

Budget Brief – DAS Administrative Rules

NUMBER CFAS-06-06

SUMMARY

The Division of Administrative Rules establishes procedures for administrative rulemaking, records administrative rules, and makes administrative rules available to the public. The division also administers the Utah Administrative Rulemaking Act and ensures state agencies comply with filing, publication and hearing procedures. To accomplish these mandates, the division provides training to agency rule writers and administrators, performs individual consultations, publishes a periodic newsletter, and distributes the *Rulewriting Manual for Utah*.

ISSUES AND RECOMMENDATIONS

eRules Software Maintenance

The Analyst recommends a \$12,000 ongoing General Fund appropriation increase beginning in FY 2007 for eRules software maintenance.

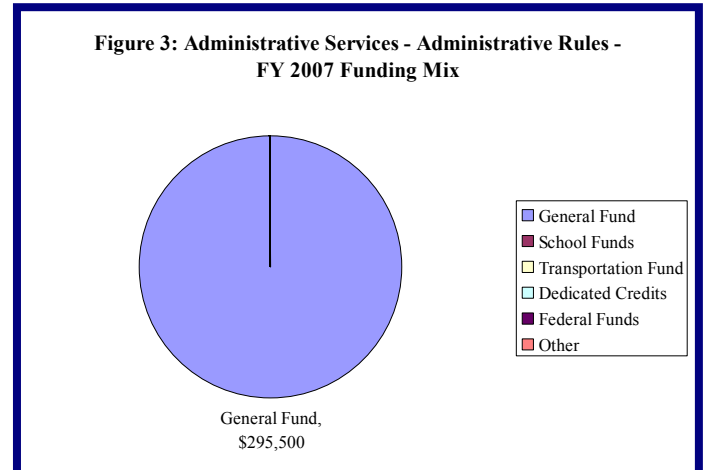
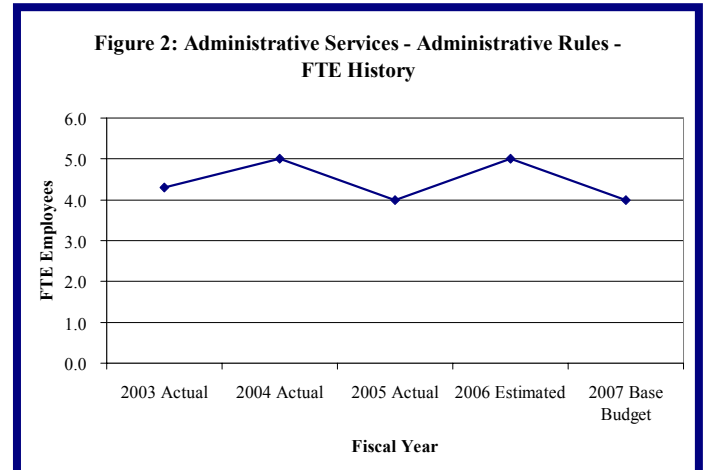
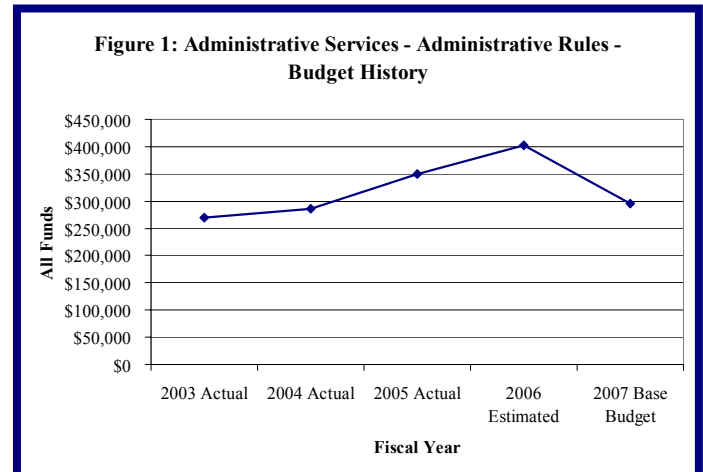
eRules is a web-enabled filing and publishing system constructed with one-time funds between 1999 and 2001. At the time the division did not ask for ongoing maintenance funding. The software is an improvement over the former paper-based filing system. However, the system is prone to down time due to changes in agencies' hardware and software platforms, as well as other technical issues that arise. The system was developed by a private consultant, so some maintenance will need to be performed through a private contract, but some can be done by state DTS staff. The system may require approximately 100 hours of maintenance per year.

Agencies Continue to Submit Rules with Errors

Because UCA 63-46a-3.5 gives agency rules the effect of law, agencies must carefully craft their submissions. However, as highlighted on page 2, the error rate in agency submissions is unacceptably high. The risk of an agency administrative rule being challenged because of a procedural defect is rising. The large number of incorrectly submitted rules is creating a strain on the Rules staff.

The Legislature appropriated \$55,000 (one-time funds) in each of FY 2004 and FY 2005 for a temporary editor to review rules and train state agencies. As a result the error rate appears to be declining but still no clear relationship exists between this funding and a reduction in errors.

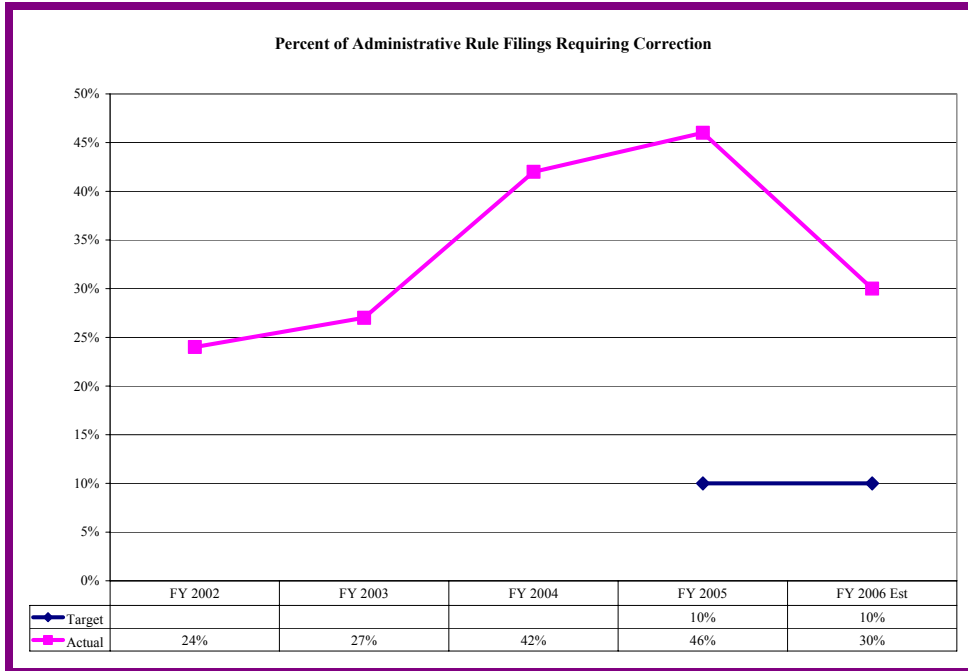
While the Analyst doesn't recommend an appropriation for this issue at this time, the matter is serious enough to merit legislative consideration.



ACCOUNTABILITY DETAIL

Percent of Agency Rule Filings Requiring Correction

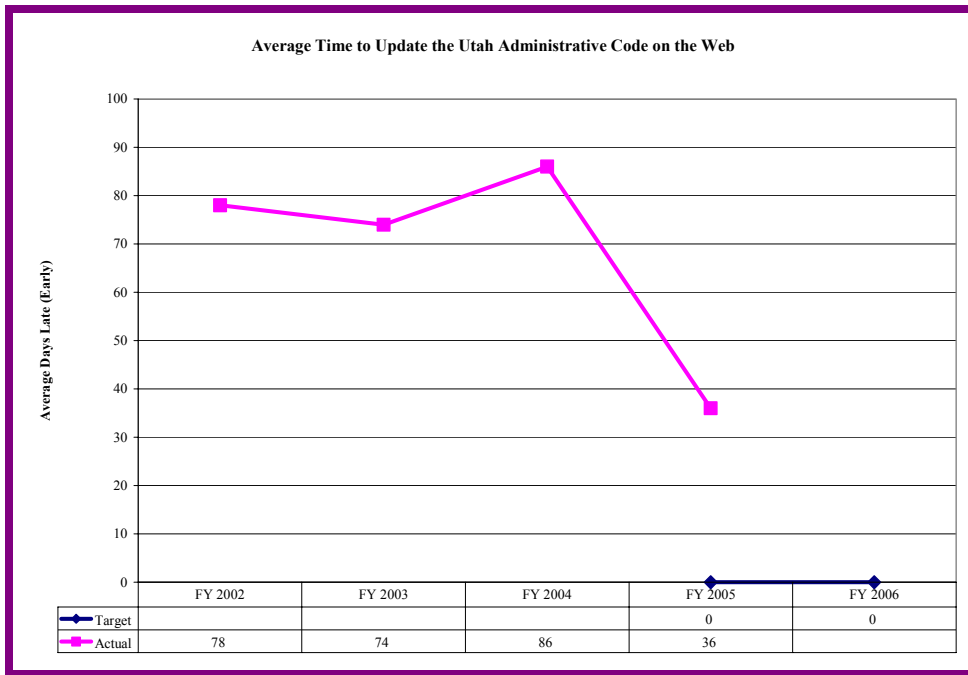
It is much easier to challenge a rule on the grounds that an agency failed to follow proper procedures than it is to attack the substance of a rule. To help protect the state from procedural challenges, the division reviews rule filings to make sure certain minimum statutory requirements have been met. Rules that do not meet the minimum requirements are returned to the agency for correction.



More than 45 percent of rules filed in FY 2005 required correction by the originating agency. If left unchecked, this could result in a need for additional employees at the division with the sole responsibility of reviewing rules for accuracy. While the error rate appeared to decrease in early FY 2006, recent results show no clear connection between previous one-time funding and a reduction in the error rate. The goal is no more than a ten percent error rate.

Average Time to Update the Administrative Code on the Web

Timely availability of the Utah Administrative Code (effective rules) plays a critical role in how Utah’s regulatory system works. Public access to administrative rules increases the likelihood of compliance. Timely availability is also critical because some administrative rules may have a fiscal impact on the state, local governments, or individuals. Public access also provides citizens with an understanding of government’s expectations and requirements. Being informed, citizens can then act accordingly or recommend changes to rules.



The division made great improvement from an average of 86 days late in FY 2004 to 36 days late in FY 2005. However, it still needs to improve to reach its goal of 0 days late.

BUDGET DETAIL

UCA 63-46a-10(5) gives this budget nonlapsing authority for funds appropriated or collected for the division’s publications. To offset rising workload and to correct agency errors, the 2004 and 2005 Legislatures each provided \$55,000 per year in one-time funds to hire a contract employee to assist with agency training and rules publication.

Dedicated Credits of \$57,200 in FY 2005 represent one-time grant money from two foundations for an Alternative Dispute Resolution (ADR) program. The two previous governors issued executive orders assigning ADR to the Department of Administrative Services. The grant money was used to hire a temporary ADR coordinator who did a broad survey of whether such a program had potential to benefit the state. To date no state funds have been spent. If the program is to be continued, it would most likely move to the Division of Human Resource Management and would need a legislative appropriation of state funds.

Budget Recommendation

The Analyst recommends a total FY 2007 base appropriation of \$295,500 entirely from the General Fund. The Analyst further recommends an additional \$12,000 in ongoing funds in FY 2007 for eRules software maintenance. This additional recommendation is not built into the tables or charts in this budget brief.

Intent Language

The Analyst recommends the Legislature continue using the following intent language which was approved in House Bill 1, 2005 General Session:

It is the intent of the Legislature that funds appropriated for Administrative Rules shall not lapse and that those funds may be used to fund an FTE or contract position on a temporary basis.

LEGISLATIVE ACTION

This section is a summary of what actions might be taken if the Legislature wishes to adopt the recommendations of this brief. The Analyst recommends the Legislature consider adopting:

1. A total base appropriation of \$295,500 for the Division of Administrative Rules.
2. An additional appropriation of \$12,000 for eRules software maintenance.
3. Intent language making this appropriation nonlapsing.

BUDGET DETAIL TABLE

Administrative Services - Administrative Rules						
Sources of Finance	FY 2005 Actual	FY 2006 Appropriated	Changes	FY 2006 Revised	Changes	FY 2007* Base Budget
General Fund	285,500	295,500	0	295,500	0	295,500
General Fund, One-time	2,100	0	0	0	0	0
Dedicated Credits Revenue	57,200	0	0	0	0	0
Risk Management ISF	0	55,000	0	55,000	(55,000)	0
Beginning Nonlapsing	58,000	0	52,500	52,500	(52,500)	0
Closing Nonlapsing	(52,500)	0	0	0	0	0
Total	\$350,300	\$350,500	\$52,500	\$403,000	(\$107,500)	\$295,500
Programs						
DAR Administration	350,300	350,500	52,500	403,000	(107,500)	295,500
Total	\$350,300	\$350,500	\$52,500	\$403,000	(\$107,500)	\$295,500
Categories of Expenditure						
Personal Services	309,600	316,000	3,100	319,100	(60,700)	258,400
In-State Travel	0	0	200	200	(200)	0
Out of State Travel	5,100	3,000	800	3,800	0	3,800
Current Expense	20,600	17,600	3,300	20,900	(400)	20,500
DP Current Expense	15,000	13,900	45,100	59,000	(46,200)	12,800
Total	\$350,300	\$350,500	\$52,500	\$403,000	(\$107,500)	\$295,500
Other Data						
Budgeted FTE	4.0	5.0	0.0	5.0	(1.0)	4.0
Actual FTE	5	0	0	0	0	0

*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.