

Small Business Regulatory Flexibility Frequently Asked Questions

Q. Is this legislation really necessary?

A. Yes, the burden of regulations that are unnecessary and over reaching at state level is a major concern of small businesses. Small businesses are impacted by local, state, and federal regulations. Regulatory reform is needed at all three levels to ensure that small businesses are not unduly burdened by unnecessary regulation. An Advocacy research study, *The Impact of Regulatory Costs on Small Business*, established that small businesses with less than 20 employees spend nearly \$7,000 each year, per employee, just to comply with federal regulations and mandates. That's 60 percent more than the \$4,463 estimated for firms with more than 500 employees.

Q. Is this a costly matter for state government?

A. No, in fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation. Required small business analysis, input, and consideration of less burdensome alternatives ensure that state agencies make good final decisions. In fact, if regulations are poorly written and do not consider small business, they may need to be redone. That is more costly to state government than doing a thorough analysis the first time.

Q. Won't this cost the state agencies huge amounts of money to comply and conduct the economic impact statements?

A. No, many states already conduct a general regulatory impact analysis. Segmenting out the impact on small business is a necessary additional step in the analysis. In addition, rules and regulations that are finalized without adequate impact analysis run the risk of being more costly to both the citizens and state agencies.

Q. Will this delay safety or health related regulations?

A. Better analysis and consideration of how regulations affect small business results in streamlined and effective implementation of government rules and regulations. Moreover, the legislation is intended to encourage burden reduction without sacrificing policy objectives such as safety and health.

Q. Won't judicial review create a lot of lawsuits?

A. The federal law had limited success in curbing excess regulatory burden for 16 years until judicial review was enacted in 1996. The effect of the 1996 law was to get heightened attention to small business issues by regulatory officials. Approximately 4,000 regulations are finalized in any given year. Since 1996, only 12-13 lawsuits have been filed per year since federal judicial review was enacted. In Arizona, which enacted regulatory flexibility provisions in the early 1980s, no small business has used the judicial

review provision. However, Arizona's state agencies conduct aggressive small business outreach before proposing new rules, which results in more efficient, less burdensome rules.

Q. Won't this require a large staff in administrative rules? Are we creating another bureaucracy?

A. No, in fact by including small business early in the regulatory process, state agencies can ensure better quality regulations. The objective of the legislation is to connect small businesses, and their trade and membership organizations, to regulatory policymakers. Such a connection ensures that regulations which will impact small business reflect a full consideration of their views. Connecting small business with regulatory officials does not necessarily require a large staff or a new bureaucracy. Many state agencies already have a small business office. In fact, the information that small businesses, as the regulated community, can provide agencies should lower the information gathering burden placed on the agency. Colorado and North Dakota recently passed similar legislation and their fiscal analysis showed that there was no cost to the budget associated with implementing this legislation. In Puerto Rico, this work is being done by their Small Business Ombudsman and one other person.

Q. Are these state regulations? Don't most regulations come from the federal government?

A. Small businesses are regulated at the federal, state, and local level. As noted in a 2004 report by the National Governors Association (NGA), streamlining duplicative paperwork and regulations is an important economic development tool. The report recommends that "States should pursue comprehensive reviews of rules and regulations to initiate reform efforts. Reviews may be focused on eliminating unnecessary or duplicative regulations, harmonize state and federal regulations to reduce compliance burdens, or providing waivers or variances." In addition, the report notes that small business owners based their employment decisions not just upon the economic needs of their business but also upon the additional costs of taxes and regulations. Finally, the report points out that early-stage companies may be tempted to move to a jurisdiction where the regulations are less burdensome.

Q. How long have some states been doing this?

A. New York, Oklahoma and Arizona have years of experience. Colorado, North Dakota, South Dakota, and Wisconsin have passed legislation in the last year and a half and are beginning to put their systems into place.

Q. How do some states get the agency to communicate with small business?

A. Colorado has an on-line notification system where small businesses can sign up to receive emails about proposed regulations that may impact their business. The Oklahoma Small Business Regulatory Review Committee includes thirteen business owners and the chairs

of the Oklahoma House and Senate Small Business Committees. The Committee reviews new rules which may adversely impact small businesses and suggests less restrictive alternatives and/or creative, flexible means for business to comply to the agencies wherever possible. The committee can also assist businesses with concerns about existing rules. In Arizona, the Governor's Regulatory Review Council was created by Executive Order in May 1981. Composed of six members, the Council is chaired by the Director of the Department of Administration or designee, who serves ex-officio. For most agencies, the Council is the final step in the rulemaking process. The Council reviews most rules to ensure that they are necessary and to avoid duplication and adverse impact on the public. The Council assesses whether a rule is clear, concise, and understandable, legal, consistent with legislative intent and within the agency's statutory authority, and whether the benefits of a rule outweigh the cost. If a rule does not meet these criteria, the Council returns it to the agency for further consideration.

Q. Isn't this just a way to get rid of regulations?

A. Absolutely not. Health, safety and welfare issues are of major importance to state governments. The problem with the current rules process is that it attempts to put a one-size-fits-all regulation into place without taking into account the limited resources of small business to comply. If a new rule comes out that has a major negative economic impact on business, it is small business that are most likely to fail because of it. With small business accounting for over two-thirds of the net new jobs in the economy it is important that they have a voice in the process. This is particularly true in regards to paperwork and reporting requirements.

Q. Are there any success stories either through the federal law or in other states that show the effectiveness of these types of laws?

A. Yes, on the federal side there are numerous examples. The U.S. Small Business Administration's Office of Advocacy produces an annual report to Congress highlighting these successes. Over the last three fiscal years ('01-'03), the Office of Advocacy saved small business \$31 billion in foregone regulatory compliance costs. You can find those examples and access the FY '03 annual report at:
<http://www.sba.gov/advo/laws/flex/03regflx.pdf>

Each state handles success stories differently. Some specify regulatory cost savings while others do not. New York has individual success stories at:

<http://www.gorr.state.ny.us/generalinfo.html>. If you go to this link you can go to "Success Stories" and [Reduction in Rules under GORR](#)

Q. Is this legislation bad for state agencies?

A. No, the last thing a state agency wants to do is propose and finalize a rule with which small businesses cannot comply and causes widespread industry burdens, results in layoffs, or business closures. The Regulatory Flexibility Act requires that economic analysis is done up front so these types of burdens are recognized. If there are alternative

ways of achieving a public policy goal that are less burdensome to small business, it is a win-win situation for the agency and small business.

Q. How else can this even the playing field for small business?

- A.** Regulatory barriers to entry in certain sectors limit competition and increase prices. Ensuring that the regulatory burden is not excessive and regulations are straightforward and easy to comply with helps entrepreneurs enter those industries and increase competition, employment and tax revenues.