

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$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

*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 for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This repeal and reenactment of R590-160 is not expected to have any fiscal impacts on large businesses revenues or expenditures, because the changes only affect the procedures the Insurance Department follows when administering an adjudicative proceeding.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

~~[R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.~~

~~— This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A 2 201(3)(a), and, Subsection 63G 4 102(6), Subsection 63G 4 203(1) and other applicable sections of Chapter 4 of Title 63G providing for rules governing adjudicative proceedings.~~

~~R590-160-2. Purpose and Scope.~~

~~1(a) Purpose: This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or the commissioner's designee.~~

~~(b) Public hearings under Section 63G-3-302 are not covered by this rule.~~

~~(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.~~

~~R590-160-3. Definitions.~~

~~For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:~~

~~(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.~~

~~(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.~~

~~(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.~~

~~(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.~~

~~(5) "Petitioner" is a person seeking agency action.~~

~~(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.~~

~~R590-160-4. Designations of Proceedings.~~

~~(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.~~

~~(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.~~

~~(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63G-4-202(3).~~

~~R590-160-5. Rules Applicable to All Proceedings.~~

~~(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.~~

~~— (2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.~~

~~— (3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.~~

~~— (4) Parties.~~

~~— (a) Parties to a proceeding before the commissioner may be:~~

~~— (i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.~~

~~— (ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;~~

~~— (iii) The Insurance Department staff;~~

~~— (iv) Other persons permitted by the commissioner or presiding officer.~~

~~— (b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "interveners", according to the nature of the proceeding and the relation of the parties thereto.~~

~~— (5) Appearances and Representation.~~

~~— (a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.~~

~~— (b)(i) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.~~

~~— (ii) An attorney licensed to practice in another jurisdiction in the United States may apply to appear pro hac vice to represent any party in a particular matter by filing a Motion to Appear Pro Hac Vice. A Motion to Appear Pro Hac Vice shall be served on all parties and shall contain:~~

~~— (A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the applicant;~~

~~—— (B) the name and number of the case in which the applicant is seeking to appear as the attorney of record or, if the case has not yet been filed, a description of the parties;~~

~~—— (C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding;~~

~~—— (D) the name, address, Bar identification number, telephone number, fax number and email address of a member of the Utah State Bar to serve as associate counsel; and~~

~~—— (E) attach a Certificate of Good Standing from the licensing state in which the applicant resides.~~

~~—— (iii) The presiding officer may issue an order allowing the applicant to appear Pro Hac Vice if it appears that the applicant is qualified and allowing the appearance would be in the interest of justice. The order allowing the applicant to appear may be revoked at any time if the attorney fails to comply with any order or direction of the presiding officer or engages in conduct contrary to the Rules of Professional Conduct. The presiding officer may require Utah counsel to appear at all hearings.~~

~~—— (c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.~~

~~—— (d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.~~

~~—— (6) Pleadings.~~

~~—— (a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.~~

~~—— (b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.~~

~~—— (c) Title. Pleadings before the commissioner shall be titled in substantially the following form:~~

~~—— (i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;~~

~~—— (ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);~~

~~—— (iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);~~

~~—— (iv) Right side, docket number.~~

~~—— (d) Size and Content of Pleadings. Pleadings shall be typewritten, double spaced on white 8 1/2 x 11 inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.~~

~~—— (e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.~~

~~—— (f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.~~

~~—— (g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."~~

~~—— (h) Motions.~~

~~—— (i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.~~

~~—— (ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.~~

~~—— (iii) Any motion shall be filed at least ten days prior to the date set for the hearing.~~

~~—— (7) Filing and Service.~~

~~—— (a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.~~

~~—— (b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.~~

~~—— (c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.~~

~~—— (d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially~~

~~the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).~~

~~(c) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.~~

~~(8) Presiding Officers — Disqualification for Bias.~~

~~(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.~~

~~(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.~~

~~(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.~~

~~(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.~~

~~(c) A presiding officer may at any time voluntarily disqualify himself or herself.~~

~~(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.~~

~~(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.~~

~~R590-160-5.5. Electronic Filing and Service of Documents in Formal and Informal Proceedings.~~

~~(1) Filing with or service on the Commissioner or a presiding officer may be accomplished by sending a copy of the document in .pdf format to uidadmincases@utah.gov.~~

~~—— (2) Filing with or service on the Department may be accomplished by sending a copy of the document in .pdf format to the Department's current email address as set forth in a document filed by the Department in the subject proceeding.~~

~~—— (3) Filing with or service on a licensee may be accomplished by sending a copy of the document in .pdf format to the current email address provided by the licensee to the Department under Utah Code Subsection 31A-23a-412(1).~~

~~—— (4) Filing with or service on a party's representative may be accomplished by sending a copy of the document in .pdf format to the representative's current email address set forth in a document filed by the representative in the subject proceeding.~~

~~—— (5)(a) Documents electronically filed or served shall be signed by a party or its representative and shall contain a signed certificate stating the date of electronic filing or service.~~

~~—— (b) An electronically filed or served document may be signed using any lawfully recognized signature, including an electronic signature, which is any electronic symbol or other digital form adopted by the person with the intent to sign the document.~~

~~R590-160-6. Rules Applicable to Formal Proceedings.~~

~~—— Hearings.~~

~~—— (1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63C-4-206.~~

~~—— (2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.~~

~~—— (3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.~~

~~—— (4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.~~

~~—— (5) Record of Hearing.~~

~~—— (a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a~~

~~copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.~~

~~— (b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.~~

~~— (6) Subpoenas and Fees.~~

~~— (a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.~~

~~— (b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.~~

~~— (7) Discovery. Discovery may be had as the parties may agree or pursuant to an order of the presiding officer.~~

~~— (8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.~~

~~R590-160-7. Rules Applicable to Informal Proceedings.~~

~~— (1) An informal proceeding may be commenced by the department by issuing a Notice of Informal Proceeding and Order in cases when it appears to the department that no disputed issues exist or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondent unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.~~

~~—— (2) Failure to request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.~~

~~—— (3) When a hearing is requested in an informal adjudicative proceeding, including a request for a hearing upon the denial of an application for a license or certificate of authority, or a petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, a Notice of Hearing shall be issued stating the matters to be decided and giving notice of the date, time and place of an informal hearing to be held.~~

~~—— (4) An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.~~

~~—— (5) At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.~~

~~R590-160-8. Agency Review.~~

~~—— (1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.~~

~~—— (2) Petitions for Review shall be filed in accordance with Section 63G-4-301.~~

~~—— (3) Review shall be conducted by the commissioner or a person or persons designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review 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). The request for agency review shall include a copy of the order, which is the subject of the request.~~

~~—— (b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and~~

~~—— (ii) may include supporting arguments and citation to appropriate legal authority; and~~

~~—— (A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or~~

~~—— (B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.~~

~~—— (c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:~~

~~—— (i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or~~

~~—— (ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.~~

~~—— (d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:~~

~~—— (i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or~~

~~—— (ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.~~

~~—— (e)(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 record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590 160 6.(5)(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or~~

~~—— (B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.~~

~~—— (ii) When a request for agency review is filed under the circumstances set forth under R590 160 8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.~~

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

~~—— (iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where 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.~~

~~—— (f) Failure to comply with this rule may result in dismissal of the request for agency review.~~

~~———— (5) Request of 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 the request for a stay in writing within 10 days from the date the stay is requested.~~

~~———— (c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner 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 commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.~~

~~———— (6) Memoranda.~~

~~———— (a) The commissioner 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 entered by the commissioner or the commissioner's designee.~~

~~———— (b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(c)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.~~

~~———— (ii) If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.~~

~~———— (c) Any response in opposition to a request for agency review and any memoranda supporting that response:~~

~~———— (i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or~~

~~———— (ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.~~

~~———— (d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.~~

~~———— (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 commissioner may order or permit oral argument if the commissioner determines such argument is 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 proceedings or hearing.~~

~~R590-160-9. Sanctions.~~

~~—— In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.~~

~~R590-160-10. Enforcement Date.~~

~~—— The commissioner will begin enforcing the provisions of this rule on the effective date of the rule.~~

~~R590-160-11. Severability.~~

~~—— If any provision of this rule or its application 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.~~

~~KEY: insurance~~

~~Date of Enactment or Last Substantive Amendment: July 28, 2016~~

~~Notice of Continuation: September 30, 2013~~

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

R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a), 63G-4-102(6), 63G-4-203(1), and applicable provisions of Title 63G, Chapter 4, Administrative Procedures Act.

R590-160-2. Purpose.

(1) This rule establishes procedures governing the designation and conduct of adjudicative proceedings before the presiding officer.

(2) Public hearings pursuant to Section 63G-3-302 are not governed by this rule.

R590-160-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 63G-4-103, the following definitions shall apply for the purpose of this rule:

(1) "Complainant" means the Department in any action against a licensee or other person alleged to have committed a violation of statute, rule, or order of the commissioner.

(2) "Department" means the Utah Insurance Department.

(3) "Existing Disability" means:

(a) any suspension, revocation or limitation of a license or certificate of authority; or

(b) any limitation on a right to apply to the commissioner for a license or certificate of authority.

(4) "Intervenor" means any person, not a party, permitted to intervene in a proceeding pursuant to Section 63G-4-207.

(5) "Licensee" means any person who has been issued a license or certificate under Title 31A, Insurance Code.

(6) "Petitioner" means any person, other than the Department, who commences an adjudicative proceeding and seeks agency action.

(7) "Pleading" means any paper or document filed, in written or electronic form, in an adjudicative proceeding.

(8) "Presiding officer" means the commissioner or a presiding officer appointed by the commissioner

(9) "Respondent" means any person against whom an adjudicative proceeding is initiated.

R590-160-4. Designations of Proceedings.

(1) Any of the following proceedings may be commenced as an informal adjudicative proceeding:

(a) the Department's initial decision on an application for a license or a certificate of authority;

(b) the Department's decision on a petition to remove an existing disability;

(c) the Department's decision to disapprove a rate;

(d) the Department's decision to disapprove a form;

(e) when it appears to the Department that the matter may have no issues;

(f) when it appears to the Department that the matter involves technical or minor violations of law; or

(g) proceedings for the purpose of entering stipulated findings of fact, conclusions of law and orders.

(2) A complainant may commence an informal or formal adjudicative proceeding pursuant to this rule.

(3) Any petitioner may commence a formal adjudicative proceeding pursuant to this rule.

(4) The presiding officer shall conduct any informal or formal adjudicative proceeding.

(5) Any time before a final order is issued, the presiding officer may, sua sponte or upon motion of any party, convert any adjudicative proceeding from a formal to an informal adjudicative proceeding or from an informal to a formal adjudicative proceeding, provided the conversion is in the public interest and does not unfairly prejudice the rights of any party.

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues.

(2) Deviation from Rules. The presiding officer may permit a deviation from these rules if strict compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be completed shall be computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday or a legal holiday, and then the last day is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) A party to a proceeding is:

(i) any person authorized by statute or agency rule to participate in the adjudicative proceeding pursuant to Subsections 63G-4-201(1)(a) or (b);

(ii) a complainant;

(iii) a petitioner;

(iv) a respondent; or

(v) an intervenor.

(b) Any participant in a proceeding shall be named in the caption as Petitioner, Complainant, Respondent or Intervenor.

(5) Appearances, Representation, and Pro Hac Vice.

(a) Making an Appearance. Any party enters an appearance by filing an initial written response to a notice of agency action at the beginning of the adjudicative proceeding, providing the party's name, address, email, telephone number, and the party's position or interest in the proceeding.

(b) Representation of Parties.

(i) An attorney who is an active member of the Utah State Bar may represent any party.

(ii) An individual who is a party to an adjudicative proceeding may represent himself or herself.

(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.

(iv) A general partner may represent a partnership.

(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.

(vi) The legal, registered owner of a business conducted under an assumed name, dba, shall be considered the legal party in interest and that business may not be represented except through the legal party in interest.

(c) Pro Hac Vice.

(i) An attorney licensed to practice in a jurisdiction outside of Utah may represent any party in a particular matter before the presiding officer without being admitted pro hac vice in Utah.

(ii) An attorney, pro hac vice attorney, or other authorized representative pursuant to R590-160-5(5)(b), if previous appearance has not been entered, shall file a Notice of Appearance with the presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear. The Notice of Appearance shall contain:

(A) the name, address, telephone number, fax number, email address, bar identification number(s), and state(s) of admission of the pro hac vice attorney, if applicable;

(B) the name and docket number of the case in which the applicant is appearing as the attorney of record;

(C) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding; and

(D) the name, address, Bar identification number, telephone number, fax number and email of a member of the Utah State Bar to serve as associate counsel.

(iii) The presiding officer may require Utah counsel to appear at any hearing.

(6) Pleadings.

(a) Pleadings Allowed. Pleadings shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or documents in a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings shall be titled in substantially the following form:

(i) Centered heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties;

(iii) Right side, identification of type of pleading;

(iv) Right side, docket number.

(d) Content of Pleadings. Any pleading shall identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendment to Pleading. The presiding officer may allow any pleading to be amended or corrected. Any amendment to any pleading shall be consistent with the Utah Rules of Civil Procedure.

(f) Signing of Pleading. Any pleading shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email. The signature is a certification by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds to support it.

(g) Motions.

(i) A proceeding seeking an order to secure compliance may not be initiated by motion except for a Motion for Order to Show Cause.

(ii) Any motion, other than one made orally at a hearing, shall be in writing and shall be filed and served on all parties as provided in this rule. The presiding officer may use discretion to decide any motion with or without a hearing. If either party desires a hearing on its motion, the pleadings in support or in opposition shall state that a hearing is requested and shall provide the reasons therefor. The filing of affidavits or declarations in support of the motions or in opposition thereto may be permitted or required by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed and served at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) Any pleading shall be considered filed on the date it is received by the Department.

(b) Unless filed and served electronically pursuant to R590-160-5.5, the pleading shall be filed with the Department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of any pleading be made available by the filer to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon a licensee, if by mail, shall be to the mailing address or other address on file with the Department.

(d) Any pleading required to be served by these rules shall include a Certificate of Service in substantially the following form: The undersigned hereby certifies that on this date, a true and correct copy of the (Pleading title) was served, emailed, or mailed, postage prepaid, to the following: name, street, city, state, zip code, and email address. Dated this (blank) day of (month), (year). (signed).

(e) When any party is represented by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Disqualification of Presiding Officer.

(a) Any party to an adjudicative proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an affidavit alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case and may request and receive any additional evidence or testimony as considered necessary to make this determination. The adjudicative proceeding may not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's order on the determination of disqualification except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contact Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer shall not have ex parte contact with any party or its representative, directly or indirectly involved in any matter that is the subject of a pending adjudicative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. Any issue of fact in an adjudicative proceeding before the presiding officer shall be decided upon the basis of a preponderance of the evidence standard.

(11) Burden of Proof.

(a) A party who commences an adjudicative proceeding has the burden to prove entitlement to the relief sought.

(b) A party who asserts an affirmative defense to a request for relief has the burden to prove entitlement to that defense.

R590-160-6. Electronic Filing and Service of Pleadings in Formal and Informal Proceedings.

(1) Filing with or service on the presiding officer may be accomplished by sending a copy of the pleading in PDF to uidadmincases@utah.gov.

(2) Filing with or service on the Department may be accomplished by sending a copy of the pleading in PDF to the Department's current email as provided in the subject proceeding.

(3) Filing with or service on:

(a) a licensee may be accomplished by sending a copy of the pleading in PDF to the current email provided by the licensee pursuant to Subsection 31A-23a-412(1); or

(b) a party's representative may be accomplished by sending a copy of the pleading in PDF to the representative's current email set forth in the representative's filed pleading.

(4)(a) Any pleading electronically filed or served shall be signed by a party or its representative and shall contain a signed certificate stating the date of electronic filing or service.

(b) An electronically filed or served pleading may be signed using any lawfully recognized signature, including an electronic signature.

R590-160-7. Rules Applicable to Formal Adjudicative Proceedings.

(1) Conduct of Hearing. Any hearing in a formal adjudicative proceeding shall be conducted pursuant to the provisions of Section 63G-4-206.

(2) Continuance. If application is made within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown.

The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, any hearing shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. If telephonic testimony is taken, any party shall be permitted to hear the testimony and examine or cross-examine the witness. The presiding officer has discretion whether telephonic testimony may be allowed. Any telephonic testimony shall be given under oath.

(5) Record of Hearing.

(a) Recording. The record of the proceeding shall be made by an audio recording. A duplicate copy of the recording, or any portion thereof, shall be provided by the presiding officer at the request and expense of any party, and at no cost to the commissioner.

(b) Transcript of Hearing. Upon reasonable notice and at the party's own expense, any party may request that a certified shorthand reporter be present to record the proceeding. If a transcript is made, the original transcript of the proceeding shall be filed with the presiding officer at no cost to the commissioner. Any party who wants a copy of the transcript may purchase it from the reporter at the party's own expense

(6) Subpoenas, Witness Fees and Payment.

(a) Subpoenas.

(i) On the presiding officer's command, or at the request of any party the presiding officer may issue a subpoena to:

(A) obtain or inspect documents;

(B) inspect premises or tangible things; or

(C) secure the attendance of a witness at a hearing or deposition in a formal adjudicative proceeding.

(ii) Any subpoena shall be issued and served in accordance with the Utah Rules of Civil Procedure, Rule 45, Subpoena.

(b) Witness Fees. Each subpoenaed witness, other than Department staff, who appears before the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party who requests the subpoena.

(c) Payment.

(i) Any witness appearing at the request of the presiding officer shall be entitled to payment from the funds appropriated for the use of the Department.

(ii) Any witness subpoenaed at the request of a party other than the presiding officer may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery may be conducted by the parties' agreement or pursuant to an order of the presiding officer.

(8) Order. The presiding officer shall issue a written, signed order based upon evidence presented in the hearing.

R590-160-8. Rules Applicable to Informal Adjudicative Proceedings.

(1) An informal adjudicative proceeding may be commenced by the Department by issuing a Notice of Informal Adjudicative Proceeding and Order as provided in R590-160-4(1). The Order shall be based upon the information contained in the files of the Department, any declarant's testimony, and information known to the presiding officer. The Order shall constitute a proposed order that shall become final 15 days after service or mailing to the party unless a written request for a hearing is received by the Department prior to the expiration of 15 days.

(2) A respondent's failure to timely request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.

(3) When a hearing is requested in an informal adjudicative proceeding, a Notice of Prehearing Conference shall be issued stating the matters to be decided and giving notice of the date, time and place of the prehearing scheduling conference to be held.

(4) A hearing in an informal adjudicative proceeding may be of record.

(5) At a hearing in an informal adjudicative proceeding, the presiding officer may receive testimony, proffers of evidence, affidavits, declarations, and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

(6) At the close of the informal adjudicative proceeding, the presiding officer shall issue a written, signed order based upon evidence in the Department's files and the evidence or proffers of evidence received at the proceeding. The order shall be final on the date of the order.

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 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)(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 the request for a stay 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(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 may result in dismissal of the request for agency review.

R590-160-10. Sanctions.

(1) In any adjudicative proceeding the presiding officer may, by order, impose sanctions upon any party, a party's representative, any witness, or a witness's representative for contemptuous or disobedient conduct, or for failure to comply with this rule or any lawful order.

(2)(a) The presiding officer may take reasonable steps to control the conduct of an adjudicative proceeding. The presiding officer may impose a sanction against a party or a witness who fails to comply with an order or with a requirement of R590-160.

(b) A sanction may include:

(i) excluding evidence;

(ii) dismissing claims;

(iii) striking pleadings or portions of the pleadings;

(iv) entering default judgments; or

(v) ordering payment of costs, expenses and fees.

R590-160-11. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason 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: July 28, 2016

Notice of Continuation: September 30, 2013

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