



Utah Administrative Rulemaking Process

The path a Proposed Rule Takes

The rulemaking process for a Proposed Rule can be logically divided into seven major phases or periods: authorization, preproposal, proposal, comment period, comment consideration, adoption, and enforcement. Publication of a rule—once when it is proposed, and once again after it is made effective—serves as a significant milestone in the rulemaking process. This basic sequence of the rulemaking process for a Proposed Rule is outlined below. "Division" means the Division of Administrative Rules. For process requirements, see Utah Code, Title 63G, Chapter 3; and Utah Administrative Code, Title R15.



Authorization

- An agency must be authorized to regulate by the Utah Constitution or state statute. The Utah Constitution, state statute, federal law, or court order may permit or require rules (Subsection 63G-3-102(16) and Section 63G-3-201).

Preproposal Phase

- The agency identifies a need for a new rule or a change to an existing rule. The need for a rule may come from comments received from the public; new legislation; an adjudication establishing a principle of law; a petition for rulemaking, etc.
- The agency may obtain assistance from the attorney general (Subsection 63G-3-201(9)).
- The agency may create and maintain an "administrative record" (defined in Subsection 63G-3-102(1)) to document its decision-making process (Sections 63G-3-602(3)(b) and 63G-3-602(4)(a)(ii)).
- The agency involves affected persons in drafting the rule (Subsection 63G-3-301(3)).
- If the agency expects the rule to have a measurable negative fiscal impact on small business, the agency conducts a small business impact reduction analysis (Subsection 63G-3-301(6)).
- The agency's department head (typically a member of the Governor's Cabinet, or a person at an equivalent level) comments on the fiscal impacts the rule may have on businesses (Subsection 63G-3-301(5)).
- The agency prepares a Proposed Rule.
 - The agency drafts the rule text marking it to show additions with underlining and deletions with strike-out surrounded by brackets (Section R15-4-9).
 - The agency completes a rule analysis (Subsection 63G-3-301(8)).
- The agency may prefile the rule with the Governor's Office of Planning and Budget.
- The agency reviews the rule analysis with any board or commission with rulemaking or advisory authority (EO/013/2011).
- The agency sends the Proposed Rule to its departmental administrative rules coordinator (EO/013/2011).

Proposal Phase

- The agency files the Proposed Rule with the Division of Administrative Rules (Subsection 63G-3-301(4)).
- The Division of Administrative Rules provides a copy of the rule to the Governor's Office of Management and Budget (GOMB) for executive branch review (EO/013/2011).

- GOMB, as the agency's designee, provides a copy to the Governor's Office of Economic Development (EO/013/2011).
- The agency sends a copy of the rule analysis to persons: (1) who have requested notice; (2) who the agency is required by law to notify; and (3) who, in the judgment of the agency, should be notified (Subsection 63G-3-301(10)).
- The Division of Administrative Rules reviews the rule for completeness and compliance with the Utah Administrative Rulemaking Act and related rules (Subsection 63G-3-402(1)(n)).

Bulletin Publication

The Division of Administrative Rules publishes the Proposed Rule in the Utah State Bulletin available from <http://www.rules.utah.gov/publicat/bulletin.htm> (Subsection 63G-3-402(1)(d)).

Comment Period

- The Division provides the Administrative Rules Review Committee with a copy of the Utah State Bulletin containing each Proposed Rule (Subsection 63G-3-501(2)).
- A person may submit public comment regarding a Proposed Rule directly to the agency during the comment period.
- The agency accepts public comment during the period it designates on the rule analysis (no fewer than 30 days and no more than 113 days after publication of the rule) (Subsection 63G-3-301(11)).
- The Administrative Rules Review Committee must review the agency's rule and may ask the agency to appear before the committee (Section 63G-3-501).
- A person may request that the agency hold a public hearing about a specific Proposed Rule (Subsection 63G-3-302(2)).
- The agency:
 - may hold a hearing at its option; OR
 - must hold a hearing when requested by: (1) another state agency; (2) 10 interested persons; or (3) an interested association having not fewer than 10 members (The request for a hearing must be made within 15 days of publication of the rule in the Bulletin, must be held before the rule is made effective, and must be no fewer than 7 nor more than 30 days after the agency received the request.); OR
 - must hold a hearing when required by other law (Subsection 63G-3-302(1) through (3)).
- A person may request that the agency prepare a small business impact reduction analysis if one was not previously prepared by the agency (Subsection 63G-3-301(7)).

Comment Consideration

- The agency must take at least seven days following the public comment period to consider the public comment it has received (Subsection 63G-3-301(11) and (12)).

Adoption Phase

- The agency notifies the Division of Administrative Rules of the rule's effective date (no fewer than 7 calendar days after the close of the public comment period, nor more than 120 days after the publication of the rule in the Bulletin) (Subsection 63G-3-301(12)).
- The Division publishes notice of the effective date in the next issue of the Utah State Bulletin (Subsection 63G-3-301(12)).
- If the Division of Administrative Rules does not receive a Notice of Effective Date on or before the 120th day, the rule lapses. To make the rule enforceable, the agency must start the rulemaking process over again (Subsection 63G-3-301(12)).

Code Publication

The Division of Administrative Rules codifies and publishes the effective rule in the Utah Administrative Code available at <http://www.rules.utah.gov/publicat/code.htm> (Subsection 63G-3-402(1)(e)).

Enforcement Phase

- The agency enforces the rule.
- The Administrative Rules Review Committee may ask the agency to appear before the committee (Section 63G-3-501).
- A person may petition the agency to change or repeal an existing rule, or enact a new rule (Section 63G-3-601).
- A person aggrieved by a rule may seek judicial review of that rule after exhausting administrative remedies (Section 63G-3-602).

Notes

"Agency" means "each state board, authority, commission, institution, department, division, officer, or other state government entity . . . 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." "Agency" does not include the legislative or judicial branches, or state political subdivisions (Subsection 63G-3-102(2)).

"Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency (Subsection 63G-3-102(12)).