceedings.**

(1) Parties must have notice and an opportunity to be heard. The purpose of a proceeding is to determine if the facts and applicable law support the Department's Notice of Agency Action or denial of an application or Request for Agency Action. A written argument is allowed but not required. The Presiding Officer may determine whether to hear the matter in person or electronically based on the parties' written submissions or conditions that make holding the hearing electronically safer or more convenient for the parties. The Presiding Officer will convene a requested hearing unless the Presiding Officer finds no material issue of fact in dispute or that the issue in dispute is frivolous or already authoritatively decided.

(2) The Presiding Officer may set reasonable time, manner, and scope limitations on any witness testimony, presentations by the parties, written argument, and the length of any hearing.

(3) Section 63G-4-203 of UAPA governs an informal adjudicative proceeding, so discovery is prohibited. However, the Presiding Officer may issue subpoenas or other orders to a party to compel the production of necessary evidence. Accordingly, upon request, the Department will provide the applicant information in the Department's files, including records that are part of any investigation, unless those records are otherwise made confidential or protected from disclosure by state or federal law.

(4) Each party may make, at minimum, an opening statement, presentation, and rebuttal. A party may decide whether to have a rebuttal argument heard during the hearing or delivered to the Presiding Officer in writing ten days after the hearing.

(5) Within a reasonable time after the close of an informal adjudicative proceeding, the Presiding Officer will issue a final agency order that complies with Subsections 63G-4-203(1)(i), (j), and (k). The order will contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues;

(iv) conclusions of law as to each of the issues;

(v) the reasons for the disposition;

(vi) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(vii) notice of the right to judicial review under Section 63G-4-402 by filing a Petition in a district court within 30 days after the date the Presiding Officer issues the order constituting the final agency action.

**R907-1-8. Reconsideration.**

(1) Within 20 days after the Presiding Officer issues the Final Order, a party may request reconsideration, stating the specific grounds upon which the party requests relief.

(2) The person filing the request for reconsideration will mail or email a copy to each party.

(3) The Executive Director, or a designee, will issue a written order either denying or granting the request. If the Executive Director or a designee does not issue this order within 20 days, the request is denied. If the Executive Director or designee grants the request in any part and issues a new Final Order, it will include the same information listed in Section R907-1-7 or Section R907-1-9 if the matter concerned motor carriers.

**R907-1-9. Administrative Procedures for Motor Carrier Actions.**

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, they will follow the procedures established in Rule R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-203. The Department will provide the applicant, upon request, information in the Department's files, including records that are part of any investigation, unless those records are otherwise made confidential or protected from disclosure by state or federal law.

(2) At the hearing, the motor carrier will go first and bear the burden of showing why the Department should not assess civil penalties. The division will respond, and the motor carrier will have an opportunity to rebut the division's evidence. If the Presiding Officer decides doing so will benefit the Presiding Officer's understanding of the issues, the Presiding Officer may allow closing statements or arguments and record the proceedings. The rules of evidence do not apply.

(3) The person deciding the review will issue a final agency order as promptly as possible. The order will contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review according to Section 63G-4-402 by filing a Petition with a district court within 30 days.

**R907-1-10. Formal Process and Hearing: Initiation.**

(1) If notwithstanding Subsection R907-1-2(1), the Department wishes to initiate an adjudicative proceeding as a formal proceeding, it will conduct the formal hearing process as follows:

(2) The Department will prepare and deliver to interested parties a Notice of Agency Action that includes the following information:

(a) the names and mailing addresses of the Respondents and any other persons to whom the Department is giving notice;

(b) the Department's file number or another reference number;

(c) a name or caption of the adjudicative proceeding, for example, Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Department delivered the notice to the Respondents;

(e) the Department's legal authority and jurisdiction allowing it to maintain the adjudicative proceeding;

(f) the name, title, contact information of the office or division initiating the Notice of Agency Action and the Presiding Officer;

(g) a summary of the purpose for the adjudicative proceeding and the questions the Department wants to have decided;

(h) if the Department seeks to assess a fine or penalty, the amount of the proposed fine or penalty and a summary of the evidence and authority supporting the proposed amount;

(i) notice the Department is conducting a formal adjudicative proceeding according to this rule and Sections 63G-4-204 through 63G-4-209;

(j) notice to the Respondent that it must file a written response within 30 days of the mailing date of the Notice of Agency Action;

(k) notice that the Presiding Officer will set a time and place of the hearing after consulting with the parties;

(l) notice of the purpose for the hearing; and

(m) notice that the Department will hold in default a party who fails to attend or participate in the hearing.

(3) Absent the filing of a timely request, the Department will issue an order that the Respondent is in default. If the defaulting party is the sole Respondent, the Notice of Agency Action will become the Department's Final Order. The initiating division or office will revise the Notice of Agency Action to effect this change, captioning the notice as the Final Order, affixing the appropriate signature and the new date. The Department may not change the substance of the Final Order. However, the Final Order will include a notice of the Respondent's right to judicial review. The Department will then deliver a copy of the Default Order and the Final Order to the Respondent.

(4) If the defaulting party is not the sole Respondent, the initiating division or office will mail the Default Order to the parties. The adjudicative proceeding may continue, and the Department may determine the issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of a Default Order by sending a written request to the Presiding Officer identified in Subsection R907-1-3(2). If a Presiding Officer issued the Default Order, the defaulting party must seek reconsideration of the Default Order according to Section R907-1-8. The sole issue on reconsideration is whether entering default was appropriate.

**R907-1-11. Formal Process and Hearing: Responses.**

(1) For formal adjudicative proceedings, the Respondent must file and serve a written response signed by the Respondent or a representative within 30 days of the mailing date of the Notice of Agency Action. The written response must include:

(a) the Department's file number or another reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief the Respondent seeks;

(d) a statement of the facts; and

(e) a summary of the reasons the Presiding Officer should grant the relief requested.

(2) The Respondent must file the response with the Department and deliver one copy to each party.

(3) Papers this rule allow or require the Respondent to file must be filed with the Presiding Officer. The Respondent must also deliver one copy of each document to each party.

(4) The Presiding Officer may hear from any Respondent without formal written documents.

(5) The Presiding Officer may issue a Default Order against any Respondent who fails to provide any response to a Notice of Agency Action.

**R907-1-12. Formal Process and Hearing: Intervention.**

(1) Order Granting Leave to Intervene Required. Any person, not a party, seeking to intervene in a formal proceeding must obtain an order from the Presiding Officer granting leave to intervene before being allowed to participate. A potential intervenor must request such an order by providing a signed, written Petition to intervene. The person must file the written Petition with the Department before a response is due as prescribed in Subsection R907-1-11(1) and promptly deliver a copy to each party. The Presiding Officer may consider a Petition to intervene or materials filed after the response date, but only upon separate motion of the potential intervenor made at or before the hearing for a good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The Petition must contain a statement of facts demonstrating the Petitioner has legal rights or interests that may be affected by the formal adjudicative proceeding, or the Petitioner qualifies as an intervenor under any provision of law. Additionally, the Petition must include a statement of the relief requested, including the legal basis for the Petitioner's requested relief from the Presiding Officer.

(3) Response to Petition. Any party to a proceeding in which a person files a Petition to intervene may make an oral or written response opposing the Petition. The response in opposition must state the party's basis for opposing the Petition and may suggest limitations the Presiding Officer should place upon the potential intervenor if the Presiding Officer grants the Petition. The response must be presented or filed at or before the hearing.

(4) Granting of Petition. The Presiding Officer will grant a Petition to intervene if the Presiding Officer determines:

(a) The Petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the potential intervenor's participation in the adjudication will not materially impair the interests of justice or the orderly and prompt conduct of the adjudicative proceedings.

(5) Order Requirements.

(a) Any order granting or denying a Petition to intervene must be in writing and delivered to the Petitioner and each party.

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding necessary for a just, orderly, and prompt conduct of the proceeding.

(c) The Presiding Officer may impose conditions on the intervenor any time after the intervention.

(d) If the Presiding Officer determines an intervenor has no direct or substantial interest in the proceeding, and the public interest does not require the intervenor's participation, the Presiding Officer may dismiss the intervenor.

(e) In the interest of expediting a hearing, the Presiding Officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially similar interests and positions, the Presiding Officer may limit the number of intervenors who may testify, cross-examine witnesses, or make and argue motions and objections.

**R907-1-13. Formal Process and Hearing: Conduct of Hearings.**

The Presiding Officer will follow these procedures when conducting hearings for a formal adjudication:

(1) Public Hearings. Hearings must be open to the public unless otherwise ordered by the Presiding Officer with a showing of good cause. Hearings must be accessible by the parties.

(2) Full Disclosure. The Presiding Officer will regulate the course of the hearing to fully disclose relevant facts and afford the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Presiding Officer will use the Utah Rules of Evidence as appropriate guides as they apply to the proceeding and are not inconsistent with this rule.

(4) Notwithstanding Subsection R907-1-13(3), on the Presiding Officer's motion or upon objection of a party, the Presiding Officer:

(a) may exclude evidence that is irrelevant, immaterial, or repetitious;

(b) will exclude evidence privileged by law in the courts of Utah;

(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains pertinent portions of the original document; and

(d) may take official notice of:

(i) any facts to which a court might grant judicial notice under the Utah Rules of Evidence;

(ii) the record or another proceeding before the Department; and

(iii) technical or scientific facts within the Department's specialized knowledge.

(5) Hearsay. Notwithstanding Subsection R907-1-13(4)(c), the Presiding Officer may not exclude evidence solely because it is hearsay.

(6) Parties Rights. The Presiding Officer must allow the parties to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(7) Public Participation. The Presiding Officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(8) Oath. If offered as evidence to be considered in deciding on the merits, witnesses must present testimony at the hearing under oath.

(9) Failure to Appear. When a party to a proceeding with due notice fails to appear at a hearing, the Presiding Officer may enter a Default Order that accords with this rule.

(10) Time Limits. The Presiding Officer may set reasonable time limits for the hearing participants.

(11) Continuances of the Hearing. The Presiding Officer may continue any hearing to a time and date certain announced at the hearing, which will not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the dereliction of the party requesting the continuance. In addition, the Presiding Officer may continue a hearing when in the public interest.

(12) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the Presiding Officer may permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule designated by the Presiding Officer.

(13) Record of Hearing. Subsection R907-1-3(2) governs the recording of the hearing.

(14) Preserving Integrity. This section does not preclude the Presiding Officer from taking appropriate measures necessary to preserve the integrity of the hearing.

(15) Witness Fees, Summons, Discovery, and Construction.

(a) Witness fees. The Presiding Officer may allow appropriate witness fees as statute or rule provides.

(b) Summons. The Presiding Officer may issue a summons or subpoena on the Presiding Officer's motion. Upon request of a party, the Presiding Officer will issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

(c) Discovery. Upon the motion of a party and for a good cause shown that it is to obtain relevant information necessary to support a claim or defense, the Presiding Officer may authorize such manner of discovery against another party or person, including the Department's staff, as may be prescribed by and in the form provided by the Utah Rules of Civil Procedure.

(d) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Executive Director or a Deputy Director by law.

**R907-1-14. Formal Process and Hearing: Decisions and Orders.**

(1) Decision. The Presiding Officer will sign and issue an order that includes:

(a) a statement of the Presiding Officer's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or facts officially noticed;

(b) a statement of the reasons for the Presiding Officer's decision;

(c) a statement of any relief ordered;

(d) a notice of the right to apply for reconsideration;

(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(f) the time limits applicable to any reconsideration or review.

(2) Preparation of Order. The Presiding Officer may direct the prevailing party to prepare proposed findings of fact, conclusions of law, and an order consistent with the requirements of this rule, which will be completed within ten days of the direction unless otherwise instructed by the Presiding Officer. The prevailing party will serve copies of the proposed findings of fact, conclusions of law, and order upon the parties of record before being presented to the Presiding Officer for signature. A party objecting to any part of an order will serve a Notice of Objection to the Presiding Officer and parties of record within ten calendar days of the date of the order.

(3) Entry of Order. The Presiding Officer will sign the order and cause the same to be entered and indexed in books kept for that purpose. The order will be effective on the date it is issued unless otherwise provided in the order. Upon the Petition of a person subject to the order and for a good cause shown, the Presiding Officer may extend the time for compliance fixed in its order.

(4) Evaluation of Evidence. The Presiding Officer may use expertise, technical competence, and specialized knowledge to evaluate the evidence.

(5) Hearsay. No contested finding of fact may be based solely on hearsay evidence.

(6) Interim Orders. This section does not preclude the Presiding Officer from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(7) Notice. The Presiding Officer will notify the parties of the decision by delivering copies of the order with accompanying findings of fact and conclusions of law to each party.

**R907-1-15. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.**

(1) Time for Filing. Within 20 days after the Presiding Officer issues the Final Order in a formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which the party requests relief.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the Final Order.

(3) Mailing Requirement. A party seeking reconsideration must file a Petition for Reconsideration with the Presiding Officer. The person making the request must deliver one copy of the Petition to each.

(4) Contents of Petition. A Petition for Reconsideration must set forth specifically the particulars in which the Petitioner claims the order or decision is unlawful, unreasonable, or unfair. If the Petitioner bases a Petition on a claim that the Presiding Officer failed to consider specific evidence, it must include an abstract of that evidence. If the Petitioner bases the Petition upon newly discovered evidence, the Petitioner must include with the Petition an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence before the hearing.

(5) Response to Petition. Other parties to the proceeding may file a response to the Petition with the Presiding Officer no later than ten days from the Petition's filing date. Parties filing such a response must deliver a copy of their response to the Petitioner on the date they file their response.

(6) Action on the Petition. The Presiding Officer is authorized to act upon the Petition for reconsideration. If the Presiding Officer does not issue an order within 20 days after the Petition filing, the Petitioner must consider the request for reconsideration denied. The Presiding Officer may, by written order, set a time for hearing on said Petition or deny the Petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Presiding Officer will be treated as a new Request for Agency Action under this rule. Such a request for modification or amendment must include the parties to the previous adjudicative proceeding and their successors in interest as directly affected persons.

**R907-1-16. Declaratory Rulings.**

(1) Petition for Declaratory Orders. Any person may Petition the Department to appoint a Presiding Officer to hear arguments for and against issuing a declaratory order on the applicability of any Department administrative rule, federal regulation, or order as well as any provision of the Utah Code within the jurisdiction of the Department, which directly affect the operations or activities of that person. The Petition must include the questions and answers sought and reasons supporting or opposing the application of the statute, rule, federal regulation, or order involved.

(2) Not Subject to Declaratory Rulings. A Presiding Officer may not issue a declaratory ruling if:

(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) there would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of Section R907-1-12.

(4) Forms of Rulings. After receiving a Petition for a declaratory order, a Presiding Officer may issue a written order:

(a) declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances; or

(b) decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order will contain:

(a) the names of the parties to the proceeding;

(b) the particular facts that are the basis of the proceeding; and

(c) the reasons for its conclusion.

(6) Mailing of Order. The Presiding Officer will promptly deliver a copy of orders issued in response to a request for a declaratory proceeding to the Petitioner and other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the Petitioner and the Presiding Officer agree in writing to an extension, if the Presiding Officer has not issued a declaratory order within 60 days after receiving the request for a declaratory order, the Petitioner may consider the Petition denied.

**R907-1-17. Exhaustion of Administrative Remedies.**

(1) Persons must exhaust their administrative remedies according to Section 63G-4-401 before seeking judicial review.

(2) In any adjudicative proceeding before a Presiding Officer, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that have exhausted these available and adequate remedies before a Presiding Officer may be allowed to seek judicial review of a Presiding Officer's final action.

**R907-1-18. Deadline for Judicial Review.**

A party must file a Petition for judicial review of final agency action within 30 days after the order constituting the final agency action is issued. The Petition must name the Department and other appropriate parties as Respondents and meet the form requirements specified in Title 63G, Chapter 4 Administrative Procedures Act.

**R907-1-19. Judicial Review of Formal Adjudicative Proceedings.**

Section 63G-4-403 governs the Judicial Review of the Department's formal adjudicative proceedings.

**R907-1-20. Civil Enforcement.**

(1) Agency Action. In addition to other remedies provided by law and other Transportation Commission or Department rules, the Department may pursue civil enforcement of an order in the district courts.

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom the Department seeks civil enforcement.

(b) The Utah Rules of Civil Procedure must determine the venue for an action seeking civil enforcement.

(c) The action may request, and the court may grant, any of the following:

(i) declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of the Department to enforce its order may file a complaint with a district court seeking civil enforcement of that order. The complaint must name as defendants the Department and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not begin:

(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or the Department, the attorney general, and to each alleged violator against whom the Petitioner seeks civil enforcement;

(b) if the Commission or the Department has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

(c) if a Petition for judicial review of the same order has been filed and is pending in court.

**R907-1-21. Waivers.**

Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to the Department. This waiver provision may not prohibit default findings as defined in this rule.

**R907-1-22. Construction.**

The UAPA described in Title 63G, Chapter 4 Administrative Procedures Act, or any other federal, state statute, or federal regulation will supersede any conflicting provision of this rule. Accordingly, the Department intends that, where possible, this rule be construed to comply with those superseding provisions.

**KEY: administrative procedures, enforcement (administrative)**

**Date of Last Change: October 8, 2024**

**Notice of Continuation: August 29, 2024**

**Authorizing, and Implemented or Interpreted Law: 63G-4-101 through 502; 72-1-102**