UT Admin Code R365-3. Computer Software Licensing, Copyright, and Control. [Utah Administrative Code List of Titles]|[Search Rules Publications]

Rule R365-3. Computer Software Licensing, Copyright, and Control.
As in effect on December 1, 2000
Table of Contents

R365-3-1. Purpose.
R365-3-2. Application.
R365-3-3. Authority.
R365-3-4. Definitions.
R365-3-5. Compliance and Responsibilities.
KEY
Date of Enactment or Last Substantive Amendment
Authorizing, Implemented, or Interpreted Law

R365-3-1. Purpose.
The purpose of this rule is to establish the state's position and its intent to:
(1) comply with computer software licensing agreements and federal laws, including copyright and patent laws;
(2) define the methods by which the state will control and protect computer software; and
(3) establish the state's right, title and interest in state-developed computer software, including its sale and transfer under certain conditions.
R365-3-2. Application.
All state agencies of the executive branch of government shall comply with this rule, which shall apply to all computer software, regardless of the operating environment or source of that software.
R365-3-3. Authority.
This rule is issued by the Chief Information Officer, pursuant to the Information Technology Act, Section 63D-1- 301, and in accordance with the Utah Rulemaking Act, Section 63- 46a-3, Utah Code Annotated, 1953.
R365-3-4. Definitions.
As used in this rule:
(1) "Audit" means audit of compliance with laws, rules and policy applicable to computer software and related documentation; and reporting findings and conclusions.
(2) "Commercial computer software" means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.
~~(3) "Computer data base" means a collection of data in a form capable of being processed and operated on by a computer.~~
(4) "Computer program" means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program.
(5) "Computer software" means computer programs~~. and computer data bases.~~
(6) "State agency" means any agency or administrative subunit of state government except the following:
(a) legislative and judicial branches;
(b) State Board of Education;
(c) Board of Regents; and
(d) institutions of higher education.
(7) "State-developed computer software" means computer software and related documentation developed under contract or under the conditions set

forth in the Employment Inventions Act, Section 34-39-1 et seq., Utah Code Annotated, 1953.

R365-3-5. Compliance and Responsibilities.

(1) Each state agency and its employees shall comply with computer software licensing agreements, federal contracts and funding agreements, and federal laws, including copyright and patent laws. Requests for interpretation of a software licensing agreement shall be submitted to the Chief Information Officer.

(2) Each state agency shall adopt the following practices to control computer software:

(a) Keep and maintain an inventory control listing of all state-owned computer software and respective licensing agreements.

~~(b) Designate an employee to keep track of all computer software license agreements for a state agency. Each designated employee shall make requests for interpretation of a computer software license agreement to the Chief Information Officer, when necessary.~~

(c) ~~Provide enough legally purchased copies of computer software to enable all employees to meet management's expectations and reduce any necessity for computer software piracy.~~ Verify that all computer software used by state employees to meet management's expectations is legal and currently licensed.

(d) Ensure that all data or computer software is removed from the storage media of any computer device before disposition or transfer of equipment, unless computer software and related documentation are included as part of the transfer.

(e) ~~Carefully research~~ Understand the conditions of computer software licensing agreements before purchasing computer software and inform all agency software users of these conditions.

(f) Inform employees that any state-developed software is an asset owned by the state and is controlled under this rule.

(g) Information regarding this rule and its implementation must be made available to all affected staff by the State of Utah manager responsible for the performance of that staff member.

(3) A state agency may retain the right, title and interest in any state-developed computer software. To do so, each agency shall:

(a) clearly define who has ownership in all contracts for the development of computer software and related documentation.

(b) mark all computer software and related documentation developed by employees with the copyright symbol, year, and label "Utah State Government", on all media on which the computer software or documentation is stored and also at the beginning of computer software execution.

(4) A state agency may sell or otherwise transfer the right, title and interest in any state-developed computer software as permitted by the State Attorney General's Office Informal Opinion No. 85-65. Such action shall meet the following requirements:

(a) prior to the sale or transfer, submit a request for approval to sell or otherwise transfer state-developed computer software to ~~the Information Technology Policy and Strategy Committee, through~~ the Chief Information Officer. A summary report of these requests will be provided to the Information Technology Policy and Strategy Committee. Included within this request shall be all applicable contractual and other pertinent information. An example "Memorandum of Agreement" for the transfer/sale of state-developed software can be obtained from the web page of the Chief Information Officer.

(b) clearly specify within the transfer documents whether costs associated with copying and sending the state-developed computer software will be recovered from the receiver.

(c) clearly specify within the transfer documents whether costs of development will be recovered from the receiver in the selling price of the state-developed computer software.
(d) clearly specify within the transfer documents that the receiver is responsible for acquiring any commercial computer software upon which the state-developed computer software may be dependent.
(e) clearly specify within the transfer documents that no additional services, such as installation, training, or maintenance, will be provided unless negotiated otherwise.
(f) clearly specify within the transfer documents that the state-developed computer software is being transferred in "as is" condition and that the State will not be held liable for any incidental and consequential damages under any circumstances.
(g) account for funds received as "revenue" (dedicated credits) or a "refund of expenditure," subject to the provisions of Appropriation Control, I-02-02.00 as of 25 January 1988 and Internal Service and Enterprise Funds, I-07 et seq., as of 1 July 1988, State Accounting Policies and Procedures; Budgetary Procedures Act, Section 63-38-3 and 63-38-3.5, Utah Code Annotated, 1953; and the conditions articulated by the Division of Finance Opinion dated March 23, 1992, wherein:
(i) A state agency enters into a cost sharing agreement with another entity to develop computer software. (Note: In this situation, any collections from the other entity for their share of the cost will be deposited as a refund of expenditure.)
(ii) A state agency develops computer software and then shares the computer software with other entities. (Note: The only costs recovered by the developing agency are those costs to duplicate and distribute the computer software and manuals, which would also be a refund of expenditure. An agency should make sure the expenditure and the refund of expenditure are both recorded in the same fiscal year.)
(iii) A state agency wishes to market its state-developed computer software similar to a commercial enterprise. (Note: The intent is to recover the full cost of developing and distributing the computer software. In this situation the collections for sale of the computer software should be deposited as revenue (dedicated credits) to the agency.)
(h) retain records of sales and other transfers, and process them in accordance with the Government Records Access and Management Act, Section 63-2-101 et seq., Utah Code Annotated, 1953.
(5) A state agency may initiate a "Memorandum of Understanding" when reasons exist to share state- developed computer software with other states or entities. Such agreements shall conform with the provisions of the Utah Attorney General's letter of December 13, 1985, to the Office of Planning and Budget, or other pertinent legal documentation.
(6) The Chief Information Officer ~~shall~~ may measure compliance of a state agency and its employees with this rule by conducting a periodic audit in accordance with Section 63D- 1-301, Utah Code Annotated, 1953, and utilizing external auditors and an agency's internal auditor(s) where such resources are available and appropriate.
(7) A state employee who is found to not be in compliance with this rule may be subject to disciplinary action, including dismissal.
KEY
computer software*, licensing, copyright, control*
Date of Enactment or Last Substantive Amendment
September 15, 1997
Authorizing, Implemented, or Interpreted Law
63D-1-301; 63-46a-3; 34-39-1 et seq.