

ADMINISTRATIVE RULES AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; AMENDING THE ADMINISTRATIVE RULEMAKING ACT TO ALLOW FOR INCORPORATING FEDERALLY-MANDATED STATE IMPLEMENTATION PLANS BY REFERENCE; ALLOWING THE REAUTHORIZATION LEGISLATION TO SUNSET A SECTION OF A RULE; REQUIRING THE COMMITTEE TO MEET ON A MONTHLY BASIS; CHANGING THE STATUTE OF LIMITATIONS ON DIVISION NONSUBSTANTIVE CHANGES FROM FOUR YEARS TO TWO YEARS; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-46a-3, as last amended by Chapter 60, Laws of Utah 1996

63-46a-9, as last amended by Chapter 375, Laws of Utah 1997

63-46a-11, as last amended by Chapter 33, Laws of Utah 1997

63-46a-11.5, as last amended by Chapter 2, Laws of Utah 1997, First Special Session

63-46a-14, as last amended by Chapter 60, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-46a-3** is amended to read:

63-46a-3. When rulemaking is required.

(1) Each agency shall:

- (a) maintain a complete copy of its current rules; and
- (b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

- (a) authorizes, requires, or prohibits an action;
- (b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the division.

(5) A rule shall enumerate any penalty authorized by statute that may result from its violation.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally-recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

~~[(ii)]~~ (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

[(iii)] (iv) lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public inspection at the agency and at the division.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Section 2. Section **63-46a-9** is amended to read:

63-46a-9. Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

(1) Each agency shall review each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review, whichever is later. Rules effective prior to 1992 need not be reviewed until 1997.

(2) An agency may consider any substantial review of a rule to be a five-year review. If the agency chooses to consider a review a five-year review, it shall follow the procedures outlined in Subsection (3).

(3) At the conclusion of its review, the agency shall file a notice of review on or before the anniversary date indicating its intent to continue, amend, or repeal the rule.

- (a) If the agency continues the rule, it shall file a statement which includes:
- (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - (ii) a summary of written comments received [~~after enactment~~] during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.
- (b) If the agency repeals the rule, it shall comply with Section 63-46a-4.
- (c) If the agency amends and continues the rule, it shall comply with the requirements of Section 63-46a-4 and file the statement required in Subsection (3)(a).
- (4) (a) The division shall publish the notice and statement in the bulletin.
- (b) The division may schedule the publication of agency notices and statements, provided that no notice and statement shall be published more than one year after the review deadline established under Subsection (1).
- (5) The division shall notify an agency of rules due for review at least 180 days prior to the anniversary date.
- (6) If an agency finds that it will not meet the deadline established in Subsection (1):
- (a) the agency may file an extension prior to the anniversary date with the division indicating the reason for the extension; and
 - (b) the division shall publish notice of the extension in the next issue of the bulletin.
- (7) An extension permits the agency to file a notice no more than 120 days after the anniversary date.
- (8) If an agency fails to file a notice of review or extension on or before the date specified in the notice mandated in Subsection [~~(4)~~] (5), the division shall:
- (a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;
 - (b) remove the rule from the code; and
 - (c) notify the agency that the rule has expired.

(9) After a rule expires, an agency must comply with the requirements of Section 63-46a-4 to reenact the rule.

(10) (a) Rules issued under the following provisions related to the Department of Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to the requirements of this section until July 1, 1998:

- (i) Title 34, Labor in General;
- (ii) Title 34A, Utah Labor Code;
- (iii) Title 35, Labor - Industrial Commission;
- (iv) Title 35A, Utah Workforce Services Code;
- (v) Title 40, Chapter 2, Coal Mines; and
- (vi) Title 57, Chapter 21, Utah Fair Housing Act.

(b) Any rule described in Subsection (10)(a) that would have expired on or after July 1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of Workforce Services or Labor Commission files:

- (i) the notice of review, described in Subsection (3); or
- (ii) an extension described in Subsection (6).

Section 3. Section **63-46a-11** is amended to read:

63-46a-11. Administrative Rules Review Committee.

(1) (a) There is created an Administrative Rules Review Committee of ten permanent members and four ex officio members.

(b) (i) The committee's permanent members shall be composed of five members of the Senate, appointed by the president of the Senate, and five members of the House, appointed by the speaker of the House, with no more than three senators and three representatives from the same political party.

(ii) The permanent members shall convene at least once each month as a committee to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules. Meetings may be suspended at the discretion of the committee chairs.

(iii) Members shall serve for two-year terms or until their successors are appointed.

(iv) A vacancy exists whenever a committee member ceases to be a member of the Legislature, or when a member resigns from the committee. Vacancies shall be filled by the appointing authority, and the replacement shall serve out the unexpired term.

(c) When the committee reviews existing rules, the committee's permanent members shall invite the Senate and House chairmen of the standing committee and the Senate and House chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.

(d) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee at the same time public notice is given under Section 63-46a-4.

(3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

(b) The committee shall examine rules submitted by each agency to determine:

(i) whether or not they are authorized by statute;

(ii) whether or not they comply with legislative intent;

(iii) their impact on the economy and the government operations of the state and local political subdivisions; and

(iv) their impact on affected persons.

(c) To carry out these duties, the committee may examine any other issues that it considers necessary. The committee may also notify and refer rules to the chairmen of the interim committee which has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

(4) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(5) In order to accomplish its oversight functions, the committee has all the powers granted to legislative interim committees as set forth in Section 36-12-11.

(6) (a) The committee may prepare written findings of its review of each rule and may include any recommendations, including legislative action.

(b) The committee shall provide to the agency that enacted the rule:

(i) a copy of its findings, if any; and

(ii) a request that the agency notify the committee of any changes it makes in the rule.

(c) The committee shall provide a copy of its findings to any member of the Legislature and to any person affected by the rule who requests a copy.

(d) The committee shall provide a copy of its findings to the presiding officers of both the House and the Senate, Senate and House chairmen of the standing committee, and the Senate and House chairmen of the Appropriation Subcommittee that have jurisdiction over the agency whose rules are the subject of the findings.

(7) (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.

(b) The report shall include:

(i) the findings and recommendations made by the committee under Subsection (6);

(ii) any action taken by an agency in response to committee recommendations; and

(iii) any recommendations by the committee for legislation.

Section 4. Section **63-46a-11.5** is amended to read:

63-46a-11.5. Legislative reauthorization of agency rules -- Extension of rules by governor.

(1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.

(2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on ~~[January 1]~~ February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.

(b) Notwithstanding the provisions of Subsection ~~[(1)]~~ (2)(a), an agency's rules do not expire if:

(i) the rule is explicitly mandated by a federal law or regulation; or

(ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.

(3) (a) [~~Prior to January 1 of each year, the~~] The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.

(b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".

(c) Before sending the legislation to the governor for his action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.

(d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.

(4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.

(5) (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

(i) that the rule is necessary; and

(ii) a citation to the source of its authority to make the rule.

(c) (i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, he may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

Section 5. Section **63-46a-14** is amended to read:

63-46a-14. Time for contesting a rule -- Statute of limitations.

(1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.

(2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.

(3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63-46a-10(2) or (3) substantively changed the rule shall be commenced within [four] two years of the date the change was made.

Section 6. **Effective date.**

This act takes effect on July 1, 1998.