

Part 2 Adjudicative Proceedings

63G-4-201 Commencement of adjudicative proceedings.

- (1) Except as otherwise permitted by Section 63G-4-502, all adjudicative proceedings shall be commenced by either:
 - (a) a notice of agency action, if proceedings are commenced by the agency; or
 - (b) a request for agency action, if proceedings are commenced by persons other than the agency.
- (2) A notice of agency action shall be filed and served according to the following requirements:
 - (a) The notice of agency action shall be in writing, signed by a presiding officer, and shall include:
 - (i) the names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;
 - (ii) the agency's file number or other reference number;
 - (iii) the name of the adjudicative proceeding;
 - (iv) the date that the notice of agency action was mailed;
 - (v) a statement of whether the adjudicative proceeding is to be conducted informally according to the provisions of rules adopted under Sections 63G-4-202 and 63G-4-203, or formally according to the provisions of Sections 63G-4-204 through 63G-4-209;
 - (vi) if the adjudicative proceeding is to be formal, a statement that each respondent must file a written response within 30 days of the mailing date of the notice of agency action;
 - (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;
 - (viii) if the adjudicative proceeding is to be informal and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, a statement that the parties may request a hearing within the time provided by the agency's rules;
 - (ix) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;
 - (x) the name, title, mailing address, and telephone number of the presiding officer; and
 - (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.
 - (b) When adjudicative proceedings are commenced by the agency, the agency shall:
 - (i) mail the notice of agency action to each party;
 - (ii) publish the notice of agency action, if required by statute; and
 - (iii) mail the notice of agency action to any other person who has a right to notice under statute or rule.
- (3)
 - (a) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by that person's representative, and shall include:
 - (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

- (ii) the agency's file number or other reference number, if known;
 - (iii) the date that the request for agency action was mailed;
 - (iv) a statement of the legal authority and jurisdiction under which agency action is requested;
 - (v) a statement of the relief or action sought from the agency; and
 - (vi) a statement of the facts and reasons forming the basis for relief or agency action.
- (b) The person requesting agency action shall file the request with the agency and shall mail a copy to each person known to have a direct interest in the requested agency action.
- (c) An agency may, by rule, prescribe one or more forms eliciting the information required by Subsection (3)(a) to serve as the request for agency action when completed and filed by the person requesting agency action.
- (d) The presiding officer shall promptly review a request for agency action and shall:
- (i) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;
 - (ii) notify the requesting party in writing that the request is denied and, if the proceeding is a formal adjudicative proceeding, that the party may request a hearing before the agency to challenge the denial; or
 - (iii) notify the requesting party that further proceedings are required to determine the agency's response to the request.
- (e)
- (i) Any notice required by Subsection (3)(d)(ii) shall contain the information required by Subsection 63G-4-203(1)(i) in addition to disclosure required by Subsection (3)(d)(ii).
 - (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except that any notice required by Subsection (3)(d)(iii) may be published when publication is required by statute.
 - (iii) The notice required by Subsection (3)(d)(iii) shall:
 - (A) give the agency's file number or other reference number;
 - (B) give the name of the proceeding;
 - (C) designate whether the proceeding is one of a category to be conducted informally according to the provisions of rules enacted under Sections 63G-4-202 and 63G-4-203, with citation to the applicable rule authorizing that designation, or formally according to Sections 63G-4-204 through 63G-4-209;
 - (D) in the case of a formal adjudicative proceeding, and where respondent parties are known, state that a written response must be filed within 30 days of the date of the agency's notice if mailed, or within 30 days of the last publication date of the agency's notice, if published;
 - (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default;
 - (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules; and
 - (G) give the name, title, mailing address, and telephone number of the presiding officer.
- (4) When initial agency determinations or actions are not governed by this chapter, but agency and judicial review of those initial determinations or actions are subject to the provisions of this chapter, the request for agency action seeking review must be filed with the agency within the time prescribed by the agency's rules.

- (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide for a longer response time than allowed by this section, and may provide for a shorter response time if required or permitted by applicable federal law.
- (6) Unless the agency provides otherwise by rule or order, an application for a package agency, license, permit, or certificate of approval filed under authority of Title 32B, Alcoholic Beverage Control Act, is not considered to be a request for agency action under this chapter.
- (7) If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the agency may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

Amended by Chapter 276, 2010 General Session

63G-4-202 Designation of adjudicative proceedings as informal -- Standards -- Undesignated proceedings formal.

- (1) The agency may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter if:
 - (a) the use of the informal procedures does not violate any procedural requirement imposed by a statute other than this chapter;
 - (b) in the view of the agency, the rights of the parties to the proceedings will be reasonably protected by the informal procedures;
 - (c) in the view of the agency, the agency's administrative efficiency will be enhanced by categorizations; and
 - (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.
- (2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not specifically designated as informal proceedings by the agency's rules shall be conducted formally in accordance with the requirements of this chapter.
- (3) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:
 - (a) conversion of the proceeding is in the public interest; and
 - (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-203 Procedures for informal adjudicative proceedings.

- (1) If an agency enacts rules designating one or more categories of adjudicative proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe procedures for informal adjudicative proceedings that include the following:
 - (a) Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.
 - (b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a hearing is permitted by rule and is requested by a party within the time prescribed by rule.
 - (c) In any hearing, the parties named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence, and comment on the issues.
 - (d) Hearings will be held only after timely notice to all parties.

- (e) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.
 - (f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.
 - (g) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.
 - (h) All hearings shall be open to all parties.
 - (i) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:
 - (i) the decision;
 - (ii) the reasons for the decision;
 - (iii) a notice of any right of administrative or judicial review available to the parties; and
 - (iv) the time limits for filing an appeal or requesting a review.
 - (j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.
 - (k) A copy of the presiding officer's order shall be promptly mailed to each of the parties.
- (2)
- (a) The agency may record any hearing.
 - (b) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.
- (3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-204 Procedures for formal adjudicative proceedings -- Responsive pleadings.

- (1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63G-4-201(5), the respondent, if any, shall file and serve a written response signed by the respondent or the respondent's representative within 30 days of the mailing date or last date of publication of the notice of agency action or the notice under Subsection 63G-4-201(3)(d), which shall include:
 - (a) the agency's file number or other reference number;
 - (b) the name of the adjudicative proceeding;
 - (c) a statement of the relief that the respondent seeks;
 - (d) a statement of the facts; and
 - (e) a statement summarizing the reasons that the relief requested should be granted.
- (2) The respondent shall send a copy of the response filed under Subsection (1) to each party.
- (3) The presiding officer, or the agency by rule, may permit or require pleadings in addition to the notice of agency action, the request for agency action, and the response. All documents permitted or required to be filed shall be filed with the agency and one copy shall be sent to each party.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-205 Procedures for formal adjudicative proceedings -- Discovery and subpoenas.

- (1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their

claims or defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedure.

- (2) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on the presiding officer's own motion.
- (3) Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-206 Procedures for formal adjudicative proceedings -- Hearing procedure.

- (1) Except as provided in Subsections 63G-4-201(3)(d)(i) and (ii), in all formal adjudicative proceedings, a hearing shall be conducted as follows:
 - (a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.
 - (b) On the presiding officer's own motion or upon objection by a party, the presiding officer:
 - (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 - (ii) shall exclude evidence privileged in the courts of Utah;
 - (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document; and
 - (iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.
 - (c) The presiding officer may not exclude evidence solely because it is hearsay.
 - (d) The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.
 - (e) The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.
 - (f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.
 - (g) The hearing shall be recorded at the agency's expense.
 - (h) Any party, at the party's own expense, may have a person approved by the agency prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing.
 - (i) All hearings shall be open to all parties.
- (2) This section does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-207 Procedures for formal adjudicative proceedings -- Intervention.

- (1) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:
 - (a) the agency's file number or other reference number;
 - (b) the name of the proceeding;

- (c) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and
 - (d) a statement of the relief that the petitioner seeks from the agency.
- (2) The presiding officer shall grant a petition for intervention if the presiding officer determines that:
- (a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and
 - (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.
- (3)
- (a) Any order granting or denying a petition to intervene shall be in writing and mailed to the petitioner and each party.
 - (b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.
 - (c) The presiding officer may impose the conditions at any time after the intervention.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-208 Procedures for formal adjudicative proceedings -- Orders.

In formal adjudicative proceedings:

- (1) Within a reasonable time after the hearing, or after the filing of any posthearing documents permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:
 - (a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;
 - (b) a statement of the presiding officer's conclusions of law;
 - (c) a statement of the reasons for the presiding officer's decision;
 - (d) a statement of any relief ordered by the agency;
 - (e) a notice of the right to apply for reconsideration;
 - (f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and
 - (g) the time limits applicable to any reconsideration or review.
- (2) The presiding officer may use the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.
- (3) A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.
- (4) This section does not preclude the presiding officer from issuing interim orders to:
 - (a) notify the parties of further hearings;
 - (b) notify the parties of provisional rulings on a portion of the issues presented; or
 - (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-4-209 Default.

- (1) The presiding officer may enter an order of default against a party if:

- (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative proceeding;
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 - (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63G-4-204.
- (2) An order of default shall include a statement of the grounds for default and shall be mailed to all parties.
- (3)
- (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.
 - (b) A motion to set aside a default and any subsequent order shall be made to the presiding officer.
 - (c) A defaulted party may seek agency review under Section 63G-4-301, or reconsideration under Section 63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.
- (4)
- (a) In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding begun by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.
 - (b) In an adjudicative proceeding that has no parties other than the agency and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session