

## **The Importance of Regulatory Flexibility for Arkansas' Small Businesses**

In February 2005, Arkansas Governor Mike Huckabee signed Executive Order (EO) 05-04, requiring agencies to evaluate the economic impact of proposed regulations on small business and to consider less burdensome alternatives. Also under the EO, agencies must submit this analysis to the Arkansas Department of Economic Development (ADED) Small and Minority Business Unit, which is responsible for the oversight of the state's regulatory flexibility program.

During the 2005 General Assembly, a law passed requiring the Arkansas Department of Labor (DOL) to license elevator contractors, elevator mechanics and elevator inspectors. Additionally, the Elevator Safety Board (Board), within the DOL, was in the process of updating its regulations for the first time in ten years. Outdated regulations often resulted in contractors having to obtain variances, through a cumbersome process, simply to utilize newer technologies recognized in the latest nationally-recognized safety code, the American Society of Mechanical Engineers' (ASME) Codes for Elevators and Escalators.

As the Elevator Safety Board and the agency proceeded through the regulatory flexibility process, it was apparent that there were two expensive compliance issues for small business. First, elevators installed from 1963 to 1973, which previously had not been required to install fire service, were going to be required to do so under the revised rules. The Safety Division found that there were approximately 337 elevators in Arkansas that could be affected, and of those, 200 were located in small businesses. The cost to install the fire service was estimated at approximately \$10,000 per elevator.

The second compliance issue dealt with a retro fit requirement for hydraulic elevators that have a flat-bottom hydraulic jack, or a single-bottom cylinder. The most recent ASME code required the replacement of the cylinder with a double cylinder or a cylinder with a safety bulkhead to prevent the elevator from falling if an in-ground cylinder ruptured. The agency initially estimated that approximately 350 elevators installed prior to 1980 might be affected, and of those, 208 were located in small businesses. The least expensive retrofit would cost approximately \$10,000 per elevator.

As the agency received input from the ADED Small and Minority Business Unit, a third issue was identified. Small speciality installation contractors felt that it was overly burdensome to license and test their employees in the same manner as a mechanic working for a larger company. They argued that elevator mechanics who only install wheelchair accessibility lifts should not be subject to the same stringent testing as a mechanic that installs a commercial elevator in a high-rise building.

As a result of Arkansas' regulatory flexibility law, the Board and DOL received comments and input from the ADED Small and Minority Business Unit and a number of other small businesses. Each party recognized the public safety issues involved and approached the process in a cooperative manner. The final regulations, effective September 1, 2006, reflected this collaborative process and flexible regulatory methods were utilized.

Owners of elevators without fire service or with a flat-bottom hydraulic jack were given five years to come into compliance. The regulations allow for an exception from these requirements if undue hardship is shown and reasonable safety is assured. Also, a restricted class of license was created for elevator mechanics that exclusively install wheelchair accessibility lifts with a less stringent testing requirement.

This example demonstrates a how a strong regulatory flexibility law facilitates a working relationship between small business stakeholders and regulating agencies. The result is a set of rules that will be less harmful to small business while still accomplishing the agency goal of elevator safety.