

ADMINISTRATIVE RULES - IMPACT ON

SMALL BUSINESSES

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill requires state agencies to provide information on the financial impact of their rules on businesses, including small businesses.

Highlighted Provisions:

This bill:

- defines "small businesses" under the Utah Administrative Rulemaking Act; and
- requires state agencies, as part of filing a new administrative rule or an amendment to an existing administrative rule, to provide an assessment of the financial impact of the new rule or rule change on businesses and on small businesses.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-46a-2, as last amended by Chapter 197, Laws of Utah 2003

63-46a-4, as last amended by Chapter 138, Laws of Utah 2001

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

Section 1. Section **63-46a-2** is amended to read:



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) "Small business" means a business employing fewer than ~~H→ [100]~~ 50 ~~←H~~ persons

~~H→ [or a~~ business with less than \$2,000,000 in annual gross receipts] ~~←H~~ .

~~[(18)]~~ (19) "Substantive change" means a change in a rule that affects the application or results of agency actions.

Section 2. Section **63-46a-4** is amended to read:

63-46a-4. Rulemaking procedure.

(1) 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.

(2) 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.

(3) (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 Subsection (3) 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.

(4) 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.

(5) 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) small businesses;
 - (iv) business in general; and
 - ~~[(iii)]~~ (v) other persons;
- (e) the compliance cost for affected persons;

- 121 (f) how interested persons may review the full text of the rule;
122 (g) how interested persons may present their views on the rule;
123 (h) the time and place of any scheduled public hearing;
124 (i) the name and telephone number of an agency employee who may be contacted
125 about the rule;
126 (j) the name of the agency head or designee who authorized the rule;
127 (k) the date on which the rule may become effective following the public comment
128 period; and
129 (l) comments by the department head on the fiscal impact the rule may have on
130 businesses.
- 131 (6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
132 summary that generally includes the following:
133 (i) a summary of substantive provisions in the repealed rule which are eliminated from
134 the enacted rule; and
135 (ii) a summary of new substantive provisions appearing only in the enacted rule.
- 136 (b) The summary required under this Subsection (6) is to aid in review and may not be
137 used to contest any rule on the ground of noncompliance with the procedural requirements of
138 this chapter.
- 139 (7) A copy of the rule analysis shall be mailed to all persons who have made timely
140 request of the agency for advance notice of its rulemaking proceedings and to any other person
141 who, by statutory or federal mandate or in the judgment of the agency, should also receive
142 notice.
- 143 (8) Following the publication date, the agency shall allow at least 30 days for public
144 comment on the rule.
- 145 (9) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule becomes
146 effective on any date specified by the agency that is no fewer than 30 nor more than 120 days
147 after the publication date.
- 148 (b) The agency shall provide notice of the rule's effective date to the division in the
149 form required by the division.
- 150 (c) The notice of effective date may not provide for an effective date prior to the date it
151 is received by the division.

152 (d) The division shall publish notice of the effective date of the rule in the next issue of
153 the bulletin.

154 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
155 not filed with the division within 120 days of publication.

Legislative Review Note

as of 1-14-05 11:36 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Administrative Rules - Impact on Small Businesses***24-Jan-05***Bill Number: HB0209***1:15 PM*

State Impact

Provisions of this bill will require \$4,100 for reprogramming eRules software.

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
	<u>Approp.</u>	<u>Approp.</u>	<u>Approp.</u>	<u>Revenue</u>	<u>Revenue</u>	<u>Revenue</u>
General Fund	\$4,100	\$0	\$0	\$0	\$0	\$0
TOTAL	\$4,100	\$0	\$0	\$0	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst