

Office of the
Legislative Fiscal Analyst

FY 2005 Budget Recommendations

Joint Appropriations Subcommittee for
Capital Facilities and Administrative Services

Department of Administrative Services
Division of Administrative Rules

Contents:

- 1.0 Summary
- 2.0 Issues
- 3.0 Programs
- 4.0 Additional Information

1.0 Summary: Division of Administrative Rules

The Division of Administrative Rules establishes procedures for administrative rulemaking, records administrative rules, and makes administrative rules available to the public. As a member of the Department of Administrative Services, the Division "provides agencies assistance in rulemaking; administers [the Utah Administrative Rulemaking Act]; and requires state agencies to comply with filing, publication and hearing procedures" (Utah Code 63-46a-10). To accomplish these mandates, the Division provides training to agency rulewriters and administrators, performs one-on-one consultations, publishes a periodic newsletter and distributes the *Rulewriting Manual for Utah*. The Division also provides regular notices to agencies of rules due for five-year review, rules about to expire, or rules about to lapse.

	Analyst FY 2005 Base	Analyst FY 2005 Changes	Analyst FY 2005 Total
Financing			
General Fund	279,700		279,700
Total	<u>\$279,700</u>	\$0	<u>\$279,700</u>
Programs			
DAR Administration	279,700		279,700
Total	<u>\$279,700</u>	\$0	<u>\$279,700</u>
FTE/Other			
Total FTE	4		4

2.0 Issues: Division of Administrative Rules

The division has two primary publications - *The Utah State Bulletin* and the *Utah Administrative Code*. The *Utah State Bulletin* is state government's means of notifying the public of rules being proposed by state agencies as well as the basic tool for soliciting public comment. The *Bulletin*, issued on the first and fifteenth each month, is Utah's version of the *Federal Register*. In addition to containing proposed rules, the *Bulletin* includes emergency rules, notices of five-year reviews, effective notices, other public notices from state agencies, indexes of effective rules and executive orders. The Division moved to electronic publication beginning in April of 2003.

The *Utah Administrative Code* is the compilation of effective rules with which state government, local entities and citizens are required to comply. The *Code* is Utah's version of the *Code of Federal Regulations*. In addition to effective rules, the printed *Code* contains research aids such as indexes, tables that correlate statutes and rules, case annotations, and history notes. The *Code* is available in electronically over the internet. Print and CD-ROM versions are available from private source vendors.

2.1 Fiscal Impact of Rules

Administrative rules have the effect of law – which means that they can have a fiscal impact on State government or on citizens and businesses. Legislators have expressed concern that the rule making process lacks a formal fiscal note process. There is concern that State Agencies may enact rules without fully considering costs to the State or citizens. To ensure fiscal oversight, the Division and the Analyst enacted a program to provide better rule writing and additional oversight.

2.2 Accuracy in the rule filing process

The Division of Administrative Rules processes approximately 1,500 rules per year with only four staff members. The Division also supports the Administrative Rules Committee, publishes the *Bulletin* and the *Utah Administrative Code*. The Division does not have the time nor the staff expertise to analyze every rule for accuracy and legality. However, over the past year the Division noted an increase in rules filed with technical inaccuracies. Section 3.2 provides further information on this issue.

3.0 Programs: Division of Administrative Rules

3.1 DAR Administration

	2003	2004	2005	Est/Analyst
	Actual	Estimated*	Analyst	Difference
Financing				
General Fund	254,000	279,700	279,700	
General Fund, One-time		800		(800)
Total	\$254,000	\$280,500	\$279,700	(\$800)
Expenditures				
Personal Services	236,900	233,900	233,900	
Out of State Travel		2,300	2,300	
Current Expense	4,700	16,400	15,600	(800)
DP Current Expense	12,400	27,900	27,900	
Total	\$254,000	\$280,500	\$279,700	(\$800)
FTE/Other				
Total FTE	4	4	4	0

*Non-state funds as estimated by agency

Utah Code 63-46a-10(5) gives this budget nonlapsing authority.

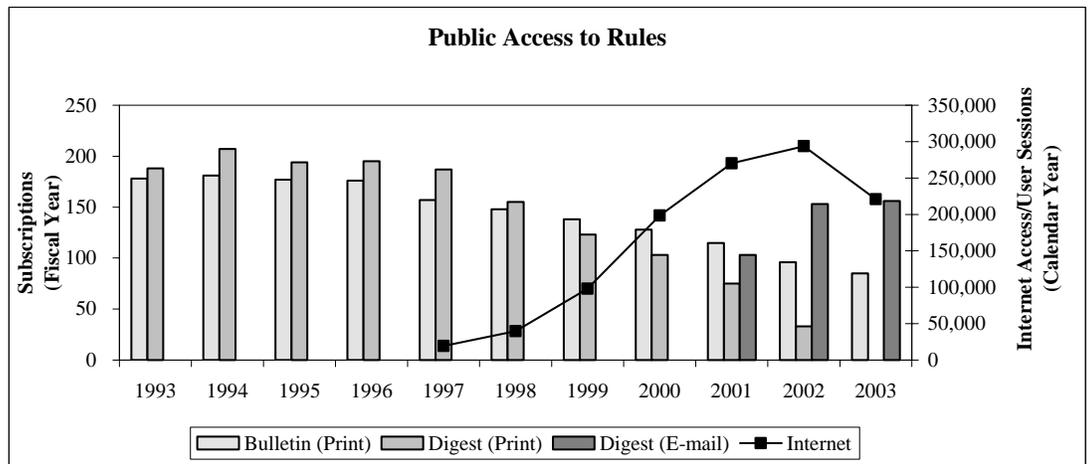
Fiscal Impact of Rules

The Administrative Rules Review Committee seeks to ensure that fiscal impacts arising from rulemaking are properly addressed. Impacts may be the result of new rules or rise from rule amendments.

In response to Legislative Intent, the Division of Administrative Rules maintains standards for agency submission of proposed rules. All impacts must be fully explained, including those proposed rules that have no fiscal impact. In addition, the Office of the Legislative Fiscal Analyst reviews fiscal notes contained in the *Utah State Digest* (a summary of the *Bulletin*) every month.

Across the board cuts made to the Division in FY 2003 created serious difficulties in maintaining the program. The Legislature recognized the Division’s leadership in providing online access and found savings by eliminating costs associated with paper publications.

3.2 Performance Measures



Source: Utah Division of Administrative Rules

The downturn in internet access coincided with the state’s shift to the “utah.gov” domain. Now that internet indexes, search engines and legal indexes have eliminated links to the old domain (state.ut.us), utilization is improving.

Elimination of paper publication

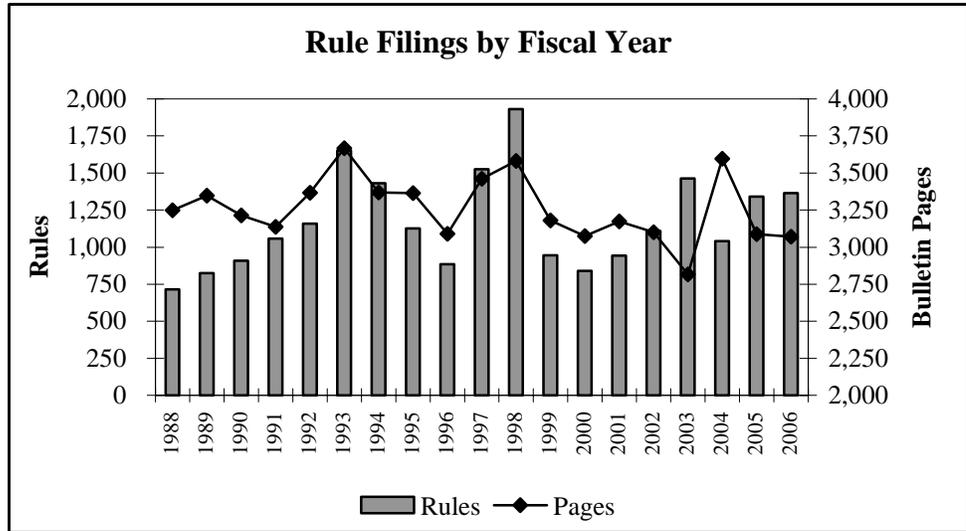
Statute (UCA 63-46a-10 (h) &(i)) requires the division to “print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter; (and) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature.”

The Division of Administrative Rules operates a user-friendly internet site that allows anyone to read and download proposed rules. The Division’s use of technology enhances government access for citizens and adds value without requiring additional staff and obviates the need for paper based publication.

In response to the FY 2003/2004 budget deficit, the Legislature moved to eliminate paper publication of rules documents and used the savings in other areas of state government. The action confirmed that the Legislature believes publication is no longer limited to paper and ink products. With broad electronic access through local schools and libraries, every citizen has free access to state publications, including Administrative Rules. Printed copies of the *Utah State Bulletin* and *Utah Administrative Code* are available from outside vendors.

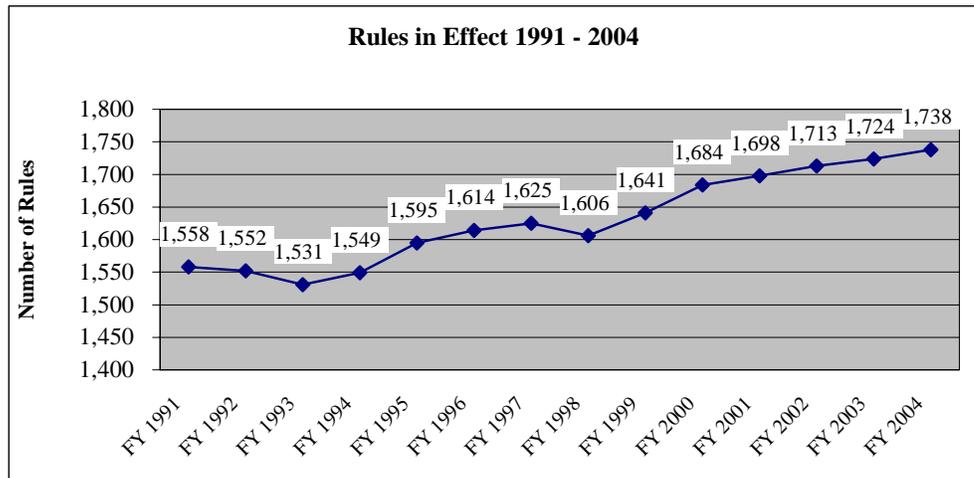
Rules Stats

The Division of Administrative Rules counts numbers of rules filed, records the number of rules in effect and reports the type of rules modified or proposed each year. The following charts depict historical trends relating to Administrative Rules. Projections for 2004 to 2006 are based on historical trends.



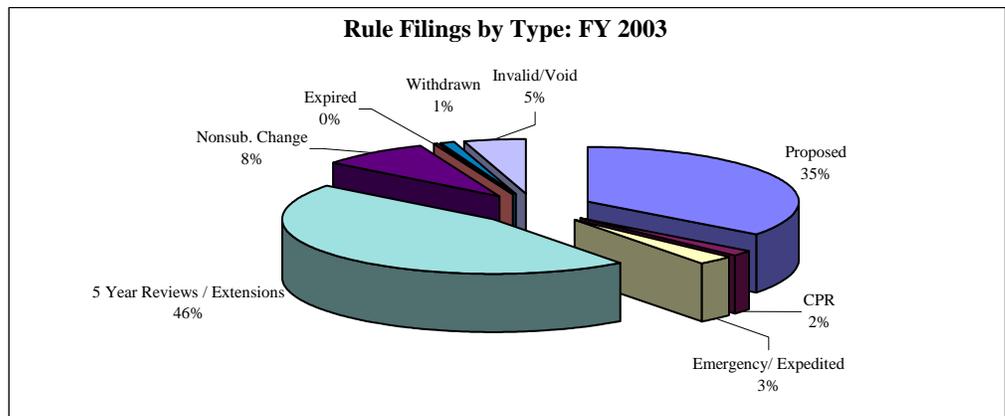
Source: Utah Division of Administrative Rules

Annual rule filings have more than doubled since 1988, but pages printed in the Bulletin have declined. Other factors affecting number of pages include complexity of rules, number of rules up for five-year review and the length of fiscal commentary attached to each rule.



Source: Utah Division of Administrative Rules

From 1991 through 2004 Utah maintained an average of 1,631 effective rules. Annual growth in the number of effective rules averaged less than one percent since 1991. Cumulative growth in the number of effective rules over the same period is 11.6 percent.



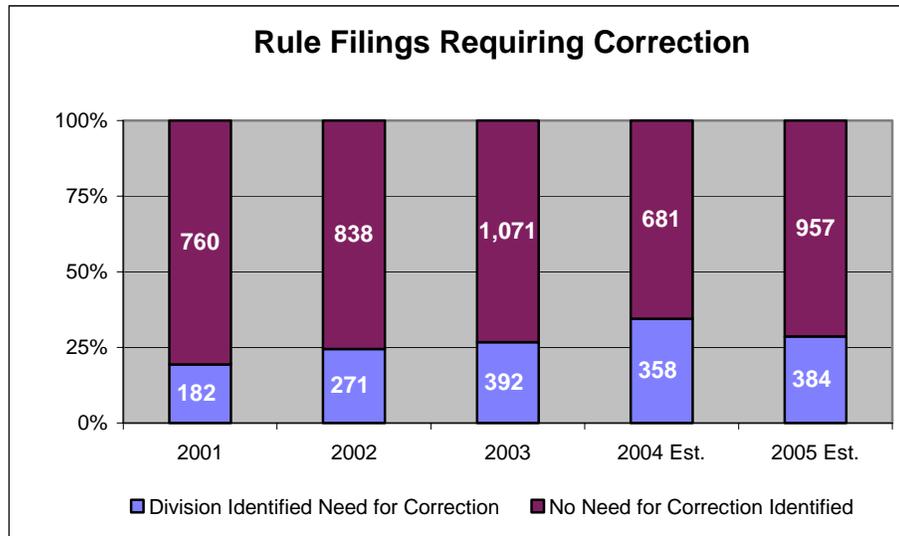
Source: Utah Division of Administrative Rules

FY 2003 was a “peak” in the five year cycle of the rule making process. Of 1,463 total rule filings in FY 2003, 670 were five year reviews or extension, up nearly fifty percent from the 461 reviews filed in FY 2002.

Traditionally, the bulk of rule filings are rule proposals or reviews and extensions – almost all of which are amendments to existing rules. Of 515 proposed rules, only 56 were new rule proposals while 407 were amendments to existing rules.

3.3 Accuracy in the Rule Making Process

The Division of Administrative Rules processes approximately 1,500 rules per year with four staff members. The Division also supports the Administrative Rules Committee, publishes the *Utah State Bulletin* and the *Utah Administrative Code*. The Division does not have the time nor the staff expertise to analyze every rule for accuracy and legality. However, over the past year the Division noted an increase in rules filed with technical inaccuracies.



Source: Utah Division of Administrative Rules and OLFA

More than twenty-five percent of rules filed in 2003 required correction by the originating agency. If left unchecked, the increase could result in the need for additional employees at the Division with the sole responsibility of verifying that Rules are submitted appropriately. The Analyst does not believe that this would be the highest and best use of state funds since this is a responsibility of rule making agencies.

Each state agency is assigned a staff attorney from the Attorney General’s office who should provide assistance with this process. Furthermore, rule writing is an integral function of open government. Every agency should ensure ample staff are in place that will make accurate rule submissions. Citing a 1988 Executive Order (see below), the Division of Administrative Rules believes that they can work with agencies to improve the process. However, if the problem continues the Legislature may wish to add a staff member to the DAR staff that will be funded from fees charged to agencies submitting rules.

*Rule Making process
set by Executive
Order*

Text of Executive Order issued in 1988 to address the rule making process.

Executive Order
March 22, 1988

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

4.0 Additional Information: Division of Administrative Rules

	2001	2002	2003	2004	2005
	Actual	Actual	Actual	Estimated*	Analyst
Financing					
General Fund	267,400	271,700	272,200	279,700	279,700
General Fund, One-time				800	
Transfers	93,000				
Beginning Nonlapsing	30,800	13,700	5,300		
Closing Nonlapsing	(13,700)	(5,300)	(8,200)		
Total	\$377,500	\$280,100	\$269,300	\$280,500	\$279,700
Programs					
DAR Administration	353,600	255,000	254,000	280,500	279,700
Rules Publishing	23,900	25,100	15,300		
Total	\$377,500	\$280,100	\$269,300	\$280,500	\$279,700
Expenditures					
Personal Services	227,800	232,900	236,900	233,900	233,900
In-State Travel		200			
Out of State Travel	1,800	1,200		2,300	2,300
Current Expense	33,400	24,800	19,100	16,400	15,600
DP Current Expense	114,500	21,000	13,300	27,900	27,900
Total	\$377,500	\$280,100	\$269,300	\$280,500	\$279,700
FTE/Other					
Total FTE	4	4	4	4	4

*Non-state funds as estimated by agency.