

State of Utah
Administrative Rule Analysis
Revised May 2020

OUR File No. 53288

Date Filed: 1-21-2021

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment XXX; Repeal ___; Repeal and Reenact ___

Title No. - Rule No. - Section No.

Utah Admin. Code Ref (R no.):

R156-46b

Filing No. (Office Use Only)

Changed to Admin. Code Ref. (R no.):

R

Agency Information

1. Department:	Commerce	
Agency:	Division of Occupational and Professional Licensing	
Room no.:		
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
City, state:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Deborah Blackburn	(801) 530-6060	deborahblackburn@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

Division Utah Administrative Procedures Act Rule

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 Division of Occupational and Professional Licensing ("Division") is filing these proposed amendments to update the rule in accordance with statutory changes made by H.B. 285 passed in the 2020 General Session.

4. Summary of the new rule or change:

The proposed amendments make the following changes:

- (1) update references to the Division's diversion program with references to the Division's new Utah Professionals Health Program (UPHP) enacted by H.B. 285;
- (2) clearly designate as formal a Division adjudicative proceeding regarding a board of appeal under Subsection 15A-1-207(3) (disputing the application and interpretation of a building code before the UBCC, after a city has been found to be negligent in its statutory responsibility to have an appeal process).
- (3) designate as informal adjudicative proceedings those initiated by a notice of agency action regarding 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) (failing to comply with state or federal laws and rules regarding hunting guides and outfitters) or R156-79-502(14) (failing to adequately maintain general liability insurance as required by the US Forest Service or the Bureau of Land Management); and
- (4) make stylistic changes throughout consistent with the *Rulewriting Manual for Utah*.

Google Meets information for February 25, 2021 rule hearing before the Division:
Join with Google Meet

meet.google.com/mms-abwd-mxu

Join by phone

(US) +1 657-529-2812 (PIN: 172567001)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed amendments to R156-46b-202(2) are expected to result in a cost savings to the Division by simplifying the required adjudicative proceedings for the referenced unprofessional conduct. Based on two anticipated adjudicative proceedings per year that now may be conducted informally instead of formally under the Administrative Procedures Act, it is anticipated that the Division will save approximately \$2,300 annually ongoing based on reduced labor costs and mailing savings. The remaining proposed amendments are not expected to impact state government revenues or expenditures because they only update the rule to clarify Division procedures and to refer to the Division's new UPHP program enacted by H.B. 285.

B) Local governments:

No impact is expected to local governments because these changes will not affect local government practices or procedures.

C) Small businesses ("small business" means a business employing 1-49 persons):

None of these proposed amendments are expected to impact small business revenues or expenditures because the changes merely update Division procedures and terminology and will not alter the price or quantity of any exchanges involving small businesses.

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

None of these proposed amendments are expected to impact non-small business revenues or expenditures because the changes merely update Division procedures and terminology and will not alter the price or quantity of any exchanges involving non-small businesses.

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*):

The Division estimates that approximately two registrants per year will fail to comply with Subsections R156-79-502(12) or R156-79-502(14), but the typical registrant will not be impacted as it will not affect their actions in responding to the Division. The referenced unprofessional conduct provisions are based on a registrant's duty to comply with other state or federal requirements for hunting guides and outfitters, and registrants in these cases either promptly come into compliance upon receiving notice of the failure or have ceased to practice. The remaining proposed amendments are not expected to impact other persons because they only update the rule to refer to the new UPHP program in accordance with H.B. 285 and do not impose additional costs beyond what was anticipated during the legislative process.

F) Compliance costs for affected persons:

As described above, none of the proposed amendments are expected to impose compliance costs on 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	FY2021	FY2022	FY2023
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	\$2,300	\$2,300	\$2,300
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$2,300	\$2,300	\$2,300
Net Fiscal Benefits	\$2,300	\$2,300	\$2,300

H) Department head approval of regulatory impact analysis:

The head of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

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

The Division of Occupational and Professional Licensing ("Division") proposes amendments to the Division Utah Administrative Procedures Act Rule. The Division is filing these proposed amendments to clarify and update the rule and to implement certain statutory changes made by H.B. 285 in the 2020 General Legislative Session. Further, the Division has made minor amendments to update references and clarify the rule.

Small Businesses (less than 50 employees):

The proposed amendments are not expected to impact small business revenues or expenditures because the changes merely update the Division procedures and make formatting changes for clarity. Further, no fiscal impact is expected for small business over and above any fiscal impact described in the legislative fiscal notes for H.B. 285 passed in the 2020 General Legislative Session as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees):

These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small business. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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

Margaret W. Busse, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 63G-4-102(6)	Subsection 58-1-106(1)(a)

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): 03/17/2021

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
02/25/2021	9:00 AM	Rule hearing will be held electronically before

the Division. See Google Meets information in Box #4.

10. This rule change MAY become effective on (mm/dd/yyyy): 03/24/2021

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: Mark B. Steinagel, Director Date (mm/dd/yyyy): 01/21/2021

R156. Commerce, Occupational and Professional Licensing.

R156-46b. 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) [~~and Subsection 58-1-106(1)(a)~~].

(2) The purposes of this rule include:

(a) [~~classifying~~] designating categories of Division adjudicative proceedings;

(b) [~~clarifying the identity of~~] identifying presiding officers at Division adjudicative proceedings; and

(c) defining procedures for Division adjudicative proceedings [~~which~~] that are consistent with [~~the requirements of~~] Title [~~s~~] 58, Occupations and Professions, [and] 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 [~~initiated~~] commenced by a request for agency action are [~~classified~~] 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 [~~initiated~~] commenced by a [~~Notice of Agency Action~~] notice of agency action are [~~classified~~] designated as formal adjudicative proceedings:

(a) disciplinary proceedings, except those [~~classified~~] designated as informal proceedings under Section R156-46b-202, [~~that result in~~] 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 [~~s~~] or of a program contract under Section 58-4a-107.

R156-46b-202. Informal Adjudicative Proceedings.

(1) Pursuant to Section 63G4-202, the [~~The~~] following adjudicative proceedings [~~initiated~~] commenced by other than a notice of agency action are [~~classified~~] 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 ~~[pursuant to]~~ under Section 58-1-310;

(c) ~~[board of appeal under Subsection 15A-1-207(3)]~~;

~~_____~~(d) 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;

(~~[e]~~d) payment of approved claims against the Residence Lien Recovery Fund ~~[described in Subparagraph (f)]~~ under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(~~[f]~~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 ~~[diversion program under Section 58-1-404]~~;

(iii) for modification of a disciplinary order;

(iv) for correction of procedural or clerical mistakes; or

(v) for correction of other than ~~[preedural]~~ procedural or clerical mistakes;

(~~[g]~~f) matters relating to ~~[diversion program]~~ 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;

(~~[h]~~g) citation hearings held in accordance with citation authority established under Title 58, Occupations and Professions;

(~~[i]~~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;

(~~[j]~~i) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

(~~[k]~~j) ~~[all]~~ other requests for agency action permitted by statute or rule governing the Division not specifically ~~[classified]~~ designated as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) Pursuant to Section 63G-4-202, the ~~[The]~~ following adjudicative proceedings ~~[initiated]~~ commenced by a notice of agency action are ~~[classified]~~ designated as informal adjudicative proceedings:

(a) nondisciplinary proceedings that ~~[which]~~ result[s] 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); ~~[-and]~~

(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 [~~initiated~~]commenced by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings [~~initiated~~]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)® or (d); or

(ii) Subsections R156-1-501(1) through (5); and

(e) disciplinary proceedings [~~initiated~~]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 [~~as~~]defined at Subsection 63G-4-103(1)(h) and [~~as specifically~~]established by Sections 58-1-109 and [~~by Section~~]R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are [~~set forth~~]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 [~~set forth~~]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.

[~~A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency action or other date specified in the notice of agency action.~~]

(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, e[E]videntiary hearings are not required for [~~informal~~]Division informal adjudicative proceedings unless:

(a) required by statute or rule[~~r~~]; 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 ~~[must]~~ shall be submitted in writing:

(a) ~~[no later than]~~ within 20 days ~~[following]~~ of the issuance of the notice of agency action if the proceeding was ~~[initiated]~~ commenced by the Division~~[7]~~; or

(b) ~~[together]~~ with the request for agency action if the proceeding was not ~~[initiated]~~ commenced by the Division.

(3) An evidentiary hearing is required for ~~[for the following informal proceedings:~~

~~(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and~~

~~(b)]an informal adjudicative proceeding under R156-46b-202(1)([g]), citation hearings [held in accordance with Title 58].~~

(4) An evidentiary hearing is permitted for an informal adjudicative proceeding under Subsection R156-46b-202(1)(f), ~~[pertaining to]~~ matters relating to the Utah Professionals Health Program ~~[a diversion program in accordance with R156-46b-202(1)(k)]~~.

(5) (a) Unless otherwise agreed by the parties, ~~[no]~~ an evidentiary hearing ~~[shall]~~ 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]~~ notice of hearing upon ~~[all]~~ the parties ~~[not later than]~~ at least ten days prior to ~~[any]~~ 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 ~~[the requirements of]~~ Subsection 63G-4-203(1)(i).

(3) (a) Issuance of a letter denying a license or related requests is sufficient to satisfy ~~[the requirements of]~~ Subsection 63G-4-203(1)(I).

(b) The letter ~~[must]~~ 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) ~~[A notice shall appear in the]~~ The informal guidance letter ~~[notifying]~~ shall notify the subject of the letter that:

(a) the letter is only an informal guidance letter, ~~[only]~~ and is not ~~[intended as]~~ a formal declaratory order; and

(b) ~~[. The notice shall also]~~ provide the citation ~~[where the requirements which]~~ that governs declaratory orders ~~[are found]~~.

KEY: administrative procedures, government hearings, occupational licensing

Date of Enactment or Last Substantive Amendment: ~~[December 23, 2019]~~ 2021

Notice of Continuation: November 19, 2020

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