

ADMINISTRATIVE RULES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill enacts provisions related to administrative rulemaking procedures.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ limits an agency's authority to makes rules that exceed a specified cost to implement unless a bill ratifies the agency's proposed rule.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-3-102, as last amended by Laws of Utah 2021, Chapter 344

63G-3-301, as last amended by Laws of Utah 2022, Chapter 443

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

Section 1. Section **63G-3-102** is amended to read:

63G-3-102. Definitions.

As used in this chapter:



28 (1) "Administrative record" means information an agency relies upon when making a
29 rule under this chapter including:

- 30 (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- 31 (b) the public comment received and recorded by the agency during the public
32 comment period;
- 33 (c) the agency's response to the public comment;
- 34 (d) the agency's analysis of the public comment; and
- 35 (e) the agency's report of its decision-making process.

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

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

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

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

47 (6) "Department" means the Department of Government Operations created in Section
48 [63A-1-104](#).

49 (7) "Director" means the director of the office.

50 (8) "Effective" means operative and enforceable.

51 (9) "Executive director" means the executive director of the department.

52 (10) "File" means to submit a document to the office as prescribed by the office.

53 (11) "Filing date" means the day and time the document is recorded as received by the
54 office.

55 (12) "Interested person" means any person affected by or interested in a proposed rule,
56 amendment to an existing rule, or a nonsubstantive change made under Section [63G-3-402](#).

57 (13) "Office" means the Office of Administrative Rules created in Section [63G-3-401](#).

58 (14) "Order" means an agency action that determines the legal rights, duties, privileges,

59 immunities, or other interests of one or more specific persons, but not a class of persons.

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

62 (16) "Publication" or "publish" means making a rule available to the public by
63 including the rule or a summary of the rule in the bulletin.

64 (17) "Publication date" means the inscribed date of the bulletin.

65 (18) "Register" may include an electronic database.

66 (19) (a) "Rule" means an agency's written statement that:

67 (i) is explicitly or implicitly required by state or federal statute or other applicable law;

68 (ii) implements or interprets a state or federal legal mandate; and

69 (iii) applies to a class of persons or another agency.

70 (b) "Rule" includes the amendment or repeal of an existing rule.

71 (c) "Rule" does not mean:

72 (i) orders;

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

75 (iii) the governor's executive orders or proclamations;

76 (iv) opinions issued by the attorney general's office;

77 (v) declaratory rulings issued by the agency according to Section [63G-4-503](#) except as
78 required by Section [63G-3-201](#);

79 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection
80 [63G-3-201](#)(6); or

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

82 (20) "Rule analysis" means the format prescribed by the office to summarize and
83 analyze rules.

84 (21) "Small business" means a business employing fewer than 50 persons.

85 (22) "Substantial fiscal impact rule" means a proposed rule that has an anticipated cost,
86 as described in Subsection [63G-3-301](#)(8)(d), of at least \$500,000 over a three-year period.

87 [~~(22)~~] (23) "Substantive change" means a change in a rule that affects the application
88 or results of agency actions.

89 Section 2. Section [63G-3-301](#) is amended to read:

90 **63G-3-301. Rulemaking procedure.**

91 (1) An agency authorized to make rules is also authorized to amend or repeal those
92 rules.

93 (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making,
94 amending, or repealing a rule agencies shall comply with:

- 95 (a) the requirements of this section;
- 96 (b) consistent procedures required by other statutes;
- 97 (c) applicable federal mandates; and
- 98 (d) rules made by the office to implement this chapter.

99 (3) Subject to the requirements of this chapter, each agency shall develop and use
100 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
101 affected by the agency's rules.

102 (4) (a) Each agency shall file the agency's proposed rule and rule analysis with the
103 office.

104 (b) Rule amendments shall be marked with new language underlined and deleted
105 language struck out.

106 (c) (i) The office shall publish the information required under Subsection (8) on the
107 rule analysis and the text of the proposed rule in the next issue of the bulletin.

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

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

112 (5) Before filing a rule with the office, the agency shall conduct a thorough analysis,
113 consistent with the criteria established by the Governor's Office of Planning and Budget, of the
114 fiscal impact a rule may have on businesses, which criteria may include:

115 (a) the type of industries that will be impacted by the rule, and for each identified
116 industry, an estimate of the total number of businesses within the industry, and an estimate of
117 the number of those businesses that are small businesses;

118 (b) the individual fiscal impact that would incur to a typical business for a one-year
119 period;

120 (c) the aggregated total fiscal impact that would incur to all businesses within the state

121 for a one-year period;

122 (d) the total cost that would incur to all impacted entities over a five-year period; and

123 (e) the department head's comments on the analysis.

124 (6) If the agency reasonably expects that a proposed rule will have a measurable
125 negative fiscal impact on small businesses, the agency shall consider, as allowed by federal
126 law, each of the following methods of reducing the impact of the rule on small businesses:

127 (a) establishing less stringent compliance or reporting requirements for small
128 businesses;

129 (b) establishing less stringent schedules or deadlines for compliance or reporting
130 requirements for small businesses;

131 (c) consolidating or simplifying compliance or reporting requirements for small
132 businesses;

133 (d) establishing performance standards for small businesses to replace design or
134 operational standards required in the proposed rule; and

135 (e) exempting small businesses from all or any part of the requirements contained in
136 the proposed rule.

137 (7) If during the public comment period an agency receives comment that the proposed
138 rule will cost small business more than one day's annual average gross receipts, and the agency
139 had not previously performed the analysis in Subsection (6), the agency shall perform the
140 analysis described in Subsection (6).

141 (8) The rule analysis shall contain:

142 (a) a summary of the rule or change;

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

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

145 (d) the anticipated cost or savings to:

146 (i) the state budget;

147 (ii) local governments;

148 (iii) small businesses; and

149 (iv) persons other than small businesses, businesses, or local governmental entities;

150 (e) the compliance cost for affected persons;

151 (f) how interested persons may review the full text of the rule;

- 152 (g) how interested persons may present their views on the rule;
- 153 (h) the time and place of any scheduled public hearing;
- 154 (i) the name and telephone number of an agency employee who may be contacted
155 about the rule;
- 156 (j) the name of the agency head or designee who authorized the rule;
- 157 (k) the date on which the rule may become effective following the public comment
158 period;
- 159 (l) the agency's analysis on the fiscal impact of the rule as required under Subsection
160 (5);
- 161 (m) any additional comments the department head may choose to submit regarding the
162 fiscal impact the rule may have on businesses; and
- 163 (n) if applicable, a summary of the agency's efforts to comply with the requirements of
164 Subsection (6).
- 165 (9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
166 summary that generally includes the following:
 - 167 (i) a summary of substantive provisions in the repealed rule which are eliminated from
168 the enacted rule; and
 - 169 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 170 (b) The summary required under this Subsection (9) is to aid in review and may not be
171 used to contest any rule on the ground of noncompliance with the procedural requirements of
172 this chapter.
- 173 (10) A copy of the rule analysis shall be mailed to all persons who have made timely
174 request of the agency for advance notice of the agency's rulemaking proceedings and to any
175 other person who, by statutory or federal mandate or in the judgment of the agency, should also
176 receive notice.
- 177 (11) (a) Following the publication date, the agency shall allow at least 30 days for
178 public comment on the rule.
- 179 (b) The agency shall review and evaluate all public comments submitted in writing
180 within the time period under Subsection (11)(a) or presented at public hearings conducted by
181 the agency within the time period under Subsection (11)(a).
- 182 (12) (a) Except as provided in Sections [63G-3-303](#) and [63G-3-304](#), a proposed rule

183 becomes effective on any date specified by the agency that is:

184 (i) no fewer than seven calendar days after the day on which the public comment
185 period closes under Subsection (11); and

186 (ii) no more than 120 days after the day on which the rule is published.

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

189 (c) The notice of effective date may not provide for an effective date before the day on
190 which the office receives the notice.

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

193 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
194 not filed with the office within 120 days after the day on which the rule is published.

195 (13) (a) Except as provided in Subsection (13)(d) or for a rule described in Subsection
196 (15), before an agency enacts a rule, the agency shall submit to the appropriations
197 subcommittee and interim committee with jurisdiction over the agency the agency's proposed
198 rule for review, if the proposed rule, over a three-year period, has a fiscal impact of more
199 than[~~±~~]

200 [~~(i)~~] \$250,000 to a single person[~~±~~ or].

201 [~~(ii)~~] ~~\$7,500,000 to a group of persons.~~

202 (b) An appropriations subcommittee or interim committee that reviews a rule
203 submitted under Subsection (13)(a) shall:

204 (i) before the review, directly inform the chairs of the Administrative Rules Review
205 and General Oversight Committee of the coming review, including the date, time, and place of
206 the review; and

207 (ii) after the review, directly inform the chairs of the Administrative Rules Review and
208 General Oversight Committee of the outcome of the review, including any recommendation.

209 (c) An appropriations subcommittee or interim committee that reviews a rule submitted
210 under Subsection (13)(a) may recommend to the Administrative Rules Review and General
211 Oversight Committee that the Administrative Rules Review and General Oversight Committee
212 not recommend reauthorization of the rule in the omnibus legislation described in Section
213 [63G-3-502](#).

214 (d) The requirement described in Subsection (13)(a) does not apply to:

215 (i) the State Tax Commission; or

216 (ii) the State Board of Education.

217 (14) (a) As used in this Subsection (14), "initiate rulemaking proceedings" means the
218 filing, for the purposes of publication in accordance with Subsection (4), of an agency's
219 proposed rule that is required by state statute.

220 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
221 day on which the statutory provision that specifically requires the rulemaking takes effect,
222 except under Subsection (14)(c).

223 (c) When a statute is enacted that requires agency rulemaking and the affected agency
224 already has rules in place that meet the statutory requirement, the agency shall submit the rules
225 to the Administrative Rules Review and General Oversight Committee for review within 60
226 days after the day on which the statute requiring the rulemaking takes effect.

227 (d) If a state agency does not initiate rulemaking proceedings in accordance with the
228 time requirements in Subsection (14)(b), the state agency shall appear before the legislative
229 Administrative Rules Review and General Oversight Committee and provide the reasons for
230 the delay.

231 (15) (a) If the rule analysis of a proposed rule indicates the rule is a substantial fiscal
232 impact rule the rule is not effective until a bill that ratifies the rule takes effect.

233 (b) The agency shall submit the proposed substantial fiscal impact rule to the
234 Administrative Rules Review and General Oversight Committee at least 30 days before the day
235 on which the next annual general session begins.

236 (c) The Administrative Rules Review and General Oversight Committee shall submit
237 the proposed substantial fiscal impact rule to each member of the Legislature as soon as
238 practicable.

239 (d) Any member of the Legislature may introduce legislation to ratify the proposed
240 substantial fiscal impact rule.

241 (e) The proposed substantial fiscal impact rule is exempt from Subsections
242 63G-3-301(12)(a) and 63G-3-301(12)(e).

243 (f) The agency may not file a notice of effective date with the Office of Administrative
244 Rules before a bill ratifying the proposed substantial fiscal impact rule becomes effective.

245 (g) The proposed substantial fiscal impact rule automatically lapses:
246 (i) the day after the day on which the Legislature adjourns the annual general session
247 described in Subsection (15)(b) if the Legislature fails to pass a bill ratifying the proposed rule;
248 or
249 (ii) the day after the last day on which the Legislature could hold a veto override
250 session if the governor vetoes the bill ratifying the substantial fiscal impact bill.
251 (h) (i) The proposed substantial fiscal impact rule takes effect on the date the agency
252 specifies in the notice of effective date.
253 (ii) A date described in Subsection (15)(h)(i) shall be at least 150 days after the day on
254 which the Legislature adjourns the general session sine die.
255 (i) This Subsection (15) does not apply to:
256 (i) an emergency rule made under Section [63G-3-304](#);
257 (ii) a proposed rule that regulates an issue that a provision of Utah's constitution vests
258 the agency with specific constitutional authority to regulate; or
259 (iii) a proposed rule an agency makes to implement legislation if the anticipated cost
260 stated in the legislation's fiscal note is greater than or equal to the amount of the anticipated
261 cost of the proposed rule.
262 Section 3. **Effective date.**
263 This bill takes effect on May 1, 2024.