

## **An Example of the Value of Reviewing Existing Regulations Periodically**

### **Puerto Rico's "Junkers" Rule**

In December of 2000, Puerto Rico passed the Regulatory Flexibility Act (RFA) Law Number 454 – “Ley de Flexibilidad Administrativa Y Reglamentaria para Pequeños Negocios,” which requires state agencies to perform an economic impact analysis, a regulatory flexibility analysis, and a periodic review of existing regulations. The law also contains a judicial review provision. Additionally, a new position, the Small Business Advocate, was created within the Office of the Ombudsman to oversee the execution of the law through authority to implement administrative and executive investigations, lobby the legislature, and make requests and interact directly with state agencies. The Small Business Advocate began a process mandating that all state agencies review existing regulations that might be affecting small businesses.

On June 27, 1966, Law Number 125 (“Law 125”) was passed to govern businesses called “Junkers,” also known as junk yards in the United States. In Puerto Rico, Junkers are generally in the business of buying both used and salvaged cars for the purpose of selling the used parts. Despite the requirements of Law 125, many of the Junkers operated illegally. As a result, in 1994 the Puerto Rico Department of Transportation and Public Works (“DTOP”) issued a rule which called for Junkers to comply with the law’s requirements for filing and renewing operating permits, recording and recordkeeping of the used parts, and paying all outstanding debts associated with the vehicle. The law also established fine amounts for businesses in violation of the statute.

In response to the periodic review requirement under Puerto Rico’s RFA, in 2004 DTOP examined the 1994 Junkers regulation. This was the beginning of what would become a comprehensive course of action by DTOP to identify all regulations that were affecting these particular small businesses, to review and revise those rules that were found to be burdensome, and to eliminate rules that were no longer effective or were deemed redundant.

DTOP began by compiling research for the flexibility analysis to determine which requirements were critical to the regulation and which might be negatively impacting the businesses. They systematically collected data on the Junkers operating on the island including: business addresses; businesses holding a valid operating license versus those operating illegally; the number of employees; estimated operating expenses; a description of recordkeeping; and other pertinent information. They also identified other state governmental agencies that had regulations impacting the Junker industry such as the Fire Corps Department, the Health Department, the Permit and Regulation Administration, and the Environmental Agency to name a few. After identifying which agency oversaw which related rules, DTOP calculated the licensing costs and requirements of each agency rule and made an assessment of other agency regulations that could conflict with the DTOP rule.

Before issuing their conclusion, DTOP held a series of meetings in conjunction with the Junkers Association to receive comments directly from the businesses. The final outcome was a positive end result for the legitimate Junkers in Puerto Rico and for DTOP. The Department took all of the comments that it received and its analysis into consideration and revised the rule to streamline the filing requirements for an operating license and eliminated the requirement that the Junker pay all outstanding fines attached to the vehicle. Since that time, DTOP has begun to see an increase in the number of Junkers that are operating in compliance with Law 125.

## **Puerto Rico's Periodic Rule Review Achieves Small Business and Public Health Goals**

Puerto Rico's Regulatory Flexibility Act (Law Number 454—"Ley de Flexibilidad Administrativa y Reglamentaria para el Pequeño Negocio") requires agencies and departments to perform periodic reviews of existing regulations. Earlier this year, Puerto Rico's Department of Health conducted one such review at the request of small business owners and the Ice Makers Association. The resulting rule change has been an improvement for small business owners and the island's public health.

Ice manufacturing is an important industry in Puerto Rico. Ice is an essential product for an island whose economy is driven in large part by tourism. In addition, Puerto Rico is prone to power outages, leaving businesses and residences to rely on bagged ice.

Puerto Rico's Rule 6090, "Reglamento General de Salud Ambiental," was meant to ensure that commercially produced ice was clean and uncontaminated. To ensure this, the rule requires bags that hold ice to be clear, allowing the entire bag to be easily inspected. The Department of Health interpreted the rule to mean that bags must be completely transparent, with no labeling whatsoever. In the course of inspecting ice plants, health inspectors would confiscate any bags printed with a company logo and issue fines for rule violations.

Business owners and the Ice Manufacturing Association met with Puerto Rico's Office of the Small Business Advocate/Ombudsman to discuss the situation and see if there was any hope for improvement. The representatives contended that a transparent bag with printing on one side still allowed a clear view of a bag's entire contents. They also pointed out another issue of concern to the Department of Health: many ice manufacturers on the island were operating on the black market and not complying with any health or safety laws. Tests of ice at the point of sale had sometimes found illegally high levels of bacteria; a rule that prohibited identifying labeling actually made it more difficult for the Department of Health to ascertain the source of contaminated ice and stem public health concerns.

The Small Business Advocate submitted a formal request for review of the regulation and arranged for Department of Health and ice industry representatives to meet. After a thorough review and receipt of comments from business owners, the Department of Health agreed to modify the regulation to permit printing on one side of a transparent plastic bag, and it eliminated the associated fine. The result was a win for both the agency and small ice manufacturers. Businesses could legally place their logo on one side of the ice bag and still allow enough visible surface to ensure the cleanliness of the bag's contents.

The Office of Advocacy's state model legislation initiative includes periodic review of existing regulation as one of the key elements of an effective regulatory flexibility law. This example from Puerto Rico shows how regulatory review can be applied to ameliorate a burden on small business and advance public health goals. To learn more about the initiative, visit [www.sba.gov/advo/laws/law\\_modeleg.html](http://www.sba.gov/advo/laws/law_modeleg.html).