

**IMPACT OF ADMINISTRATIVE RULES ON  
SMALL BUSINESSES**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: Gregory H. Hughes

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Administrative Rulemaking Act by requiring that the agency analysis for a proposed rule include the financial impact on business, 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 proposed administrative rule or an amendment to an existing administrative rule, to provide an assessment of anticipated costs or savings regarding businesses and also 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 48, Laws of Utah 2005

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*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 50 persons.

~~[(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) 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) small businesses;

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134           (7) (a) For a rule being repealed and reenacted, the rule analysis shall contain a  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136               (i) a summary of substantive provisions in the repealed rule which are eliminated from  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

152 form required by the division.

153 (c) The notice of effective date may not provide for an effective date prior to the date it  
154 is received by the division.

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

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

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**Legislative Review Note**  
**as of 1-17-06 4:26 PM**

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**

**Legislative Committee Note**  
**as of 01-18-06 3:30 PM**

The Administrative Rules Review Committee recommended this bill.