

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

- (1) This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Administrative Procedures Act, and Subsections 58-1-106(1)(a) and 58-1-108(1).
- (2) The purposes of this rule include:
 - (a) designating categories of Division adjudicative proceedings;
 - (b) identifying presiding officers at Division adjudicative proceedings; and
 - (c) defining procedures for Division adjudicative proceedings that are consistent with Title 58, Occupations and Professions, Title 63G, General Government, and Rule R151-4, Department of Commerce Administrative Procedures Act Rule.

R156-46b-201. Formal Adjudicative Proceedings.

- (1) The following adjudicative proceedings commenced by a request for agency action are designated as formal adjudicative proceedings:
 - (a) special appeals board held in accordance with Section 58-1-402;
 - (b) declaratory order determining the applicability of statute, rule, or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
 - (c) board of appeal held in accordance with Subsection 15A-1-207(3).
- (2) The following adjudicative proceedings commenced by a notice of agency action are designated as formal adjudicative proceedings:
 - (a) disciplinary proceedings, except those designated as informal proceedings under Section R156-46b-202, for the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed through a citation;
 - (vi) administrative fine except when imposed through a citation; and
 - (vii) issuance of a public reprimand;
 - (b) unilateral modification of a disciplinary order; and
 - (c) termination of diversion agreement or of a program contract under Section 58-4a-107.

R156-46b-202. Informal Adjudicative Proceedings.

- (1) Pursuant to Section 63G-4-202, the following adjudicative proceedings commenced by other than a notice of agency action are designated as informal adjudicative proceedings:
 - (a) approval or denial of an application for:
 - (i) initial licensure;
 - (ii) renewal or reinstatement of licensure;
 - (iii) relicensure;
 - (iv) inactive or emeritus licensure status;
 - (v) a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; or
 - (vi) criminal history determination;
 - (b) favorable or unfavorable determination, based on an application for criminal history determination under Section 58-1-310;
 - (c) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
 - (d) payment of approved claims against the Residence Lien Recovery Fund under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
 - (e) approval or denial of a request:
 - (i) to surrender licensure;
 - (ii) for entry into and participation in the Utah Professionals Health Program under Title 58, Chapter 4a, Utah Professionals Health Program;
 - (iii) for modification of a disciplinary order;
 - (iv) for correction of procedural or clerical mistakes; or
 - (v) for correction of other than procedural or clerical mistakes;
 - (f) matters relating to Title 58, Chapter 4a, Utah Professionals Health Program, including:
 - (i) approval or denial of a request for modification of a program contract or diversion agreement;
 - (ii) matters relating to a program contract or diversion agreement that do not involve termination under Section 58-4a-107; or
 - (iii) determination of a licensee's successful completion of the Utah Professionals Health Program;
 - (g) citation hearings held in accordance with citation authority established under Title 58, Occupations and Professions;
 - (h) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;
 - (i) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and
 - (j) other requests for agency action permitted by statute or rule governing the Division not specifically designated as formal adjudicative proceedings in Subsection R156-46b-201(1).
- (2) Pursuant to Section 63G-4-202, the following adjudicative proceedings commenced by a notice of agency action are designated as informal adjudicative proceedings:
 - (a) nondisciplinary proceedings that result in cancellation of licensure;
 - (b) disciplinary proceedings against:
 - (i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

- (ii) a controlled substance licensee under Subsection 58-37-6(4)(g);
- (iii) a contract security company or armored car company licensed under Title 58, Chapter 63, Security Personnel Licensing Act, for failure to replace a qualifier as required under Section 58-63-306; or
- (iv) a hunting guide or outfitter registered under Title 58, Chapter 79, Hunting Guides and Outfitters Registration Act, for unprofessional conduct under Subsections R156-79-502(12) or R156-79-502(14);
- (c) disciplinary proceedings commenced by a notice of agency action and order to show cause concerning violations of an order governing a license;
- (d) disciplinary proceedings commenced by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:
 - (i) Subsections 58-1-501(2)(c) or (d); or
 - (ii) Subsections R156-1-501(1) through (5); and
 - (e) disciplinary proceedings commenced by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are defined at Subsection 63G-4-103(1)(h) and established by Sections 58-1-109 and R156-1-109.

R156-46b-401. In General.

- (1) The procedures for formal Division adjudicative proceedings are in Sections 63G-4-204 through 63G-4-208, Rule R151-4, Department of Commerce Administrative Rule, and this rule.
- (2) The procedures for informal Division adjudicative proceedings are in Section 63G-4-203, Rule R151-4, Department of Commerce Administrative Procedures Act Rule, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Adjudicative Proceeding.

- (1) In accordance with Sections 63G-4-202 and R156-4-205, a notice of agency action commencing an informal adjudicative proceeding may require a respondent to file a written response or answer.
- (2) Unless a different date is specified in the notice of agency action, a respondent shall file a required written response or answer within 30 days of the mailing date of the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

- (1) In accordance with Section 63G-4-203, evidentiary hearings are not required for Division informal adjudicative proceedings unless:
 - (a) required by statute or rule; or
 - (b) permitted by rule and requested by a party within the time prescribed by rule.
- (2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule shall be submitted in writing:
 - (a) within 20 days of the issuance of the notice of agency action if the proceeding was commenced by the Division; or
 - (b) with the request for agency action if the proceeding was not commenced by the Division.
- (3) An evidentiary hearing is required for an informal adjudicative proceeding under R156-46b-202(1)(g), citation hearings.
- (4) An evidentiary hearing is permitted for an informal adjudicative proceeding under Subsection R156-46b-202(1)(f), matters relating to the Utah Professionals Health Program.
- (5)(a) Unless otherwise agreed by the parties, an evidentiary hearing may not be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d).
 - (b) Timely notice means service of a notice of hearing upon the parties at least ten days prior to the scheduled evidentiary hearing.
- (6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

- (1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).
- (2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy Subsection 63G-4-203(1)(i).
 - (3)(a) Issuance of a letter denying a license or related requests is sufficient to satisfy Subsection 63G-4-203(1)(i).
 - (b) The letter shall explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.
- (4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.
- (5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

- (1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.
- (2) The informal guidance letter shall notify the subject of the letter that:
 - (a) the letter is only an informal guidance letter, and is not a formal declaratory order; and
 - (b) provide the citation that governs declaratory orders.

KEY: administrative procedures, government hearings, occupational licensing

Date of Enactment or Last Substantive Amendment: March 25, 2021

Notice of Continuation: November 19, 2020

Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)

