

Rulewriting Manual for Utah

Rulewriters

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Rulewriting Manual for Utah: Rulewriters

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Preface

For many years the *Rulewriting Manual for Utah* was designed to be a one-stop reference for administrators and rulewriters alike. It contained an explanation of administrative law and administrative rulemaking. It provided a brief history of rulemaking in Utah. It discussed the role of the legislature in reviewing agency rulemaking.

While valuable, the scope of the information provided in previous editions was far more than necessary. The Division of Administrative Rules has accordingly opted for a change in publication. The *Rulewriting Manual for Utah* will become three separate manuals, each dealing with a different part of administrative rulemaking, and each written for a specific audience:

- *Rulewriting Manual for Utah: Administrators*: This publication contains much of the information regarding rulemaking history and law in Utah, as well as the role of the Legislature.
- *Rulewriting Manual for Utah: Rulewriters*: This publication contains the style section and a brief discussion on certain practical aspects of the rulemaking process.
- *Rulewriting Manual for Utah: Rulewriting and eRules*: This publication will be a users' manual for the eRules software used for submitting rulemaking actions for publication.

This new approach does not lose sight of its history. As always, the Division of Administrative Rules is indebted to all those who have made contributions to the *Rulewriting Manual for Utah*. We are grateful for the work of KayCee McGuinly and Robin L. Riggs for their efforts in preparing the first edition. Dr. William S. Callaghan, the first director of the Division of Administrative Rules, and Dr. Dalmas Nelson of the University of Utah made significant contributions in subsequent editions. We are also grateful to staff at the Office of Legislative Research and General Counsel, from whose *Legislative Drafting Manual* we have liberally borrowed.

Lastly, we are grateful to the current director and staff at the Division of Administrative Rules: Kenneth A. Hansen, Nancy Lancaster, Chris Fawcett, Sophia Manousakis, and Mike Broschinsky, who have spent time and effort to create this new version of the *Rulewriting Manual for Utah*.

Chapter 1. Rulewriting Style

In matters of grave importance, style, not sincerity, is the vital thing.
--Oscar Wilde

General Principles

Generally

This chapter provides the rulewriter guidance in composing, drafting, organizing, and formatting rules. Read and re-read this chapter before beginning to write. Major portions of this chapter have been adapted from the Office of Legislative Research and General Counsel's Legislative Drafting Manual, State of Utah, 2005 edition, Chapters 1 and 7. This chapter incorporates most of the same standards applied in writing statutes.

Good Drafting

Organization

Before composing an administrative rule, a rulewriter should identify the authority for the rule; determine the purpose, intended results, or objectives of the rule; define the words to be used; and outline the organization of the rule.

There is no single approach to outlining the organization of a rule. Following the construction of statutes, however, will usually work well. Beginning with a general purpose section, followed by definitions of terms used throughout the rule, before writing the body of the rule, is a common rulewriting method. The body, as in a statute, should be divided by specific subjects the rule addresses, each a section of the rule. Good organization often makes a difficult rule comprehensible, and preparing a complete outline will facilitate good organization.

Purpose

The rulewriter should keep in mind that the basic purpose of an administrative rule is to facilitate carrying out statutory mandates. The rule and consequent agency action must be based on statute (or a constitutional mandate). It may also be based on federal mandate, legislative intent language (if any), the governor's policy, direction from federal or state court, or the agency mission (as defined in or extrapolated from statute).

Fully understanding the intended results of the rule is critical to its effective composition. The rulewriter should be able to identify clearly whether the intent is to restrict activities or provide a benefit under certain conditions, or both; and be able to state the conditions under which the restrictions apply or benefits are bestowed.

Principles of Style

Following the principles of drafting enables a rulewriter to avoid ambiguity and to write in "plain English." The three basic principles of drafting are:

- consistency;
- simplicity; and
- clarity.

Consistency requires that the same form be used throughout an agency's rules to avoid varying interpretations that may result from divergent styles and construction. Unlike literary composition, a rulewriter avoids unnecessary variation in sentence form, even to the point of monotony. Similarly, a word, especially if the word is included in a definition section, should be used with the same meaning throughout an agency's rules. Avoid synonyms or synonymous expressions.

The principle of simplicity is reflected in dignified but simple and direct regulatory language. Clarity similarly requires a rulewriter to avoid abstract or vague language so that courts and others implementing a rule can understand the directives of the agency. All three principles require common terminology and simple phrasing. The following are basic skills that can be used in achieving these overriding principles.

Careful Choice of Language

An effective rulewriter uses familiar language that expresses the intended meaning according to common and approved usage. Terms used in drafting should be easily understood, with those few exceptions defined. A balance must be struck between excessive technical terms and an inappropriate conversational tone. Technical terms may be used if properly defined. Rules should not be overly simplistic or informal.

- Use short words and sentences. When possible, keep sentences brief using words of three syllables or fewer.
- If it is possible to omit a word and retain the desired meaning, omit the word.
- Do not use jargon, slang, overly technical language, “legalese,” or foreign phrases (including Latin legal terms) unless the word or phrase is a term of art or its use is supported by substantial case law.
- Do not use abstract words. Regulatory language should be precise using simple and concrete terms.

DO NOT SAY:	IF YOU MEAN:
firearm	handgun
vehicle	automobile
aircraft	helicopter

- Do not use superfluous or indefinite words. These type of words include “real,” “actual,” “true,” “duly,” “whatsoever,” “hereby,” and “therewith.”
- Do not use provisos. A proviso, such as “provided, that,” is archaic and creates confusion. Rearranging a sentence generally eliminates the need for a proviso. For further discussion of provisos, see the section called “Provisos”.
- Avoid using indefinite pronouns as references. Indefinite pronouns can result in confusion as to whom a condition or duty applies. If a pronoun could refer to more than one person in a sentence, repeat the title of the person. Use of pronouns also raises issues regarding drafting in gender neutral language. For further discussion of gender neutral drafting, see the section called “Gender Neutral Language”

DO NOT SAY:	SAY:
After the executive director appoints the director, he shall administer this rule.	After the executive director appoints the director, the director shall administer this rule.

- Do not use different words to denote the same meaning. The same word, especially if included in a definition section, should be used with the same meaning throughout a rule and throughout any related existing regulatory provisions.

DO NOT SAY:	SAY:
An owner of an automobile shall register the owner's car with the division.	An owner of a motor vehicle shall register the motor vehicle with the division.

- Do not use the same word to denote different meanings.

DO NOT SAY:	SAY:
Each tank shall have a 10 gallon fuel tank.	Each tank shall have a 10 gallon container of fuel.

Appropriate Structure for Rules

Rules should be structured so that the rule is logical and accessible. The arrangement and parallel construction of sentences or phrases become critical to the structure of a rule.

- Sections similar in substance should be similarly arranged and outlined. Parallel structure improves accessibility and promotes consistency. Sentences should be arranged so that parallel ideas look parallel, especially in a list.

DO NOT SAY:	SAY:
(1) The commission shall:	(1) The commission shall:
(a) receive applications;	(a) receive any application;
(b) it sets fees; and	(b) set fees; and
(c) approving licenses.	(c) approve a license.

- Express parallel points using numbered clauses. For example, if there are multiple conditions or exceptions, a rulewriter should consider placing all exceptions in a separate subsection and refer to this subsection before stating the general rule. The multiple exceptions would appear in the subsection as a list of numbered clauses (for more on exceptions, see the section called “Exceptions”).

Example: ^a
(a) This section applies, according to the provisions thereof, except to the extent that there is involved—
(1) a military or foreign affairs function of the United States; or
(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

^aSee 5 USC 553

- Avoid placing two or more prepositional phrases together. Word order becomes confusing when prepositional phrases are placed together.

DO NOT SAY:	SAY:
Each applicant for a license in this state...	Each license applicant from this state...
	OR:
	Each applicant for a license to practice in this state...

- Write a rule as if it is continuously in effect, not as if it applies only at a point in time. This requires drafting in the present tense and avoiding words such as “now” or “present.”
- Use a simple and consistent paragraph structure within a section. Long sentences or phrases should be divided into shorter, more readable paragraphs when amending an existing rule or writing a new rule. Do not create “dangling” paragraphs, i.e., a paragraph where it is unclear whether the paragraph applies to the last clause of a list or to multiple clauses in the list.
- Be careful to only modify a word that is intended to be modified. This generally arises when a provision includes multiple terms only some of which are subject to a modification.

DO NOT SAY:	SAY:
(1) A person may not own a reptile, a canine, or a feline defined as an endangered species under...	(1) A person may not own: (a) a reptile; (b) a canine; or (c) a feline that is defined as an endangered species under...
	SAY, IF YOU MEAN TO MODIFY ALL CATEGORIES:
	(1) A person may not own any of the following that is defined as an endangered species under...: (a) a reptile; (b) a canine; or (c) a feline...

Avoid “noun sandwiches.” Noun clusters can be avoided by using more prepositions.

DO NOT SAY:	SAY:
Water resources loan plan	A loan plan for water resources

Avoid the use of split infinitives. Although there is nothing wrong with them, the prejudice against them is strong.

DO NOT SAY:	SAY:
If it is necessary under this section to promptly reply...	If it is necessary under this section to reply promptly...

Basic Drafting Tools

A good reference library is a valuable resource to a rulewriter. The following reference documents are recommended for anyone involved in drafting rules.

- Rulewriting Manual for Utah (2005)
- Utah Constitution (available from the Legislature's web site)
- Utah Code (also available from the Legislature's web site)
- Utah Administrative Code (available from the Division of Administrative Rules web site)
- a comprehensive general dictionary
- Black's Law Dictionary
- a comprehensive thesaurus

Quoting Statute in Rule

At times we are tempted to quote statute in rule, either because we believe it will add weight to what we say, or because we want to demonstrate conclusively that we really do have the authority to write this particular rule. There may be any number of other reasons why we want to quote statute in rule. *Don't do it.*

Let's look at some reasons why quoting statute in rule is a bad idea.

It is redundant. Quoting statute in rule results in printing the exact same legal requirements in two codes when one will suffice. Doing so imposes at the least a time burden on careful readers who go to the effort of comparing the repeated statutory language in rule to the language of the statute itself. Trying to create a one-stop text where *all* material can be found ultimately doesn't work, and can possibly result in other problems (see “It creates potential for other legal problems” below).

It has no legal purpose. There is no legal purpose to be found in repeating language that is already legally enforceable.

It misses the point of what a rule is supposed to be. A rule is a legal tool intended to be used by an agency to implement or interpret a statute. It is not intended to be a users' manual. This purpose is better accomplished by, well, a *users' manual*. Agencies may certainly create guidance documents to help their regulated constituents navigate both rule and statute.



Note

Remember that guidance or interpretive documents are *not* regulatory in nature, and do not carry the weight of rule. Enforceable rules must go through the rulemaking process (see Section 63-46a-3.5).

It pulls the agency into the regulatory oversight process. The Governor's Office of Planning and Budget (GOPB) reviews rules and routinely tells agencies not to quote statute in rule. The Legislature has a special committee—the Administrative Rules Review Committee (ARRC)—that also reviews rules on a regular basis. The ARRC advises agencies not to quote statutes in rules. While agencies can benefit from comments from both GOPB and ARRC, it seems less than helpful to encourage these comments by doing something they have asked us *not* to do. Potentially, there may be other implications for the agency and the rule as well. Both GOPB and ARRC review is not limited to language being changed, but also includes the review of existing language.

It creates potential for other legal problems. If an agency quotes statute in rule it is then required to be hyper-vigilant to ensure that it matches the language of the statute *exactly*. Additionally, after every session, someone must review the language again to verify that no changes have been made. Mismatched

quotations result in confusion that may result in a challenge. It also means that any time the legislature makes a change, even a nonsubstantive change, to the text of the statute, the agency is required to go through the rulemaking process to synchronize the texts. Of course, any legislative session requires regulators to go back and review rules and make certain that cross references are still correct. It just means that we are doing this at a much more detailed level than would otherwise be necessary.

It increases unnecessarily the size of the administrative code. Politicians in both the legislative and executive branches tend to point to the size of codes, policy and procedure manuals, and like materials as a tool for showing what is wrong with government. Quoting statute in rule unnecessarily increases the size of the code at the cost of making it bigger, and thus an object of criticism.

In summary, should you feel tempted to quote statute in rule, *don't do it*.

Tense

In addition to the general principles of consistency, clarity, and simplicity, a rulewriter should follow other basic drafting principles. It is essential for a rulewriter to draft a rule in present tense and to clearly express time relationships.

Present Tense

A rule continually “speaks” to the person reading the rule. Therefore, a rule should be written in the present indicative, not in the subjunctive; and in the present perfect, not in the future perfect.

DO NOT SAY:	SAY:
A person who violates this rule shall be guilty...	A person who violates this rule is guilty...
If the director shall have been notified...	If the director has been notified...

The term “shall” should not be used except to impose an affirmative duty on someone. For a more complete discussion of this issue, see the section called “Structure and Word Selection”.

Example:
The employer shall keep records.

There is generally no need to write in any tense other than the present tense. See Subsection 68-3-12(1)(d) (words used in statutes in the present tense include the future). One exception to this principle occurs in expressing time relationships.

Time Relationships

If a time relationship must be expressed, present facts may be used in conjunction with past facts.

Example:
Any person who has committed a felony may not apply for a permit.

Combining present facts with future facts is generally not appropriate because the application of the law does not occur until the future fact happens (for example, “Any person who will commit a felony may not apply for a permit.”). This type of rule has obvious difficulties.

Voice

Active Voice

Whenever possible, use the active voice rather than the passive voice. A rulewriter's use of the active voice forces the rulewriter to name an actor as the subject of a sentence. Use the passive voice only if no identified principals are involved or if the active voice would be awkward.

DO NOT SAY:	SAY:
A board shall be appointed to enforce this rule.	The executive director shall appoint a board to enforce this rule.

Action Verbs

Whenever possible, use action verbs instead of participles, infinitives, gerunds, or other noun or adjective verb forms. Action verbs are shorter and more direct.

DO NOT SAY:	SAY:
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
is applicable	applies
make an appointment of	appoints
make application	apply
make payment	pay
make provision for	provide for

Positive Voice

Write positively.

DO NOT SAY:	SAY:
The director may not appoint members other than those with three years experience.	The director shall appoint members with at least three years experience.

Avoid several negatives in one sentence.

DO NOT SAY:	SAY:
The project may not be approved unless all requirements are met.	The project may be approved only if all requirements are met.

Case

Singular and Plural

There is generally no need to write in the singular and the plural tense. See Subsection 68-3-12(1)(b) (singular words used in statutes include the plural and the plural includes the singular). Phrases like “person or persons” or “person(s)” are unnecessary. Do not interchangeably use the singular and the plural (remember consistency in the section called “Principles of Style”). Use the singular even if the statute encompasses both. Using the singular avoids the problem of whether a law applies separately to each member of a class or to the class as a whole. If the agency intends to have the rule only read in the singular, the rulewriter should make that express in regulatory language.

DO NOT SAY:	SAY:
The division shall issue licenses to applicants qualified as dentists and dental hygienists.	(1) The division shall issue a license to an applicant who qualifies as a dentist. (2) The division shall issue a license to an applicant who qualifies as a dental hygienist.
	UNLESS YOU MEAN:
	The division shall issue a license to an applicant who qualifies as both a dentist and a dental hygienist.

Third Person

When drafting a rule, the rulewriter should use the third person, “person”; and not use the first person “I,” or the second person “you.”

Compound Terms

If a compound word is plural, the significant word takes the “s.”

SINGULAR:	PLURAL:
attorney general	attorneys general
corporation counsel	corporation counsels
lieutenant governor	lieutenant governors
notary public	notaries public
right-of-way	rights-of-way

Gender Neutral Language

Gender based distinctions are rarely appropriate and gender neutral language should be used when possible. However, Subsection 68-3-12(1)(c) provides that words in one gender comprehend the other gender. Therefore, phrases such as “he or she” are unnecessary in drafting rules.

In drafting gender neutral language, the rulewriter can use the following techniques to avoid using gender specific pronouns and to avoid awkward or artificial wording.

- Repeat the subject of the sentence or the word that would have been the pronoun's antecedent reference. In some instances, the possessive noun may be repeated.

DO NOT SAY:	SAY:
A person shall receive an exemption if he submits the application.	A person shall receive an exemption if the person submits the application.

- Substitute a noun for the pronoun.

DO NOT SAY:	SAY:
If he submits an application, the division shall consider the application.	If the individual submits an application, the division shall consider the application.

- Omit the pronoun or the phrase that would include the pronoun, if the pronoun or phrase is not essential.

DO NOT SAY:	SAY:
The board chair shall hold his office until a successor is appointed.	The board chair shall hold office until a successor is appointed.

- Use an article such as “a,” “an,” “the,” or “that” instead of the pronoun.

DO NOT SAY:	SAY:
The person shall submit his application.	The person shall submit an application.

- Reconstruct or rewrite the sentence to avoid the need for a pronoun.

Use a relative clause.	<p>DO NOT SAY: If an applicant has been licensed in another state, he shall submit a verified application.</p> <p>SAY: An applicant <i>who has been licensed in another state</i> shall submit a verified application.</p>
Use a modifier without an expressed subject.	<p>DO NOT SAY: If the commissioner finds that the sampling frequency can be safely reduced, he may order it reduced as specified in Subsection (2).</p> <p>SAY: <i>Upon finding</i> that the sampling frequency can be safely reduced, <i>the commissioner</i> may order it as specified in Subsection (2).</p>
Remove the nominal.	<p>DO NOT SAY: A person who imports or has in his possession dangerous drugs commits a first-degree felony.</p> <p>SAY: A person who imports or <i>possesses</i> dangerous drugs commits a first-degree felony.</p>

The following table contains examples of preferred gender neutral terms.

DO NOT SAY:	SAY:
brother, sister	sibling
chairman, chairwoman	chair
clergyman	minister, member of the clergy
committeeman	committee member
crewman	crew member
daughter, son	child, children
draftsman	drafter

DO NOT SAY:	SAY:
enlisted man	enlisted personnel
ex-serviceman	veteran
father, mother	parent
female, male, man, woman	person
fireman	firefighter
fisherman	fisher
foreman	supervisor
grandfather, grandmother	grandparent
husband, wife	spouse
husband and wife	married couple
layman	lay person
mailman	mail carrier
man-hours	hours worked, worker hours
mankind	humanity
man-made	artificial, synthetic
manpower	personnel, staff
nurseryman	nursery operator
policeman	peace officer, police officer, sheriff, trooper
serviceman	military personnel
warehouseman	warehouse keeper
widow, widower	surviving spouse
workman, working men	worker, workers

Punctuation

Generally

Punctuation is an important part of rulewriting. It should be used properly and uniformly. A rulewriter should know the principles of punctuation as well as the rulewriter knows the principles of construction and format.

All rules should be drafted according to generally accepted standards of punctuation. Many of these standards are discussed in this section.

Colons

Next to commas, colons and semicolons are perhaps the most overused and misused punctuation in legal drafting. The following are basic principles that should be followed in using colons.

- Use a colon to precede a series of separately listed subsections.
- Use a colon to precede a series of complete sentences only when drafting definitions.

Semicolon

The following are basic principles that should be followed in using semicolons.

Series

The most common proper use of a semicolon is at the end of an enumeration in separate paragraphs that are dependent clauses, incomplete sentences, either in the conjunctive or disjunctive, preceded by a colon, and not capitalized.

Example:
(1) A person does not violate the licensing terms under this section if the person:
(a) receives a certificate of authority under Subsection R156-5-5(2); and
(b) displays the certificate of authority at the person's principal place of business.

A rulewriter should not write lists in which sentences are attached to phrases or clauses. If there is only one inserted sentence, the rulewriter can move the sentence to the end of the list or convert the sentence into a dependent clause. It may be necessary to turn the list into a list of sentences so that the inserted sentence can directly follow the item it explains. If the list is converted to a list of sentences, then the introductory phrase should also be a sentence and not a phrase followed by a colon.

If the series following the introduction consists of complete sentences:

DO NOT SAY:	SAY:
(1) The commission may not... except as follows:...	(1) Except as provided in this Subsection (1), the commission may not...

The one exception to the general rule that complete sentences should not follow a colon is when the rulewriter is defining terms either in a section devoted primarily to definitions or in a subsection of a section. Definitions should be drafted as complete sentences introduced by a dependent clause regardless of whether the definitions are placed in a separate section or in a subsection of a section.

Example:
As used in this rule:
(1) "Employer" means the state of Utah.
(2) "Office" means the State Retirement Office.
(3) "Termination date" means June 30, 2006, 12 midnight.

Other Uses of Semicolons

In addition to use in series, semicolons are also used in drafting to separate:

- two main clauses that are not joined by a conjunction; or
- elements, such as items in a series, which themselves contain commas.

In circumstances involving the points above, it is usually clearer to use separate sentences than to combine ideas using semicolons. For this same reason, the rulewriter should avoid the use of the phrases "provided,

however” and “provided, further,” and other provisos. In the rare case when the use of the phrase cannot be avoided, it should be preceded by a semicolon.

Often, the rulewriter will come across existing rule text that includes colons and semicolons that do not conform to these principles. The rulewriter should amend existing rule text to make it conform with proper paragraphing style if those changes would not cloud the meaning of the proposed rule.

Commas

Commas are inserted to separate a series of words, phrases, or clauses. When used properly, they are a useful writing tool. However, the overuse or incorrect use of commas is the most common error in drafting. Two general principles should always be observed:

- Commas should not be used if they interrupt the thought of the sentence; and
- Commas should be used if they make the meaning more clear.

In addition to these general principles, the rulewriter should use the following specific standards.

1. Use a comma to separate words and phrases in a series, including the word or phrase immediately before a conjunction. This is known as a “serial” comma.

Examples:
oil, gas, or minerals
Data obtained pursuant to this section is not subject to civil, criminal, judicial, administrative, or legislative proceeding.
The division shall participate with local government agencies in the development of a health statistics system, the production of comparable and uniform health information, and the implementation of health-related policies.

2. Use a comma between adjectives preceding a noun if they are coordinating qualifying words.

Example:
The budget document shall be a brief, simple, uniform report.

3. Use a comma to set off nonrestrictive appositives. These are nouns or pronouns placed next to other nouns or pronouns that add nonessential details about the noun or pronoun.

Examples:
The director, who is appointed by the governor, shall keep and maintain records.
The director, unless ill, shall report annually to the executive director.

Use a comma to set off a nonrestrictive adjective clause. This is a clause that describes but does not limit the meaning of something.

Example:
The fund account, which contains revenues from the fees collected, shall be administered by the county treasurer.

Do not use a comma to set off a restrictive adjective clause. This is a clause that is needed to make the meaning clear.

Examples:

The fund account that contains revenues from the fees collected shall be administered by the division.
--

The person who serves as the executive secretary of the commission may hire additional clerical assistance as necessary.
--

“Which” is used when a relative clause conveys additional information or is parenthetical. “That” is used when the clause is restrictive. For further discussion of how to use “that” and “which”, see the section called “That, Which”.

Use a comma between the parts of a compound sentence when punctuation is needed for clarity or to provide an additional idea. A compound sentence contains two or more independent clauses connected by a conjunction.

Example:

The division shall fund the program from its general operations budget, but they shall expend no less than \$100,000 on the program.
--

If two independent clauses are joined by a coordinating conjunction and the coordinating conjunction is followed by a phrase or dependent clause, then no comma is placed after the conjunction.

Example:

The fund account shall be administered by the division, <i>and</i> other provisions of this section notwithstanding, the executive director shall report on the fund's administration.
--

Normal usage permits placing a comma before a conjunction that connects two independent clauses, each having a subject and a predicate. Often, however, independent clauses are sufficiently long to justify making them separate sentences. In these cases, use two separate sentences rather than two independent clauses connected by a comma because the use of two independent clauses makes the sentence too long and difficult to follow.

Examples:

The board shall select one of its members as chair, but if that member is not a legislator, that member may not serve more than one term.

The director shall be administrative head of the Division of Wildlife Resources. The director shall be a person experienced in administration and the protection of wildlife.

Do not use a comma to separate the parts of a compound sentence if the clauses are short and closely related.

Example:

The director is the head of the division and shall be experienced in administration.
--

Do not use a comma between the verbs of a compound predicate. This is a simple sentence that contains two or more verbs with the same subject.

Example:

The chair shall be a member of the board and licensed under this rule.
--

Use a comma to set off introductory and transitional words or phrases.

Example:
In the case of an emergency, the director may...

Use a comma after introductory participial and absolute phrases.

Example:
After the votes are counted, the election judge shall seal the election pouch.

Do not use a comma to set off restrictive participial phrases. This is a phrase that is essential to the meaning of the sentence.

Example:
All persons seeking to practice in Utah shall apply with the division for a license.

Use a comma to set off a contrasted word or phrase.

Example:
Meetings of the commission shall be set by majority vote of the members, not by the chair.

If the day of the month is stated in a date, use a comma before and after the year.

Example:
This program begins on July 1, 2005, and ends on June 30, 2010.

A comma is not needed if the day is omitted.

Example:
The events of July 1989 led to the establishment of ...

For further discussion on dates, see the section called “Dates or Time”.

Use a comma to set off figures in groups of four or more numerals.

Example:
1,000,000
1,500

For further discussion on commas used in money, see the section called “Money”.

Use a comma to set off words, phrases, and clauses that would otherwise be unclear.

DO NOT SAY:	SAY:
When I was to begin the speech ended.	When I was to begin, the speech ended.

Parentheses

Avoid parentheses except for use in equations, endnote reference numbers, or when defining acronyms. In general, words and phrases should be set off by commas rather than parentheses. If text is important enough to include in rule, it should not be included parenthetically.

Example:
Government Records Access and Management Act (GRAMA)

Apostrophes

Use apostrophes to indicate the possessive only, either in the singular or plural, as in “director's” or “workers'.” Do not use contractions, such as “can't” and “doesn't.” Do not confuse “its” with “it's” or “whose” with “who's.”

Hyphens

Hyphens should be used sparingly in rule text.

Numbers

See the section called “Numerical References” for hyphenation of numbers.

Time Periods

Hyphens are used in periods of time when expressed in either Arabic numerals or spelled out to begin a sentence.

Example:
60-day period
Three-week period
Five-year review

Compound Words

Compound words can be closed (one word), open (two words without a hyphen), or hyphenated. The trick is in trying to decide when to spell the word as closed, open, or hyphenated. First, always consult a good comprehensive dictionary if you have any questions about whether a compound word is spelled with a hyphen. This should provide the answer in most cases. In the event that the dictionary is silent, the following general rule may be helpful: if the compound is being used as an adjective before a noun and if there is a risk of ambiguity, spell the compound using the hyphenated form. However, do not hyphenate compound adjectives if the first word ends in “ly.”

Example:
ready-made
readily available

The following is a list of compound adjectives that require the use of a hyphen:

Example:		
consumer-related problem	joint-stock company	part-time employee
even-numbered years	last-known address	state-owned property
habit-forming drugs	law-abiding citizen	tax-supported universities
hearing-impaired student	life-sustaining procedure	

Example:		
interest-free loan	low-income housing units	

Words that are Not Compound Words

In general, words which are not compound words are not hyphenated. This means that you should not use the hyphen to provide for a more graceful breaking of the line. In no cases should you use the automatic hyphenation provided by word processing software. When in doubt about the use of a hyphen consult a comprehensive general dictionary.

Quotation Marks

Generally

As a general principle, the rulewriter should use quotation marks in only three situations.

- Use quotation marks to enclose definitions in a definition section of a rule. Do not use quotation marks again to enclose a defined term in the body of the rule.

Examples:
(1) “Department” means the Department of Commerce.
The executive director of the department shall...

- Use quotation marks to enclose titles at the beginning of a statute. However, as with definitions, quotation marks should be used only in their original reference.

Examples:
This chapter is known as the “Utah Administrative Rulemaking Act.”
In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may...

- Use quotation marks to enclose the contents of a form, sign, or label.

Example:
All flavoring containers shall be plainly labeled “flavorings”...

Before quotation marks are used, the rulewriter should make certain that WordPerfect's QuickCorrect or Word's AutoCorrect features have been disabled. These features automatically convert quotes into publishing quotes. For more information, see the section called “Symbols”.

Punctuation within Quotation Marks

Punctuation is placed outside quotation marks, except for periods and commas which are placed inside quotation marks. However, when describing a form, sign, or label, periods and commas that are not part of a form, sign, or label should also be placed outside quotation marks.

Examples:
... the word or phrase “Utah,” or “United States,” and words used in conjunction with them such as “United States Government”;
(1) all flavoring containers shall be plainly labeled “flavorings”; and
The sign shall read “Warning: The consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others”, and shall be mounted in a conspicuous place.

Brackets

Use brackets (“[” or “]”) in rule drafting to indicate deleted material only. Brackets may not be used within the text of a rule. Brackets, and the text between them, are automatically deleted when a rule is codified. For more information, see the section called “Changes to Rule Text”.

Underscore and Underline

Avoid the use of the underscore if at all possible. Underlining is used in rulewriting to marking added words and punctuation in a new rule or rule amendment. Obviously, the use of the underscore character in new language would be obscured by the underline, resulting in potential misunderstanding on the part of the reader.

Do not use features in word processing programs that automatically create links of Internet addresses. This formatting is typically associated with the insertion of unnecessary codes in the document. For more information, see the section called “Changes to Rule Text”.

Capitalization

As with punctuation, the rulewriter should not overuse capitalization. Standards were developed to minimize the use of capitalization because historically capitalization was more expensive to print. Although expense is no longer an issue, traditional capitalization principles are familiar and easier to read. To avoid the poor appearance of nonuniform capitalization, the rulewriter should use the following capitalization standards.

When to Capitalize

The following should be capitalized:

- the first word in a sentence;
- months and days of the week;
- the word or phrase “Utah,” or “United States,” and words used in conjunction with them such as “United States Government”;
- names of institutions such as “Utah State Prison,” “Utah State Training School,” “Utah State Hospital,” “Utah Museum of Natural History,” and “University of Utah”;
- full and official names of associations and organizations such as “American Dental Association” or “Utah State Bar”;
- full names of courts and other government departments, divisions, offices, committees, and boards;
- the word “Legislature” only when referring specifically to the Utah Legislature;

- the terms “Senate,” “House,” “House of Representatives,” and “Congress” only when used to indicate either the Utah Legislature or the United States Congress;
- names, proper derivatives of proper names, places, historic events, and holidays, as in “Indian,” “Utah Lake,” “World War II,” and “Easter”;
- official short titles and popular names of acts, bills, codes, and statutes;
- the word “Title,” “Chapter,” “Rule,” “Part,” “Section,” “Subsection,” or other major subdivision designations of the administrative and statutory codes, when accompanied by the number of that subdivision, as in “Subsection 63-46a-3(3),” and when used in conjunction with the name of another code compilation, as in “Section 14 of the Federal Social Security Act”—capitalization is not necessary when used without a specific number, as in “as provided in this rule”;
- the names of programs such as “Medicare,” “Medicaid,” and “Social Security”;
- specific references to the state constitution or the codes such as “Utah Constitution,” “Utah Code,” “Utah Code Annotated,” or “Utah Administrative Code,” but not when general references are used such as “this code” or “this constitution”;
- proper names of amendments should also be capitalized such as “Fourteenth Amendment” or “Gateway Amendment,” but the word “amendment” used in general references such as “the equal protection amendment” or “this amendment” should not be capitalized;
- specific funds or accounts such as the “General Fund” or “Mineral Lease Account”; and
- references to “Social Security number.”

When Not to Capitalize

The following should not be capitalized:

- generic political subdivisions, as in “state” or “county,” except when the terms follow the names of the subdivisions, as in “Salt Lake County”;
- titles of federal, state, local, and judicial officials, as in “governor,” “president,” “commissioner,” “representative,” “director,” “attorney general,” “judge,” “justice,” “chief justice,” or “treasurer,” unless used to refer to a particular person as in “Governor Huntsman”;
- the words “federal,” “state,” or “court” when not part of a proper name except when “Supreme Court” refers to the Utah Supreme Court;
- words merely indicating geographic location such as “northern Utah”; and
- “general session” unless it is used in conjunction with a specific year “2005 General Session.”

Numerical References

In General

Ten and Under Rule

Spell out numbers ten and under when enumerating common nouns. Express numbers 11 and above in Arabic numerals.

Examples:
Four persons
15 children

Begin a Sentence with a Number

A rulewriter should always spell out a number if it begins a sentence or a paragraph. If a number greater than 100 appears at the beginning of a sentence, it is always expressed in words and the rulewriter should not include the word “and” between the numbers.

DO NOT SAY:	SAY:
One hundred and fifteen people attended.	One hundred fifteen people attended.

Do Not Follow a Number with a Number in Parentheses

When a number is spelled out, it should not be followed by a numeral in parentheses.

DO NOT SAY:	SAY:
Twenty-nine (29)	Twenty-nine

Singular Verb to Express Dollars

References to dollars should be used with a singular verb.

DO NOT SAY:	SAY:
There are appropriated \$5,000 to...	There is appropriated \$5,000 to...

Hyphenation

Compound Numbers from Twenty-one to Ninety-nine

Hyphens are used when the numbers are spelled out to begin a sentence. This principle includes both cardinal and ordinal numbers.

Examples:
Twenty-one...
Twenty-first...

Fractions

Hyphens are used when the fractions are spelled out to begin a sentence, except that if the numerator or denominator is a compound number requiring a hyphen, it is the only number hyphenated.

Examples:
Two-thirds...
Six sixty-fourths...

Mixed Numbers

Hyphens are used when a mixed number is expressed in either Arabic numerals or spelled out to begin a sentence.

Examples:
1-1/2
One and one-half

Measurements and Ages

In General

The ten and under rule is most used when referring to measurements and ages.

Examples:
40 gallons
two quarts
400 feet
six inches
21 years old
seven miles
ten years old

The expression of age can be ambiguous at times. The phrase “older than 18 years old” could mean the day after the 18th birthday or the day of the 19th birthday. Either the term “old” or the term “of age” may be used when referring to a person's age. However, the term chosen should be used consistently throughout a rule.

DO NOT SAY:	SAY:
Applicants shall be more than 21 years old.	Applicants shall be 21 years of age or older.
Applicants shall be between 21 and 50 years old.	Applicants shall be at least 21 years old but shall be younger than 50 years old.

Exceptions to the Ten and Under Rule

There are several exceptions to the ten and under rule. The rulewriter should always use Arabic numbers to express:

- money;
- population;
- percentages;
- mixed numbers;
- groups of numbers;

- numbers in tabular form; and
- citations to the Utah Code, Utah Administrative Code, and other laws.

Money

Always express money using Arabic numerals.

DO NOT SAY:	SAY:
fifty cents	50 cents
Five million dollars	\$5,000,000
\$1.5 M	\$1,500,000

Use decimals only to express cents or tax-related figures such as tax rates, assessments, and valuations. In these cases decimals are preferred to fractions, although at times a fraction is the only way to express a tax rate.

Examples:
\$5.83
\$0.50
.0032 per assessed dollar valuation
sales tax rate of 5.85%
sales tax rate of 5-9/32%

Do not use zeros after a decimal unless actual cents must be expressed.

DO NOT SAY:	SAY:
\$5.00	\$5

In listing monetary amounts in tabular form, however, use both decimals and zeros.

Examples:
\$ 5.25
194.10
2,100

Commas and Money

Use commas in monetary amounts of four figures or more.

DO NOT SAY:	SAY:
\$5000000	\$5,000,000
\$9700	\$9,700
\$1500	\$1,500

Population

Always express population using Arabic numerals.

Examples:
1,382,600 people
A city with a population of 100,000 or more...

Percentages

Express percentages using Arabic numerals and the percent symbol (%).

Example:
5%
15-1/2%
3.3%

Mixed Numbers and Fractions

With the occasional exception of two-thirds, express mixed numbers and fractions using Arabic numerals. Spell out “two-thirds” when stating the need for a two-thirds vote by a committee.

Examples:
1-1/2
4-7/8
... two-thirds vote...

Groups of Numbers

If any number in a group of numbers exceeds ten, always express the group using Arabic numerals. If all numbers are ten or under spell out the numbers.

DO NOT SAY:	SAY:
ten, 45, five	10, 45, 5
1, 5, and 8	one, five, and eight

Numbers in Tabular Form

When listing numbers in tabular form, use Arabic numerals.

Examples:
10
100
3

For more information, see the section called “Tables”.

Formulas and Equations

Mathematical, scientific, and chemical formulas and equations should be described in text to avoid the risk of a corrupted formula or equation being published. Formulas and equations may become corrupted if they include special symbols, brackets, or underlining.

If formulas or equations are necessary, it is possible to use symbols common to all systems (parentheses, slashes, pluses, hyphens, asterisks, and text) and not use other special symbols (brackets, braces, or underlining).

Example:
$((175(\text{Grams contained U-235})/350) + (50(\text{Grams U-233})/200) + (50(\text{Grams Pu})/200))$ greater than 1

If formulas or equations are essential, there are a few important things to remember:

- Special symbols may be lost when text is transferred among different computer programs or systems (see the section called “Symbols”).
- Underlining is reserved solely for the purpose of showing new language in proposed rules. Using the underscore character in creating equations could result in a significant misreading of the text when coupled with underline showing new text.
- Brackets may only be used to identify text being deleted in proposed rules. Brackets and bracketed text are deleted when rules are inserted into the administrative code.

Dates or Time

When drafting, the rulewriter will often need to express dates or times in statute. The following highlights the combinations of Arabic numerals and words used to express dates or time.

Hours

Never use the phrase “o'clock.” Instead, use “a.m.” and “p.m.” with the exception that “noon” and “midnight” should be used instead of “12:00 m.,” “12:00 p.m.,” or “12:00 a.m.” Do not use a colon to express minutes unless actual minutes are to be indicated.

DO NOT SAY:	SAY:
9:00 a.m.	9 a.m.
10:00 p.m.	10 p.m.
	10:15 p.m.
	10:15 a.m.
12 p.m. or 12 m	12 noon
12 a.m.	12 midnight

Time Periods

To eliminate uncertainty in expressing periods of time, the first and last days of the period should be specified. Make the first day of the application clear. Never use imprecise phrases such as “from and after,” and “to or until.” If something must be done by the end of a named period, the rulewriter should indicate whether the act should be done before the period begins or whether it must be done within that period.

DO NOT SAY:	SAY:
July 1, 2005, to July 1, 2006,...	Beginning July 1, 2005, and before July 1, 2006...
Between July 1, 2005, and July 1, 2006,...	Beginning on or after July 1, 2005, and ending on or before June 30, 2006,...
	A taxable year beginning on or after January 1, 2005, but beginning before December 31, 2005,...

Express dates simply using common notation.

Days, Weeks, or Months

If a time period is expressed in whole days, use “day” not “time.” “Time” may be construed as referring to the exact time of day or night.

DO NOT SAY:	SAY:
Five days after the time when...	Five days after the day on which...

A rulewriter can use a set day of the week to indicate a deadline or other time restraint.

Example:
Each license shall be renewed each year on the first Monday of April.

When referring to effective dates use the actual date itself rather than ambiguous phrases such as “after this rule takes effect.”

Example:
After July 1, 2005, members shall serve two-year terms.

Subsection 68-3-12(2)(m) states that in statute “month” means a calendar month. For the rulewriter’s purposes, “week” also means a calendar week.

Years

If a time period is expressed in whole years and the context creates no special ambiguity, use the word “year.” If a continuous two-year period is intended, use “for a two-year period” rather than “for two years.”

If a rule references a time period spanning years (e.g., fiscal years), include on the last two digits of the last year.

Example:
fiscal year 2005-06

References to the Utah Code, Utah Administrative Code, and Other Laws

A reference to statute, rule, or other law is always drafted with numerals. For a more detailed discussion concerning references, see the section called “Citations in Rule”.

Examples:
Utah Constitution Article XIII, Section 2
Subsections 32-6-15(b) through 32-6-15(e)
UT L 2005 ch 1
Section R708-2-24
28 U.S.C. Section 105(a)
Pub. L. No. 94-12, 89 Stat. 26
42 CFR 2.1 (2005)

Structure and Word Selection

General Principles

Exceptions

The rulewriter should state a general principle or category directly rather than describing that principle or category by stating its exceptions.

DO NOT SAY:	SAY:
All persons except those 18 years or older shall...	Each person younger than 18 years old shall...

When exceptions are used, they should be stated in simple terms. If only one exception applies, the general principle should be stated first and the exception should follow. The word “except” should be used to introduce the exception.

Example:
This rule applies to all persons except persons 65 years of age or older.

If there are multiple conditions or exceptions, the rulewriter should consider:

- placing all exceptions in a separate subsection and refer to this subsection before stating the general rule; or
- placing an enumerated list at the end of the sentence after the general rule has been stated (see the section called “Enumerations”).

Examples:
Except as provided in Subsection R477-200-6 (1)(b), the director shall...
The director shall... , except if the applicant:
(a) is a minor;
(b) has been convicted of a felony; or
(c)...

Conditions

When a condition is used, the condition should also be stated in simple terms. If only one or two simple conditions apply, they should be stated first and the general principle should follow. The word “if” should be used to introduce the condition.

Example:
If any person violates this rule, that person is subject to prosecution.

Limitations

Limitations should be avoided if possible. Generally, a rearrangement of sentences and wording will accomplish the rulewriter's objective without use of a limitation. If a limitation must be used, it should follow the general principle and be introduced with the word “but” or may be provided in a separate sentence.

Example:
“Applicant” means a private individual, or person, but does not include a public entity.
(1)(a) “Applicant” means a private individual or person.
(b) “Applicant” does not mean a public entity.

Provisos

Provisos are archaic and usually result in unintelligible phrases. Expressions like “provided, that,” “provided further that,” or other similar phrases should not be used. In most cases, rearranging the sentence will eliminate the need for the proviso. If the clause modified by a proviso is a complete thought, it should always be rewritten as a complete sentence. If the proviso is rewritten as an exception or condition, principles discussed above should be followed in drafting the exception or condition.

Enumerations

To provide access and readability, the rulewriter should enumerate or list exceptions or conditions in separate paragraphs whenever possible. Enumerations generally are incomplete sentences that are preceded by introductory language stating the general principle set off with a colon. Each condition or exception is then followed by a semicolon with the next to last item in the enumeration followed by a conjunction. Internal periods in a paragraph of these types of enumerations should not be used.

Example:
This rule does not apply to:
(1) investment companies;
(2) securities brokers and dealers;
(3) insurance companies; or
(4) licensed attorneys.

If the enumerations are sentences, the introductory clause should be a sentence which states the general rule and makes clear whether all, any one, or a combination of the conditions or exceptions apply.

Rule of “Expression of One Thing is the Exclusion of Another” (*Expressio Unius Est Exclusio Alterius*)

When drafting a list, the rulewriter should recognize the inference that all omissions from a list are understood to be exclusions. Although it is practically impossible to make a list complete, some courts have applied the rule *expressio unius est exclusio alterius*, which means “expression of one thing is the exclusion of another,” and refused to apply a rule to something that, had the rulewriter thought of it, might have been included in the list. However, because this rule is a rule of construction and not a rule of law, it can be overcome by a clear indication of contrary intent. In some jurisdictions the rulewriter avoids this problem by using “includes, but not limited to, . . .” Because the latter phrase may be interpreted as prospective incorporation, it should be avoided. In Utah, however, the rulewriter need only use the term “include.” According to Sutherland Statutory Construction, when “include” is used, “it is generally improper to conclude that [things] not specifically enumerated are excluded.”

DO NOT SAY:	SAY:
This rule applies to all evidences of indebtedness, including, but not limited to, bonds, notes, and certificates.	This rule applies to all evidences of indebtedness including bonds, notes, and certificates.

Use of “includes” in this case is similar to its use in definitions. It is inclusive but not exclusive, allowing the courts to adopt additional meanings. For further information on the use of *includes*, see the section called “Includes”.

Rule of “General Words Followed by Specific” (*Ejusdem Generis*)

The rule of *ejusdem generis* is also used to interpret rules. It means that when general words follow an enumeration of persons or things with a particular and specific meaning, the general words are not to be construed in their broadest meaning but are to be held as applying only to persons or things of the same general kind or class as those specified in the enumeration. The rulewriter should use general terms when it is reasonable not to have specific enumeration. If enumeration is required, however, the rulewriter should use introductory language that applies to all items listed in the class.

SAY:	IF YOU MEAN:
The Division of Conservation may sell gravel, sand, earth, or other material from state owned land.	The phrase “other material” means material similar in type to gravel, sand, and earth and not timber.

Paragraphs

The rulewriter should divide long sentences and phrases into shorter and more readable paragraphs when amending existing rules as well as when writing new rules.

DO NOT SAY:	SAY:
(1) If any payment on a contract with a private person, firm, or corporation is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city, or the board of trustees of the town.	(1)(a) Any payment on a contract with a private person, firm, or corporation that is retained or withheld shall be placed in an interest bearing account. (b) The interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city, or the board of trustees of the town.

The rulewriter should also avoid adding paragraphs without designation (a number or letter) to the end of a section. If the language in this “dangling” paragraph affects the last paragraph only, it should be part of the affected paragraph. If the dangling paragraph affects multiple paragraphs, the affected paragraphs should become one subsection, and the dangling paragraph made either a separate subsection or a separate section altogether. By assigning each paragraph a number or letter, the rulewriter makes the rule easier to understand and facilitates accurate citation.

Abbreviations

Avoid most abbreviations except to cite other laws like federal or state statutes and to indicate the time of day (a.m., p.m.). Some words are always abbreviated such as “etc.,” and “e.g.,” but these should not be used in rule drafting.

Acronyms

If an acronym is used, the rulewriter must clearly define it. An acronym should be defined in the “Definitions” section of the rule. Alternatively, it may be defined the first time it appears in each rule in which it is used. Acronyms do not have periods.

Examples:
“GRAMA” means the Government Records Access and Management Act, Title 63, Chapter 2.
... Government Records Access and Management Act (GRAMA)...

Symbols

Generally, symbols or special characters may not be used in rule text, except in the special cases noted elsewhere in this manual. Some symbols serve as commands for computer programs and their inclusion in rule text may cause undesired results. Other symbols, like those created within software (for example, WordPerfect's Compose feature), will not translate to other computer systems or programs and are simply lost, thus distorting the meaning of the rule. Still, other word processors use different type fonts to display symbols. All type font codes are stripped from the rule text before it is published. A rulewriter should use the textual equivalent to a symbol to ensure correctness and clarity. **REMEMBER:** When in doubt, spell it out!

DO NOT SAY:	SAY:
† or ‡	Do not use. These symbols are usually used for footnotes. See the section called “Footnotes and Endnotes” for a discussion of why this is bad in rule.
#	“pound” or “number”
§	“Section”
§§	“Sections”
[] { }	“(” or “)”—do not use brackets or braces as part of the rule text; see the section called “Changes to Rule Text”.
&	“and”, <i>unless</i> the ampersand is part of an Internet address.
>, <, ≤, and ≥	“greater than”, “less than”, “less than or equal to”, and “greater than or equal to” respectively
°	“degrees”
±, or +/-	“plus or minus”
¶	“paragraph”

DO NOT SAY:	SAY:
¢	“cents”
μ or Σ	do not use Greek or other foreign letters
@	“at”, “each at”, or “sum”
^	do not use
/	“or”
“ ” ‘ ’	“ ” ‘ ’
©	“copyright”
™	“trademark”
®	“registered trademark”
_ (an underscore character)	do not use
— (an em dash)	“_”

To avoid the unintentional insertion of symbols, a rulewriter must disable automatic formatting features in the word processor being used to draft the rule. If the rulewriter is using WordPerfect, this means disabling QuickCorrect. If the rulewriter is using Word, this means disabling AutoCorrect. QuickCorrect and AutoCorrect automatically substitute one set of characters for another (for example, “(c)” becomes “©”). For technical instructions about disabling QuickCorrect or AutoCorrect, visit

<http://rules.utah.gov/agncinfo/faqs.htm#wordprocessor>.

Official Titles

In referring to a public officer or agency, use the official and correct title of the person or agency. For example, do not call the director of the Division of Real Estate the “commissioner.”

Specific Terms

Many terms and phrases are difficult in meaning, spelling, and usage. These include archaic legal language, commonly known as “legalese.” Please see Appendix C, *Preferred Terms* for a comprehensive list of preferred terms or phrases. The most common drafting problem terms are described here. For a list of problem words or phrases and their definitions, see Appendix B, *Problem Words and Expressions Defined*.

Affect, Effect

Whether to use the term “affect” or “effect” in drafting generally depends on whether a verb or a noun is needed. The verb “affect” means to influence, attack, or touch the emotions. The noun “effect” means the result of an act or event. “Effect” is used as a noun only to indicate when something is to produce a specific effect.

DO NOT SAY:	SAY:
This provision takes affect on July 1, 2005.	This provision takes effect on July 1, 2005.

However, “effect” may also be used as a verb, meaning “to cause to come into being, to bring about...” Thus, “The agency may effect change by engaging in these actions...”

And, Or

Never use “and/or.” The rulewriter should be able to determine which term is correct. If all the items in an enumeration are to be taken together, they may be joined at the last two items by the conjunction “and.” If the items are to be taken in the alternative, “or” is used. If terms are to be taken both together and in the alternative the “and/or” need not be used, but the rulewriter should consider using a phrase similar to “or both” or making the introductory language clear.

DO NOT SAY:	SAY:
Each corporation and/or bank shall...	Each corporation, bank, or both shall...

Do not use “/” in the place of the word “or.” It creates ambiguity.

Any, Each

One way to avoid ambiguity in writing is to use the singular subject. The rulewriter should therefore use the singular articles “a,” “an,” and “the.” Sometimes the use of these articles creates an ambiguity, and if this occurs, the rulewriter should use the indefinite pronouns “any” and “each.” “Each” should be used if imposing an obligation to act, and “any” should be used if granting a right, privilege, or power. The term “every” should not be used.

DO NOT SAY:	SAY:
The commissioner shall issue a certificate to an insurance company.	The commissioner shall issue a certificate to each insurance company.
The commissioner may issue a certificate to an insurance company.	The commissioner may issue a certificate to any insurance company.

If the subject is plural, the articles and indefinite pronouns need not be used. However, the singular expression is preferred. The terms “all” and “some” should not be used.

DO NOT SAY:	SAY:
All qualified employees shall...	Qualified employees shall...

Compose, Comprise

The words “compose” and “comprise” both involve the idea of containing, embracing, comprehending, or surrounding. “Compose” also means making or forming.

“Comprise” suggests including or containing. The whole comprises the parts, the parts do not comprise the whole.

“Comprised of” is a wordy expression and should not be used.

Examples:
The board shall be composed of ten members.
The board comprises ten members.

If, When, Whether

Use “if” not “when” to express a condition. Use “when” only as a reference to time.

DO NOT SAY:	SAY:
If the complaint is filed, the director shall schedule a hearing...	When the complaint is filed, the director shall schedule a hearing...
When the applicant is qualified...	If the applicant is qualified...

Includes

As discussed in “Expression of One Thing is the Exclusion of Another,” if a rule contains an inclusive list the term “includes” should be used. This term is inclusive but not exclusive, allowing courts to adopt additional meanings. (See *Checkrite Recovery Services v. King*, 52 P.3d 1265 (Utah 2002).) Do not say, “shall be deemed to include” or “shall include but is not limited to.” If necessary, a rulewriter may list items that are not to be included under a definition or enumeration. In such case, the rulewriter may begin the list of exclusions with the phrase, “but does not include ...”

Notwithstanding

Avoid the use of the term “notwithstanding” unless referring to a specific provision of the Utah Administrative Code. The term “notwithstanding” is normally used as a shortcut to avoid conflicts with other sections. It is preferable for the rulewriter to rewrite that section so that there is no conflict. If a conflict cannot be avoided, the rulewriter should specify the existing section that is in conflict and indicate that the provisions of the rule supersede that section. It is important to be as specific as necessary to explain which provisions are being superseded. Only if it is impossible to specify the sections that are in conflict should the rulewriter state that the new section supersedes conflicting sections.

DO NOT SAY:	SAY:
Notwithstanding Section R13-1-1...	Section R13-1-1 is amended to read:...
Notwithstanding Section R13-1-1...	This section supersedes Section R13-1-1.
Notwithstanding any other law to the contrary...	This section supersedes conflicting sections.

Person, Party

The term “party” refers to a party in a legal action, and should not be used to denote a “person” who carries out an act or discharges a duty.

DO NOT SAY:	SAY:
A party that violates...	A person that violates...

Provisions Of

Use of the phrase “the provisions of” before a citation to a section or subsection is superfluous and should not be used.

DO NOT SAY:	SAY:
... comply with the provisions of Section R34-1-101...	... comply with Section R34-1-101...

Pursuant To

Phrases like “pursuant to” are used to identify or make reference to other provisions of law. All of the following are acceptable, but the rulewriter should be consistent in their use.

Example:
pursuant to...
as provided in...
under...
prescribed by...
as described in...

Respectively and As the Case May Be

“Respectively” and “as the case may be” are often used improperly. If a rulewriter desires to apply A to X, B to Y, and C to Z, that may be clarified by stating, “A, B, and C apply to X, Y, and Z, respectively.” Here the three relationships are concurrent, not alternative. In such a statement, the verb should be plural.

On the other hand, if a rulewriter desires to apply A if X occurs, B if Y occurs, and C if Z occurs, the correct statement would be “If X, Y, or Z occurs, A, B, or C applies, as the case may be.” Here the three relationships are alternative, not concurrent. The verb should be singular in this situation.

Rules, Regulations

The phrase “rules and regulations” is an inaccurate statement. “Rules” are made by administrative agencies in this state and are referred to as such in official publications. These agencies do not make “regulations.” See Section 63-46a-2. The rulewriter, when referring to rules made by Utah agencies, should only use the term “rules.” The term “regulations” is generally used at the federal level and may be used in reference to federal regulations.

Said, Same, Such

Try to use “a,” “an,” “it,” “that,” “the,” “them,” “these,” “this,” or “those” instead of “said” and “same.” “Such” is not preferred but its use is sometimes necessary to modify a preceding term or phrase. “Such as” and “such a” may be used to introduce an example.

Shall, May, May Not, Must

Do not use expressions such as “is authorized to,” “is empowered to,” “has the duty to,” “can,” or “the Legislature intends that the director shall.” “Shall” or “may” are more appropriate expressions. “Must” may be used if an action is intended to be a condition precedent to the accrual of a right or privilege.

“Shall” is imperative or mandatory and is used when indicating an obligation to act.

DO NOT SAY:	SAY:
The director will submit a budget.	The director shall submit a budget.

“May” is permissive or directory and is used when granting a right, privilege, or power, or indicating any discretion to act.

DO NOT SAY:	SAY:
The director is authorized to issue an order.	The director may issue an order.

Whenever possible, an obligation or discretion to act should be stated positively. However, if a right, privilege, or power is abridged and the sentence contains a negative subject, “may not” should be used.

This is preferable to “shall not” and “no person shall,” because “no person shall” literally means that no one is required to act. A rule that includes the phrase “shall not” negates the obligation, but not the permission to act. “A person may not” also negates the permission to act and is, therefore, the stronger prohibition.

DO NOT SAY:	SAY:
An applicant shall not...	An applicant may not...

Because some courts on occasion have interpreted “shall” to mean “may” and vice versa, it is imperative that the rulewriter give careful consideration to the context. If a problem of interpretation arises, add a sentence stating that action inconsistent with the provision is void.

State of Utah

Reference to “the state of Utah” is unnecessary. Utah cannot make rules for another state. When it is necessary to refer to the state of Utah, use “state,” “this state,” or “Utah.”

That, Which

The terms “that” and “which” are not interchangeable. The choice between these terms is determined by the type of clause that follows the terms. “That” is used to introduce a restrictive clause, or a clause that provides information necessary for full comprehension of the sentence.

A restrictive clause is never set off by commas. See the section called “Commas”.

Example:
Any funds that are not restricted shall lapse.

“Which” is used to introduce a nonrestrictive clause, or a clause that provides nonessential or parenthetical information.

A nonrestrictive clause is usually set off by commas. See the section called “Commas”.

Example:
The division, which is responsible for all licenses, shall provide an application blank to each applicant.

Where and When

“When” is preferred to “where” except when dealing with a specific place. However, “if” is the preferred term to “when” to express condition. See the section called “If, When, Whether”.

DO NOT SAY:	SAY:
Where the licensee applies...	When the licensee applies...

Writing

Utah has adopted the Uniform Electronic Transaction Act, Title 46, Chapter 4, which anticipates that commerce and government services could be conducted electronically. In light of this, a rulewriter should be careful to draft in a media neutral way to allow for electronic transactions. However, the Utah Code has defined the term “writing” to include electronic writings. (See Section 46-4-502.)

Citations in Rule

Generally

There are various styles of legal citation. Agency rulewriters should use the following citation style, which mirrors the citation style described in the Legislative Drafting Manual, State of Utah (2005). A consistent citation scheme promotes readability and thus facilitates understanding for the reader.

Citations to the Utah Constitution

The Utah Constitution is cited by article and section within the text of a rule, and at the end of the rule.

Example:
Utah Constitution Article XIII, Section 2, Subsection (2)

Citations to the Utah Code

Currently, the Utah Code is divided into titles, chapters, parts, sections, and subsections.

Titles, Chapters, and Parts

Titles, chapters, and parts are numbered differently than sections and subsections. Titles, chapters, and parts are referenced by stating their single or double-digit number and are cited in descending order.

Examples:
Title 59, Chapter 3
Title 59, Chapter 3, Part 1

If the citation is to an entire title, chapter, or part that has a title, the rulewriter should include the title in the citation.

Examples:
Title 70A, Utah Uniform Commercial Code
Title 61, Chapter 1, Utah Uniform Securities Act
Title 59, Chapter 12, Part 1, Tax Collection
Title 17, Chapter 3, Part 1, Governing Body

When citing two or more chapters if the rulewriter uses the conjunctive “and” or “through,” the words “chapter” or “part” should be plural. If the rulewriter uses the conjunctive “or,” the words “chapter” or “part” should be singular. References to two or more chapters are referenced as follows:

Examples:
Title 7, Chapters 1, 2, and 19
Title 7, Chapters 1 through 3
Title 7, Chapters 16, 17, and 18, and Chapter 20, Parts 1, 3, and 6
Title 7, Chapters 5 through 14, Chapter 17
Title 7, Chapter 5, Part 1 or 2

Uncodified Material, Laws of Utah

Sometimes a bill or a portion of a bill is not codified into the Utah Code, and the only reference available is to the session laws. In that case, refer to the chapter and year of the session law involved. If the bill passed during a special session, the special session is also cited.

Examples:
Chapter 112, Laws of Utah 2001
Chapter 5, Laws of Utah 2002, Fifth Special Session

Sections

Sections are the fundamental unit of the Utah Code. They are numbered in three parts offset by hyphens.

Example:
Section 59-3-101

References to provisions of law are by inference to other sections of the Utah Code unless otherwise stated. Therefore, references to “Utah Code Annotated” or “UCA” are superfluous.

DO NOT SAY:	SAY:
Section 58-1-1, Utah Code Annotated 1953	Section 58-1-1
Section 58-1-1, UCA	Section 58-1-1

References to single or multiple sections throughout the Utah Code should be as follows:

Examples:	
Single section:	Section 58-1-1
One of many sections:	Section 31A-7-101, 31A-7-102, or 31A-7-103
All of many sections:	Sections 78-12-1, 78-12-4, and 78-12-10
Consecutive sections:	Sections 59-10-101 through 59-10-110

Do not use the phrase “Section 59-10-101 to Section 59-10-110” because it is ambiguous. Instead, use the word “through” to indicate that both the starting and ending sections in the range are included.

DO NOT SAY:	SAY:
Section 58-1-1 to 58-1-10	Section 58-1-1 through 58-1-10

If possible, a brief description of a cited statute should be included in the reference so the reader will not be forced to turn to the provision to see what it is about.

Example:
The procedure used shall be the same as that used in Section 13-1-1, concerning consumer grievances.

Subsections

Subdivisions within either a section or a subsection are called “subsections.” Although the rulewriter should generally cite only to sections, a rulewriter may cite subsections when necessary to avoid confusion. Subsections are cited within parentheses. The rulewriter should avoid citing sections in units smaller than the second level, e.g., (1)(a) or (14)(b). If further division is absolutely necessary, cite to the level necessary. This is particularly important when citing an agency’s rulewriting authority. References to subdivisions are always to “subsections” to avoid confusion and maintain simplicity.

Examples:
Subsection 58-1-1(2)
Subsection 58-1-1(3)(a)

When a subsection is referenced, provide the full reference including the section number. Using the full reference facilitates hypertext linking when rules are provided in text databases or posted to the Internet. The phrase “... of Section 58-1-1” should not be used.

DO NOT SAY:	SAY:
Subsection (2)(a) of Section 58-1-1	Subsection 58-1-1(2)(a)
Section 58-1-1(2)	Subsection 58-1-1(2)
Section 58-1-1(2)(a)	Subsection 58-1-1(2)(a)
Subsection (2) of Section 58-1-1	Subsection 58-1-1(2)

Citations to Utah Administrative Code

The Utah Administrative Code is divided as follows:

- titles;
- rules;
- sections; and
- subsections.

In general, the same standards apply for numbering and referencing the Utah Administrative Code as for the statutory code. To avoid confusion with statutory citations, each administrative code citation begins with an “R.”

Titles and Rules

Section 63-46a-9.6 establishes the primary structure of the administrative code. A “title” is usually not referred to individually, but if necessary, may be cited as “Title R56.” A rule is always defined by its two-part, hyphenated number, as in “Rule R56-3”. Titles and rules are all referenced by stating their single, or double digit number.

Examples:
Title R156
Rule R156-1

Sections

Sections are referenced by their three-part hyphenated number.

Example:
Section R156-1-301

All references to other rules are by inference to other sections of the most current edition of the administrative code unless otherwise stated. Therefore, references to the Utah Administrative Code and phrases such as “of this code” are superfluous.

DO NOT SAY:	SAY:
Section R313-32-22, Utah Administrative Code 2005	Section R313-32-22
Section R313-32-22 of this code	Section R313-32-22

References to single or multiple sections throughout the Utah Administrative Code should be as follows:

Examples:	
Single section:	Section R15-4-10
One of many sections:	Section R317-3-7, R317-3-9, or R317-3-11
All of many sections:	Sections R156-56-706, R156-56-708, and R156-56-710
Consecutive sections:	Sections R432-150-12 through R432-150-24

Do not use the phrase “Section R432-150-12 to Section R432-150-24” because it is ambiguous.

DO NOT SAY:	SAY:
Section R432-150-12 to R432-150-24	Section R432-150-12 through R432-150-24

If possible, a brief description of a cited statute should be included in the reference so the reader will not be forced to turn to the provision to see what it is about.

Example:
The procedure used shall be the same as that used in Section R317-3-2, concerning sewers.

Subsections

Subsections of sections and subdivisions within a subsection are all called “subsections” and are cited within parentheses:

Example:
Subsection R156-1-301(2)
Subsection R156-1-301(3)(a)

When a subsection is referred to, cite it along with the section number.

DO NOT SAY:	SAY:
Subsection (2)(a) of Section R156-1-301	Subsection R156-1-301(2)(a)

References to other portions of the administrative code should never be “above,” “below,” “hereinafter,” “hereinbefore,” and similar vague terms. Always cite the specific designation.

Other Organizational Divisions

The format for administrative rules is different from that of statutes or federal regulations. Section 63-46a-9.6 does not provide for Parts or Subparts. A chapter in the Utah Code is equivalent to a rule in the Utah Administrative Code. Currently, the only designations that may be used are Title, Rule, Section, and Subsection.

Citations to Court Rules

The Utah Rules of Evidence, Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, Utah Rules of Appellate Procedure, and Utah Juvenile Court Rules of Practice and Procedure may be cited in rule and have the force of law to the extent they are not contrary to statute.

Examples:
Utah Rules of Civil Procedure, Rule 65B
Utah Rules of Evidence, Rule 20
Utah Rules of Criminal Procedure, Rule 15
Utah Rules of Appellate Procedure, Rule 5
Utah Juvenile Court Rules of Practice and Procedure, Rule 10

The Utah Code of Judicial Administration should be cited as follows:

Example:
Utah Code of Judicial Administration, Rule 7 201

Citations to Federal Statutes and Regulations

Whenever possible, refer to federal law by reference to the United States Code or applicable Public Law rather than simply using the law's short title. The term *et seq.* (*et sequentes*, “and the following”) may be used in citing federal law.

Examples:
Americans with Disabilities Act of 1990, 42 U.S.C. 12102
Endangered Species Act of 1973, 16 U.S.C. Sec 1531, et seq.
Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.
Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.
Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq.
Tax Reduction Act of 1975, Pub. L. No. 94 12, 89 Stat. 26
Telecommunications Act of 1996, Pub. L. No. 104 104

Reference to both the short title and to the United States Code citation is acceptable to enable the lay person to easily identify the federal law in question. However, reference to the United States Code or the Public Law should always be used. One exception to this principle is when making reference to a well known or often changed federal law, such as the Internal Revenue Code or the Social Security Act. When referencing the Internal Revenue Code, the rulewriter should always refer to the citation as “section” and not “subsection.”

Examples:
Section 41(c)(4), Internal Revenue Code
Section 408, Internal Revenue Code

When citing federal regulations, cite the Code of Federal Regulations (CFR) if the regulation has been codified. If the regulation has been adopted, but not yet been codified in the CFR, cite the Federal Register (FR) reference. A rulewriter should, whenever possible, use CFR references instead of FR references. However, there may be instances when federal law requires that rules must be in place before the regulation actually appears in the CFR. In cases like this, it is appropriate to refer to the FR.

CITATION:	MEANS:
29 CFR 1901.1 (July 1, 2004)	Code of Federal Regulations, Title 29, Part 1901, Section 1, 2004 edition
48 FR 1196	Federal Register, Vol. 48, page 1,196 (the date is implicit from the volume number)

Citations to Case Law

In the rare situations where it is necessary to cite to case law in the text of an administrative rule, the rulewriter should include the name and citation of the case without any underlining or italics.

Example:
(v) “Uintah and Ouray Reservation” means the lands recognized as being included within the Uintah and Ouray Reservation in:
(i) Hagen v. Utah, 510 U.S. 399 (1994); and
(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

Citations to Other Materials

A rulewriter may need to refer to other materials in the text of the rule. Most commonly, this occurs when an agency incorporates by reference materials produced by another organization.

Example:
R432-4-8. Standards Compliance.
(1) The following standards are adopted and incorporated by reference:
(a) Illuminating Engineering Society of North America, IESNA, publication RP 29 95, Lighting for Hospitals and Health Care Facilities, 1995 edition;
(b) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, 2000 edition:

Example:

- | |
|--|
| (i) Chapter 18, New Health Care Occupancies;
(ii) Chapter 19, Existing Health Care Occupancies. |
|--|

When referencing other materials in rule, the rulewriter must provide (see Subsection 63-46a-3(7)(b)) the following information:

- the title of the material as it appears on the cover; and
- the date, issue number, or version of the material.

The rulewriter may also consider providing other information to make it easier for a citizen to find, including:

- name of the publisher;
- the ISBN or ISSN number; or
- both

For information about materials incorporated by reference, see the section called “Incorporation by Reference”.

Incorporation by Reference

Generally

Incorporation by reference is a legal tool that allows an agency to take a standard published by another entity and make it an enforceable part of the agency's rule without reprinting the entire text in its rule. The factors to consider when deciding to incorporate material by reference include:

- the statutory parameters;
- the importance of the incorporated material to the rule;
- the need to enforce standards as part of the rule; and
- the availability of the incorporated material.

Use of Incorporation

The Rulemaking Act permits agencies to incorporate certain types of materials by reference. However, the governor, by executive order, has mandated agencies to incorporate where appropriate (see Appendix G, *Governor's Executive Order, 2/3/1986*). The advantages of incorporating materials by reference include:

- eliminating error that may be introduced when material is transcribed into rule format;
- encouraging consistency in the state's implementation of the external requirements;
- simplifying updates—the agency need only change a single date instead of retyping vast amounts of text; and
- eliminating the expense of republishing material that is already publicly available.

Materials that May Be Incorporated

The Rulemaking Act explicitly indicates what types of materials may be incorporated. Subsection 63-46a-3(7)(a) provides that four types of materials may be incorporated by reference:

- 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;
- state agency implementation plans mandated by the federal government for participation in the federal program;
- lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or
- lists, tables, illustrations, or similar materials that the director determines are too expensive to reproduce in the administrative code.

If the material meets the statutory description, the rulewriter should consider incorporating that material by reference. However, since statute allows agencies to incorporate only certain types of materials, a rulewriter may not write segments of agency standards and procedures in an internal policy manual, and then merely incorporate the manual by reference. Prohibitions or regulating standards that fit the definition of a rule (Subsection 63-46a-3(2)), and that are unique to the agency, may not be incorporated by reference and must be included in rule in its full text.

Incorporation Procedures

After an agency determines that it will incorporate materials by reference, it must follow the procedures outlined in Subsection 63-46a-7(b) and Section R15-3-3. The agency is required to:

- enact an incorporation by following rulemaking procedures;
- explicitly state that the material is “incorporated by reference”;
- state the date, issue, or version of the material being incorporated;
- describe substantive changes that appear in the materials incorporated as part of the “summary of rule or change” in the rule analysis;
- define specifically what material is incorporated by reference and identify any agency deviations from it by following rulemaking procedures; and
- maintain a complete and current copy of the referenced materials for public inspection at the agency and at the Division of Administrative Rules, while complying with copyright requirements.

When a rulewriter sends the Division a document that has been incorporated by reference, the document needs to be accompanied by the Incorporation by Reference form.

The Rulemaking Act does not permit an agency to use open-ended incorporation statements. The courts have also invalidated prospective incorporations—statements that do not refer to a specific edition or source to which the public may refer. Therefore, the rulewriter may not use phrases like, “as amended” or “including future amendments.” Whenever there is a substantive change in the material incorporated by reference that the agency intends to enforce, the agency must incorporate the new edition by following rulemaking procedures.

Because so many agencies incorporate provisions of the CFR, the Division maintains copies of the CFR published by the Government Printing Office on microfiche covering the years 1988 through the present. Therefore, the Division has satisfied the requirement for copies in this instance. However, if the agency incorporates a version of the CFR other than that produced by the Government Printing Office, the agency must provide the Division with a copy of the text to fulfill the requirements of the Act.

Incorporation Examples

Here are some examples of incorporation by reference statements.

- Incorporating the Code of Federal Regulations

R999-11-1. Purpose and Authority.

This rule incorporates by reference 24 CFR 570 (April 1, 2005).

- Incorporating the CFR and Changes Published in the FR

R999-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22 (1993), as amended by 58 FR 46040 are incorporated by reference with the following amendments: ...

- Incorporating Uniform Codes

R999-56-4. Specific Editions of Uniform Building Standards.

(1) The division incorporates by reference the following Uniform Building Standards...:

(a) the 1994 edition of the Uniform Building Code (UBC) promulgated by the International Conference of Building Officials; and ...

- Incorporating Materials with Agency Deviations

R999-13-1. Land Disposal Restrictions.

The division incorporates by reference the requirements as found in 40 CFR 268 (1994), including Appendices IV, V, VI, VII, VIII, IX, and X as amended by 59 FR 43496, 59 FR 47980, 59 FR 47982, 60 FR 242, and 60 FR 25540, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44 and with the following exceptions:

(a) Substitute “Board” for all federal regulation references made to “Administrator” or “Regional Administrator” except for 40 CFR 268.40(b).

(b) Substitute the words “plan approval” for all federal references made to “permit”.

(c) All references made to “EPA Hazardous Waste Number” will include P999, and F999.

(d) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

- Incorporating List, Tables, Illustrations or Similar Materials

R999-14-5a. Coding Table.

This rule incorporates by reference the Department of Public Safety, Division of Driver License code violation tables, consisting of lists of violation codes published by the department as of November 1996. Copies of these coding tables are available at the division office and also at Division of Administrative Rules for public inspection.

Organization of Rules

Organization of the Administrative Code

The Utah Administrative Code is organized alphabetically by department name, each department followed by a listing of its constituent agencies. In some cases, agencies are further subdivided. The Division of Administrative Rules assigns each agency an “R” number or title. The first department, for example, is the Department of Administrative Services, with a title for department “Administration.” It is Title R13. Its first agency, the Division of Administrative Rules is assigned Title R15, and so on. Rules enacted by an agency are therefore grouped together in a manner similar to a title in the statutory code. This is appropriate since each agency normally deals with a unique, but broad, subject. Individual rules, then, correspond to statutory chapters, since each should have a unique, specific subject.

There is no requirement on how to organize rules within the agency “title.” Agencies may arrange their rules chronologically (by order of adoption), by subject matter, by administrative organization of the agency, or some other sequence. While it is useful to keep some logical order, rules change far more frequently than do statutes and agencies would often have to rewrite their entire set to maintain perfect uniformity.

A suggestion in organizing rules may prove helpful. The published version of the Utah Administrative Code indexes rules by their authorizing statute and by subject. Grouping rules around their enabling statutory citation or according to general subjects (“construction,” “inspection,” “traffic rules,” “violations,” etc.) will result in an easier-to-use index. Whatever pattern is used, the rulewriter should keep it as simple and consistent as possible; any system must account for future changes in administrative organization, additions, and deletions.

Should the Legislature change the name of a department, the agency will need to file a nonsubstantive change for each department rule to make that change appear in the administrative code. Likewise, should the administration reorganize the structure of a department or rename agencies within a department, the agency must file a nonsubstantive change for each rule to make that change appear in the administrative code.

If a department is renamed, the title designation will change. If a department reorganizes its divisions and agencies, the Title catchlines will be changed to reflect the reorganization, but the titles will not be renumbered.

Organization Within Rules

Because rules are as diverse as the agencies that make them, no single organization scheme will serve all instances. However, rules are extensions of their governing statutes. Therefore, rules should generally follow the patterns used in the statutory code.

A rule should begin with a general purpose section, outlining the intent and application of the rule, followed by a section identifying its statutory authorization.

<p>Example:</p> <p>R15-5-1. Purpose.</p> <p>(1) This rule provides the procedures for informal adjudicative proceedings governing:</p> <p>(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and</p> <p>(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.</p> <p>(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.</p> <p>R15-5-2. Authority.</p> <p>This rule is required by Sections 63-46b-4 and 63-46a-5, and is enacted under the authority of Subsection 63-46a-10(1)(n) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.</p>

A definitions section, if necessary, should follow. Terms used throughout a rule should be defined in one section so that they are easy to find. If it is necessary to define terms in individual sections, those definitions should appear at the beginning of each section in which they are used. It will only confuse the reader if the rulewriter places a definition in one section somewhere in the middle of a rule, that describes a term used in another section. If the authorizing statute contains definitions, they may be referenced and definitions of other needed terms added.

<p>Example:</p> <p>R15-5-3. Definitions.</p> <p>(1) The terms used in this rule are defined in Section 63-46b-2.</p> <p>(2) In addition, "division" means the Division of Administrative Rules.</p>
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The third and following sections should be the body of the rule. Each section should develop a separate subject such as "standards," "application procedure," "selection criteria," "notification," "appeals," and "penalties." Sections should be arranged in a logical sequence of descending importance.

Numbering Rules

Title Numbering

Rule numbering follows a pattern similar to statute numbering (see Section 63-46a-9.6. The three-part citation tells the reader the agency, the rule number, and section. Each rulemaking organization in state government is assigned a unique "R" number. Therefore, the rulewriter will normally use the same first number for every rule. When the name of an agency changes, either because of legislation or administrative reorganization, the rulewriter should notify the Division in writing.

Rule and Section Numbering

The rule number, which follows the R number and a hyphen, is limited to three characters. The section number, following another hyphen, is limited to five characters. Because of the computer logic and coding, rule and section designations must be at least one Arabic number greater than zero (for example, Section R15-1-1). The Arabic number may be followed by a letter (for example, Section R562-1f-1a). Variations of this format are not permitted.

The Division uses computers to manage and publish Utah's administrative rules. When rules are codified, the computer sorts rules based on the citation. An agency will find that its rules do not appear in the order it intended if this standard is not followed.

INCORRECT	CORRECT
501-1-5	R501-1-5
R513-201.105	R513-201-105
R. 574-34	R574-34
R51 -9 -1	R51-9-1
R414-032-0	R414-32-1
R414-A2	R414-2A
R414-2A8	R414-2A-8
R432-150A	R432-15A
R-513-204	R513-204
R51-47212-23112b	R51-472-2311b
R920-1.1-14.001	R920-1a-14a
R156-66-604aa	R156-66-605a

If an agency chooses to use a letter as part of one rule number (i.e., R414-2A), it may not number another rule using three digits (i.e., R414-500). Likewise, if an agency chooses to use a letter as part of one section number (i.e., R156-55c-1302c), it may not number another section in any of its rules using five digits (i.e., R156-55c-10001). When the two numbering styles are mixed, computers will not correctly sort the agency's rules.

The computer will always read left to right and sort rules numerically, then alphabetically, by the agency, rule, then section numbers. The rulewriter should organize rules and sections accordingly. The simpler the system, the less confusing it is to the reader.

Subsection (Paragraph) Numbering

To date, internal numbering (paragraph numbering) has been left to the discretion of the rulewriter. The result is a hodgepodge of internal numbering systems. The Division recommends the following internal numbering system, which is the same system used in statute.

Example:
R15-5-1. Purpose.
(1) This rule provides the procedures for informal adjudicative proceedings governing:
(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and
(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.
(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

The rulewriter should avoid dividing sections into units smaller than a subsection such as “Subsection R56-1-1(2)” or “Subsection R56-1-1(2)(a).” When further division is absolutely necessary, however, rulewriters may follow the statutory system of citing the lower case Roman numeral, the capital letter, then the upper case Roman numeral, all enclosed by parentheses: “Subsection R56-1-1(2)(a)(i)(A)(I).” References to these subdivisions are always “subsections,” to avoid confusion and maintain simplicity. This numbering system, as developed and implemented by the legislature, allows outlines to extend to a maximum of five levels.

Example:	
PARAGRAPH NUMBERING LEVELS	GRAPHICAL ILLUSTRATION OF PARAGRAPH NUMBERING LEVELS
R1-1-101. Example.	R1-1-101. Example.
(1)...	(1)...
(a)...	(a)...
(i)...	(i)...
(A)...	(A)...
(I)...	(I)...
(2)...	(2)...(Note: multiple indentations are not allowed in rules)

Currently, rulewriters are permitted and encouraged to renumber within existing definitional sections to alphabetize the section. In all other circumstances, a rulewriter must use great care. Rearranging subsections makes it difficult to compare sections by computer to look for potential conflicts or unmarked changes. Also, it is possible that by rearranging the subsections, the change inadvertently alters the substance of the section. This change in meaning may be difficult to catch.

If the rulewriter is amending a section of a rule in which the subsections are numbered in a different manner and the rulewriter is going to change the number to be consistent with this form, the rulewriter must check cross-references to determine if that particular subsection is referenced in any other sections of the code. The rulewriter must then change all other references to conform with the new numbering. If cross-references appear in another title of the administrative code, the rulewriter should notify the other agency of the pending change. The rulewriter should also check any relevant case law to determine whether that specific subsection is mentioned in a court opinion. If that is the case, the rulewriter may want to consider leaving the whole section and the impacted subsection as it is currently numbered to preserve the legal history of the subsection even though it is inconsistent with this general drafting guideline.

While consistency throughout the administrative code is desirable, because consistency makes the code easier to use, it is most important that subsection numbering be consistent within a rule and a title.

Reusing Rule and Section Numbers

In general, the rulewriter should not use the number of a section that has been repealed to enact new unrelated material. This leads to a confusing history for those newly enacted provisions that have no relation to the old, repealed provisions. Similarly, it is preferable to create a new rule rather than enact unrelated subject matter under a repealed rule's number. However, if the new section or rule is related in subject matter to the old section or rule, it is appropriate to use the number of the repealed section or rule.

Text Formatting Standards: A Comprehensive Check List

Rules must adhere to a precise format. The format is not designed for aesthetics, rather for utility and economy. A consistent format makes rules:

- easier to use in conjunction with the statutory code;
- less expensive to print or maintain in a searchable database; and
- compatible with multiple computer systems—allowing rules to be transferred between dissimilar systems and programs without loss or distortion of data.

The state's rulemaking process will function efficiently and economically only if nearly all operations (such as filing, publication, database entry, code production) can be automated. For purposes of drafting, disseminating for public comment, inserting in agency manuals, reprinting, or other uses, agencies are free to use any desirable format—as long as the official text, catchlines, and numbering are not altered.

When preparing rules for filing with the Division of Administrative Rules and publication in the Utah State Bulletin, agencies should use the following sections as a check list. This will ensure that the Division of Administrative Rules does not return a rule or change to the agency for text corrections, possibly delaying publication.

Presentation

Presentation involves how the text of a rule appears on the page.

- Pages appear in portrait orientation (horizontally 8.5", vertically 11").
- Pages are not numbered.
- Pages do not contain text in headers.
- Pages do not contain text in footers or watermarks.
- Margins are set at one inch on the left, right, top and bottom of the page.
- Text is single spaced.
- A rule includes:
 - one title number/catchline (for example, "R15. Administrative Services, Administrative Rules.");
 - one rule number/catchline (for example, "R15-2. Public Petitioning for Rulemaking."); and

- a section number/catchline (for example, “R15-2-2. Definitions.”) for each section of the rule.
- Each section contains text.
- Rules and sections may be reserved, provided the word “Reserved” appears in the catchline and on the first line following the catchline and a tab. Numbering schemes do not need to be consecutive.
- One tab (not an indent) must be used to begin each paragraph.

Rule Citation/Reference Numbers

Administrative rule citations are critical because they tell the reader where they are within the organization of an administrative rule. More importantly, however, citations are the tool that allows the reader to reference a specific passage of an administrative rule so that others may find the same passage. Administrative rules in Utah contain four levels of citation.

1. The title (“R”) number (for example, “R15.”) indicates the agency that wrote the rule. The title number:

- is assigned by the Division of Administrative Rules;
- may be changed by the Division of Administrative Rules to accommodate reorganizations in state government;
- contains an “R” followed by a maximum of three numerical characters;
- is followed by a period; and
- appears in boldface type.

2. The rule number (for example, “R15-2.”) :

- is preceded by the agency “R” number and a hyphen;
- may use a maximum of three characters:
- the first character must be numerical other than zero,
- the last character may be alphabetical provided it is preceded by a number greater than zero, and that no other agency rule is numbered using three digits;
- is followed by a period; and
- appears in boldface type.

3. The section number (for example, “R15-2-2.”) is the fundamental unit of organization in the administrative code. Each section:

- is preceded by the agency “R” number, a hyphen, a rule number, and a hyphen;
- may use a maximum of five characters:
- the first character must be numerical other than zero,
- the last character may be alphabetical provided it is preceded by a number greater than zero, and that no other agency rule section is numbered using five digits, and
- zeros may not precede (pad) the section number;

- is followed by a period; and
 - appears in boldface type.
4. Paragraph or subsection numbers:
- use a consistent scheme throughout an agency's rules;
 - are followed by two spaces;
 - should follow the predominant paragraph numbering scheme in the statutory code (for example, (1)(a)(i)(A)(I)); and
 - should not be subdivided more than two levels, and never more than five levels.

Catchlines

Following the title, rule, and section numbers, the rulewriter identifies the agency writing the rule or briefly describes the topic addressed. Catchlines:

- follow the title, rule, and section numbers;
- are preceded by two spaces (for example, “R15-1-1. Definitions.”);
- provide a brief description of the text without using unnecessary phrases like “Rules for,” “Rules of,” or “for the State of Utah”;
- are capitalized like the title of a book—with significant words beginning with upper-case letters;
- are followed by a period;
- are not enforceable as part of the rule text; and
- appear in boldface type.

Text

Citations and catchlines organize the substance of rules—the text. What the rule text says is up to the rulewriting agency, based on its legal authority to regulate. However, the text formatting requirements are established by the Division of Administrative Rules. Rule text:

- appears beneath a section number and catchline;
- is divided into paragraphs—each paragraph begins with a tab and ends with a hard return;
- is separated from the next section of text or the annotations by one blank line;
- uses words, not symbols, to express concepts, measurements, and relationships;
- begins with a paragraph number or letter, typically in parenthesis, followed by two spaces (for example, “(b) the name of the adjudicative proceeding...”);
- does not include symbols, or any characters not found in the Standard ASCII Character Set;
- uses characters for their intended purpose (for example, the letter “l” may not be used as the number “1” even though they may look identical when printed with a particular font);

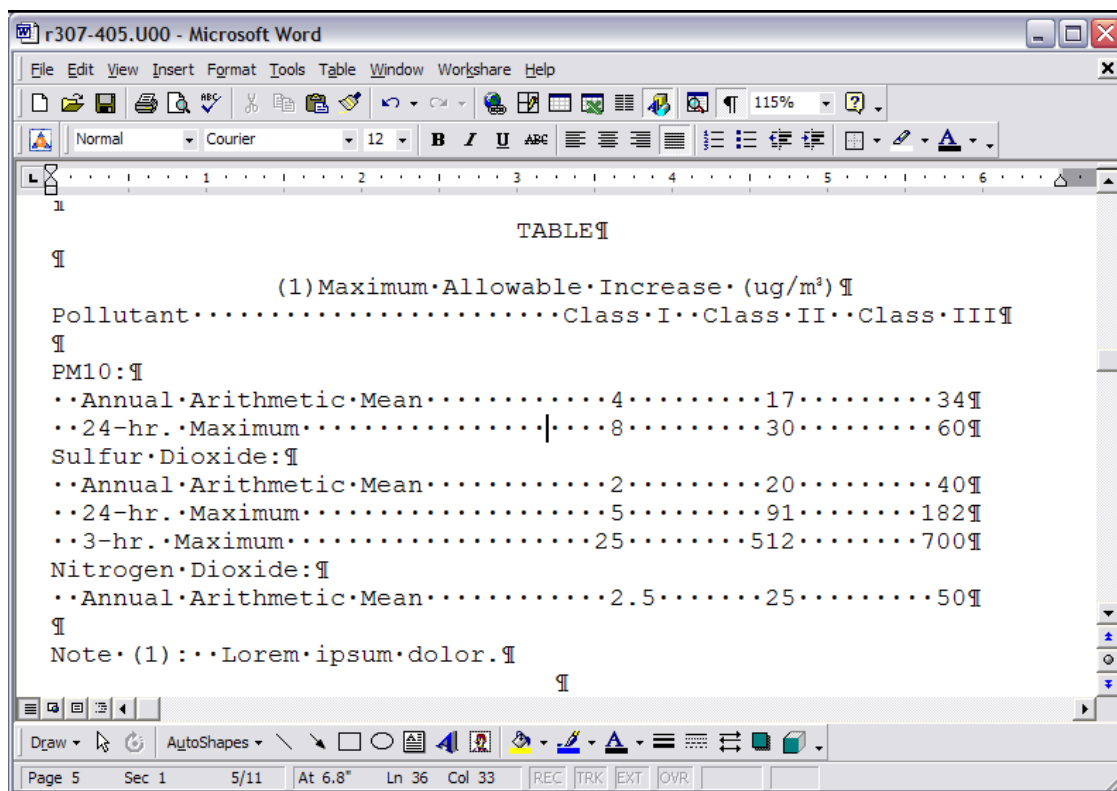
- does not contain hard return codes, line break codes, or words hyphenated to facilitate breaks at the right margin of the page;
- does not include graphics, charts or maps (however, graphics, charts and maps may be incorporated by reference); and
- is free of typographical and grammatical errors (run spell check).

Tables

Maps, charts, graphs, diagrams, illustrations, drawings, forms, or similar materials are prohibited in rules (Section R15-3-4), but may be incorporated by reference. The Division of Administrative Rules allows agencies to include textual tables. Tables must:

- be preceded by:
 - one blank line;
 - the word “TABLE” in capital letters centered across the page,
 - an Arabic number when more than one table appears in a rule, and
 - a table title centered above the table, separated from the table by one blank line;
- not exceed 60 characters in width from the left margin followed by a hard return;
- generally be comprised of columns;
- use spaces, not tabs, to define and separate columns;
- not exceed 20 columns;
- contain data confined to the parameters of the column (data from one column may not run into another column); and
- be followed by a center code and a hard return.

In some instances, an agency will include paragraphs of text within a table. The lines of text within these paragraphs must not exceed the 60 characters line limit. In other words, please insert a line break at the end of each line of text in a paragraph included in a table. The following screenshot illustrates a correctly formatted table.



Footnotes and Endnotes

Footnotes (notes that appear at the bottom of a page) may not be used in administrative rules. The use of endnotes in administrative rules is discouraged. If information is important enough to include in a rule, it should be included in the regular text of the rule. If endnotes must be used, they may appear:

- as numbers surrounded by parentheses, not superscripted numbers, symbols, or word processing codes that automatically generate references;
- directly beneath a table when describing components of a table, separated from the table by a blank line and separated from the text following the table by a center code and a hard return; and
- as endnotes at the end of the section in which the notes appear, separated from the text of the section by one blank line.

End Matter

The information that appears at the end of each rule includes: indexing terms, the date of last substantive amendment, the date of the notice of continuation, and legal citations.

Indexing terms:

- appear at the end of each rule after the last section;
- appear in boldface type;
- are preceded by one blank line and the word “KEY” followed by a colon and two blank spaces;

- consist of no more than four terms;
- contain at least one term that describes the primary topic of the rule;
- should be used sparingly; and
- appear in lower case letters, except for proper names (i.e., Medicaid).

History—date of last substantive amendment:

- appears on the line beneath the indexing terms;
- appears at the left margin;
- appears in boldface type; and
- indicates the date on which the last substantive amendment to the rule became effective.

History—notice of continuation:

- appears on the line beneath the date of last substantive amendment;
- appears at the left margin;
- appears in boldface type;
- states “Notice of Continuation,” followed by the date of review.

Indexing citations:

- appear on the line beneath the history, flush left;
- may include additional citations added beneath the first statute citation; and
- appears in boldface type.

Special Formatting

Personal computers and word processing programs allow users many added features that enhance the presentation of information. Most of these special formatting features, however, must be displayed and printed with the same program used to create the effect. Since rules are exchanged between different computer systems and programs, rules must be prepared in a plain format so that data is not lost nor distorted.

Special formatting functions:

- may not be used within rule text, except as otherwise provided in this manual; and
- include the following as examples:
 - boldface type;
 - underlining to show anything other than the addition of new text;
 - italics;
 - changes in type face, font size, or type color;

- headers or footers;
- page numbering;
- line numbering;
- tables generated with software;
- graphics boxes;
- text boxes;
- software-generated cross references, tables of content, outlines, or indexes;
- footnotes or endnotes;
- block protection or conditional end of page commands;
- page breaks;
- column formatting; and
- line drawings.

Changes to Rule Text

Laws governing the creation and amendment of administrative rules require that additions be underlined, and deletions be struck out and surrounded by brackets (Subsection 63-46a-4(4)(b), and Section R15-4-9).

- New rules shall be completely underlined.
- New language added to existing rules shall be underlined.
- Deleted language shall be struck out and surrounded by brackets (for example, [~~deleted~~]).
- Repealed rules are completely struck out AND surrounded by brackets.

Chapter 2. The Rulemaking Process

A Practical Guide

Rulemaking Types

The UARA and the rules under Title R15 provide the processes by which rulemaking can occur. In practical terms, these processes are embodied in a number of different rulemaking types. The purpose of this section is to describe these types, when they should be used, and the types of questions that must be answered when any of them is filed.

Proposed Rules

By far, the majority of rulemaking actions filed with the division are proposed rules. Proposed rules come in a number of varieties:

1. New rules;
2. Amended rules;
3. Repealed rules; and
4. Repealed and reenacted rules.

Each of these varieties is discussed briefly below.

Proposed Rule Types



Note

Rulemaking procedures governing proposed rules are found at Section 63-46a-4 and are clarified at Rule R15-4.

New rules. A new rule is a proposed rule the text of which does not already exist in the administrative code. New rules may come about because the Legislature has authorized the agency to implement a new program. Occasionally, new rules come about as the result of an agency reorganization of rules, or because of the creation of a new agency by the Legislature.

Amended rules. An amended rule proposes changes to existing rule text. Amendments may occur when the Legislature changes aspects of a program administered by an agency, or when the agency identifies a necessary change. Amendments may also result from a public petition for the agency to engage in rulemaking (see Section 63-46a-12 and Rule R15-2).

Repealed rules. A repealed rule is a proposed rule where the entire rule text is deleted from the administrative code. Repealed rules may occur when the Legislature removes authority for a particular program or when an agency reorganizes its rules.

Repealed and reenacted rules. A repealed and reenacted rule is a proposed rule used when conventional marking of proposed changes would make the changes impossible to follow.

Rule Analysis Questions for Proposed Rules

When filing any type of proposed rule, the same type of information must be provided as part of the rule analysis. This information includes:

1. a brief explanation of why the agency is engaging in rulemaking;
2. a summary of the rule or the change;
3. a summary of the costs or savings associated with the rule (approached five different ways; see the section called “Costs and Savings Associated with the Rule”);
4. a list of the laws that authorize the rule or that the rule implements; and
5. a list of incorporated materials that are added to, or changed in the rule by the rulemaking action.

These are the most important questions in the rule analysis. We'll discuss below how best to answer them.

“Purpose of the rule or reason for the change”

Why are you making this new rule? Why are you amending this existing rule? This is the way in which you should approach this part of the rule analysis. This is required information which should provide a specific reason for the filing. As a matter of style, if acronyms appear in the language, make sure they are spelled out the first time they appear. If the reason for the filing is a result of legislation, you should provide a House or Senate Bill number and the session in which it was passed (e.g. 2004 General Session, 2005 First Special Session, etc.).



Note

This question is required by the UARA; see Subsection 63-46a-4(6)(b).

“Summary of the rule change”

What does the new rule do or require? What is changed by the amendment? This is required information which should consist of a concise summary of what the rulemaking action does. There are two special cases to consider when completing the summary: a) the repeal and reenact; and b) the repeal.

Repeal and reenact. The proposed repeal and reenact presents a special case for the summary. In this case the summary should be of:

1. the substantive provisions that existed in the old rule that do not exist in the new rule; and
2. the substantive provisions that exist in the new rule that did not exist in the old.

This variation is required by Subsection 63-46a-4(7).

Repeal. The summary for the repeal is very straightforward. All that is needed is the sentence, “This rule is repealed in its entirety.”



Note

This question is required by the UARA; see Subsection 63-46a-4(6)(a).

Costs and Savings Associated with the Rule

As you might expect, the Legislature is continually concerned about money issues related to rulemaking. We all should be, as the funds to pay for, or the funds that are saved by, a particular rulemaking action come from our, the taxpayers pocket. Because of this the Legislature has required that we comment on the cost or savings impact our rulemaking will have. The following rules of thumb apply to all the cost questions (except for comment made by the department head):

1. Report only the incremental costs or savings associated with the change; if there are none, see item 4.
2. Report the costs or savings using a dollar amount, if possible.
3. Report actions required by the rule that generate costs or savings; this can take the place of the reporting in dollars if estimates simply cannot be made, or no firm dollar figure is known. However, you must also explain *why* you cannot provide a dollar estimate.
4. Report how you came to the conclusion that there are no incremental costs or savings associated with the rule, in the event that there are none.

These rules of thumb are taken from Section R15-4-10. Below you will find some specific guidance for each cost impact question.

State budget. This box may only contain information relating to State Government. Ensure that responses are concise and complete. Remember, “None” or similar language must be accompanied by an explanation of how you determined that there were no incremental costs or savings associated with the rule or change.

Local government. This box may only contain information relating to Local Government. Ensure that responses are concise and complete. Remember, “None” or similar language must be accompanied by an explanation of how you determined that there were no incremental costs or savings associated with the rule or change.

Other persons. This box may only contain information pertaining to affected persons as a class. This is an aggregate impact. For example, “the cost to the entire Dry Cleaning industry will be \$500,000”. Remember, “None” or similar language must be accompanied by an explanation of how you determined that there were no incremental costs or savings associated with the rule or change.

Compliance costs for affected persons. This box provides supplemental information to “Other persons” in Box 7. This is the compliance cost, so it addresses the average cost to an individual entity within a class. For example, “the average cost to an individual Dry Cleaning Business will be between \$10,000 and \$12,000”. When using dollar amounts, use “\$5” as opposed to “\$5.00”, be consistent. Remember, “None” or similar language must be accompanied by an explanation of how you determined that there were no incremental costs or savings associated with the rule or change.

Comments by the department head. This is required and crucial information which must be the language of the department head. Note, though, that the response by the department head is not governed by the provisions of Section R15-4-10 but is governed only by Subsection 63-46a-4(6)(1). Remember to append the department head's name and title after the comment as in the example below:

I have determined that there is no fiscal impact on business associated with this amendment. Simon Bamberger, Executive Director.



Note

Cost and savings information questions are required by the UARA; see Subsection 63-46a-4(6)(d), (e), and (l). The detail of the answers to these questions is governed by Section R15-4-10.

“This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws”

This is required information. The citations in this box should match the citations at the bottom of the rule text. Do not use “UCA” or “Utah Code Ann.”. Only use “Section”, “Subsection”, or Title and Chapter. Where it is necessary, “et seq.” may be used.



Note

This question is required by the UARA; see Subsection 63-46a-4(6)(c).

“This rule adds, updates, or otherwise changes the following title of materials incorporated by reference”

If an incorporation is listed, it should contain the complete title and the editor number or date of the publication. Please indicate whether you are adding, modifying, or removing an incorporated reference, as in the following example:

This filing adds 42 CFR 1020 and 43 CFR 3100, 2001 edition; it removes 25 USC 19; it changes NFPA 1192, Standard on Recreational Vehicles, published by the National Fire Protection Association, from the 2000 edition to the 2005 edition.



Warning

If you are not adding, changing, or removing an incorporated reference, do not answer this question.



Note

This question is required by the UARA and by administrative rule; see Subsection 63-46a-3(7)(c) and Subsection R15-3-3(1)(d).

Changes in Proposed Rules (CPRs)

Differences between CPRs and Proposed Rules

Sometimes you file a rule for publication and decide that there are further changes you wish to make to it. It isn't effective yet. What do you do?

One alternative is to file a “Change in Proposed Rule”. The purpose of a change in proposed rule is to make changes in some proposed rule filing that isn't yet effective.

One thing to remember is that, generally speaking, the proposed rule and its associated change in proposed rule are a package deal; in fact, they are assigned the same DAR file number. One isn't made effective without the other. Because of this, you should consider carefully any time or political constraints imposed upon your agency.

Changes in proposed rules can be filed on any type of proposed rule filing, though we would recommend that you *not* file one related to a proposed repeal of a rule. If you really decide not to repeal a rule after having filed, let the repeal lapse and file any necessary amendments.

Changes in proposed rules are just that: changes that are being made to a proposed rule that is already published but not effective. Because the filing represents changes, the answers in the rule analysis should reflect this, as we will discuss below.



Note

Changes in proposed rules are governed by Section 63-46a-6 of the UARA.

Rule Analysis Questions for Changes in Proposed Rules

Rule analysis questions for changes in proposed rules are essentially the same as for proposed rules. However the answers to the questions should reflect the nature of the rulemaking action. In other words the answers should reflect that the change in proposed rule is a modification of a previous proposed rule.

For example, let's say that School and Institutional Trust Lands files a proposed amendment that raises the royalty rate for minerals extractors operating on trust lands. This raising of the royalty rate should have been reported in the rule analysis as a cost to affected persons.

After publication, School and Institutional Trust Lands discovers through public comment that the royalty rate was raised too high. In responding to the question about cost to affected persons, School and Institutional Trust Lands would report the *change* in cost from the original proposed amendment.

This approach—reporting the *differences* between the original proposed rule and its subsequent change in proposed rule—should be followed for the following questions:

1. the reason for the change: do not report the reason for the original proposed rule, simply the reason for the change in proposed rule;
2. the summary of the change: do not summarize the original proposed rule, simply summarize the changes in the change in proposed rule;
3. all of the cost questions: do not report the costs or savings associated with the original proposed rule, simply the costs or savings associated with the change in proposed rule. If there are no changes in costs or savings, then your response should indicate this, while referring the reader to the original filing for the cost information.

Emergency Rules

Differences between Emergency Rules and Proposed Rules

While there may be an aspect of urgency associated with proposed rules, emergency rules are, by definition, rules that you want to put into place because of an emergency. But, just because there is an emergency doesn't mean that there aren't questions that need to be answered.

Rule Analysis Questions for Emergency Rules

Generally speaking, answers to the rule analysis questions for emergency rules follow the same instructions as answers to the rule analysis questions for proposed rules. There is, however, one critical difference that agencies ignore at their peril.

Because the entire purpose of an emergency rule is to allow an agency to quickly put into place some necessary regulatory language, the UARA requires that you explain *why* you don't have time to go through regular rulemaking.

There are three criteria under which an emergency rule can be enacted. At least one must exist, but there may, of course, be any combination of the three:

1. an agency is in violation of federal or state law;
2. there exists an imminent danger to the public's health, safety, or welfare;
3. there exists an imminent budget reduction because of budget restraints or federal requirements.

Each of these criteria is sufficient for an agency to follow the emergency rulemaking process. But, you can't just say in the rule analysis, "Oh, there's an emergency and we have to deal with it." What you have to do is identify which of the three, or which combination of the three, criteria apply, and then provide a *justification*, an explanation of how the criteria apply.



Note

Emergency rulemaking is governed under Section 63-46a-7 of the UARA; it is also governed by administrative rule; see Section R15-4-8.

Five-Year Reviews

Differences between Five-Year Reviews and Proposed Rules

The key difference between five-year reviews and proposed rules is that five-year reviews are not designed to *change* anything. A five-year review is designed to do two things: 1) require the agency to determine whether the underlying legal authority for a rule still exists; and 2) require the agency to *explain why* the rule is still necessary.



Note

The five-year review process is governed by the UARA: see Section 63-46a-9 Agency review of rules.

Questions for Five-Year Review and Statements of Continuation

The questions that need to be answered when filing a five-year review are completely different than those answered when preparing a rule analysis for a proposed rule. There is no need to explain why or what anything is changing in the rule because *nothing changes* in a five-year review. Nor is there any need to describe costs, because *nothing changes* in a five-year review.

If we seem to be trying to make a point here, it's because we are, for the following reason. We require that agencies file the text of the rule that is being reviewed; this is to ensure that the text the agency has on file matches the most currently effective version of the rule. However, agencies will often submit five-year reviews with rule text that is marked as if for amendment. *Do not do this*. Five-year reviews are only for responding to the following questions.

“A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule”

This question is really very straightforward, yet you would be surprised by the answers that are sometimes provided. This is asking for more than simply providing a reference to the statute that underlies your rule. You need to reference it of course, but you need to tell us *how* the statute authorizes the rule. Let's look at an example.

The Division of Administrative Rules is authorized to write rules governing filing and publication procedures for the *Utah State Bulletin*. That authority is found in Section 63-46a-10. When answering the question of “the particular statutory provisions under which the rule is enacted” we *would not* do this:

Section 63-46a-10

This doesn't answer the question. The question really is “How does Section 63-46a-10 authorize the Division of Administrative Rules to write this rule?” Something like this would be better:

Section 63-46a-10 directs the Division of Administrative rules to establish filing and publication procedures.

“A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule”

There is a fine line between summarizing comments and reporting comments verbatim. Some agencies choose to report all comment made during the course of five years. This is not necessary. The UARA does not require it. All the UARA asks for is a *summary*.

Summary means “briefly giving the gist of something...”¹ Some synonyms of *summary* are *compact* and *succinct*. The summary of comment need not be lengthy. It need not repeat verbatim all comments that you have received. The summary should be an abstract or an abridgment. Think of it as if you were an editor at Reader's Digest and you were preparing *A Tree Grows in Brooklyn* for publication in the *Best Loved Books* series. You would *abridge*. Note that you are only required to summarize written comment.²

This suggests taking care during the five years in between reviews to categorize any comment that you might receive. This is especially important if you receive an enormous amount of comment.

“A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any”

A good way to think of this question is to ask yourself, “What would happen if the rule were gone?” The UARA is asking for more here than simply responding, “Because the law still requires it.” A reasoned justification is an *explanation* on the part of the agency for why the rule is still necessary.

¹See *summary* at DICT.org.

²The *Best Loved Books* was a series published by Reader's Digest some years ago. It presented four to five abridged works of classic and contemporary fiction in each volume.

Nonsubstantive Changes

Differences between Nonsubstantive Changes and Proposed Rules

Nonsubstantive changes differ from proposed rules in the following ways:

1. Nonsubstantive changes are not published in the *Utah State Bulletin*;
2. Nonsubstantive changes are not subject to a comment period; and
3. Nonsubstantive changes do not make changes that *are of substance*.

Let's explore this last difference a bit more, since the first two depend upon it.

Rules enacted by state agencies affect rights and privileges. *Substantive* changes to rules affect rights and privileges. Nonsubstantive changes do not affect rights and privileges because they are limited to the following types of changes (see Section R15-4-6):

1. grammatical changes; or
2. changes that do not materially affect the application of the rule (e.g., typographical corrections, removal or redundant language, or similar changes).

Let's look at some examples of changes that fall in these two broad categories outlined in Section R15-4-6:

1. Removing redundant language (i.e., language that already exists elsewhere in the agency's rules or statute) is a nonsubstantive change.
2. Correcting a subject-verb accord (singular subject but plural verb, for example) would be a nonsubstantive change.
3. Changing rule references, statutory reference, or other legal references because of other changes in rules or statutes is a nonsubstantive change.
4. Changing agency names can be a nonsubstantive change.

Other changes that might *seem* nonsubstantive are not. Adding commas to what appears to be an itemized list would not necessarily be a nonsubstantive change. Let's look at a classic example:

The panda eats shoots and leaves.

This is a description of a large mammal's rather monotonous diet. Watch what happens to the meaning, the *substance* of the sentence by the unfortunate introduction of commas where they shouldn't be:

The panda eats, shoots, and leaves.

Now the large mammal satisfies his hunger, engages in assault with a deadly weapon, and departs the scene of the crime. The key to determining whether a change is nonsubstantive is always to look at what you want to do, and then ask the question, "Does this materially affect the way the rule will be applied?" It's not a question of how much text you add or remove; it's a question of what happens to the text's *substantive meaning*.

Questions for Nonsubstantive Changes

“Purpose of or reason for the nonsubstantive change”. Just as with a proposed rule, you must provide the purpose of, or reason for, the change. *Why* are you doing this? If the change is because of legislative action, remember to provide the House Bill or Senate Bill number, as well as the session information.

“Summary of the nonsubstantive change”. Again, just as with a proposed rule, you must also summarize the change. *What* are you doing with the change?

Appendix A. Flow Charts of the Rulemaking Process

Figure A.1. Utah Administrative Rulemaking Process—Simplified View

Utah Administrative Rulemaking Process

A Simplified View of Utah's Administrative Rulemaking Process. For the requirements of the process, see *Utah Code*, Title 63, Chapter 46a.; and *Utah Admin. Code*, Title R15.

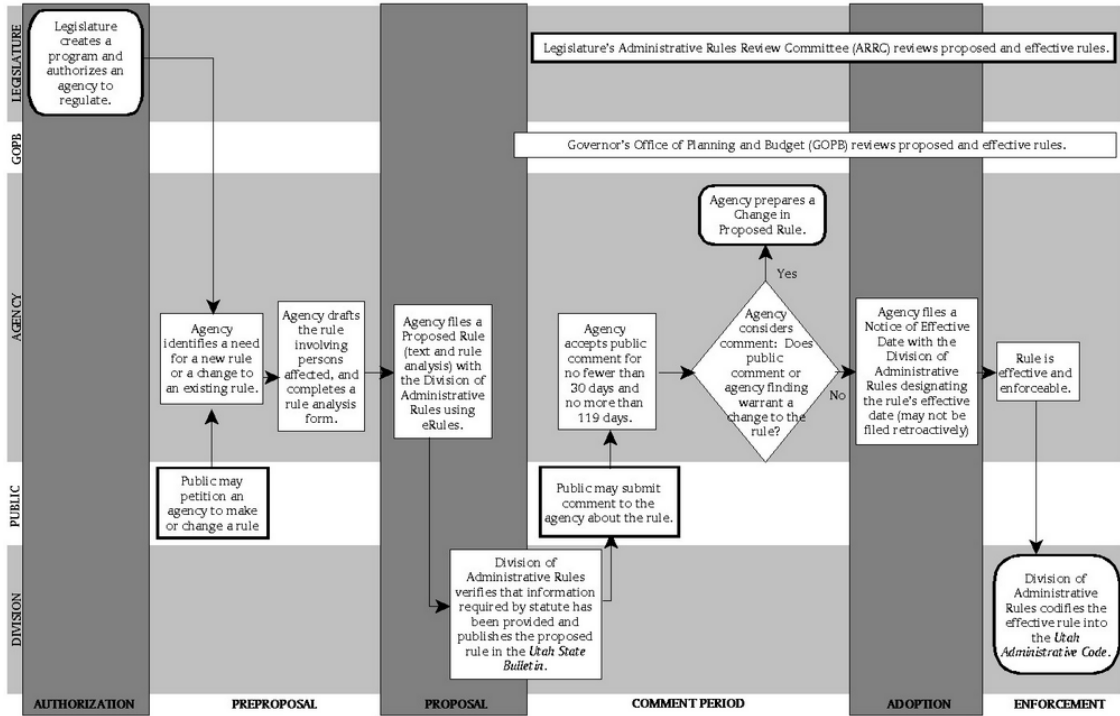
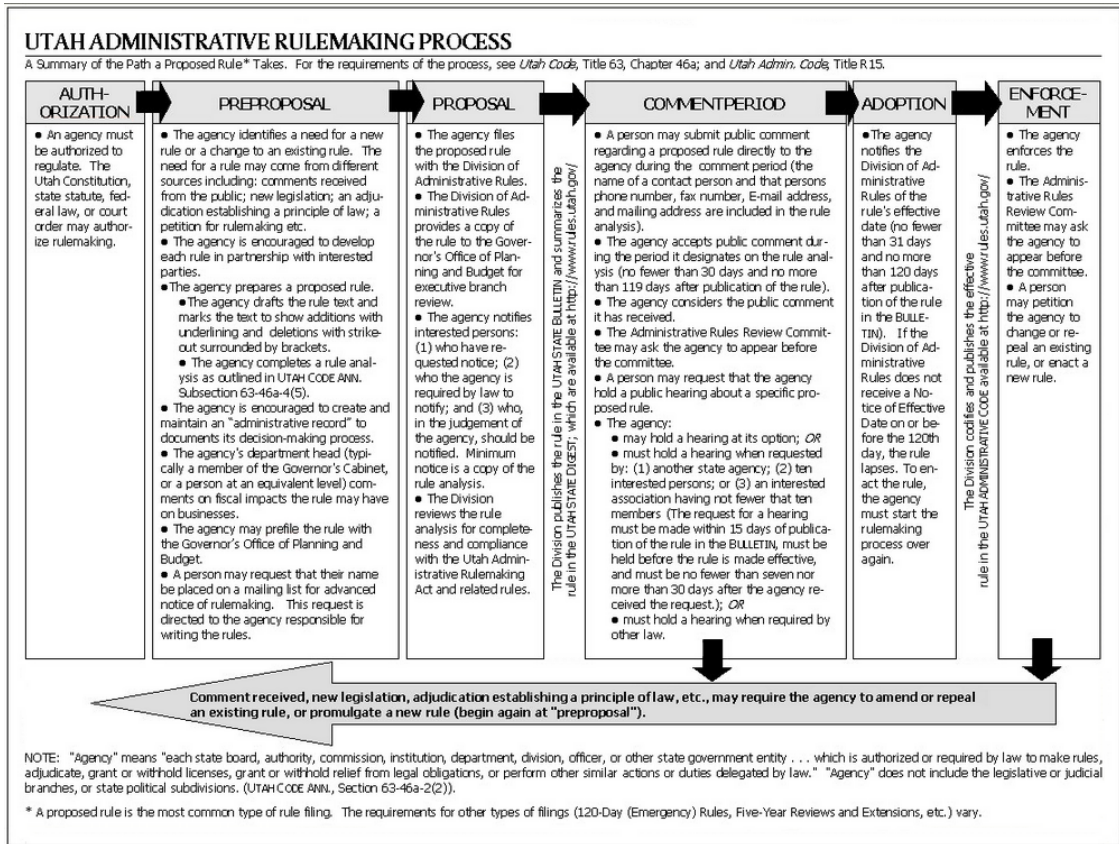


Figure A.2. Utah Administrative Rulemaking Process



Appendix B. Problem Words and Expressions Defined

TERM	DEFINITION
Adjacent	"Lying near."
Contiguous	"Touching."
Advise	verb - "To counsel."
Advice	noun - "Opinion" or "recommendation."
Affect	verb - "To influence" or "to assume."
Effect	noun - "Result" or "accomplishment;" verb - "to cause" or "to bring about."
Affective	"Caused by or expressing feeling or emotion."
Effective	Broader, "producing the intended or expected results."
Allow	"To grant."
Permit	More formal and specific but essentially the same meaning.
Among	Used to show the relationship of more than two objects or persons or when no close relationship exists. Use "and" as the connective. Never followed by "each" or "every."
Between	Used to show the relationship of only two objects or persons or if a close relationship exists. Use "and" as the connective. Never followed by "each" or "every."
Amount	Used to refer to anything that can be measured.
Number	Used to refer only to items that can be counted in individual units.
Anyone	Refers only to persons.
Anybody	Same as "anyone."
And	Should not be used to begin a sentence or used with "also." "And" is always preferred.
Also	Should not be used to begin a sentence or used with "and."
Assure	"To convince" or "to guarantee" and applies only to persons.
Ensure	"To make certain" or "to guard against loss" and applies to both persons and property.
Insure	To cover with insurance or "to guard against loss."
Because	"Since" or "for the reason that." Its use with "reason" is redundant.
Biannual	"Twice a year" or "semiannual."
Biennial	"Once in two years" or "every two years."
Bimonthly	"Once in two months" or "every two months."
Biweekly	"Once in two weeks" or "every two weeks"
Capital	Used in all meanings except that of a building.
Capitol	A building or edifice.
Censor	"To examine."
Censure	"To condemn" or "to find fault."
Client	"Person who seeks the advice of lawyers or other professionals."
Customer	"Buyer."
Patron	"Buyer" or "one who supports with money or gifts."

Problem Words and Expressions
Defined

TERM	DEFINITION
Consecutive	"Uninterrupted succession."
Successive	"Following in a regular sequence."
Disinterested	"Impartial" or "unbiased."
Uninterested	"Indifference" or "lack of interest."
Disregardless	Improper. Use "regardless," "unmindful," or "heedless."
Irregardless	Improper. Use "regardless," "unmindful," or "heedless."
Dispense	"To distribute in parts" or "to administer."
Disperse	"To scatter" or "to dispel."
Disburse	"To pay out" or "to expend."
Either/or	"One of two." Not to be used to coordinate more than two words, phrases, or clauses.
Neither/nor	"Not one of two." Not to be used to coordinate more than two words, phrases, or clauses.
Equable	"Uniform" or "unchanging."
Equitable	"Just," "right," or "fair."
Everybody	Refers only to persons.
Everyone	Same as "everybody."
Farther	Refers to a measurable distance or space.
Further	"Moreover." Also indicates greater in quantity, time, and degree.
Garnish	"To decorate" or "to attach money or salary."
Garnishee	"To attach money or salary" and is preferred when referring to "attaching."
Guarantee	"Promise" or "assurance;" "warrant" or "pledge" when referring to debts. Both noun and verb.
Guaranty	"Warrant" or "pledge" when referring to debts. Usually a noun.
Majority	"More than half."
Minority	"Number, amount, or part forming less than half of the whole."
Plurality	"The highest number within a given number."
Prescribe	"To direct" or "to order."
Proscribe	"To banish" or "to outlaw."
Principal	noun - "A sum of money" or "chief person;" adjective - "main" or "foremost."
Principle	"Governing rule or truth" or "doctrine."
Whether or Not	"Or not" is usually unnecessary. To decide if it is needed, substitute "if" for "whether." If the "if" results in a different meaning, then "or not" is needed.
Who, Whoever	Used as the subject of a verb or a predicate pronoun, as in "who can go."
Whom, Whomever	Used as the object of a verb or preposition, as in "whom we saw."

Appendix C. Preferred Terms

DO NOT SAY:	SAY:
"above"	state the specific code section
"absolutely null and void"	"void"
"accorded"	"given"
"admit of"	"allow"
"aforementioned"	state the specific code section
"aforesaid"	state the specific code section
"afforded"	"given"
"alright"	"all right"
"all"	"each" or "any"
"all of the"	"all the"
"already"	state the specific code section
"an adequate number of"	"enough"
"an excessive number of"	"too many"
"any and all"	"any"
"and/or"	either word as appropriate or add the phrase "or both"
"approximately"	"about"
"a sufficient number of "	"enough"
"at the time"	"when"
"attempt" (verb)	"try"
"authorize and direct"	either word as appropriate
"be and the same hereby is"	"is"
"before mentioned"	state the specific code section
"below"	state the specific code section
"by and under"	either word as appropriate
"by and unless"	either word as appropriate
"by and with"	either word as appropriate
"by means of"	"by"
"category"	"kind," "class," or "group"
"cause it to be done"	"have it done"
"cease"	"stop"
"commence"	"begin" or "start"
"complete" (verb)	"finish"
"conceal"	"hide"
"consequence"	"result"
"constitute and appoint"	"appoint"
"deem"	"consider"

Preferred Terms

DO NOT SAY:	SAY:
"deemed to be"	do not use unless a fiction is intended
"does not operate to"	"does not"
"donate"	"give"
"duly"	do not use
"during such time as"	"while"
"during the course of"	"during"
"each and all"	"each"
"each and every"	"each"
"effectuate"	"carry out"
"employ" (meaning "use")	"use"
"endeavor" (verb)	"try"
"enter into a contract with"	"contract with"
"every"	"each" or "any"
"evidence, documentary or otherwise"	"evidence"
"evidence"	"show"
"examine witnesses and takes testimony"	"take testimony"
"expend"	"spend"
"expiration"	"end"
"fail, refuse, or neglect"	"fail"
"final and conclusive"	"final"
"following"	state the specific code section
"for the duration of"	"during"
"for the purpose of"	"to"
"for the reason that"	"because"
"forthwith"	"immediately"
"frequent"	"often"
"from and after"	"after"
"full and complete"	"complete"
"full force and effect"	"effect"
"give consideration to"	"consider"
"give recognition to"	"recognize"
"have knowledge of"	"know"
"have need of"	"need"
"have the effect of"	do not use unless a fiction is intended
"he or she" or "he/she"	"he"
"hereby"	do not use
"hereafter"	"after [some provision] takes effect"
"heretofore"	"before [some provision] takes effect"

Preferred Terms

DO NOT SAY:	SAY:
"herein"	state the specific code section
"hereinafter"	state the specific code section
"hereinbefore"	state the specific code section
"his or her" or "his/her"	"his"
"in case"	"if"
"in cases in which"	"when"
"in order to"	"to"
"indicate"	"show" or "state"
"inquire"	"ask"
"institute" (verb)	"begin" or "start"
"interrogate"	"question"
"in the case of"	"when"
"in the event that"	"if"
"in the interests of"	"for"
"is able to"	"can"
"is applicable"	"applies"
"is authorized to"	"may"
"is binding upon"	"binds"
"is defined and shall be construed to mean"	"means"
"is dependent on"	"depends"
"is directed to"	"shall"
"is empowered to"	"may"
"is entitled to"	"may"
"is hereby authorized and it shall be his duty to"	"shall"
"is in attendance at"	"attend"
"is required to"	"shall"
"is unable to"	"cannot"
"it is directed"	"shall"
"it is his duty to"	"shall"
"it is lawful to"	"may"
"it is the duty"	"shall"
"it shall be lawful"	"may"
"law passed"	"law enacted"
"made and entered into"	"made"
"make application"	"apply"
"make an appointment of"	"appoint"
"make payment"	"pay"
"make provision for"	"provide"

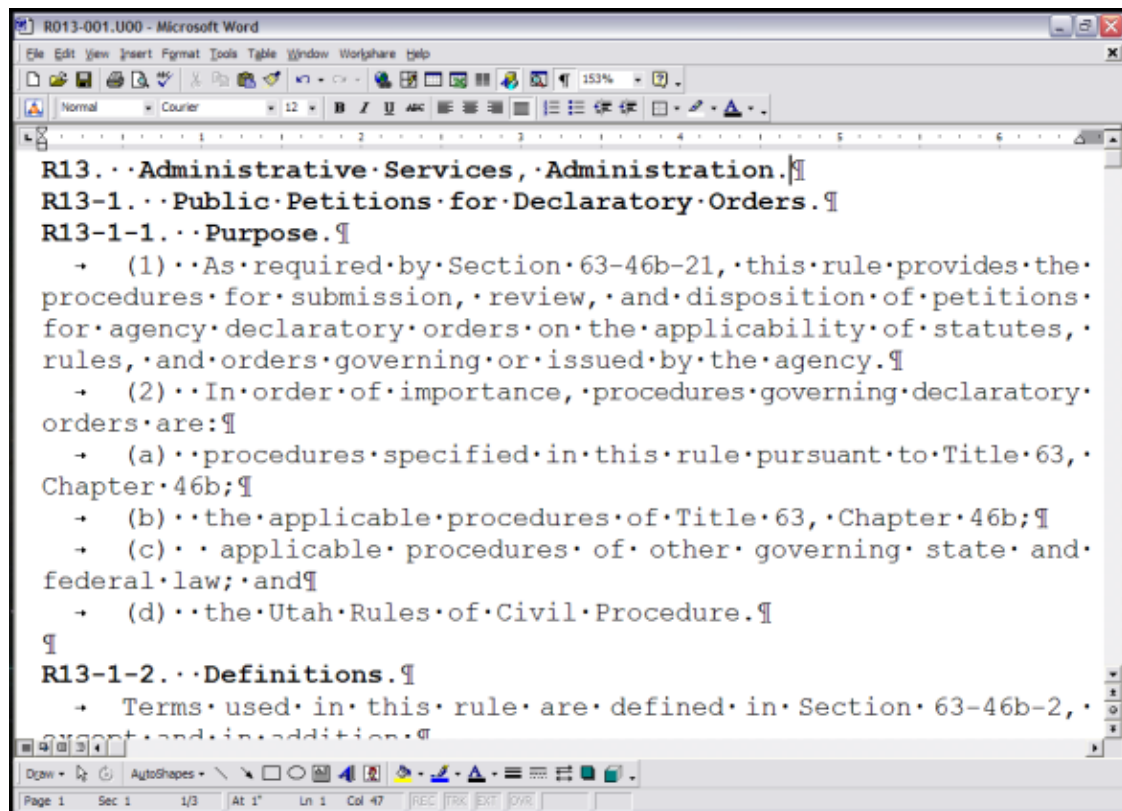
Preferred Terms

DO NOT SAY:	SAY:
"matter transmitted through the mail"	"mail"
"may be treated as"	do not use unless a fiction is intended
"means and includes"	either word as appropriate
"member of a partnership"	"partner"
"minimum"	"least"
"modify"	"change"
"necessitate"	"require"
"negotiate" (as in "negotiate a contract")	"make"
"none whatsoever"	"none"
"not later than"	"before"
"now"	state a specific date
"null and void"	"void"
"obtain"	"get"
"occasion" (verb)	"cause"
"of a technical nature"	"technical"
"on and after July 1"	"after June 30"
"on his own application"	"at his request"
"on the part of"	"by"
"order and direct"	either word as appropriate
"or, in the alternative"	"or"
"over and above"	"exceed"
"per annum"	"each year"
"per centum"	"percent"
"per day"	"a day"
"per foot"	"a foot"
"period of time"	"period"
"person or persons"	"person"
"possess"	"have"
"preceding"	state the specific code section
"presently in progress"	"in progress"
"preserve"	"keep"
"prior"	"earlier"
"prior to"	"before"
"prosecute its business"	"carry on its business"
"provided, that"	"except that"
"provided, however, that"	"except that"
"provisions of section"	"section"
"purchase" (verb)	"buy"

Preferred Terms

DO NOT SAY:	SAY:
"remainder"	"rest"
"render" (meaning "give")	"give"
"render" (meaning "cause to be")	"make"
"require" (meaning "need")	"need"
"retain"	"keep"
"rules and regulations"	use "rules" to refer to Utah administrative rules; use "regulations" to refer to federal regulations
"said"	use the appropriate article; e.g., "the", "that", "these"
"same"	use the appropriate article; e.g., "the", "that", "these"
"shall be considered to be"	do not use unless a fiction is intended
"shall be construed to mean"	do not use unless a fiction is intended
"shall have the power to"	"may"
"sole and exclusive"	"exclusive"
"some"	state a specific number or amount
"specified" (meaning "listed")	"named"
"subsequent to"	"after"
"such"	do not use
"suffer" (meaning "allowed")	"allow"
"terminate"	"end"
"the place of his abode"	"his abode"
"thereof"	"of"
"therewith"	"with"
"to the effect that"	"that"
"to or until"	"until"
"to wit"	do not use
"transmit"	"send"
"under the provisions"	"under"
"unless and until"	either word as appropriate
"until such time as"	"until"
"utilize" (meaning "use")	"use"
"whatsoever"	do not use
"whenever"	do not use
"wheresoever"	do not use
"whosoever"	do not use
"whenever"	"when"
"with the object of"	"to"
"with reference to"	"for"

Appendix D. Sample Rule in Format



Appendix E. Rulemaking Law in the *Utah Code*

Title 63, Chapter 46a: Utah Administrative Rulemaking Act

63-46a-1. Short title.

This act is known as the "Utah Administrative Rulemaking Act."

(as enacted by UT L 1985 ch 158)

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) "Publication" or "publish" means making a rule available to the public by including the rule or a summary of the rule in the bulletin.
- (14) "Publication date" means the inscribed date of the bulletin.
- (15) "Register" may include an electronic database.
- (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) implements or interprets a state or federal legal mandate; and
 - (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) an agency's written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;
 - (iii) the governor's executive orders or proclamations;
 - (iv) opinions issued by the attorney general's office;
 - (v) declaratory rulings issued by the agency according to Section 63-46b-21 except as required by Section 63-46a-3;
 - (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.
- (17) "Rule analysis" means the format prescribed by the division to summarize and analyze rules.
- (18) "Substantive change" means a change in a rule that affects the application or results of agency actions.
- (as last amended by UT L 2003 ch 197, effective May 5, 2003)

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

- (1) Each agency shall:
 - (a) maintain a current version of its 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 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.

(as last amended by UT L 2001 ch 138, effective April 30, 2001)

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.

(as last amended by UT L 2003 ch 197, effective May 5, 2003)

63-46a-4. Rulemaking procedure.

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

(2) 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.

(3) 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.

- (4)(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.
- (c)(i) The division shall publish the information required under this Subsection (4) 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.
- (5) 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.
- (6) 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 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.
- (7)(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 (7) 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.

(8) 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.

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

(10)(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.

(as last amended by UT L 2005 ch 48 s 7, effective May 2, 2005)

63-46a-5. Public hearings.

(1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.

(2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:

(a) a public hearing is required by state or federal mandate;

(b)(i) another state agency, ten interested persons, or an interested association having not fewer than ten members request a public hearing; and

(ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.

(3) The agency shall hold the hearing:

(a) before the rule becomes effective; and

(b) no less than seven days nor more than 30 days after receipt of the request for hearing.

(as last amended by UT L 1987 ch 241)

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) 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.

(as last amended by UT L 2001 ch 138, effective April 30, 2001)

63-46a-7. Emergency 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) 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(4).

(c) The agency shall notify interested persons as provided in Subsection 63-46a-4(8).

(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.

(as last amended by UT L 2005 ch 48 s 8, effective April 30, 2001; Boldface changed from "Exceptions to rulemaking procedure" at the request of the Administrative Rules Review Committee, January 14, 2002)

63-46a-8. Division to provide list of rulemaking activity to Office of Legislative Research and General Counsel. [Repealed]

(repealed by UT L 1992 ch 146)

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 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 (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 35A, Utah Workforce Services Code;
- (iv) Title 40, Chapter 2, Coal Mines; and
- (v) 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).

(as last amended by UT L 1998 ch 13, effective May 4, 1998; and UT L 1998 ch 332, effective July 1, 1998)

63-46a-9.5. Division of Administrative Rules created -- Appointment of director.

(1) There is created within the Department of Administrative Services the Division of Administrative Rules, to be administered by a director.

(2) The director of administrative rules shall be appointed by the executive director with the approval of the governor.

(as enacted by UT L 1987 ch 241)

63-46a-9.6. Utah Administrative Code -- Organization -- Official compilation.

(1) The Utah Administrative Code shall be divided into three parts:

- (a) titles, whose number shall begin with "R";

(b) rules; and

(c) sections.

(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.

(3) The division shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the division is considered the correct, current version.

(as last amended by UT L 1996 ch 60)

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 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 of all rules and notices 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 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 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 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.

(as last amended by UT L 2001 ch 138, effective April 30, 2001)

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 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 the text of their reenacted rules available:
 - (A) for public review during regular business hours; and
 - (B) in an electronic version; and
 - (ii) comply with the requirements of Subsection 63-46a-4(8).
- (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 (4)(a).
- (6) The division shall distribute complete 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.

(as last amended by UT L 2005 ch 48 s 9, effective May 2, 2005)

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) 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 its findings to any member of the Legislature and to any person affected by the rule who requests the findings.

(d) The committee shall provide its findings to the presiding officers of both the House and the Senate, Senate and House chairs of the standing committee, and the Senate and House chairs 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.

(as last amended by UT L 2002 ch 185 s 40, effective May 6, 2002)

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 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 (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) 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).

(as last amended by UT L 1998 ch 332, effective July 1, 1998)

63-46a-12. Interested parties.

(1) An interested person may petition an agency requesting the making, amendment, or repeal of a rule.

(2) The division shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(3) A statement shall accompany the proposed rule, or amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(4) Within 30 days after submission of a petition, the agency shall either deny the petition in a writing stating its reasons for the denial, or initiate rulemaking proceedings in accordance with Section 63-46a-4.

(as enacted by UT L 1987 ch 241)

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 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 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) 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) the text of the rule or proposed rule, if any;

(v) an allegation that 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.

(as last amended by UT L 2001 ch 138, effective April 30, 2001)

63-46a-13. Actions for declaratory judgment to determine the validity of a rule. [Repealed]

(repealed by UT L 1990 ch 224)

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 two years of the date the change was made.

(as last amended by UT L 1998 ch 332, effective July 1, 1998)

63-46a-15. Declaratory rulings by agencies. [Repealed]

(repealed by UT L 1988 ch 72)

63-46a-16. Utah Administrative Code as official compilation of rules -- Judicial notice.

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

(as last amended by UT L 1992 ch 261)

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.

(as enacted by UT L 2001 ch 138, effective April 30, 2001)

NOTE: Source documents downloaded 6/23/2004 from http://www.le.state.ut.us/~code/TITLE63/63_1B.zip, and 5/25/2005 from http://www.le.state.ut.us/~code/TITLE63/63_1C.zip. Legislative action information added by the Division of Administrative Rules based on 63_1B.txt (2004) and 63_1C.txt (2005) prepared by the Office of Legislative Research and General Counsel.

Appendix F. Administrative Rules on Rulemaking

R15-1. Administrative Rule Hearings

R15-1-1. Authority.

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63-46a-10(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63-46a-2.

(2) In addition:

(a) "hearing" means an administrative rule hearing; and

(b) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63-46a-5(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63, Chapter 46a, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63-46a-12.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63-46a-4(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63-46a-5 or 63-46a-12, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

Annotations:

KEY: administrative law, government hearings

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: October 16, 2000

Authorizing, and Implemented or Interpreted Law: 63-46a-10

R15-2. Public Petitioning for Rulemaking.

R15-2-1. Authority.

As required by Subsection 63-46a-12(2), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

- (1) Terms used in this rule are defined in Section 63-46a-2.
- (2) In addition, "rule change" means:
 - (a) making a new rule;
 - (b) amending, repealing, or repealing and reenacting an existing rule;
 - (c) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63-46a-6;
 - (d) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
 - (e) any combination of the above.

R15-2-3. Petition Procedure.

- (1) The petition shall be addressed and delivered to the head of the agency authorized by law to make the rule change requested.
- (2) The agency receiving the petition shall stamp the petition with the date of receipt.

R15-2-4. Petition Form.

The petition shall:

- (a) be clearly designated "petition for a rule change";
- (b) state the approximate wording of the requested rule change;
- (c) describe the reason for the rule change;
- (d) include an address and telephone where the petitioner can be reached during regular work days; and
- (e) be signed by the petitioner.

R15-2-5. Petition Consideration And Disposition.

- (1) The agency head or designee shall:
 - (a) review and consider the petition;
 - (b) write a response to the petition stating:
 - (i) that the petition is denied and reasons for denial, or
 - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
 - (c) send the response to the petitioner within 30 days of receipt of the petition.
- (2) The petitioned agency may interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgement, deems necessary to provide the petition due consideration.

(3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.

(4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

Annotations:

KEY: administrative law

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: October 16, 2000

Authorizing, and Implemented or Interpreted Law: 63-46a-12

R15-3. Definitional Clarification of Administrative Rule.

R15-3-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 63-46a-10(1) which requires the division to administer the Utah Administrative Rulemaking Act, Title 63, Chapter 46a.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63-46a-2.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63-46a-3(2).

(4) Within the limits prescribed by Sections 63-46a-3 and 63-46a-12.1, an agency has full discretion regarding the substantive content of its rules. The division has authority over nonsubstantive content under Subsections 63-46a-10(2) and (3), and 63-46a-10.5(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63-46a-3(7) shall comply with the following standards:

- (a) The rule shall state specifically that the cited material is "incorporated by reference."
 - (b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.
 - (c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.
 - (d) In accordance with Subsection 63-46a-3(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.
- (2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

- (1) All rules shall be in a format that permits their compatibility with the division's computer system and compilation into the Utah Administrative Code.
- (2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.
- (3) The division shall issue and provide to agencies instructions and standards for formatting rules.

Annotations:

KEY: administrative law

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: October 16, 2000

Authorizing, and Implemented or Interpreted Law: 63-46a-10; 63-46a-3

R15-4. Administrative Rulemaking Procedures.

R15-4-1. Authority and Purpose.

- (1) This rule establishes procedures for filing and publication of agency rules under Sections 63-46a-4, 63-46a-6, and 63-46a-7, as authorized under Subsection 63-46a-10(1).
- (2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

- (1) Terms used in this rule are defined in Section 63-46a-2.
- (2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63-46a-9(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63-46a-10(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63-46a-4(2)(b);

(d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;

(e) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;

(f) "Savings" means:

(i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;

(ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

(iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or

(iv) any combination of these aggregated monetary amounts.

(g) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63-46a-4(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63-46a-4(2) and 63-46a-6(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

(a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.

(b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.

(2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-day Comment Period.

(1) For the purposes of Subsections 63-46a-4(6) and 63-46a-4(7), and in conformity with Utah Rules of Civil Procedures, Rule 6 (a), "30 days" shall be computed by:

(a) counting the day after publication of the rule as the first day; and

(b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless

(c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the comment period runs until 5 p.m. the next regular business day.

(2) A rule may be made effective on the day after the comment period expires.

R15-4-5. Notice of the Effective Date of a Rule.

(1) (a) Upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

(b) The agency shall notify the division after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the division of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2) (a) The agency shall notify the division by filing with the division a form designated for that purpose indicating the effective date.

(b) If the form designated is unavailable to the agency, the agency may notify the division by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the division or published in the bulletin, and stating its effective date.

(3) The date designated shall be after the comment period specified on the rule analysis.

(4) The division shall publish the effective date in the next issue of the bulletin and digest. There is no publication deadline for a notice of effective date, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63-46a-3(4)(d) and 63-46a-6(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

(2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).

(a) The agency may seek the advice of the Attorney General or the division, but the agency is responsible for compliance with the cited criteria.

(3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:

(a) proposed rules already published in the bulletin and digest but not made effective, or

(b) rules already effective.

(4) To make a nonsubstantive change in a rule, the agency shall:

(a) notify the division by filing with the division the form designated for nonsubstantive changes;

(b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and

(c) include with the notice the name of the agency head or designee authorizing the change.

(5) A nonsubstantive change becomes effective on the date the division makes the change in the Utah Administrative Code.

(6) The division shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

(1) Pursuant to Section 63-46a-6, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

(i) the agency determines a change in the rule is necessary;

(ii) the change is substantive under the criteria of Subsection 63-46a-2(19);

(iii) the rule was published as a proposal in the bulletin and digest; and

(iv) the rule has not been made effective under the procedures of Subsection 63-46a-6(1)(d) and Section R15-4-5.

(b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.

(2) To make a substantive change in a proposed rule, the agency shall file with the division:

(a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and

(b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published as described in Section R15-4-9.

(3) The division shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The division may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-day Rules.

(1) Pursuant to Section 63-46a-7, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63-46a-7(1).

(a) The division interprets the criteria of Subsection 63-46a-7(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

(3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:

(a) the rule shall become effective and enforceable on the day and hour it is recorded by the division unless the agency designates a later effective date on the rule analysis;

(b) no comment period is necessary;

(c) no public hearing is necessary; and

(d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the division, on the form or by memorandum, of an earlier expiration date.

(4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.

(5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.

(6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

(1) (a) Pursuant to Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63-46a-4(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

(c) Consistent with legislative bill drafting technique, the struck out language shall be surrounded by brackets.

(2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

(3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.

(b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:

(i) each page annotated "repealed in its entirety" or

(ii) the entire text struck out in its entirety and surrounded by one set of brackets.

(c) The division shall not publish repealed rules unless space is available within the page limits of the bulletin.

(4) When an agency fails to mark a change as described in this section, the director or his designee may refuse to codify the change. When determining whether or not to codify an unmarked change, the director shall consider:

(a) whether the unmarked change is substantive or nonsubstantive; and

(b) if the purpose of public notification has been adequately served.

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63-46a-16 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

(1) Pursuant to Subsections 63-46a-4(3), 63-46a-6(1), 63-46a-7(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

(a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;

(b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);

(c) indicate that the amount is either a cost or a savings; and

(d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," or "other persons" as aggregated cost or savings;

(2) In addition, an agency may:

(a) provide a narrative description of anticipated cost or savings, and compliance cost;

(b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:

(i) current budgeted costs associated with the existing rule,

(ii) figures reported on a fiscal note attached to a related legislative bill, or

(iii) both (i) and (ii).

(3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

(4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.

(5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "other persons," or any combination of these.

(6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the Division may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the Division refuses to register and publish a rule or change, it shall:

(a) return the rule or change to the agency with a notice indicating that the Division has refused to register and publish the rule or change;

(b) identify the reason or reasons why the Division refused to register and publish the rule or change; and

(c) indicate the filing deadlines for the next issue of the Bulletin.

Annotations:

KEY: administrative law

Date of Enactment or Last Substantive Amendment: July 1, 1998

Notice of Continuation: October 16, 2000

Authorizing, and Implemented or Interpreted Law: 63-46a-10

R15-5. Administrative Rules Adjudicative Proceedings.

R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63-46b-4 and 63-46b-5, and is enacted under the authority of Subsection 63-46a-10(1)(m) and Sections 63-46b-4, 63-46b-5, and 63-46b-21.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63-46b-2.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63-46a-10(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63, Chapter 46a, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63-46a-4(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63, Chapter 46a, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63-46a-14.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

- (1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.
- (2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.
- (3) A rule the division determines is procedurally valid shall be published and registered promptly.

Annotations:

KEY: administrative procedure, administrative law

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: October 16, 2000

Authorizing, and Implemented or Interpreted Law: 63-46b-4; 63-46a-10; 63-46b-5; 63-46b-21

Appendix G. Governor's Executive Order, 2/3/1986

EXECUTIVE ORDER

WHEREAS, agencies of the state of Utah promulgate administrative rules to execute their respective statutory mandates and to protect the public health, safety and welfare; and

WHEREAS, many Agency rules are obsolete, unclear, or of unnecessary length and complexity thereby obstructing enforcement and compliance; and

WHEREAS, agency rules often repeat uniform codes, federal regulation and other material that maybe more conveniently adopted by reference; and

WHEREAS, some agencies lack necessary rules and thereby expose the state to costly litigation and loss; and

WHEREAS, the best interest of the state is to issue clear, concise rules to protect the public, promote economic development, and save taxpayers from undue loss; and

WHEREAS, the State is in the process of preparing a new administrative code containing all agency rules.

NOW THEREFORE, I, Norman H. Bangerter, Governor of the State of Utah, by virtue of the authority vested in my by the Constitution and laws of this state, do hereby promulgate the following Executive Order:

1. State agency directors shall review their administrative rules and repeal all rules and language unnecessary to interpret and carry out their statutory mandates, and delete all material not defined as a rule under Title 63, Chapter 46a, UCA 1953
2. State agency directors shall clarify and simplify all rules to facilitate enforcement and compliance
3. State agency directors shall reduce from the body of their rules all items that may be adopted by reference under Section 63-46a-3(5), UCA 1953.
4. State agency directors shall attempt to reduce the volume of their rules significantly (by 25% as a recommended, although not mandatory, target.)
5. State agency directors shall, however, ensure that all rules are enacted necessary to protect the state and taxpaying public from unwarranted litigation and loss.
6. State agency directors shall utilize the services of the Attorney General and Office of Administrative Rules as provided in Title 63, Chapter 46a, and shall assist in preparation of the new administrative code.
7. State agency directors shall complete this project no later than December 31, 1986, and shall report to the Governor's office on a quarterly basis on their progress in implementing this order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 3rd day of February, 1986.

(State Seal)

Norman H. Bangerter, Governor

W. Val Oveson, Lt. Governor

Appendix H. Governor's Executive Order, 3/22/1988

EXECUTIVE ORDER

WHEREAS, throughout the Utah Code, agencies are directed to promulgate administrative rules to administer the statutes; and

WHEREAS, the best interest of the state is served by clear, concise rules to protect the public health, safety, and welfare; promote economic development; and to facilitate the orderly implementation of state statutes; and

WHEREAS, pursuant to 63-46a-9 UCA, agencies shall periodically review their rules and provide a statement citing the statutory provisions requiring such rules and a justification for continuation of such rules; and

WHEREAS, pursuant to my Executive Order of February 3, 1986, agencies have reviewed their administrative rules and have reduced the rules volume by 61%; which rules have now been published in the first Utah Administrative Code; and

WHEREAS, agencies' continual review of existing rules and a process of careful consideration and assessment for new rules will lead to further improvements and reductions in administrative rules;

NOW, THEREFORE, I, Norman H. Bangerter, Governor of the state of Utah, do hereby issue the following Executive Order outlining agency procedures for promulgating rules in compliance with and in addition to UCA 63-46a:

1. Before filing a proposed rule or amendment with the Division of Administrative Rules, state agency directors shall examine each proposed rule in light of the following:

- a. What statute does the rule implement or interpret?
- b. Is the rule or amendment required to implement the law and legislative intent?
- c. What need will be met or problem will be solved by the rule?
- d. What fiscal and non-fiscal impact does the rule have on the citizens, businesses, state government, and local political subdivisions?
- e. Could the length of the rule be reduced through incorporation by reference?
- f. Is the rule organized in logical, understandable fashion using concise, everyday language?
- g. Does the rule meet all the criteria of 63-46a-2(13) and 63-46a-3?
- h. Is the rule in the format prescribed in the Rulewriting Manual for Utah?

2. State agency directors shall establish a procedure for reviewing each proposed rule using the above checklist as minimum standards and shall file a copy of that procedure with the governor's office before June 1, 1988.

3. State agency directors shall cooperate with the Office of Planning and Budget in implementing executive review of administrative rules.

4. State agency directors shall work with the Division of Administrative Rules to automate the rulemaking process, thereby reducing process cost to the state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, done at the State Capitol in Salt Lake City, Utah, this 22nd day of March, 1988.

(State Seal)

Norman H. Bangerter, Governor

W. Val Oveson, Lt. Governor