THE SMALL BUSINESS
# ADVOCATE

SBA Office of Advocacy

March 2004

Vol. 23, No. 3

## In This Issue



## Home-Based Businesses Restricted By Regulations

Home-based businesses face daunting restrictions from both federal and local regulations, according to a research report released by the Office of Advocacy in February. The report, *Home-Based Business and Government Regulations*, documents the difficulties of complying with complex and confusing IRS rules for home office and equipment deductions. It also describes many of the zoning restrictions faced by the 53 percent of small businesses that are based in the home.

"Home-based businesses are a significant part of our economy," said Thomas M. Sullivan, chief counsel for advocacy. "Our research shows that federal regulations already have a disproportionate impact on small business. This report shows how local zoning regulations can have a big impact on small business, as well. Since a majority of businesses are home-based, these restrictive regulations should be reviewed by policymakers at all levels of government," he said.

At the federal level, the report found that IRS regulations penalize home-based businesses in their treatment of deductions. In particular, claiming a home-office deduction is complex, the depreciation is spread over an unrealistically long time, and returning the space to full residential use generally entails penalties.

The report examined state and local regulations in Arizona, California, Illinois, Iowa, Pennsylvania, and Vermont. It found that the most restrictive regulations are at the local zoning level. It also

*Continued on page 8*


Home-based business owner Chris Krupinski and Chief Counsel for Advocacy Thomas M. Sullivan participated in the release of the Advocacy report, *Home-Based Business and Government Regulations.*

## Regulatory News

# FDA Regional Meetings on Mandatory Food Handler and Import Registration

The U.S. Food and Drug Administration (FDA) is holding several public meetings in March and April to discuss the interim final rules implementing provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 which took effect on Dec. 12, 2003. The Bioterrorism Preparedness Act initiates wide-ranging measures to protect the U.S. food supply. It requires all foreign and domestic facilities that manufacture, process, pack, or hold food for consumption by humans or animals in the United States to register with FDA by Dec. 12, 2003. In addition, it requires food importers to give the FDA advance notice of each article of food imported into the United States. ***Although these provisions currently are in effect and binding***, FDA will be exercising broad enforcement discretion for several months and focusing on educating affected parties about the new requirements, rather than enforcing violations.

The public meetings will provide an overview of FDA's Registration of Food Facilities interim final rule and Prior Notice of Imported Food Shipments interim final rule. FDA will also discuss the scope and applicability of the rules. In addition, FDA will provide on-site registration assistance for facilities that are required to register and a computer demonstration of the Prior Notification System Interface.

If you wish to complete your facility registration on-site, please bring all necessary information. The FDA's webpage on the Bioterrorism Act contains current information about the interim final rules, including what information you will need for your registration. Visit them at *www.fda.gov/oc/bioterrorism/bioact.html* or *www.cfsan.fda.gov/~dms/fsterr.html*.

**How to Register.** You may register online at *www.cfsan.fda.gov/~dms/fsbtac18.html* or by fax at (202) 479-6801. Please submit your registration information for the public meeting (including name, title, firm name, address, telephone number, e-mail address, and fax number) at least three workdays before the meeting date. If you need special accommodations due to a disability, please notify the contact person at least seven days before the meeting date.

**For Further Information.** To learn more, contact Marion V. Allen, Center for Food Safety and Applied Nutrition (HFS-32), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740; ph: (301) 436-1584, fax: (301) 436-2605, email: *marion.allen@fda.hhs.gov*. Advocacy's Assistant Chief Counsel for food safety issues is Linwood Rayford, *linwood.rayford@sba.gov*; (202) 401-6880.


**The Small Business Advocate**

**Editor** Rebecca Krafft

**Managing Editor** Rob Kleinsteuber

**Contributing Editors** John McDowell, Chad Moutray, Linwood Rayford, Kathryn Tobias, Viktoria Ziebarth

**Production Assistant** Gregory Somers

*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.

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

*The Small Business Advocate* online: *www.sba.gov/advo/news/*

Electronic delivery of *The Small Business Advocate* is available by visiting *www.sba.gov/advo/news/*. Subscriber information will be kept confidential and not used for any purpose except for newsletter delivery. To discontinue print delivery of *The Small Business Advocate*, send an email with your current mailing information to *advocacy@sba.gov* or call (202) 205-6533.

Federal Recycling Program
Printed on recycled paper.


## FDA Public Meeting Schedule

**March 2**
Denver, Colo.
Radisson Hotel, Denver

**March 4**
Fresno, Calif.
Holiday Inn, Fresno Airport

**March 9**
El Paso, Texas
Hilton, El Paso Airport

**March 11**
Salt Lake City, Utah
Marriott Downtown

**March 16**
Kansas City, Mo.
Kansas City Airport Marriott

**March 18**
New Orleans, La.
Sheraton, New Orleans

**March 23**
Raleigh, N.C.
Embassy Suites, Raleigh Durham Airport

**March 24**
Philadelphia, Pa.
Embassy Suites, Philadelphia Airport

**April 1**
Mansfield, Mass.
Holiday Inn, Mansfield

## Message from the Chief Counsel

### Tax Relief Makes Tax Day a Little Less Painful

*by Thomas M. Sullivan, Chief Counsel for Advocacy*

As we approach another April 15, it's a good time to review the recent tax developments and their implications for small business. Quite a few changes have occurred since last April 15.

We have a President who knows that the primary job creators in this country are small businesses. The Jobs and Growth Tax Relief Reconciliation Act of 2003, passed by Congress and signed by the President on May 28, 2003, included a number of provisions beneficial to small businesses:

• The amount of investment eligible for expensing quadrupled—to $100,000—for firms with investments under $400,000. This provides a tax saving and investment incentive and helps eligible businesses reduce recordkeeping burdens.

• The first-year "bonus" depreciation deduction increased from 30 percent to 50 percent for investments acquired and placed in service after May 5, 2003, and before Jan. 1, 2005. This provision is intended to provide an incentive for small businesses to purchase capital equipment.

**We will continue to do all we can to create a regulatory and tax environment in which small business can prosper.**

• The tax on capital gains and dividends fell to 15 percent. For taxpayers in the 10 and 15 percent tax brackets, the rate for both will be 5 percent until 2007 and zero percent in 2008. The capital gains reduction applies to gains realized on or after May 6, 2003, and to dividends received in 2003 or after.

• Owners of small proprietorships, partnerships, and S corporations who are taxed as individuals rather than corporations, benefit from the general tax relief at the individual level.

• Owners of small business corporations in income brackets taxable at the top tax rates benefit from the acceleration (from 2006 to 2003) of the reduction in the top income tax bracket to 35 percent.

Michael Hull, our Regional Advocate in Region 9, reports that Betsy Feinberg of Catharon Software Corporation is using the reduced taxation of dividends in her strategy to raise funds from private investors. She is inserting in the offering that investors will be paid half of the earnings every year in the form of dividends. "It is the first time I have heard of this approach in fundraising," Hull says.

In a speech recently in Tampa, Fla., President Bush emphasized again the importance to small businesses of a tax law that is consistent. And he praised the small business people who were there that day, noting "All governments can do is create an environment. It's up to our fellow citizens to seize the opportunity…The truth of the matter is, this economy is good because of the people of America."

Let me join the President in thanking America's millions of small business people for your creativity and unending ability to start and build the businesses that employ America's workers. We will continue to do all we can to create a regulatory and tax environment in which you can prosper.

### Small Business Tax Help

The SBA website has current info on tax assistance for small businesses. Visit the SBA homepage at *www.sba.gov* and click on "Tax Corner." Topics covered include:

- Acceleration of certain previously enacted tax reductions;
- Growth incentives for business;
- Reduction in taxes on dividends and capital gains;
- Temporary state fiscal relief; and
- Corporate estimated tax payments for 2003.

You can reach the page directly by typing *www.sba.gov/taxcorner*.

The IRS small business page collects several important topics in one place: *www.irs.gov/businesses/small*. You can also order the 2004 *Small Business Resource Guide* CD-ROM from a link on this page, or call (800) 829-3676. The guide provides critical tax information to small businesses including forms, instructions, and publications. It also contains essential startup information needed by new small businesses in order to be successful. The design of the CD incorporates file formats and browsers which can be run on virtually any desktop or laptop computer.

## Regional Roundup

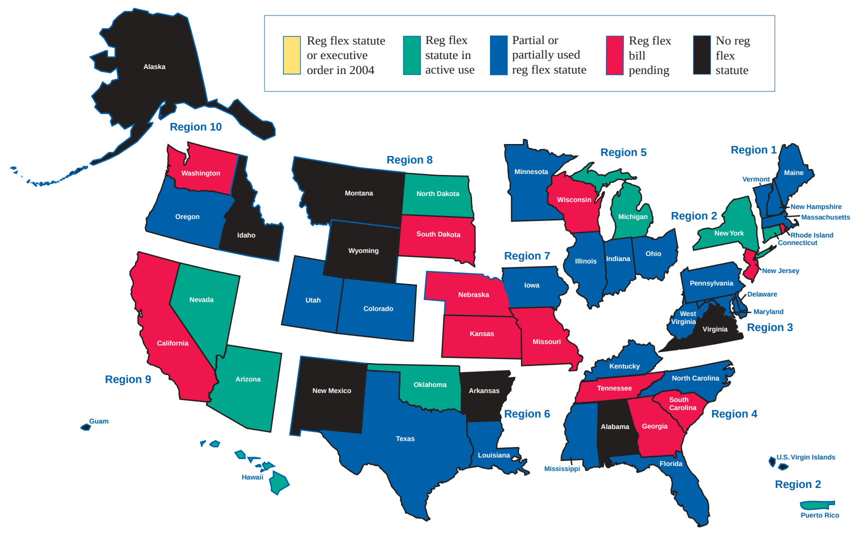
# Regulatory Flexibility Bills Introduced in 12 States

Since the beginning of the year, 12 states have introduced regulatory flexibility legislation similar to Advocacy's model legislation. Those states include California, Georgia, Kansas, Missouri, Nebraska, New Jersey, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, and Wisconsin. In addition, study bills have been introduced in Iowa's House and Senate to determine the need for small business-friendly legislation.

**Regulatory Flexibility Legislation Introduced in California.** On Feb. 19, State Sen. Tom McClintock (R-19th) affirmed the importance of small business in California by introducing S.B. 1505, the California Small Business Regulatory Flexibility Act of 2004. This legislation would strengthen the current regulatory flexibility statutes and clarify how agencies should account for small business when conducting impact analysis. "Creating a healthy business environment in California is the fundamental purpose of this legislation," said McClintock. "Small businesses employ over half of California's work force and relieving the regulatory burden on them will stimulate job creation, innovation, and increase their success," he said.

**Model Legislation Initiative**

Status of State Reg Flex Provisions, February 2004




**Georgia Legislation Passes State Senate.** Georgia's regulatory flexibility legislation, S.B. 361, was passed by the State Senate on Feb. 5 by a vote of 42-12. The legislation has been referred to the House Judiciary Committee where it awaits action.

**Nebraska Legislature Considers Bill.** Nebraska's unicameral legislature is considering regulatory flexibility legislation. On Feb. 19, Nebraska's Committee on Government, Military, and Veteran Affairs held a hearing to consider L.B. 1234. Introduced by State Sen. Paul Hartnett (I-45th), the legislation would create regulatory flexibility for small businesses in Nebraska. The National Federation of Independent Business, the Bellevue and Omaha Chambers of Commerce, small business owner Patrick Shannon, and the Nebraska Grocery Industry Association provided written and oral testimony in support of the legislation.

**Rhode Island Legislation Reintroduced.** Legislation to create regulatory fairness in Rhode Island was reintroduced on Feb. 5. State Sen. Leo Blais (R-24th), the prime sponsor of S. 2299 and a

*Continued on page 5*

## More State Reg Flex News

**Arizona.** Efforts continue to enhance Arizona's small business-friendly climate. Although Arizona already has active regulatory flexibility legislation on the books, two new bills, H.B. 2582 and S.B. 1269, have been introduced to fine-tune the statutes and make them more comprehensive.

**Hawaii.** New legislation, H.B. 2653, has been introduced that would create a Small Business Bill of Rights. The legislation would establish basic due process rights of small businesses, especially in regard to the actions of state agencies.

**South Carolina.** Gov. Mark Sanford voiced support for small business regulatory fairness legislation as an economic development tool in his 2004 State of the State Address on Jan. 21. The legislation, H. 4130, and its companion, S. 758, have been referred to the House and Senate Judiciary Committees where they await action.

## Advocacy Takes Action on Number Portability

On Feb. 13, Advocacy filed notice with the U.S. Court of Appeals for the District of Columbia Circuit to alert the court that the office plans to join a small business challenge to a Federal Communications Commission (FCC) order. Advocacy will meet with the FCC to try and resolve small business issues. If these discussions do not produce an agreement, Advocacy is prepared to file an *amicus curiae* (friend of the court) brief in the Court of Appeals to require the FCC to comply with the Regulatory Flexibility Act.

The small business petitioners—the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)—claim that the FCC did not comply with the Regulatory Flexibility Act, which requires agencies to consider the impact on small business before imposing regulatory burdens. NTCA and OPASTCO represent more than a thousand small telecommunications operators around the country.

NTCA and OPASTCO are challenging an FCC order that imposes two new requirements on small rural wireline carriers. First, it requires a wireline carrier to port numbers to wireless carriers with service areas that overlap the wireline carrier's rate center. Second, it requires number portability between wireline and wireless carriers even when the two carriers have not entered into an interconnection agreement. The two associations estimate that the impact of this action will be $76,000 per carrier in initial costs and $46,000 in recurring costs.

A complete copy of the notice of intent is at Advocacy's website, *www.sba.gov/advo/laws/comments*.

To learn more about this action, contact the head of Advocacy's legal team, Suey Howe (*susan.howe@sba.gov* or (202) 205-6144) or Eric Menge, Advocacy's telecommunications specialist (*eric.menge@sba.gov* or (202) 205-6949).

### Country-of-Origin Labeling Update

On Dec. 5, 2003, the Office of Advocacy filed comments with the U.S. Department of Agriculture (USDA) concerning its proposed rule on mandatory country-of-origin labeling (COOL). The rule issued from the Farm Security and Rural Investment Act of 2002, which directed USDA to implement a mandatory COOL program requiring food retailers to notify their customers of the country of origin of certain covered food commodities beginning on Sept. 30, 2004. Advocacy was concerned that the rule would likely result in a significant economic impact on small food retailers, wholesalers, and producers. (Advocacy's comment letter is located on the office's website at *www.sba.gov/advo/laws/comments/ams03_1205.html*.)

On Jan. 23, 2004, Congress passed the 2004 Omnibus Appropriations Bill which included a provision delaying the mandatory country-of-origin labeling program for two years.

**State Reg Flex Bills**, *from page 4*

small business owner, was joined by State Sens. William Walaska (D-30th) and Daniel DaPonte (D-14th) in introducing this important legislation in the 2004 legislative session. Last year's legislation passed out of committee but was never put to a vote in the Senate.

**South Dakota Legislation Advances to House.** S.B. 112 was passed by the South Dakota State Senate by a vote of 26-8 on Feb. 6. The legislation has been referred to the House and is scheduled to be heard in the House State Affairs Committee on Feb. 23. Jerry Wheeler, executive director of the South Dakota Retailers Association has led the push for this legislation along with other small business groups in South Dakota. "Passage of S.B. 112 is a big step forward for small businesses in our state," said Wheeler. "If passed by the House on Feb. 24, and signed by Governor Rounds, it will require government agencies to write their proposed rules in plain, easy-to-read language; tell why the rule is needed; and provide an impact statement on how the rule will affect those small businesses that employ 25 or fewer employees."

# Economic News

## Bank Consolidation Reduces Small Business Access to Credit

A new study published by the Office of Advocacy has found that bank consolidation can limit small business access to credit. The *Impact of Bank Consolidation on Small Business Credit Availability* found reductions in small business access to bank credit (especially in the form of credit limits) in regions with high levels of consolidation. However, small businesses' overall debt levels remained steady as they turned to non-bank financial institutions for their credit needs.

"Since small banks provide a substantial share of credit to small firms, bank consolidation and how it relates to small business should be a real concern for policymakers," said Thomas M. Sullivan, chief counsel for advocacy. "The overall impact of ongoing bank consolidation is a complex issue. This study provides one more piece of the puzzle and should be carefully considered," he said.

Written by Drs. Steven Craig and Pauline Hardee and funded by the Office of Advocacy, the study uses data from the 1998 Survey of Small Business Finances to examine both credit access and credit levels of small businesses. The authors found that bank consolidation resulted in significant reductions in credit limits for small businesses, but that actual credit balances had fallen by much less.

The banking industry has been undergoing an extensive period of consolidation, which has accelerated since the federal interstate banking legislation of 1994. Small firms are the source of three-quarters of the net new jobs and the bulk of their financing is from banks. Consequently, the effect of institutional change on small business credit is a major economic and job creation issue.

### For More Information

To read the complete report or the research summary, visit Advocacy's webpage at *www.sba.gov/advo/research*. To learn more about the report, contact Charles Ou, senior economist (*charles.ou@sba.gov* or (202) 205-6966).

## Study Shows Resilience of Women-Owned Businesses

Between 1997 and 2000, women-owned employer establishments demonstrated amazing tenacity and proved to be more resilient than employer firms overall. Employment among all employer firms declined by 6.7 percent during the period, but women-owned firms fared better; the employment decline among them was only 4.2 percent. Further, women-owned employer establishments were just as likely to have remained in business over this period, with three-quarters still in existence after three years.

This new information is contained in *Trends in Women-Owned Employer Establishments: 1997 to 2000*, a report published in January by the National Women's Business Council (NWBC). The report is based on data made available through an agreement between the Census Bureau and NWBC. As a result, NWBC is now producing the first-ever annual tabulations on trends in the number and employment of women-owned employer establishments by state and industry. These are the only such data available annually between census years, and will allow the NWBC to provide more detailed and timely intelligence on trends in women's entrepreneurship.

**Industry and State Details.** The report's detailed tables of state and industry employment trends show the resilience of women-owned establishments. Women-owned establishments in the agribusiness and construction industries—as well as sub-industries within the services, manufacturing and retail trade sectors—showed net employment gains from 1997 to 2000. This is in marked contrast to the 6.7 percent employment decline among all establishments. Further, in every industry except mining and retail trade, employment in women-owned establishments saw greater gains or lower declines than did all establishments. The industries with the greatest growth (or smallest decline) in employment from 1997 to 2000 among women-owned establishments were:

- Agriculture/forestry/fishing (7.4 percent growth in employment);
- Construction (6.4 percent);
- Services (-1.2 percent);
- Wholesale trade (-2.9 percent);
- Finance/insurance/real estate (-5.5 percent).

Across the United States, employment change among women-owned employer establishments was strongest in the Northeast and Mid-Atlantic regions, with eight out of ten states experiencing the highest change in employment in these regions. From 1997 to 2000, five states (New Jersey, Maine, New York, Pennsylvania, and Rhode Island)

*Continued on page 8*

# Advocacy in Action


John Graham, administrator of the White House's Office of Information and Regulatory Affairs, and Thomas M. Sullivan, chief counsel for Advocacy, testify to a House subcommittee.

Advocacy staff members instruct dozens of small business trade association representatives on the Regulatory Flexibility Act and its role in federal rulemaking.


Advocacy hosts a public outreach meeting of the Small Business Paperwork Relief Task Force that allows small businesses to voice their concerns to federal officials.

Chief Economist Chad Moutray listens to researchers and academics discuss future directions of small business research in a focus group in Phoenix.

Advocacy brings small business representatives to the White House Public Liaison office to discuss health care, taxes, and other small business issues.

## February is Action-Packed for Advocacy

In any given month, Chief Counsel for Advocacy Thomas M. Sullivan and his staff work tirelessly on behalf of small business. Though hectic, the pace of February's activities was not unusual. The month's highlights included testimony on Capitol Hill before a Subcommittee of the House Government Reform Committee; conducting Regulatory Flexibility Act training; hosting a public outreach meeting on the Small Business Paperwork Reduction Act; leading a focus group on economic research topics in Phoenix, Ariz.; and convening a meeting for key national small business organizations with the White House Public Liaison Office.

**Home-based**, *from page 1*

notes that some states have begun to enact legislation that is supportive of home-based businesses. Vermont, Maryland, and California were cited for such legislation.

"Most home-based business owners wear several hats when it comes to their business, including sales, marketing, and accounting," said Robert Hughes, president of the National Association for the Self-Employed (NASE). "But complex and confusing regulations hinder them from growth, and often leave them guessing when it comes to the tax code or local zoning laws."

"I built a 350-square-foot studio on the back of my house so that I could work at home," said Chris Krupinski, an NASE member and owner of CK Art and Design in Fairfax, Va. "But because my son watches TV in there when he comes home from school and I'm working, I cannot take the home office deduction. It is not only unfair, but would be a huge help to my business if I were able to take the deduction on my taxes."

The report was written by Microeconomic Applications, Inc. and funded by the Office of Advocacy. It was released at a telephone news conference at NASE's Washington, D.C., office. NASE represents and provides resources to the nation's self-employed and micro-businesses.

## For More Information

A research summary and the complete text of the report, *Home-Based Business and Government Regulations*, are available on Advocacy's website, at *www.sba.gov/advo/research/rs235tot.pdf*.

**Women-Owned**, *from page 6*

saw growth in employment among women-owned establishments, while no states experienced growth in employment among all establishments. The 10 states with the greatest growth (or smallest declines) in employment from 1997 to 2000 among women-owned establishments were:

- New Jersey (22.3 percent growth in employment),
- Maine (14.3 percent),
- New York (8.1 percent),
- Pennsylvania (4.2 percent),
- Rhode Island (2.9 percent),
- Virginia (-0.1 percent),
- Montana (-0.4 percent),
- Delaware (-0.4 percent),
- Wisconsin (-0.9 percent), and
- New Hampshire (-1.1 percent).

To read the complete publication online, visit NWBC at *www.nwbc.gov*, click on "other publications," then click on "issues in brief."

U.S. Small Business Administration
Office of Advocacy
Mail Code 3114
409 Third Street, S.W.
Washington, DC 20416