

**ELECTRONIC GOVERNMENT SERVICES AMENDMENTS -
ADMINISTRATIVE RULES AND PROCEDURES**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Richard M. Siddoway

This act modifies the Utah Administrative Rulemaking Act and the Administrative Procedures Act by amending statutory language to facilitate the electronic delivery of government services by governmental agencies. The act provides definitions for purposes of electronic records in governmental agencies. The act amends provisions relating to the cost of rulemaking publications.

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

AMENDS:

- 26-1-5**, as enacted by Chapter 126, Laws of Utah 1981
- 63-46a-2**, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-3**, as last amended by Chapter 332, Laws of Utah 1998
- 63-46a-4**, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-6**, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-7**, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-10**, as last amended by Chapter 60, Laws of Utah 1996
- 63-46a-10.5**, as last amended by Chapter 219, Laws of Utah 1998
- 63-46a-11**, as last amended by Chapter 332, Laws of Utah 1998
- 63-46a-12.1**, as enacted by Chapter 224, Laws of Utah 1990
- 63-46b-3**, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-6**, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-9**, as enacted by Chapter 161, Laws of Utah 1987
- 63-46b-10**, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-12**, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-13**, as last amended by Chapter 72, Laws of Utah 1988
- 63-46b-15**, as last amended by Chapter 164, Laws of Utah 1999

ENACTS:

46-4-502, Utah Code Annotated 1953

63-46a-17, Utah Code Annotated 1953

63-46b-23, Utah Code Annotated 1953

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

Section 1. Section **26-1-5** is amended to read:

26-1-5. Rules of department.

(1) Except in areas regulated by statutory committees created by this title, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.

(2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.

(3) Every rule adopted by the department pursuant to this section, or a committee established under Section 26-1-7 or 26-1-7.5, shall be subject to ~~[the]~~ Title 63, Chapter 46a, Utah Administrative Rulemaking Act[-] and shall become effective at the time and in the manner provided in ~~[the Utah Administrative Rulemaking Act, and shall be signed by the executive director]~~ that act.

~~[(4) At the time a rule adopted by the department or a committee established by Section 26-1-7 or 26-1-7.5, is filed with the state archivist it shall also be filed with the legislative research director.]~~

~~[(5)]~~ (4) If, at the next general session of the legislature following the filing of a rule with the legislative research director, the legislature passes a bill disapproving such rule, the rule shall be null and void.

~~[(6)]~~ (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, shall not adopt a rule identical to a rule disapproved under Subsection ~~[(5)]~~ (4) of this section, before the beginning of the next general session of the legislature following the general session at which the rule was disapproved.

Section 2. Section **46-4-502** is enacted to read:

46-4-502. Definitions.

For purposes of this part:

(1) "Copy" may include an electronic version of a document.

(2) "Mail" may include sending a document electronically, provided that the recipient can accept and process the electronic writing.

(3) "Mailing address" may include an electronic mailing address capable of receiving and processing an electronic writing.

(4) "Sign" or "signature" may include any form of electronic signature authorized by the governmental agency.

(5) "Written" or "writing" means information that is:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and is retrievable.

Section 3. Section **63-46a-2** is amended to read:

63-46a-2. Definitions.

As used in this chapter:

(1) "Administrative record" means information an agency relies upon when making a rule under this chapter including ~~[copies of]~~:

(a) the proposed rule, change in the proposed rule, and the rule analysis form;

(b) the public comment received and recorded by the agency during the public comment period;

(c) the agency's response to the public comment;

(d) the agency's analysis of the public comment; and

(e) the agency's report of its decision-making process.

(2) "Agency" means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) "Bulletin" means the Utah State Bulletin.

(4) "Catchline" means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) "Code" means the body of all effective rules as compiled and organized by the division and entitled "Utah Administrative Code."

(6) "Director" means the director of the Division of Administrative Rules.

(7) "Division" means the Division of Administrative Rules.

(8) "Effective" means operative and enforceable.

(9) (a) "File" means to submit a document to the division as prescribed by ~~[this chapter]~~ the division.

(b) "Filing date" means the day and time the document is recorded as received by the division.

(10) "Interested person" means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

(11) "Order" means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(12) "Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency.

(13) (a) "Policy" means a statement applying to persons or agencies that:

- (i) broadly prescribes a future course of action, guidelines, principles, or procedures; or
- (ii) prescribes the internal management of an agency.

(b) A policy is a rule if it conforms to the definition of a rule.

(14) "Publication" or "publish" means making a rule available to the public by ~~[printing]~~ including the rule or a summary of the rule in the bulletin.

(15) "Publication date" means the inscribed date of the bulletin.

(16) "Register" may include an electronic database.

~~[(16)]~~ (17) (a) "Rule" means an agency's written statement that:

- (i) is explicitly or implicitly required by state or federal statute or other applicable law;
 - (ii) has the effect of law;
 - (iii) implements or interprets a state or federal legal mandate; and
 - (iv) applies to a class of persons or another agency.
- (b) "Rule" includes the amendment or repeal of an existing rule.
- (c) "Rule" does not mean:
- (i) orders;
 - (ii) unenforceable policies;
 - (iii) internal management policies of the agency that do not restrict the legal rights of a class of persons or another agency;
 - (iv) the governor's executive orders or proclamations;
 - (v) opinions issued by the attorney general's office;
 - (vi) declaratory rulings issued by the agency according to ~~[the provisions of]~~ Section 63-46b-21 except as required by Section 63-46a-3; or
 - (vii) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3(6).

~~[(17)]~~ (18) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.

~~[(18)]~~ (19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Section 4. Section **63-46a-3** is amended to read:

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

- (1) Each agency shall:
 - (a) maintain a ~~[complete copy]~~ current version 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;

(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

(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] review 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 5. Section **63-46a-4** is amended to read:

63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the division to implement this chapter.

(2) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by

the agency's rules.

(3) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) [(†)] Rule amendments shall be marked with new language underlined and deleted language struck out.

~~[(ii) Alternatively, the repeal of an entire rule may be indicated by annotating the rule "repealed in its entirety" prominently on every page.]~~

(c) (i) The division shall publish the information required under Subsection (3) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(5) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments; and

(iii) other persons;

(e) the compliance cost for affected persons;

(f) how interested persons may [~~inspect~~] review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period;

and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

(6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (6) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

Section 6. Section **63-46a-6** is amended to read:

63-46a-6. Changes in rules.

(1) (a) To change a proposed rule already published in the bulletin, an agency shall file with the division:

(i) [~~a copy~~] the text of the changed rule; and

(ii) a rule analysis containing a description of the change and the information required by Section 63-46a-4.

(b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.

(c) The division shall publish the rule analysis for the changed rule in the bulletin.

(d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.

(e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the division within 120 days of publication of the last change in proposed rule.

(2) If the rule change is nonsubstantive:

(a) the agency need not comply with the requirements of Subsection (1); and

(b) the agency shall notify the division of the change in writing.

(3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63-46a-4.

Section 7. Section **63-46a-7** is amended to read:

63-46a-7. Exceptions to rulemaking procedure.

(1) All agencies shall comply with the rulemaking procedures of Section 63-46a-4 unless an agency finds that these procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;

(b) cause an imminent budget reduction because of budget restraints or federal requirements;

or

(c) place the agency in violation of federal or state law.

(2) (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the division:

(i) [~~a copy~~] the text of the rule; and

(ii) a rule analysis that includes the specific reasons and justifications for its findings.

(b) The division shall publish the rule in the bulletin as provided in Subsection 63-46a-4(3).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4(7).

(d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.

(3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63-46a-4.

Section 8. Section **63-46a-10** is amended to read:

63-46a-10. Division of Administrative Rules -- Duties generally.

(1) The Division of Administrative Rules shall:

(a) establish all filing, publication, and hearing procedures necessary to make rules under this chapter;

(b) record in a register the receipt of all agency rules, rule analysis forms, and notices of effective dates;

(c) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;

(d) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the division may publish the complete text of any proposed rule that the director determines is too long to print or too expensive to publish by reference to [~~a copy on file~~] the text maintained by the division;

(e) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;

(f) publish a digest[~~, at least monthly, summarizing~~] of all rules and notices [~~printed~~] contained in the most recent bulletin;

(g) publish at least annually an index of all changes to the administrative code and the

effective date of each change;

(h) print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter;

(i) distribute without charge [~~copies of~~] the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;

(j) distribute without charge [~~copies of~~] the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;

(k) distribute, at prices covering [~~all~~] publication costs, all paper rulemaking publications to all other requesting persons and agencies;

(l) provide agencies assistance in rulemaking; and

(m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures.

(2) The division may after notifying the agency make nonsubstantive changes to rules filed with the division or published in the bulletin or code by:

(a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;

(b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;

(c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(d) updating or correcting annotations associated with a section, part, rule, or title; and

(e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(3) In addition, the division may make the following nonsubstantive changes with the concurrence of the agency:

(a) eliminate duplication within rules;

(b) eliminate obsolete and redundant words; and

(c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.

(4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:

- (a) the affected code citation;
- (b) a brief description of the change; and
- (c) the date the change was made.

(5) All funds appropriated or collected for publishing the division's publications shall be nonlapsing.

Section 9. Section **63-46a-10.5** is amended to read:

63-46a-10.5. Repeal and reenactment of Utah Administrative Code.

(1) When the director determines that the Utah Administrative Code requires extensive revision and reorganization, the division may repeal the code and reenact a new code according to the requirements of this section.

(2) The division may:

- (a) reorganize, reformat, and renumber the code;
- (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63-46a-6; and

(c) require each agency to prepare a brief summary of all substantive changes made by the agency.

(3) The division may make nonsubstantive changes in the code by:

- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
- (b) eliminating duplication;
- (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
- (d) eliminating all obsolete or redundant words;
- (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering,

referencing, and wording;

(f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;

(g) updating or correcting annotations associated with a section, part, rule, or title; and

(h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.

(4) (a) To inform the public about the proposed code reenactment, the division shall publish in the bulletin:

(i) notice of the code reenactment;

(ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;

(iii) locations where the proposed reenactment of the code may be [~~inspected~~] reviewed; and

(iv) agency summaries of substantive changes in the reenacted code.

(b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:

(i) make [~~copies~~] the text of their reenacted rules available;

(A) for public [~~inspection~~] review during regular business hours; and

(B) in an electronic version; and

(ii) comply with the requirements of Subsection 63-46a-4(7).

(5) The division shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (3)(a).

(6) The division shall distribute complete [~~copies~~] text of the proposed code reenactment without charge to:

(a) state-designated repositories in Utah;

(b) the Administrative Rules Review Committee; and

(c) the Office of Legislative Research and General Counsel.

(7) The former code is repealed and the reenacted code is effective at noon on a date designated by the division that is not fewer than 45 days nor more than 90 days after the publication

date required by this section.

(8) Repeal and reenactment of the code meets the requirements of Section 63-46a-9 for a review of all agency rules.

Section 10. 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~~] the findings.

(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~~] chair 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 11. Section **63-46a-12.1** is amended to read:

63-46a-12.1. Judicial challenge to administrative rules.

(1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63-46a-3 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust [his] that person's administrative remedies by complying with the requirements of Section 63-46a-12 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust [his] that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63-46a-12; or

(iii) compliance with Section 63-46a-12 would cause the person irreparable harm.

(3) (a) [~~Besides~~] In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

- (i) the name and mailing address of the plaintiff;
- (ii) the name and mailing address of the defendant agency;
- (iii) the name and mailing address of any other party joined in the action as a defendant;

- (iv) ~~a copy~~ the text of the rule or proposed rule, if any;
 - (v) an allegation that ~~he~~ the person filing the complaint has either exhausted the administrative remedies by complying with Section 63-46a-12 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);
 - (vi) the relief sought; and
 - (vii) factual and legal allegations supporting the relief sought.
- (b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.
- (ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.
- (iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.
- (4) The district court may grant relief to the petitioner by:
- (a) declaring the rule invalid, if the court finds that:
 - (i) the rule violates constitutional or statutory law or the agency does not have legal authority to make the rule;
 - (ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
 - (iii) the agency did not follow proper rulemaking procedure;
 - (b) declaring the rule nonapplicable to the petitioner;
 - (c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
 - (d) ordering the agency to comply with Section 63-46a-3;
 - (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
 - (f) any combination of Subsections (4)(a) through (e).
- (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review

under Section 63-46a-12.

Section 12. Section **63-46a-17** is enacted to read:

63-46a-17. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.

Section 13. Section **63-46b-3** is amended to read:

63-46b-3. Commencement of adjudicative proceedings.

(1) Except as otherwise permitted by Section 63-46b-20, 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 63-46b-4 and 63-46b-5, or formally according to the provisions of Sections 63-46b-6 to 63-46b-11;

(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 ~~his~~ 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 ~~send~~ mail a copy ~~by mail~~ to each person known to have a direct interest in the requested agency action.

(c) An agency may, by rule, prescribe one or more ~~printed~~ 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 63-46b-5(1)(i) in addition to disclosure required by Subsection (3)(d)(ii) ~~[of this section]~~.

(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 63-46b-4 and 63-46b-5, with citation to the applicable rule authorizing that designation, or formally according to ~~[the provisions of]~~ Sections

63-46b-6 to 63-46b-11;

(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, applications for licenses filed under authority of Title 32A, Chapters 3, Packaging Agencies, 4, Public Liquor License, and 5, Private Club Liquor License are 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.

Section 14. Section **63-46b-6** is amended to read:

63-46b-6. Procedures for formal adjudicative proceedings -- Responsive pleadings.

(1) In all formal adjudicative proceedings, unless modified by rule according to Subsection 63-46b-3(5), the respondent, if any, shall file and serve a written response signed by the respondent or ~~his~~ 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 63-46b-3(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 response shall be filed with the agency and one copy shall be sent by mail to each party]~~ 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 ~~[papers]~~ documents permitted or required to be filed shall be filed with the agency and one copy shall be sent ~~[by mail]~~ to each party.

Section 15. Section **63-46b-9** is amended to read:

63-46b-9. 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 ~~he~~ 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 [~~sent by mail~~] 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.

Section 16. Section **63-46b-10** is amended to read:

63-46b-10. 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 [~~papers~~] 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 [~~his~~] the presiding officer's experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) [~~No~~] 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.

Section 17. Section **63-46b-12** is amended to read:

63-46b-12. Agency review -- Procedure.

(1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.

(b) The request shall:

- (i) be signed by the party seeking review;
- (ii) state the grounds for review and the relief requested;
- (iii) state the date upon which it was mailed; and
- (iv) be ~~[sent by mail]~~ mailed to the presiding officer and to each party.

(2) (a) Within 15 days of the mailing date of the request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the person designated by statute or rule to receive the response. [~~One copy of the response shall be sent by mail~~]

(b) The party who files a response under Subsection (2)(a) shall mail a copy of the response to each of the parties and to the presiding officer.

(3) If a statute or the agency's rules require review of an order by the agency or a superior agency, the agency or superior agency shall review the order within a reasonable time or within the time required by statute or the agency's rules.

(4) To assist in review, the agency or superior agency may by order or rule permit the parties to file briefs or other ~~[papers]~~ documents, or to conduct oral argument.

(5) Notice of hearings on review shall be mailed to all parties.

(6) (a) Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the agency or superior agency shall issue a written order on review.

(b) The order on review shall be signed by the agency head or by a person designated by the agency for that purpose and shall be mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute or rule permitting or requiring review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) the reasons for the disposition;

(vi) whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vii) a notice of any right of further administrative reconsideration or judicial review available to aggrieved parties; and

(viii) the time limits applicable to any appeal or review.

Section 18. Section **63-46b-13** is amended to read:

63-46b-13. Agency review -- Reconsideration.

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be [~~sent by mail~~] mailed to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Section 19. Section **63-46b-15** is amended to read:

63-46b-15. Judicial review -- Informal adjudicative proceedings.

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906; and

(iii) substantiated findings of abuse or neglect pursuant to Section 62A-4a-116.5.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains ~~[his]~~ the petitioner's principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

(i) the name and mailing address of the party seeking judicial review;

(ii) the name and mailing address of the respondent agency;

(iii) the title and date of the final agency action to be reviewed, together with a ~~[duplicate]~~ copy, summary, or brief description of the agency action;

(iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 20. Section **63-46b-23** is enacted to read:

63-46b-23. Electronic records and conversion of written records by governmental agencies.

A governmental agency may make rules regarding electronic records and conversion of written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government Agencies.