

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
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
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**\*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**

There are no non-small businesses in the industry in question in Utah. This rule only addresses the manner in which administrative alcohol and drug proceedings will be conducted by the Driver License Division.

This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because this rule only addresses the manner in which administrative alcohol and drug proceedings will be conducted by the Driver License Division.

The head of department of Public Safety, Commissioner Keith D Squires, has reviewed and approved this fiscal analysis.

## **R708. Public Safety, Driver License.**

### **R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.**

#### **R708-14-1. Purpose.**

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for ~~alcohol/drug~~ alcohol and drug adjudicative proceedings.

#### **R708-14-2. Authority.**

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

#### **R708-14-3. Definitions.**

~~[(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.](1) Terms used in this rule are defined in Section 63G-4-103.~~

(2) In addition:

(a) "~~[D]~~division" means the Driver License Division of the Utah Department of Public Safety[-];

~~[(3)](b) "[D]division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders[-];~~

~~[(4)](c) "[H]hearing" means an [alcohol/drug]alcohol or drug adjudicative proceeding where evidence is considered to determine an issue of fact; [and to adjudicate a legal right or privilege.]~~

~~[(5)](d) "hearing officer"["Presiding officer"] means a division employee with authority to conduct [alcohol/drug adjudicative proceedings]a hearing[-]; and~~

~~[(6)](e) "[R]ecording" means documenting, by electronic or other means, the testimony or information presented at an [alcohol/drug]alcohol or drug adjudicative proceeding.~~

#### **R708-14-4. Designations.**

(1) In compliance with Section 63G-4-202, all division ~~[alcohol/drug]alcohol and drug~~ adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

(3) The driver may represent ~~[him/herself]~~himself or be represented by a State Licensed attorney in the adjudicative proceeding.

#### **R708-14-5. Authority for Conducting Adjudicative Proceedings.**

~~[Alcohol/drug]Alcohol and drug~~ adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

#### **R708-14-6. Commencement of Adjudicative Proceedings.**

(1) In accordance with Subsection 63G-4-201, ~~[alcohol/drug]alcohol and drug~~ adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action.~~[-A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.]~~

#### **R708-14-7. ~~[Alcohol/Drug]Alcohol and Drug~~ Adjudicative Proceedings.**

The ~~[alcohol/drug]alcohol and drug~~ adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of ~~[alcohol/drugs]alcohol or drugs~~ (per-se), Section 53-3-223;

(b) implied consent (refusal), Section 41-6a-520;

(c) measurable metabolite in body, Section 41-6a-517;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

**R708-14-8. Hearing Procedures.**

(1) ~~[Time and place.—Alcohol/drug]~~Alcohol and drug adjudicative proceedings will be held in the county of arrest or a county which is adjacent to the county in which the offense occurred, at a time and place designated by the division, or agreed upon by the parties.

(2) ~~[Notice.—]~~Notice shall be given as provided in Subsection 53-3-216(4) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) ~~[Default.—]~~If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) ~~[Evidence.—]~~The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The hearing~~[presiding]~~ officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The ~~[presiding]~~hearing officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) ~~[Information.—]~~The driver shall have access to information in the division file to the extent permitted by law.

(6) ~~[Subpoenas.—]~~Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) ~~[Administrative notice.—]~~The ~~[presiding]~~hearing officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the ~~[presiding]~~hearing officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) ~~[Presiding officer.—]~~The ~~[presiding]~~hearing officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) ~~[tape]~~audio record or take notes of the hearing at his/~~her~~ discretion; and

(e) take appropriate measures to preserve the integrity of the hearing~~[-; and]~~.

~~[- (f) conduct hearings in accordance with division policy III A 3, III A 4, and III A 5.]~~

(9) The hearing officer shall make a recommendation to the presiding officer regarding action to be taken following the hearing.

**R708-14-9. Findings, Conclusions, Recommendations and Orders.**

(1) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks.

(2) Within a reasonable period of time after the close of the hearing, the completed recommendation form will be transmitted to the presiding officer for the preparation of an order that complies with Subsection 63G-4-203(1)(i).

**R708-14-10. Reconsideration.**

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

**KEY: adjudicative proceedings**

**Date of Enactment or Last Substantive Amendment: ~~[May 26, 2015]~~2018**

**Notice of Continuation: January 8, 2017**

**Authorizing, and Implemented or Interpreted Law: 53-3-104; 63G-4-203(1)**

!--dar--