

State of Utah
Administrative Rule Analysis
 Revised December 2019

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.):	R590-160-9	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:
Agency Review.
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 change is being made to correct phrase and rule references and to make it clear that any party can seek a stay on a Request for Agency Review.
4. Summary of the new rule or change:
The rule is being amended to update the preferred term for a Request for Agency Review, to clarify a phrase regarding opposition to a stay, and to make a number of changes to references within the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.
B) Local governments:
There is no anticipated cost or savings to local governments. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The change is largely clerical in nature and doesn't add or remove any requirements to the rule.
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 change is largely clerical in nature and doesn't add or remove any requirements to the rule.

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 change is largely clerical in nature and doesn't add or remove any requirements to the rule.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons.

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 this proposed 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):

31A-2-201	63G-4-102	63G-4-203

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	

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): 03/02/2020

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): 03/09/2020

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):	01/13/2020
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R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-9. Agency Review.

(1) Agency review of an adjudicative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to R590-160-[7]§(1), shall be available to any party to the proceeding by filing a Request for Agency Review [~~petition for review~~] with the commissioner within 30 days of the date of the order. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) A request for agency review shall be filed in accordance with Section 63G-4-301.

(3) The review shall be conducted by the commissioner or the commissioner's designee. The designee shall not be the presiding officer who issued the decision under review. If the review is conducted by a designee, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and include a copy of the order, which is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request.

(c) The request for agency review may include:

(i) supporting argument;

(ii) citation to appropriate legal authority

(iii) any reference to the relevant portion of the record developed during the formal adjudicative proceeding under review; or

(iv) reference to the relevant portion of the Department's files, and other evidence or proffers of evidence received during the informal adjudicative proceeding under review.

(d) If a party challenges a finding of fact in the order subject to review, the party shall demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence in the formal adjudicative proceeding under review; or

(ii) based on the Department's files and declarant's testimony, that the finding is not supported by substantial evidence in the informal adjudicative proceeding under review.

(e) If a party challenges a legal conclusion in the order subject to review, the party shall support its argument with citation to any relevant authority and also:

(i) cite the portion of the record which is relevant to that issue in the formal adjudicative proceeding under review; or

(ii) cite the portion of the record which is relevant to that issue based upon the evidence in the Department's files, facts appearing in the Department's files and verified by a declarant testimony, and facts presented in evidence or proffers of evidence received in the informal adjudicative proceeding under review.

(f)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the recording relevant to such finding or conclusion to be prepared in the formal adjudicative proceeding under review, in accordance with R590-160-[6]§(5)(a) and (b); or

(B) provide a statement in its request for agency review that no transcript or recording is available in the informal adjudicative proceeding under review.

(ii) In a request for agency review under R590-160-[8]§(4)([e]f)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the presiding officer when the transcript is available for filing.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The presiding officer may waive the requirement of preparation of a written transcript and permit citation to the recording of such adjudicative proceeding upon motion and a reasonable showing that such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(5) Request for Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) [~~The Department may oppose~~] An opposition to the request for a stay shall be made in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the presiding officer shall review the request, any opposing memorandum, the findings of fact, conclusions of law, and order and determine whether a stay is in the best interest of the public. If it is determined to be in the best interest of the public to issue a stay, the presiding officer may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The presiding officer may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The presiding officer may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order.

(b)(i) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the Department.

(ii) If a transcript is unavailable or waived by the presiding officer pursuant to R590-160-[8]9(4)(f)(iv), any supporting memoranda to the request for agency review shall be filed with the request.

(c) Any opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(d) After the filing of an opposing memorandum, a reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(7) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The presiding officer may order or permit oral argument if determined to be warranted to assist in conducting agency review.

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further adjudicative proceeding or hearing.

(10) Failure to comply with R590-160-[8]9 may result in dismissal of the request for agency review.

KEY: insurance

Date of Enactment or Last Substantive Amendment: August 14, 2018

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203