

UTAH ADMINISTRATIVE RULEMAKING ACT
AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

This act modifies the Utah Administrative Rulemaking Act. This act amends the definition of a rule and clarifies when an agency's written statement is determined to be a rule.

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

AMENDS:

63-46a-2, as last amended by Chapter 138, Laws of Utah 2001

ENACTS:

63-46a-3.5, Utah Code Annotated 1953

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

Section 1. 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:

(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 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)]~~ (13) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

~~[(15)]~~ (14) "Publication date" means the inscribed date of the bulletin.

~~[(16)]~~ (15) "Register" may include an electronic database.

~~[(17)]~~ (16) (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)]~~ (ii) implements or interprets a state or federal legal mandate; and

~~[(iv)]~~ (iii) 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]~~

(ii) an agency's written statement that applies only to internal management and that ~~do~~ does not restrict the legal rights of a public class of persons or another agency;

~~[(iv)]~~ (iii) the governor's executive orders or proclamations;

~~[(v)]~~ (iv) opinions issued by the attorney general's office;

~~[(vi)]~~ (v) declaratory rulings issued by the agency according to Section 63-46b-21 except as required by Section 63-46a-3; ~~[or]~~

~~[(vii)]~~ (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63-46a-3(6)~~[-]; or~~

(vii) an agency written statement that is in violation of any state or federal law.

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

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

Section 2. Section **63-46a-3.5** is enacted to read:

63-46a-3.5. Rules having the effect of law.

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63-46a-2, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the

requirements of this chapter is enforceable and has the effect of law.