

THE SMALL BUSINESS

ADVOCATE

United States
Small Business
Administration
Office of Advocacy

January 1999

Vol. 18, No. 1

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Court Decisions in 1998 Affirmed Regulatory Oversight

The Regulatory Flexibility Act (RFA) requires federal agencies to review the impact of proposed regulations on small entities and develop less burdensome regulatory alternatives when appropriate. Court challenges brought by small businesses against federal agencies that publish unfair or burdensome regulations increased in 1998 because of important statutory changes enhancing the RFA. Specifically, the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) allowed small entities to seek judicial review of federal agencies' RFA compliance.

Chief Counsel for Advocacy Jere W. Glover weighed in on a number of the court challenges. SBREFA

reaffirmed the chief counsel's authority to file *amicus curiae* (friend of the court) briefs in federal court. Glover made the decision to file such a brief in one case — *Northwest Mining Association v. Babbitt*.

"Prior to implementation of SBREFA, an agency's compliance with the RFA could not be directly reviewed by federal appellate courts," Glover said. "Therefore, 1998 was particularly important in terms of the courts' recognition that compliance with the RFA is a necessary step in developing new regulations, and that the chief counsel for advocacy is the 'watchdog' of federal agencies whose non-compliance with the RFA causes econom-

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"Vision 2000" Conference A Success



This past December 9 and 10, more than 300 people came to Washington to attend the Office of Advocacy's Vision 2000 conference. Here, attendee Brian Dancause of the Maine Governor's Regional Conference on Small Business offers his thoughts during a panel discussion. For more information, see the detailed report beginning on page 6.

Courts, from page 1

ic harm to small entities.”

A number of RFA cases had noteworthy implications for small firms in 1998. *Northwest Mining Assn. v. Babbitt* marked the first time a court overturned an agency action for non-compliance with the RFA, as well as the first time the chief counsel for advocacy exercised his right to intervene as *amicus curiae*.

Northwest Mining raised issues about a trade association's standing to bring a claim under the RFA and an agency's failure to use the proper size standard to determine the number of small businesses that may be harmed by the regulation. In the ruling, the federal district court recognized the association's standing to file a lawsuit under the RFA (see “Who Has Standing,” on page 12).

The court also agreed with the plaintiff (the small business association) and the chief counsel for advocacy with respect to the use of an improper size standard by the regulatory agency, the Bureau of Land Management (BLM). The RFA requires an agency to use the definition of “small business” designated by the Small Business Administration (SBA). Instead, BLM made its own determination. The court found that BLM's reasons for using another size standard were “unconvincing in light of the clearly mandated procedure of the RFA.”

Because BLM's certification was without observance of procedure required by law, the plaintiff was entitled to relief. The court disregarded the agency's argument that maintenance of the rule was necessary to save the environment, stating:

“While recognizing the public interest in preserving the environment, the Court also recognizes the public interest in preserving the rights of parties which are affected by government regulation to be adequately informed when their interests are at stake and to partici-

pate in the regulatory process as directed by Congress.”

In *Southern Offshore Fishing Association v. Daley*, the National Marine Fisheries Service (NMFS) reduced the quota for shark fishing by 50 percent, contending that the reduction would not have a significant economic impact on a substantial number of small entities. A federal district court did not overturn the agency action, but sternly criticized the NMFS for its failure to comply with the RFA.

The court was disturbed by inadequacies in the NMFS's economic analysis, especially since the SBA's chief counsel for advocacy sharply criticized the agency's behavior during the notice and comment period of the proposal. The court also found that the agency's refusal to recognize the economic impacts of its regulations on small business raised serious questions about its efforts to minimize economic impacts through less drastic alternatives. When the agency failed to produce an adequate analysis after the remand, the court appointed a special master to review the matter at the agency's expense. Because of the dire state of the shark fishery, however, the quota remained in place.

Other cases challenging agency RFA compliance were not always as successful for small businesses. In *Motor and Equipment Manufacturers v. Nichols* and *Valuevision v. FCC*, the U.S. Court of Appeals had an opportunity to review and overturn the case of *MidTex v. FERC*, which held that an agency must only analyze a rule's impact on the businesses directly (rather than indirectly) subject to the rule.

Motor and Equipment Manufacturers concerned an Environmental Protection Agency (EPA) rule that waived preemption for California regulations governing on-board emissions diagnostic devices (OBD), deeming compli-

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The Small Business Advocate

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The Small Business Advocate (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration's Office of Advocacy and is distributed to Small Business Administration field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, Mail Code 3114, Washington, DC 20416. Back issues are available on microfiche from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Send address changes to: The Small Business Advocate, Mail Code 3114, U.S. Small Business Administration, Washington, DC 20416. Include your current address label.

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Regulatory Reform: Raising the Bar for Success

by Jere W. Glover

Are we doing enough? This is a question that haunts me, especially as I face a new year. Where are small businesses going? How can the Office of Advocacy help them get there? The answers are determined in large part by how far we've come.

Changing the government's regulatory culture is the foundation of the Office of Advocacy's mission. Everything we do, in some way, affects this mission. Anecdotes alone cannot convert policymakers. Before we can convince a federal agency that small businesses are disproportionately affected by many regulations, we must demonstrate those costs. For instance, in a study of regulatory costs just released by the Office of Advocacy, the overwhelming costs of engineering controls and paperwork weighed heavily on small businesses. Up-front costs are daunting to a small firm that may have to sink more capital into equipment and cash flow supporting payroll. It is tough to get a traditional bank loan for regulatory compliance. Bankers prefer the promise of new markets or products.

So the Office of Advocacy's effort to study — and improve — access to capital is also a vital link in changing government culture. By requiring banks to report lending information to bank regulators, the Office of Advocacy can mine these "call reports" to find out how well banks are serving small businesses. With this government-required information, we have opened some new avenues for small businesses' efforts to gain access to capital. The small business lending studies have become a staple, providing more information to the market and encouraging traditional bank lenders

Changing the regulatory culture of government at every level is a goal that has involved the Office of Advocacy in many tasks — and the challenges will be even greater in 1999.

to woo the small business customer.

States are also raising the threshold of achievement in small business initiatives. For that reason, the Office of Advocacy hosted, along with many small business partners, "Vision 2000: The States and Small Business Conference" in December. Vision 2000 succeeded in bringing more than 300 small business leaders and state government officials together from throughout the country to identify state and local initiatives that advance small business. I was amazed to hear how underserved sectors have championed programs that fit their needs. And the underserved are not necessarily unsuccessful sectors. In fact, Advocacy's own studies identify women- and minority-owned firms far outpacing traditional firms in terms of start-up rates. But sustaining and expanding these firms must be part of the agenda. Every state must develop small business policies and services with a thoughtful understanding of the future face of small business.

State policymakers should also consider the impact of a regulation on the cost of doing business and seek to draft laws and regulations that fit the problem and the businesses being regulated. In doing so,

government will support the companies that boost a community or state economy. In a recent review, the Office of Advocacy identified 20 state laws that emulate the federal Regulatory Flexibility Act — requiring agencies to identify the cost of compliance, analyze the economic impact on businesses, and develop regulatory alternatives (see page 4).

But the road to change doesn't end with a statute, it only begins. This sentiment is evident in the implementation of the Regulatory Flexibility Act (RFA) of 1980. It took the 1996 amendments to the RFA and the Office of Advocacy's subsequent efforts in 1998 to persuade some regulatory agencies that compliance with the law must begin now.

In January 1998 the Office of Advocacy filed an *amicus curiae* (friend of the court) brief in support of small businesses' court challenge to a regulation of the Bureau of Land Management. It is not business as usual when we go to court. In fact, the 1996 amendments to the RFA helped the Office of Advocacy forge new relationships with many federal agencies and assure more "early intervention" by small business.

When you tell the story that most employed people on public assistance rely on small businesses as employers, policymakers become less critical. When you explain that the oldest, youngest, and undereducated people are more likely to be employed by a small business than by a large firm, regulators become more empathetic. Finally, when our research shows that small businesses incur 50 percent more costs per

Continued on page 14

A Growing List of State Regulatory Flexibility Laws

Many states are adopting “regulatory flexibility” laws for small businesses. These state laws are similar to the federal Regulatory Flexibility Act and require agencies to determine the impact of state proposed rules on small business or periodically consider the impact of existing rules. The Office of Advocacy has compiled a partial list of state regulatory flexibility laws. While

there are many regulatory review processes used by state governments, the laws listed below specifically require consideration of the impact of regulations on small business. This effort is important to the Office of Advocacy, which is responsible for monitoring federal agencies’ compliance with the federal Regulatory Flexibility Act.

The Regulatory Flexibility Act is

codified at 5 U.S.C. 601–612. A copy of the state laws referenced in the accompanying table may be obtained from the Office of Advocacy. Contact Advocacy’s Office of Public Liaison at 409 Third Street, S.W., Washington, D.C. 20416; tel. (202) 205-6531; fax (202) 205-6928.

State Regulatory Flexibility Laws

States with regulatory flexibility statutes, and what they do.

Arizona	Governor’s Regulatory Review Council considers, among other things, small business impact statement.	A.R.S. § 41-1052 (1998)
California	Regulatory impact statement and plain English rules.	Cal. Gov. Code § 11346.5 (1997)
Connecticut	Regulatory flexibility analysis.	Conn. Gen. Stat. § 4-168a (1997)
Delaware	Consider feasibility of exempting small businesses.	29 Del. C. §10404 (1997)
Florida	Regulatory impact and alternatives; small business ombudsman.	Fla. Stat. § 120.54 (1998)
Georgia	Economic impact analysis and alternatives.	O.C.G.A. § 50-13-4 (1998)
Hawaii	Small Business Regulatory Flexibility Act; analysis, regulatory alternatives, small business regulatory review board, and small business defender (within the legislature).	1998 Hi. ALS 168
Illinois	Regulatory flexibility analysis, effects on economic growth of small businesses, and alternatives.	5 ILCS 100/5–30 (1998); 415 ILCS 5/27 (1998)
Iowa	Regulatory flexibility analysis, alternatives and small business review.	Iowa Code § 17A.31 (1997)
Kentucky	1. Tiering administrative regulations to reduce burden. 2. Joint committee to assess impact of regulations.	KRS § 13A.210 (Michie 1996) 1998 Ky. HB 780 (1998)
Michigan	Regulatory impact statement and small firm involvement.	MSA § 3.560 (1998)
New Jersey	Regulatory flexibility analysis and alternatives.	N.J. Stat. § 52: 14B–17 (1998)
New York	Regulatory flexibility analysis.	NY CLS St Admin. Act §§ 202–202a (1998)
Pennsylvania	1. Regulatory analysis and small business provisions. 2. Small Business Advocacy Council and Advocate.	71 P.S. § 745.5 (1998) 71 P.S. § 1709.704; 73 P.S. § 399.45 (1998)
Utah	Small Business Advisory Council reviews impacts.	Utah Code Ann. § 9-2-302 (1998)
Vermont	Economic impact statement and small business alternatives.	3 V.S.A. § 838 (1998)
Washington	Economic impact statement and review of impacts.	Rev. Code Wash. §§ 19.85.020–70 (1997)
Wisconsin	Regulatory flexibility analysis, hearings, and alternatives.	WWis. Stat. §§ 226.17–19

Regulatory Agencies

Do Regulations Cost Small Entities More?

The extra burden that across-the-board rules impose on small firms has long been a target of the Office of Advocacy. Now an exhaustive new study of 24 specific regulations provides case-by-case answers to the question of cost to small entities. *The Impact of Federal Regulations, Paperwork and Tax Requirements on Small Business*, prepared under contract for the Office of Advocacy by Dr. Henry Beale of Microeconomic Applications, Inc., examined the regulatory impact analyses prepared for 10 Occupational Safety and Health Administration (OSHA) regulations, 12 rules from the Environmental Protection Agency (EPA), and one rule each from the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The report broke down the data accompanying those regulations to estimate the unit cost — that is, the cost per employee, dollar of sales, or other appropriate unit — of complying with the regulation for both large and small entities. In most cases, “entities” were businesses, but other regulations applied to municipalities of different sizes. (For example, rules on water treatment and underground storage tanks, among others, applied to both private and public entities.)

Next the report calculated a ratio of unit costs of compliance for the smallest and largest size classes in each industry or business segment affected by a rule. The ratio often varied by industry where a rule affected more than one type of business. For instance, OSHA’s final rules on asbestos were estimated to have a more than proportionate impact on small ship repair yards but a less than proportionate effect on small heavy construction

A report shows that most rules impose higher per-unit costs on small entities than on large ones. Exemptions or intermediate levels of compliance can help avoid this.

firms. To summarize the results more manageably, the report focused on the cost ratio of the average (mean or median) industry so as to have a single statistic for each rule.

In three-quarters of the cases (18 out of 24 regulations studied), the smallest size class of businesses or governments had higher unit costs of regulatory compliance than the largest entities. In 10 of these 18

cases, the difference was dramatic: the smallest entities in the average industry would have to spend between 4 and 30 times more per unit for compliance than the largest size class. Only two regulations imposed relatively lower unit costs on small entities. Under four regulations, small entities faced a higher unit cost than large entities in at least one affected industry segment but a lower cost in other segments, thanks to partial exemptions included in the rules. Two other tests that Dr. Beale performed also showed that a substantial majority of the regulations, but not all, affected small entities disproportionately.

The report also examined each case in which a rule apparently did not place a disproportionate burden on small entities in one or more industries. Of 13 such cases, four involved complete or partial exemptions for small entities. In two cases the small entity appeared able to avoid regulatory costs by making appropriate strategic decisions, such as withdrawing from a part of the market or manufacturing process that entailed the highest costs. In two instances, including a requirement to outfit each worker with protective equipment, unit costs did not vary much with firm size. And five cases involved questionable data, not documented relief.

In other words, most rules impose higher per-unit costs on small entities than on large ones. Agencies can sometimes avoid this undesirable result by providing exemptions or intermediate levels of compliance for smaller entities.

The report also dug into the specific aspects of regulations that make them costly for small entities. Regulations impose several cate-

Who Pays More?

Relative costs of regulatory compliance for 24 regulations analyzed for the Office of Advocacy.

Higher costs to large entities: 2 cases

Mixed impact: 4 cases

Higher cost to small entities: 18 cases

Source: Microeconomic Applications, Inc., *Impacts of Federal Regulations, Paperwork, and Tax Requirements on Small Business*, report no. PB99-122137 (Springfield, Va.: National Technical Information Service, 1998).

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Special Report: Vision 2000

300 Attendees Hear Success Stories, Honor Awardees

The Office of Advocacy's "Vision 2000: The States and Small Business Conference" filled the U.S. Chamber of Commerce in Washington, D.C., on December 9 and 10 with more than 300 small business leaders and state and local government officials from throughout the country. They gathered to be recognized for outstanding achievements on behalf of small business, and to learn from each other through presentations and informal exchanges.

Through their participation in 12 panel presentations on different topics over the two days of the conference, attendees were exposed to a large number of programs and ideas that they could adapt for use in their own jurisdictions. Feedback from conference participants indicated that attendees expected to appropriate many of the ideas for use in their own states or localities.

In an effort to continue the spirit of the Vision 2000 conference, state and local programs and policies



Secretary of Labor Alexis Herman (L) was the keynote speaker at the Vision 2000 conference, giving a lunchtime address on December 9. She is joined here by the SBA's Chief Counsel for Advocacy Jere W. Glover and Regional Advocate Paulette Norvel-Lewis.

that promote small business growth will be highlighted in coming issues of *The Small Business Advocate*. This month's focus is on the Chief Counsel's Special Awards

for Small Business that were presented at the conference.

The Chief Counsel's Special Awards for Small Business

(For information about the Chief Counsel's Special Awards, see box on page 9.)

Oklahoma Senate and House Committees on Small Business

In 1997, Oklahoma's speaker of the House of Representatives and the president pro tempore of the Senate created a Committee on Small Business in their respective bodies, thereby giving Oklahoma small businesses a direct link to the legislative process.

Responding immediately to one

of the greatest problems facing small business everywhere — government regulation — the Small Business Committees secured the enactment, by unanimous vote in both chambers, of the Oklahoma Regulatory Review Act. The act requires all state agencies to review all regulations under their purview and rescind or amend any redundant or unnecessary rules already in place. On or before July 1, 1999, each agency is required to report their findings and actions to implement the act.

Hon. Tom Ridge, Governor of Pennsylvania

Pennsylvania Gov. Tom Ridge understands small business. Since January 1995, he has led what has been called the "Quaker State Business Earthquake" and made Pennsylvania a national leader in community and economic development. As governor, he has developed a comprehensive range of initiatives, including workers' compensation reform, that have revitalized Pennsylvania's business cli-

Continued on page 8

At the Vision 2000 Conference . . .



"We're working hard to make sure small business continues to thrive in New Hampshire. We do that in two ways: by creating a favorable climate for business in general and working closely with small business in particular."

*Hon. Jeanne Shaheen
Governor of New Hampshire*

Above: New Hampshire Governor Jeanne Shaheen opened the conference with a speech to the attendees on Dec. 9.



Right: SBA Regional Advocate Paulette Norvel-Lewis (left) and attendees Elaine Marshall (center) and Nita Fulbright (right) share observations after a panel discussion at the Vision 2000 conference.



Left: Dr. Warren Gulko, an appointed delegate to the 1995 White House Conference on Small Business, moderates a panel on the importance of state small business conferences



SBA Deputy Administrator Fred P. Hochberg speaks to Vision 2000 attendees during the conference luncheon on Dec. 9.

"The Vision 2000 conference is focused on the three real keys to success: opening doors, learning from each other, and striking new partnerships."

*Hon. Alexis Herman
Secretary of Labor*

mate and created nearly one-quarter million new jobs in three years.

Colorado Public Employees Retirement Association and the Colorado Housing and Finance Authority

Denver, Colo.

The Colorado Public Employees Retirement Association (PERA) in partnership with the Colorado Housing and Finance Authority (CHFA) has provided Colorado small businesses with a source of long-term, fully amortizing, fixed-rate loans since 1989. Since then, PERA has made over \$100 million available to small business programs operated by CHFA. More than 500 businesses have received loans at below-market rates, creating more than 5,000 jobs.

PERA commits to bond purchases to fund specific programs based upon program guidelines and a commitment by CHFA to provide its general obligation on the bonds. Unique to this relationship, PERA provides a forward commitment up to two years in advance of the delivery of the bonds, while assuring a fair return for its members. CHFA then markets the loan pro-

grams to small businesses, lenders and referral sources such as small business development centers, chambers of commerce, and economic development organizations. Through the purchase of CHFA bonds, PERA has filled a gap in the capital marketplace and kept significant investment funds at home to work in the Colorado economy.

Delaware State Chamber of Commerce

Wilmington, Del.

The Delaware State Chamber of Commerce has embarked on two important and innovative projects to reach out to segments of the small and micro-business community that do not typically enjoy the benefits of large chamber membership. The state chamber recognized that forging alliances to specialized "affinity group" chambers in Delaware would be mutually beneficial, would bring new diversity to its own organization, and would benefit the Delaware business community generally. Working closely with leaders of the Delaware Hispanic Chamber of Commerce, the state chamber established the Latino Business Alliance. It later

formed a Microbusiness Alliance with the MicroBusiness Chamber of Commerce, organized with the assistance of Working Capital Delaware, a program of the YWCA of New Castle County with 450 micro-business clients.

Both the Latino Business Alliance and the Microbusiness Alliance are excellent examples of how a mainline, established chamber of commerce can further its own goals through a cooperative and non-competitive collaboration with smaller affinity business associations whose members share special bonds and derive special benefits from their affiliation.

Hattie Bryant and Small Business 2000

New Orleans, La.

Hattie Bryant of New Orleans had a vision. She wanted to educate the public about the vitality and power of small businesses in their own communities, and she wanted to bring this message to every corner of the country and beyond via public television. With her own funds, Bryant produced a 10-minute pilot program and then began a search for corporate sponsorship to make her dream of a weekly television

series a reality. She subsequently convinced IBM, *Business Week*, and MCI to underwrite the first 13 half-hour-long programs. Since 1994, the show has garnered a regular viewership of some 700,000 in the United States via 200 public television stations. The show is also broadcast to more than 300 cities worldwide in six languages via the United States Information Agency's WorldNet Global Satellite system.

Y2K Initiatives of the City of Lubbock, Texas

The city of Lubbock, Texas, under the leadership of Mayor Windy Sitton and City Manager Bob Cass, set an important example in September 1998 by conducting the first citywide Year 2000 (Y2K) simulation in the nation. The purpose of the drill was to prepare city officials to serve citizens and businesses in case of a computer failure due to the Y2K problem. The drill was devised by emergency personnel and Y2K experts, who alone knew what simulated crises would next be unleashed by e-mail to city managers, emergency and public safety personnel, and utility workers at a city hall emergency command post. A response judging system was set up and post-drill evaluations conducted. While city personnel performed extremely well, unanticipated problems were identified — which of course is the purpose of such an exercise. City officials have testified before the U.S. Senate about their experience, and have led the way nationally in preparing for Y2K.

National Renewable Energy Laboratory *Golden, Colo.*

The National Renewable Energy Laboratory (NREL) is the world leader in renewable energy technology development. Since its inception in 1977, NREL's mission has been to develop renewable energy



Bennie Thayer, president of the National Association for the Self-Employed, closed the Vision 2000 conference with an inspiring salute.

technologies and transfer these technologies to the private sector. A commitment to help small business is central to NREL's mission. NREL actively seeks partnership opportunities with small companies to help commercialize renewable energy technologies and to supply the NREL with essential products

and services through collaborative research methods and technology transfer activities.

About the Chief Counsel's Special Awards

One of the main purposes of the Vision 2000 conference was to spotlight and honor programs and policies across the country at the state and local level that help promote small business growth.

The SBA's regional advocates identified 17 award categories used to classify successful programs and policies. Many of these categories, such as venture and seed capital development, reflected ongoing, traditional small business areas. Others reflected new issues such as technology. Many of the categories were outgrowths of issues spotlighted by the small business community during the

White House Conference on Small Business in 1995.

A concerted effort garnered several hundred nominations for these "Models of Excellence." A total of 114 organizations or individuals were recognized as either award winners or special recognition winners during the conference.

The Chief Counsel's Special Awards honor programs, individuals, and activities that deserve special recognition for their contributions to promoting the interests of small business at the state and local level.



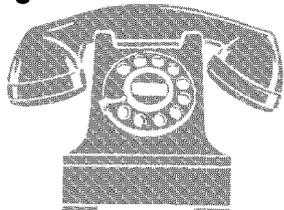
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QUESTIONS?



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The Small Business Answer Desk

Regulation, from page 5

gories of costs, such as engineering and equipment, supplies, training, and paperwork. The report found that engineering costs are generally the largest source of burdens on small entities in dollar terms, although paperwork can be quite costly for some rules.

Some administrative costs, such as becoming familiar with a rule's requirements and planning how to comply, may be the most disproportionate because they require the time of one person, no matter what size the company is. But the absolute dollar cost of that type of regulatory burden is likely to be much smaller than costs that require purchase or modification of equipment or production processes. Thus, rules that impose mainly administrative costs may place burdens on smaller entities that are disproportionate but not as significant.

The study found that one-quarter of regulations had costs that, for at least one industry, exceeded 5 percent of revenue or were large by some other measure. (Revenue may not be the appropriate basis as with some rules affecting local governments.) Another quarter had costs of 1 to 3 percent, and the remaining half had regulatory costs of less than 1 percent of revenue. As any business owner knows, percentages of revenue alone cannot be the measure of "significant impact." In fact, if a regulation costs 1 percent of revenue, but profit margins are small or cash flow is being pumped back into a growing company, the price of compliance can be significant, even detrimental.

The moral of this tale for regulators is that they must correctly identify the affected industries or other entities, be aware that rules can generate costs from several sources (such as equipment, process changes, training, paperwork), recognize that each category of costs is likely to have differential

effects on different sizes of entities and different industries, and seek alternative methods of regulating that permit small entities to avoid being affected heavily and disproportionately.

These are not easy tasks. But the payoff to society from having more enlightened, less heavy-handed regulations can be great.

For More Information

Copies of *The Impact of Federal Regulations, Paperwork, and Tax Requirements on Small Business* are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; tel. (800) 553-6847; TDD (703) 487-4639. Ask for publication no. PB99-122137.

Research Summary no. 186, which summarizes the findings of the report, is available on the Office of Advocacy's Web site at www.sba.gov/ADVO/research/.

For more information on this report, contact Kenneth Simonson, senior economic advisor in the Office of Advocacy, at (202) 205-6973 or via e-mail at kenneth.simonson@sba.gov.

Electronic Commerce: A Growing Force

After being the subject of countless discussions among academics, futurists, and computer enthusiasts over the past decade, electronic commerce — or e-commerce — has in the past few years come of age and is now an increasingly important element in the business strategy of many small firms.

According to a recently released survey of 504 small firms conducted by the Arthur Andersen Enterprise Group and National Small Business United (NSBU), 22 percent of small and mid-sized firms are using the Internet to sell their goods and services. Close to 1.2 million small businesses are actively using their Web sites to market and advertise their businesses.

“If there was ever a ‘time of technology’ for small and medium-sized businesses,” said the report, “the past two years might rank pretty high.”

Of firms reporting a Web presence, 78 percent use it to reach new customers, 65 percent use it to sell goods and services, and 17 percent use it to expand globally.

“None of these findings are surprising. Markets change overnight,” said Jere W. Glover, the SBA’s chief counsel for advocacy. “Money moves at nearly the speed of light. The Internet is the tool to compete in the global marketplace, and to reach new sales goals.”

Government officials and national surveys have only to look to Wall Street to find evidence of the increasing respect that e-commerce commands in the marketplace. In the first three months of 1998, businesses engaged in e-commerce raised \$273.1 million in initial public offerings (IPOs), setting the stage for a dynamic year in the stock market. For example, one

Electronic commerce, or e-commerce, has experienced big growth over the past year. The findings of some recent surveys show how small business has participated in this growth.

company’s IPO opened at \$9 per share and closed at \$63.50 in its first day of trading. Another major e-commerce company shipped

For More Information

Copies of the NSBU/Arthur Andersen 1998 Survey of Small and Mid-Sized Businesses are available for purchase from the Arthur Andersen Enterprise Group. To order, call 1-800-872-2454, or visit Arthur Andersen’s KnowledgeSpace store on the Internet at <http://store.knowledgespace.com>. The cost is \$25 per copy, plus shipping and handling. An executive summary of the report is available on the NSBU’s Web site at www.nsbu.org.

The study by Zona Research is available at www.zonaresearch.com.

The Office of Advocacy will be publishing a special report on e-commerce later this year. For information, contact Victoria Williams in Advocacy’s Office of Economic Research at (202) 205-6530 or via e-mail at victoria.williams@sba.gov.

more than 7.5 million units in the fourth quarter of 1998 and had sales of about \$600 million over the entire year. The same company saw the price of its stock rise 1,300 percent in 12 months. The trend continues for other e-commerce businesses as well.

The growth of e-commerce continued with the 1998 holiday shopping season. According to a survey by Zona Research, Inc., the average on-line shopper spent more than \$600 on-line, an increase of 191 percent from just one year ago. Zona Research projected that U.S. holiday Internet sales would total \$3 billion. When asked why they used the Internet to shop, 36 percent of those surveyed answered to save time.

To better assess the impact of electronic commerce on small business, the Office of Advocacy is putting together a special report on e-commerce.

Courts, from page 2

ance with California OBD regulations to constitute federal compliance. The EPA had considered the rule's impact only on "large- and small-volume automobile manufacturers." The plaintiff represented businesses that manufacture, rebuild, and sell car parts in the automobile aftermarket. The court ruled that since the plaintiff's small business was not directly subjected to the rule, the EPA did not have to consider the economic impact of the rule on the aftermarket industry.

Similarly, in *Valuevision v. FCC*, the U.S. Court of Appeals stated that the FCC's primary focus on small cable operators was understandable since that was the group that was directly affected by the new rule. The court also ruled on whether an agency is required to perform an analysis when a rule is expected to have a beneficial impact. The FCC's conclusion that the revised rules would have only a "positive" effect on programmers was sufficient to satisfy the obligations of the RFA, the court said.

A federal district court also limited a regulatory agency's obligation to perform an RFA analysis in *Greater Dallas Home Care Alliance v. U.S.* In that case, the plaintiffs sought a preliminary injunction, alleging that Congress had acted irrationally and unconstitutionally in adopting 1997 legislation changing the method of calculation and amount of payment/reimbursement by Medicare and Medicaid to providers of home health care, and that the Health Care Financing Administration (HCFA) failed to comply with the RFA.

The plaintiffs asserted that the HCFA violated the RFA because it did not evaluate adequately the costs and benefits of available regulatory alternatives and select approaches to minimize the economic burden for small businesses. The court denied the plaintiffs' request, concluding that it is not the

Who Has "Standing"?

"Standing" means a plaintiff has the right to file suit. In administrative procedures, a plaintiff must usually file comments during the notice and comment period of a proposed rulemaking in order to have standing to sue.

In the *Northwest Mining Association* case, the question arose because the Northwest Mining Association (NMA) did not file a comment during the notice and comment period. The NMA argued that it had associational standing because some of its members filed comments and it represented its members. It also argued that it had standing because it was a small entity under the RFA's definition.

The court agreed with the NMA on both arguments. First it found that the NMA fulfilled the requirements of the test set forth

by the Supreme Court in *Hunt v. Washington State Apple Advertising Commission* that (1) its members would have standing to sue in their own right; (2) the interests it sought to protect were germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested required the participation of individual members in the lawsuit.

Second, the court found that the NMA had standing to sue under the RFA as a small entity. "Small entity," as defined in the RFA, encompasses the "small organization" — any not-for-profit enterprise that is independently owned and operated and not dominant in its field. Because the NMA was a small, not-for-profit organization, it was a small entity and therefore met the requirement for standing under the RFA.

function of a court to determine the wisdom of this congressional action, and that the HCFA had acted within its statutory parameters. Because the underlying 1997 statute set forth in detail the formula for the new cost limits, the court said, the HCFA had no discretion to consider alternatives, and the HCFA's statement to that effect obviates the need to solicit or consider proposals that include differing compliance standards. Further litigation is pending on this issue in Texas and Washington, D.C.

Overall, 1998 was a mixed year for judicial interpretation of the RFA. While some opinions strongly recognized the legitimate concerns of small entities and their right to have congressional mandates enforced, others restricted the law's interpretation. Case law on the RFA, though, is still relatively new, and ample opportunity remains for the courts to revisit issues, make

distinctions, and establish precedents that may be more favorable to small entities.

The Fine Print

References for RFA cases.

- *Northwest Mining Assn. v. Babbitt*, 5 F. Supp.2d 9 (D.D.C. 1998)
- *Southern Offshore Fishing v. Daley*, 995 F. Supp. 1411 (M.D. Fl. 1998)
- *Motor and Equipment Manufacturers v. Nichols*, 142 F. 3d 449 (D.C. Cir. 1998),
- *MidTex v. FERC*, 773 F.2d 327 (1985)
- *Valuevision v. FCC*, 149 F.3d 1204 (DC1998)
- *Greater Dallas Home Care Alliance v. U.S.*, 1998 WL 355465, 1998 US Lexis 9656 (N.D. Tex.)

SCORE Celebrates a Birthday

In the corporate world, who is retired, works overtime without pay, and doesn't have a financial stake in the business he or she is helping? The likely answer is a volunteer with the Service Corps of Retired Executives (SCORE). SCORE, which is funded in part by the SBA, begins 1999 by celebrating a remarkable 35th year of service, dedicated to entrepreneurship education and the formation, growth, and success of small businesses across the country.

"The SCORE organization and its volunteers have made immense contributions to the small business community and the U.S. economy," said SBA Administrator Aida Alvarez. "I congratulate the organization on its 35 years of excellent service to millions of aspiring entrepreneurs and look forward to continuing the SBA/SCORE partnership to help small businesses succeed for many years to come."

Throughout SCORE's 35-year history, thousands of volunteers have donated their time and talent to mentor and advise America's entrepreneurs. "For 35 years, SCORE has been the counseling



SBA Administrator Aida Alvarez (L) congratulates SCORE President Emmett F. Gumm (R) during a ceremony held January 5 at SBA headquarters in Washington.

resource for small business," said SCORE President Emmett F. Gumm. In 1998, 389 SCORE chapters and 12,400 volunteers provided more than 350,000 aspiring entrepreneurs business advice, counseling, mentoring, and workshop sessions. Volunteers, who have owned and operated their own businesses or served in management roles in many notable companies, donate

more than 1 million hours each year to help small businesses succeed. SCORE has assisted nearly 4 million Americans with small business counseling.

For more information about starting or managing a small business, call, toll-free, (800) 634-0245 for the SCORE chapter nearest you or visit the SCORE Web site at www.score.org.

Sustainable Business Practices to Be Feature of National Town Meeting

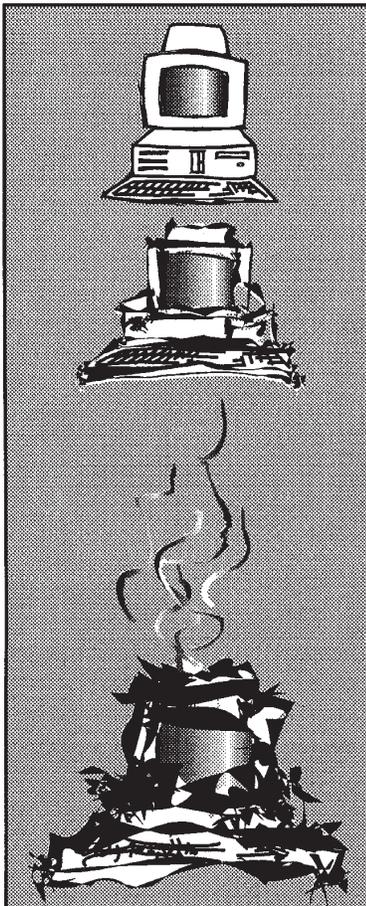
All across America, small businesses are developing sustainable business practices that minimize waste, improve productivity, create opportunities, and increase profits. No one is telling them to do it. It is a logical response to the challenges of doing business. It is fueling the growing national movement toward livable communities that combines healthy economic growth with healthy environmental practices and support for employees and community.

Businesses with a sustainable growth success story to tell can gain national recognition for their business by participating in the National Town Meeting (NTM) for a Sustainable America to be held May 2-5, 1999, at the COBO Convention Center in Detroit, Mich. This landmark event will promote companies and communities that have developed innovative best practices that will sustain America's growth in the 21st century and improve the quality of life in

their communities. The NTM is expected to be the largest U.S. event of its kind, with 3,000 participants in Detroit and thousands more in over 100 concurrent events around the country linked by satellite and the Internet.

Companies that use resources more efficiently, reduce waste, develop sustainable products, or establish innovative community partnerships can apply to make a

Continued on page 14



Are You Y2K OK?

On January 1, 2000, some computer-based systems will begin processing information as if it were January 1, 1900. This is called the Year 2000 problem or the "Y2K bug." It may cause problems for your small business unless you act now. This is not just a computer problem. It could affect any equipment that uses a computer chip as well as the suppliers and business partners you rely on.

For more information contact the
U.S. Small Business Administration
 at
1-800-U-ASK-SBA
<http://www.sba.gov>

A public service announcement provided by the



All the SBA's programs and services are provided to the public on a nondiscriminatory basis.

White House Conference Tax Chairs Meet with IRS

In December, a group of delegates to the 1995 White House Conference on Small Business met in Washington, D.C. with Donald Lubick, the Treasury Department's assistant secretary for tax policy. Ten delegates, who had been elected regional tax issue chairs by the conference, presented an action agenda of tax issues that have not been solved since the conference. The delegates also met with the Internal Revenue Service's Small Business Redesign Team to discuss the formation of an IRS small business division that would be more responsive to the special education needs and requirements of the small business community.

The group's agenda highlights recommendations of the White House Conference on Small Business that have not been fully implemented. The agenda includes:

- continue focus on simplifying the tax system;
- accelerate the implementation of the 100-percent deductibility of health care insurance for the self-employed;
- accelerate implementation of the increased expensing limit to \$25,000 (with special increases for

expenses related to the Year 2000 computer compliance costs);

- clarify the definition of independent contractor for tax purposes;
- address the deductibility of business-related entertainment for small businesses;
- provide more relief for the families of small business owners from confiscatory estate taxes; and,
- avoid an increase in payroll taxes.

The delegates interested in tax issues have remained active since the 1995 conference with monthly meetings and trips to Washington to re-deliver the White House Conference's recommendations to Congress and the administration. Among the group in Washington for the meetings in December were: Debbi Jo Horton from East Providence, R.I.; Joy Turner from Piscataway N.J.; Jack Oppenheimer from Orlando, Fla.; Paul Hense from Grand Rapids, Mich.; Edith Quick and Roy Quick from St. Louis, Mo.; Jim Turner from Salt Lake City, Utah; Gary McKenzie from Modesto Ca.; and Eric Blackledge from Corvallis Ore.

NTM, from page 13

presentation at the NTM. Winning proposals will be featured at the NTM Web site and at the NTM learning sessions and in conference materials. After the event, a "best practices" data base highlighting the innovative practices of small businesses, communities, and other organizations will be made widely available.

To obtain an application to present your story, or for more information on the NTM, visit www.sustainableamerica.org or call, toll-free, 1-888-333-6878.

Reg Reform, from page 3

employee for regulatory compliance, we begin to experience understanding. The Office of Advocacy wouldn't be able to share this insight without the invaluable statistics we underwrite at the Bureau of the Census, or the small business research that we fund.

The government won't change overnight. But I have been a part of this fight on behalf of small business for over 20 years, and great changes have occurred in that time. Just sometimes, a day at a time seems too slow. No doubt, the bar for success has been raised for 1999.

Technology Clusters Link Universities and Small Business

by Terry Bibbens

Silicon Valley, the Route 128 area of Boston, Mass., Austin, Texas, and Ann Arbor, Mich. — all bring to mind the successful development of technology clusters. These clusters have contributed to the success of the local economy, the enhancement of the research reputations of the associated universities, and the creation of exciting, world-class technology teams. The factors that contribute to the success of these clusters have long been of interest to the Office of Advocacy. One common element that is vital is a world-class university. Simply stated, there are no successful clusters without a technology university's contribution.

However, there are many great universities that have not developed clusters. The difference appears to be the cloistered or permeable nature of the university to the local industry — especially to small businesses. Universities that have an “ivory tower” concept and decline to permit their faculty and students to work with industry do not have clusters. Those universities that have a permeable policy to permit faculty, students, and industry to flow freely through the university walls and interact have created clusters.

When we look at the two most famous technology centers in the United States we can see why this permeability developed. At the Massachusetts Institute of Technology (MIT) Radiation Laboratory during World War II, the best and brightest minds of our nation were assigned the task of developing new technologies for our fighting forces. The researchers' goal was to get the best and latest products quickly to the field through the local industries supporting the war effort. As a

result, the academics, industry, and military users worked together to move technology to the field.

This collaborative effort continued after the war and created the Route 128 environment. The principal architect of this policy was Dr. Vannevar Bush, the dean of the Electronic Engineering Department and vice president of MIT, and later the director of the federal government's Office of Scientific Research and Development. This latter position was a presidential appointment, which made him responsible for the 6,000 scientists involved in the war effort. The famous MIT Radiation Lab books were the guiding university texts for electronic engineering schools for decades. MIT carried this spirit of collaboration across the country with its ubiquitous MIT forums, where small companies can receive counseling from mentors and industry leaders.

As an indication of the success of MIT, BankBoston published *MIT: The Impact of Innovation* in March 1997. The book documents the economic impact of this unique university. The study reports that the revenues produced by the companies founded by MIT graduates and faculty are equivalent to the 24th largest economy in the world.

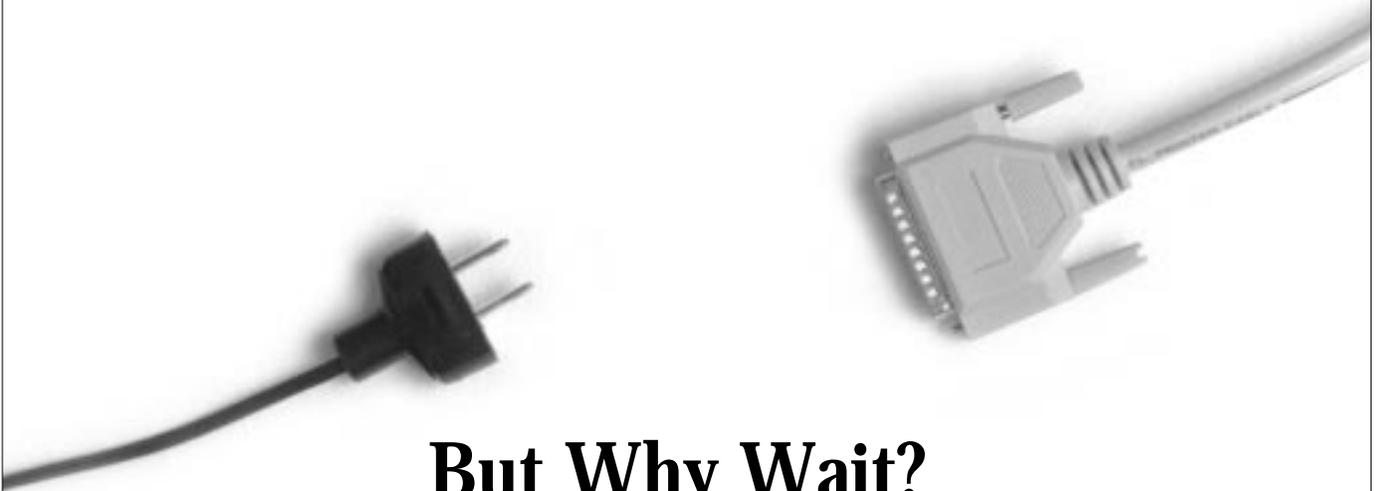
Stanford University's contribution to the growth of Silicon Valley has been documented in many studies. It is interesting that the acknowledged father of Silicon Valley, Dr. Frederick Emmons Terman, dean of the Stanford electrical engineering department, received his Ph.D. in 1924 under the tutelage of Dr. Vannevar Bush. Dr. Terman's emphasis on continued collaboration between Stanford

and local industry was well known to all students at Stanford. It was common for students and faculty to work on challenging industrial problems as advanced research projects. Then, moving to industry, it was common to see the professors consulting on the most vexing technological problems. Dr. Terman's support of Bill Hewlett and Dave Packard in the formation of their company is part of the lore of the valley. From this beginning collaborative philosophy emerged the Silicon Valley miracle.

The bridges between the universities and large and small industries were the keys to the creation of these remarkable environments. Improving these bridges where they are weak or non-existent is an important element of improving the economic climate for the technology industry across the country. As the entrepreneur in residence at the Office of Advocacy, I have developed a white paper to encourage dialogue on this topic. The paper was presented at the National Academy of Sciences, the Sigma Xi symposium on Trends in Industrial Innovation, and at international forums. For a copy of this paper, please contact me at terry.bibbens@sba.gov or at 202-205-6983. Papers, suggestions and articles on this topic are also welcome; suggestions for improving the process are solicited from both industry and university leaders.

Terry Bibbens is the Office of Advocacy's entrepreneur in residence.

In Just One Year, Small Businesses and Investors Will Plug into 21st Century Technology



But Why Wait?

The Angel Capital Electronic Network — or “ACE-Net” — is the Internet-based resource that gives new options to small companies and investors looking for promising opportunities. Look for it on the World Wide Web at:

<https://ace-net.sr.unh.edu>

ACE-Net

An initiative of the U.S. Small Business Administration's Office of Advocacy

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