

**IMPACT OF ADMINISTRATIVE RULES ON
SMALL BUSINESSES**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: Howard A. Stephenson

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 that state agencies, as part of filing a proposed administrative rule or an amendment to an existing administrative rule, provide an assessment of anticipated costs or savings regarding businesses in general 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 141, Laws of Utah 2006



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

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

30 **63-46a-2. Definitions.**

31 As used in this chapter:

32 (1) "Administrative record" means information an agency relies upon when making a
33 rule under this chapter including:

34 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

35 (b) the public comment received and recorded by the agency during the public

36 comment period;

37 (c) the agency's response to the public comment;

38 (d) the agency's analysis of the public comment; and

39 (e) the agency's report of its decision-making process.

40 (2) "Agency" means each state board, authority, commission, institution, department,
41 division, officer, or other state government entity other than the Legislature, its committees, the
42 political subdivisions of the state, or the courts, which is authorized or required by law to make
43 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
44 perform other similar actions or duties delegated by law.

45 (3) "Bulletin" means the Utah State Bulletin.

46 (4) "Catchline" means a short summary of each section, part, rule, or title of the code
47 that follows the section, part, rule, or title reference placed before the text of the rule and serves
48 the same function as boldface in legislation as described in Section 68-3-13.

49 (5) "Code" means the body of all effective rules as compiled and organized by the
50 division and entitled "Utah Administrative Code."

51 (6) "Director" means the director of the Division of Administrative Rules.

52 (7) "Division" means the Division of Administrative Rules.

53 (8) "Effective" means operative and enforceable.

54 (9) (a) "File" means to submit a document to the division as prescribed by the division.

55 (b) "Filing date" means the day and time the document is recorded as received by the
56 division.

57 (10) "Interested person" means any person affected by or interested in a proposed rule,
58 amendment to an existing rule, or a nonsubstantive change made under Section 63-46a-10.

59 (11) "Order" means an agency action that determines the legal rights, duties, privileges,
60 immunities, or other interests of one or more specific persons, but not a class of persons.

61 (12) "Person" means any individual, partnership, corporation, association,
62 governmental entity, or public or private organization of any character other than an agency.

63 (13) "Publication" or "publish" means making a rule available to the public by
64 including the rule or a summary of the rule in the bulletin.

65 (14) "Publication date" means the inscribed date of the bulletin.

66 (15) "Register" may include an electronic database.

67 (16) (a) "Rule" means an agency's written statement that:

68 (i) is explicitly or implicitly required by state or federal statute or other applicable law;

69 (ii) implements or interprets a state or federal legal mandate; and

70 (iii) applies to a class of persons or another agency.

71 (b) "Rule" includes the amendment or repeal of an existing rule.

72 (c) "Rule" does not mean:

73 (i) orders;

74 (ii) an agency's written statement that applies only to internal management and that
75 does not restrict the legal rights of a public class of persons or another agency;

76 (iii) the governor's executive orders or proclamations;

77 (iv) opinions issued by the attorney general's office;

78 (v) declaratory rulings issued by the agency according to Section 63-46b-21 except as
79 required by Section 63-46a-3;

80 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection
81 63-46a-3(6); or

82 (vii) an agency written statement that is in violation of any state or federal law.

83 (17) "Rule analysis" means the format prescribed by the division to summarize and
84 analyze rules.

85 (18) "Small business" means a business employing fewer than 50 persons.

86 [~~18~~] (19) "Substantive change" means a change in a rule that affects the application
87 or results of agency actions.

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

89 **63-46a-4. Rulemaking procedure.**

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

92 (2) Except as provided in Sections 63-46a-6 and 63-46a-7, when making, amending, or
93 repealing a rule agencies shall comply with:

94 (a) the requirements of this section;

95 (b) consistent procedures required by other statutes;

96 (c) applicable federal mandates; and

97 (d) rules made by the division to implement this chapter.

98 (3) Subject to the requirements of this chapter, each agency shall develop and use
99 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
100 affected by the agency's rules.

101 (4) (a) Each agency shall file its proposed rule and rule analysis with the division.

102 (b) Rule amendments shall be marked with new language underlined and deleted
103 language struck out.

104 (c) (i) The division shall publish the information required under this Subsection (4) on
105 the rule analysis and the text of the proposed rule in the next issue of the bulletin.

106 (ii) For rule amendments, only the section or subsection of the rule being amended
107 need be printed.

108 (iii) If the director determines that the rule is too long to publish, the director shall
109 publish the rule analysis and shall publish the rule by reference to a copy on file with the
110 division.

111 (5) Prior to filing a rule with the division, the department head shall consider and
112 comment on the fiscal impact a rule may have on businesses.

113 (6) The rule analysis shall contain:

114 (a) a summary of the rule or change;

115 (b) the purpose of the rule or reason for the change;

116 (c) the statutory authority or federal requirement for the rule;

117 (d) the anticipated cost or savings to:

118 (i) the state budget;

119 (ii) local governments; [~~and~~]

120 (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) (a) Following the publication date, the agency shall allow at least 30 days for public
147 comment on the rule.
148 (b) The agency shall review and evaluate all public comments submitted in writing
149 within the time period under Subsection (9)(a) or presented at public hearings conducted by the
150 agency within the time period under Subsection (9)(a).
151 (10) (a) Except as provided in Sections 63-46a-6 and 63-46a-7, a proposed rule

152 becomes effective on any date specified by the agency that is no fewer than seven calendar days
153 after the close of the public comment period under Subsection (9), nor more than 120 days after
154 the publication date.

155 (b) The agency shall provide notice of the rule's effective date to the division in the
156 form required by the division.

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

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

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

Legislative Review Note
as of 11-16-06 8:54 AM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-15-06 10:19 AM

The Business and Labor Interim Committee recommended this bill.