



Advocacy: the voice of small business in government

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# Small Business Regulatory Flexibility Model Legislation Initiative

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Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional Advocates and an office in Washington, DC, support the Chief Counsel's efforts.

For more information on the Office of Advocacy, visit <http://www.sba.gov/advo> or call (202) 205-6533. Receive email notices of new Office of Advocacy information by signing up on Advocacy's Listservs at <http://web.sba.gov/list>

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# Foreword

America's small businesses—more than 23 million strong—are the backbone of our nation's economy. They account for over 50 percent of the country's nonfarm domestic product, create 60 to 80 percent of the net new jobs, and produce two and one half times as many innovations per employee as large firms.

Despite their importance to the economy, small businesses are heavily burdened by the costs of government regulation and excessive paperwork. In 1976, the U.S. Congress created the Office of Advocacy within the U.S. Small Business Administration to protect, strengthen, and effectively represent the nation's small businesses within the federal government's legislative and rulemaking processes. Advocacy consistently advances the views, concerns, and interests of small businesses before Congress, the White House, federal agencies, federal courts, and state policymakers.

The Office of Advocacy works to reduce the burdens that federal policies impose on small firms. Advocacy's mission, simply stated, is to encourage policies that support the development and growth of American small businesses.

While the focus of the Office of Advocacy has been mostly at the federal level, our Regional Advocates around the country help to identify the regulatory concerns of small businesses in each state by monitoring the impact of federal and state regulations and policies at the local level. Their goal is to see that programs and policies that encourage fair regulatory treatment of small business are developed and implemented to ensure future growth and prosperity.

Recognizing that state and local governments can also be a source of burdensome regulations on small businesses, in December 2002, the Office of Advocacy presented draft state regulatory flexibility model legislation to the American Legislative Exchange Council (ALEC) for consideration by state legislators. ALEC adopted the legislation as a model bill and numerous small business advocacy organizations and state legislators have pursued its passage in

various states. Advocacy's model legislation is patterned after the federal Regulatory Flexibility Act and its purpose is to improve the regulatory climate for small businesses at the state level.

Since the release of Advocacy's state model legislation report, many states have taken steps to strengthen regulatory flexibility for small businesses. In building on state and federal successes with regulatory flexibility, the Office of Advocacy continues to urge state legislators and policymakers to enact regulatory flexibility legislation or to amend current statutes to include considerations for small businesses.

Giving small employers a voice early in the process is key to reducing the negative impact of regulations on small businesses, increasing the level of regulatory compliance, and passing on cost savings to state economies. Ensuring that the regulatory burden is not excessive and that regulations are straightforward and easy to understand helps entrepreneurs start up businesses, increases competition, and promotes job creation.

Please contact the Regional Advocate who represents your state for further assistance. The Office of Advocacy stands ready to help you level the playing field for small businesses in your state.



Thomas M. Sullivan  
Chief Counsel for Advocacy

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# Regulatory Flexibility: What It Is And Why It Matters

According to a 2001 study funded by the Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, by Drs. Mark Crain and Thomas Hopkins, small businesses spend \$6,975 each year per employee just to comply with federal regulations and mandates. That is 60 percent more than large firms.

In September 1980, Congress enacted the Regulatory Flexibility Act (RFA), which mandated that agencies consider the impact of their regulatory proposals on small entities, analyze equally effective alternatives, and make their analyses available for public comment.

The law was not intended to create special treatment for small businesses. Congress intended that agencies consider impacts on small businesses to ensure that, in their efforts to fulfill their public responsibilities, their regulatory proposals did not have unintended anticompetitive impacts and that agencies explored less burdensome alternatives that were equally effective in resolving agency objectives.

In March 1996, Congress was finally persuaded by 16 years of uneven compliance with the RFA, and by the repeated urging of the small business community, to authorize the courts to review agency compliance with the RFA. This amendment to the RFA, in the form of the Small Business Regulatory Enforcement Fairness Act (SBREFA), became law and raised the stakes for regulatory agencies. Judicial review gave the RFA “teeth” and reinforced the RFA requirement that agencies reach out and consider the input of small businesses in the development of regulatory proposals.

One of the clearest examples of how benefits can be derived from efforts to ensure compliance with the RFA comes from the Office of Advocacy’s work with the U.S. Department of Transportation (DOT). In 2002, DOT published a proposed rule to revise its Computer Reservations System (CRS) regulations. DOT issued its proposed rule to exam-

ine whether the existing rules governing these systems were necessary and if so, whether they should be modified. Through small business outreach, Advocacy determined that the proposed rule had several provisions that could harm small businesses such as travel agencies. In its March 2003 comment letter, Advocacy encouraged DOT to publish for comment a revised initial regulatory flexibility analysis that identified the affected small entities, analyzed the proposal’s economic impact on the small entities, and addressed regulatory alternatives that would minimize the impact on small businesses.

On January 7, 2004, DOT announced that it would deregulate the CRS industry by discontinuing most of its regulations on January 31, 2004. To ensure a smooth transition, rules governing display bias and prohibiting CRSs from imposing certain unreasonably restrictive contract clauses remained in effect until July 31, 2004. The final rule allowed travel agencies to negotiate their own contracts and receive bonuses and other incentives from CRSs. DOT achieved its deregulatory objective while protecting the interests of small businesses in the travel industry. The travel agent industry was very pleased with DOT’s decision and estimated that removal of the CRS rules prevented travel agents from losing \$438 million annually in revenue.

Enforcing the RFA is central to the success of tearing down regulatory barriers to entrepreneurial success. By working with federal agencies to implement the RFA, the Office of Advocacy in FY 2004 saved small businesses \$17.1 billion in foregone federal regulatory costs—money that can now be invested by the businesses in other productive uses.

## Regulatory Flexibility and the States

While there are federal measures in place to reduce regulatory burdens on small businesses, the need does not stop at the federal level. More than 92 percent of businesses in every state are small businesses, which bear a disproportionate share of regulatory costs and burdens. However, sometimes because of their size, the aggregate importance of small businesses to the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them.

Recognizing that in addition to the federal government, state and local governments can also be a source of burdensome regulations on small business, Advocacy drafted model regulatory flexibility legislation for the states based on the federal RFA.

The intent of Advocacy’s model legislation is to foster a climate for entrepreneurial success in the states so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base. Excessive regulation can be reduced and the economy improved without sacrificing important regulatory goals such as higher environmental quality, greater travel safety, better workplace conditions, and increased family financial security.

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***“This bill recognizes the vital role that small business plays in growing jobs and opportunity within the state. We must work to create an environment that fosters small business growth.”—Kentucky Governor Ernie Fletcher***

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Many states have some form of regulatory flexibility laws on the books. However, many of these laws do not contain all of the five critical elements addressed in Advocacy’s model legislation. Recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current systems.

According to Advocacy’s state model legislation, successful state-level regulatory flexibility laws should address the following: 1) a small business definition that is consistent with state practices and permitting authorities; 2) a requirement that state agencies perform an economic impact analysis on the effect of a rule on small businesses before

they regulate; 3) a requirement that state agencies consider alternatives for small businesses that are less burdensome while meeting the agency’s regulatory goals; 4) a provision that requires state governments to review existing regulations periodically; and 5) judicial review to give the law “teeth.”

Since 2002, 14 state regulatory flexibility laws have been signed into law,<sup>1</sup> 33 state legislatures have considered regulatory flexibility legislation,<sup>2</sup> and four executive orders have been signed by governors implementing regulatory flexibility.<sup>3</sup>

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***“This bill is all about making life easier for our state’s small businesses, which is a big step forward in stimulating job creation and economic growth in South Carolina. Ultimately, though, letting those businesses keep more of what they earn so they can reinvest in new people, new equipment and new technologies is going to have the biggest impact on our state’s economy.”—South Carolina Governor Mark Sanford***

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In 2005, 18 states introduced regulatory flexibility legislation (Alabama, Alaska, Hawaii, Indiana, Iowa, Mississippi, Missouri, Montana, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia, and Washington). Alaska Governor Frank Murkowski, Indiana Governor Mitch Daniels, Missouri Governor Matt Blunt, New Mexico Governor Bill Richardson, and Virginia Governor Mark Warner signed regulatory flexibility legislation into law and Arkansas Governor Mike Huckabee implemented regulatory flexibility through an executive order in 2005.

One of the most recent examples on the state level of how benefits can be derived from regulatory flexibility laws comes from the New York

- 1 These states include: Alaska, Colorado, Connecticut, Indiana, Kentucky, Missouri, New Mexico, North Dakota, Rhode Island, South Carolina, South Dakota, Virginia, and Wisconsin.
- 2 These states include: Alabama, Alaska, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.
- 3 These states include: Arkansas, Massachusetts, Missouri (whose executive order was later superseded by legislation), and West Virginia.

Department of Health. In October 2004, New York State adopted an emergency regulation to prevent prescription fraud by requiring the use of an official state prescription form for all prescriptions issued in New York. These forms have a security feature used to curtail alterations and forgeries which often divert drugs to the black market and result in the sale to unsuspecting consumers. This type of fraud also costs New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Under New York's Administrative Procedure Act and an Executive Order signed by Governor Pataki, the Department of Health was required to perform a regulatory flexibility analysis for small business. As a result of its analysis, the agency found that the proposed regulation would affect a variety of small businesses such as practitioners, pharmacists, retail pharmacies, hospitals, and nursing homes.

Therefore, in drafting the regulation, the Department of Health met with and considered comments from the affected small businesses. By consulting with small business throughout the rule writing process, the agency was able to craft a regulation that met its goals without unduly burdening small entities.

As a result of this collaborative effort, the Department of Health promulgated a rule that took into account the uniqueness of small businesses by establishing a grant administered by the agency to defray costs for software adjustments faced by small pharmacies; eliminating the official prescription fee for small practitioners and institutions; and allowing small practitioners, pharmacists, retail pharmacies, hospitals, and nursing homes 18 months to transition to the new prescription form system.

Under the Serialized Official New York State Prescription Form regulation, private insurers and the Medicaid program are expected to save millions

of dollars by reducing fraudulent prescription claims while at the same time benefiting the state, its citizens, and private insurers.

A vibrant and growing small business sector is critical to creating jobs in a dynamic economy. Small businesses are 99.7 percent of all businesses, employ half of the work force, produce 52 percent of the private sector output, and provide significant ownership opportunities for women, minorities, and immigrants.

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***“Small business is the dynamo that powers our economy and every dollar a small business puts towards complying with cumbersome government regulations is a dollar that cannot be spent expanding the business, providing benefits, or hiring new employees. I sponsored HB 33 because I see smarter regulations as an economic development tool and strongly feel that we can add an awareness of the needs of small businesses to the regulatory process without compromising the health, safety, or welfare of the public.”***

**—Alaska Representative Kevin Meyer**

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Advocacy welcomes the opportunity to work with state leaders on their regulatory issues. In addition to this report, the text of Advocacy's model legislation and frequently updated versions of the state regulatory flexibility legislative activity map can be found on Advocacy's website at [http://www.sba.gov/advo/laws/law\\_modeleg.html](http://www.sba.gov/advo/laws/law_modeleg.html).

# Table 1. State Employer Firms by Employment Size of Firm, 2002

State	Total	Number of Firms by Employment Size				Percentage of Firms by Employment Size			
		<10	<20	<100	<500	<10	<20	<100	<500
United States	5,697,759	4,476,451	5,090,331	5,598,580	5,680,914	78.6	89.3	98.3	99.7
Alabama	78,710	58,561	67,186	74,768	76,554	74.4	85.4	95.0	97.3
Alaska	15,986	12,489	14,058	15,220	15,485	78.1	87.9	95.2	96.9
Arizona	95,908	71,602	81,828	90,812	93,178	74.7	85.3	94.7	97.2
Arkansas	52,094	39,574	45,069	49,564	50,601	76.0	86.5	95.1	97.1
California	674,635	517,978	591,088	656,371	669,132	76.8	87.6	97.3	99.2
Colorado	119,568	93,475	104,768	114,373	116,761	78.2	87.6	95.7	97.7
Connecticut	77,256	57,468	65,967	73,427	75,201	74.4	85.4	95.0	97.3
Delaware	20,208	14,257	16,290	18,124	18,779	70.6	80.6	89.7	92.9
District of Columbia	16,377	10,504	12,313	14,409	15,288	64.1	75.2	88.0	93.4
Florida	370,789	303,701	335,819	360,928	366,657	81.9	90.6	97.3	98.9
Georgia	164,252	125,411	141,929	156,567	160,442	76.4	86.4	95.3	97.7
Hawaii	24,912	18,501	21,198	23,519	24,120	74.3	85.1	94.4	96.8
Idaho	33,214	25,716	29,010	31,618	32,232	77.4	87.3	95.2	97.0
Illinois	253,720	190,941	218,492	243,366	249,419	75.3	86.1	95.9	98.3
Indiana	116,030	84,694	98,289	110,317	113,234	73.0	84.7	95.1	97.6
Iowa	65,136	49,088	56,049	62,057	63,534	75.4	86.0	95.3	97.5
Kansas	60,949	45,423	51,924	57,611	59,082	74.5	85.2	94.5	96.9
Kentucky	71,874	52,679	60,753	67,968	69,753	73.3	84.5	94.6	97.0
Louisiana	81,684	60,171	69,478	77,870	79,693	73.7	85.1	95.3	97.6
Maine	34,421	26,938	30,311	32,953	33,553	78.3	88.1	95.7	97.5
Maryland	107,995	80,464	92,205	102,822	105,445	74.5	85.4	95.2	97.6
Massachusetts	146,080	110,360	125,755	139,785	143,191	75.5	86.1	95.7	98.0
Michigan	192,284	144,574	166,728	185,278	189,259	75.2	86.7	96.4	98.4
Minnesota	118,667	89,055	101,980	113,602	116,227	75.0	85.9	95.7	97.9
Mississippi	47,979	36,047	41,128	45,404	46,459	75.1	85.7	94.6	96.8
Missouri	119,561	90,010	102,627	114,161	116,855	75.3	85.8	95.5	97.7
Montana	28,812	23,055	25,738	27,770	28,171	80.0	89.3	96.4	97.8
Nebraska	41,487	31,240	35,655	39,310	40,177	75.3	85.9	94.8	96.8
Nevada	42,502	30,897	35,274	39,324	40,671	72.7	83.0	92.5	95.7
New Hampshire	32,279	23,947	27,376	30,494	31,209	74.2	84.8	94.5	96.7
New Jersey	203,467	159,624	179,467	196,447	200,273	78.5	88.2	96.5	98.4
New Mexico	35,597	26,338	30,178	33,406	34,223	74.0	84.8	93.8	96.1
New York	428,425	344,201	383,562	417,244	424,337	80.3	89.5	97.4	99.0
North Carolina	165,020	125,261	143,332	158,426	161,776	75.9	86.9	96.0	98.0
North Dakota	17,151	12,812	14,634	16,158	16,565	74.7	85.3	94.2	96.6
Ohio	211,017	155,169	180,138	202,343	207,337	73.5	85.4	95.9	98.3
Oklahoma	70,334	53,895	61,012	67,132	68,536	76.6	86.7	95.4	97.4
Oregon	85,134	65,466	74,391	81,508	83,154	76.9	87.4	95.7	97.7
Pennsylvania	237,397	178,307	204,842	228,352	233,573	75.1	86.3	96.2	98.4
Rhode Island	25,469	19,154	21,675	23,989	24,584	75.2	85.1	94.2	96.5
South Carolina	78,608	58,984	67,547	74,732	76,473	75.0	85.9	95.1	97.3
South Dakota	20,877	15,782	17,966	19,752	20,212	75.6	86.1	94.6	96.8
Tennessee	100,720	74,195	85,271	95,296	97,856	73.7	84.7	94.6	97.2
Texas	373,059	283,415	324,811	360,246	368,118	76.0	87.1	96.6	98.7
Utah	49,259	37,273	42,307	46,539	47,572	75.7	85.9	94.5	96.6
Vermont	19,039	14,566	16,522	18,059	18,427	76.5	86.8	94.9	96.8
Virginia	142,593	107,173	122,839	136,208	139,513	75.2	86.1	95.5	97.8
Washington	138,256	107,391	121,568	133,039	135,692	77.7	87.9	96.2	98.1
West Virginia	32,669	24,491	28,009	30,887	31,597	75.0	85.7	94.5	96.7
Wisconsin	115,980	84,775	98,777	111,030	113,641	73.1	85.2	95.7	98.0
Wyoming	16,465	12,670	14,325	15,610	15,905	77.0	87.0	94.8	96.6

Note: Includes employer firms that existed at any point during the year and excludes nonemployer firms, which numbered 17.6 million in 2002. Firms can be in more than one state. Data for 2002 are the latest available firm size data.

Source: U.S. Small Business Administration, Office of Advocacy, based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses.



# Model Legislation

## A BILL

To improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

## Findings

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens;
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- (4) When adopting regulations to protect the health, safety, and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses with limited resources;
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;
- (9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;
- (10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

## Section 1. Short Title

This act may be cited as the Regulatory Flexibility Act of [2006].

## Section 2. Definitions

(a) As used in this section:

(1) “Agency” means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases;

(2) “Proposed regulation” means a proposal by an agency for a new regulation or for a change in, addition to, or repeal of an existing regulation;

(3) “Regulation” means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;

(4) “Small business” means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

## Section 3. Economic Impact Statements

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed regulation;

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

## Section 4. Regulatory Flexibility Analysis

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2007], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

## Section 5. Judicial Review

(a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.

## Section 6. Periodic Review of Rules

(a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this law should be reviewed every five years of the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

# Key Elements of Advocacy's Model Bill

Every state has some form of administrative procedure law that governs the agency rulemaking process, and many states currently have provisions that pertain to regulations affecting small businesses and provide for regulatory flexibility. However, recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current systems.

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*“I think that our passage of a law requiring all South Dakota governmental agencies to complete and file small business impact statements whenever they promulgate new rules is one of the best things we have ever done for small business.”*

*—Jerry Wheeler, Executive Director, South Dakota Retailers Association*

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Advocacy's model legislation is patterned after the federal regulatory flexibility law and contains the following five key elements: 1) a small business definition; 2) an economic impact analysis; 3) a regulatory flexibility analysis; 4) periodic review of existing regulations; and 5) judicial review.

## Small Business Definition

It is important for “small business” to be defined by statute and for the definition to be consistent with how other laws and/or permitting authorities within the state characterize “small.” If there is no such definition currently provided by statute, states generally use the number of employees and/or the gross annual sales of the entity to define “small business.”

## Economic Impact Analysis

Pursuant to most state administrative procedure laws, agencies are already required to prepare some form of economic impact analysis to determine

how the proposed regulation will affect the entities being regulated. Segmenting out the impact on small business is a necessary additional step in the analysis because small businesses bear a disproportionate share of regulatory costs and burdens. By recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated businesses, agencies are able to craft regulations that consider the uniqueness of small businesses. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

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*“This in turn will mean that agencies specified in the bill will have to consider the adverse impacts to small business before promulgating regulations. I am encouraged by this move to help return common sense to the regulatory process affecting this very important sector of our economy.”—Alaska Governor Frank Murkowski*

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## Regulatory Flexibility Analysis

Sometimes, because of their size, the aggregate importance of small businesses in the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. The intent of Advocacy's model legislation is to require regulatory agencies to consider small businesses when regulations are developed and particularly to consider whether there are alternative regulatory solutions that do not unduly burden small business but still accomplish the agency goal.

Tailoring regulatory proposals to the unique needs of small business saves small employers money that is better used to hire additional employees, provide health care, train existing staff, and upgrade their facilities and equipment. This can be accomplished without sacrificing health, safety, and welfare issues of major importance to state governments.

## Judicial Review

The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996.

The effect of the 1996 law was to give the RFA some “teeth” and to focus the heightened attention of regulatory officials on small business issues. Approximately 4,000 regulations are finalized in any given year. Only 12 to 13 lawsuits that cite noncompliance with the RFA have been filed per year since federal judicial review was enacted in 1996. Allowing small businesses to challenge state agencies for failure to adequately consider their impact on small business during the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis.

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***“Adding judicial review is an important step forward for our state’s small businesses. Now the law has some teeth, and that will help small business and state agencies work together to produce good regulations that get the job done without causing serious harm. It means a better business and job-creating climate for Missouri.”—Scott George, President and CEO of Mid American Dental and Hearing Center, Mt. Vernon, MO***

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## Periodic Review

Existing regulations may also unduly burden small businesses because the rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or may have been promulgated without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rule was promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rule. Therefore, it is critical that agencies review rules periodically to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from efforts to periodically review existing regulations comes from the Massachusetts Office of Consumer Affairs and Business Regulation

(OCABR). OCABR has implemented a comprehensive 10-month review of every regulation promulgated by OCABR agencies to identify those that have become outdated or irrelevant. After publishing the proposed revisions, OCABR held a series of public hearings that gave affected small entities the opportunity to voice concerns about existing regulations and the proposed changes. OCABR was then able to refine the proposed changes based on this input.

The review is still in progress; however, approximately 50 pages of regulations have already been eliminated. Also as a result of this review process, the remaining rules are more precisely tailored, easier for regulated entities to understand, and less difficult for agency personnel to apply. OCABR also recognized that because the review process is now in place, future analyses should take considerably less time.

## Exemptions

Even the strongest regulatory flexibility law has little value if most agencies and/or certain rules are exempt from it. Therefore, legislation should provide exemptions only to agencies or rules when it is absolutely necessary.

## Fiscal Notes

During a time of tight state budgets, a common question is how much it will cost a state to implement regulatory flexibility for small businesses. The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation. Requiring small business analysis, input, and consideration of less burdensome alternatives ensures that state agencies make good final decisions. On the other hand, if regulations are poorly written and do not consider small businesses, they may need to be rewritten, which is more costly to state government than doing a thorough analysis the first time.

\*Trained in FY 2003

Implementing regulatory flexibility for small businesses also does not require state agencies to incur excessive compliance costs for the preparation of the economic impact and regulatory flexibility analyses. Many states already conduct a general regulatory flexibility analysis. Segmenting out the impact on small business is a necessary additional step in the analysis. Moreover, rules that are finalized without adequate impact analysis run the risk of being more costly to both citizens and state agencies. And it is not in the interest of state agencies to propose and finalize a rule that small businesses cannot comply with and that causes widespread industry burdens resulting in layoffs and business closures.

## Regulatory Flexibility Implementation

In states that have passed regulatory flexibility laws, the Office of Advocacy works with the small business community, state legislators, and state government agencies (usually the department of economic development) to assist with implementation and to ensure its effectiveness. Small business owners are the greatest resource that agencies can use to understand how regulations affect small businesses and what alternatives may be less burdensome.

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*“Our regulatory flexibility laws help to ensure a level playing field for South Carolina’s small business.”—Monty Felix, Alaglass Pools, Saint Matthews, SC, and chairman of the South Carolina Small Business Regulatory Review Committee*

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One of the most successful tools in communicating with small businesses and facilitating the implementation of regulatory flexibility legislation has been use of a free email regulatory alert system. A regulatory alert system allows interested parties to sign up and receive automatic regulatory alerts

when agencies file a notice for a proposed rule that may affect their small business. Creating a user-friendly Internet-based tool allows small business owners, trade associations, chambers of commerce and/or other interested parties to stay on top of agency activities that may have an impact on small businesses. It also provides an avenue through which stakeholders can voice their concerns about the adverse impact of a proposed rule and suggest regulatory alternatives that are less burdensome.

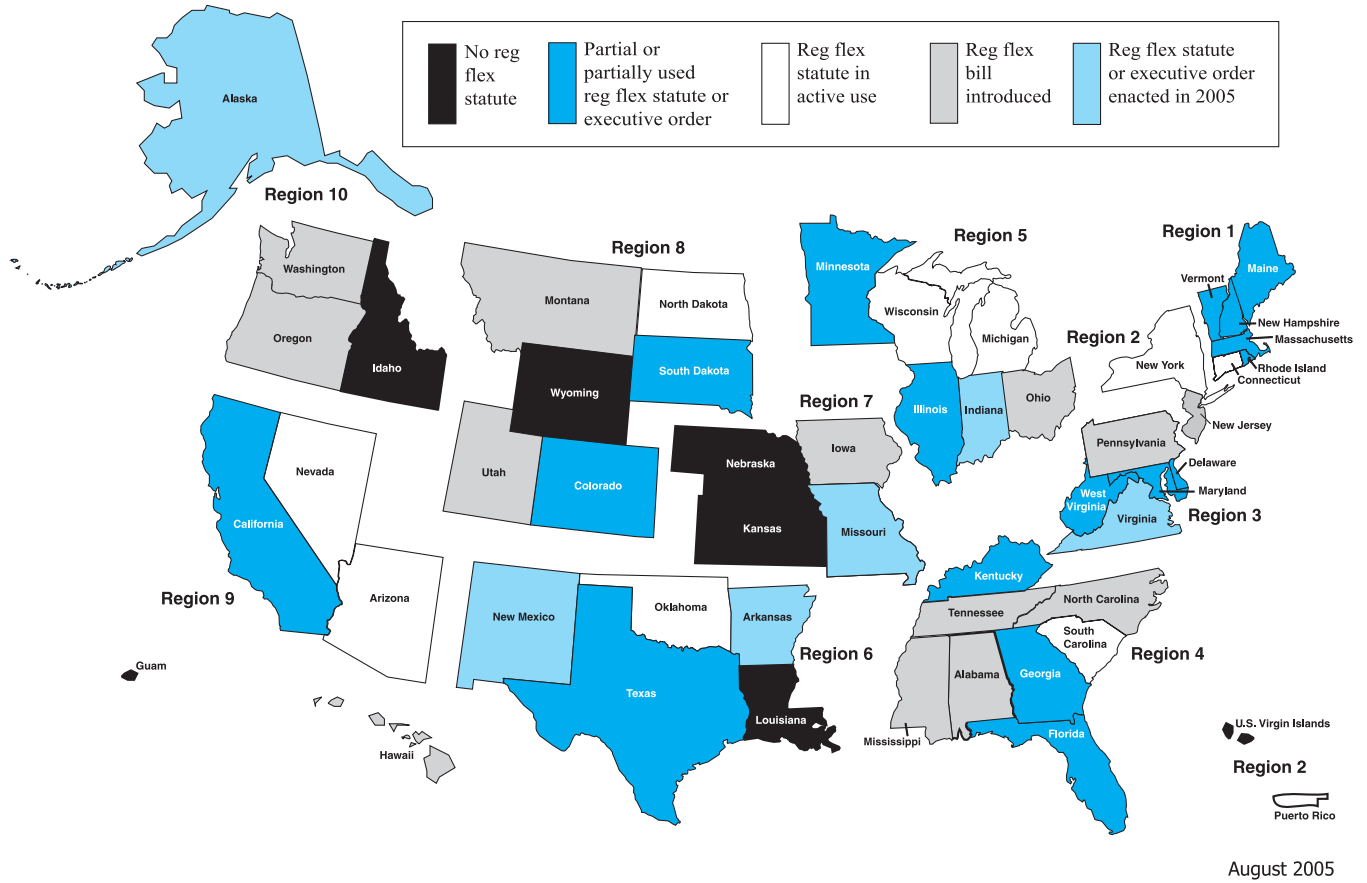
Advocacy’s state model legislation has been successful because policymakers across the country are realizing that regulatory flexibility is an economic development tool. More than 23.7 million small businesses in the United States create between 60 and 80 percent of the net new jobs in the U.S. economy. There is also no question that small businesses are the driving force of the economy in each state across the country.

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*“Giving small business owners a seat at the table when regulatory decisions are made allows for their voices to be heard and ensures that better decisions are made. This means more jobs and growth at the state and local levels.”—Thomas M. Sullivan, Chief Counsel for Advocacy*

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## Table 2. State Administrative Procedure and Regulatory Flexibility Statutes, August 2005

State	Citation	Small Business Definition	Economic Impact Analysis	Regulatory Flexibility Analysis	Periodic Review	Judicial Review	Exemptions	Legislation Introduced in 2005
Alabama	Ala. Code T. 41 Ch. 22	None.	41-22-23(f) <sup>1</sup>	42-22-23(g) <sup>1</sup>	None.	41-22-10 <sup>1</sup>	41-22-2(e) 41-22-3(1)	HB 745
Alaska	Ak. Stat. T. 24, Ch. 20 T. 44, Ch. 62	44.62.218 <sup>2</sup>	44.62.218(a) 44.62.218(c)	44.62.218(a) 44.62.218(d)	44.62.125 (b)(3)	44.62.218(h) 44.62.300 <sup>1</sup>	44.62.218(g)	HB 33 effective 1/1/06
Arizona	Ariz. Rev. Stat. T. 41, Ch. 6	41-1001(19)	41-1055(B)	41-1035 41-1055(B)	41-1056(A)	41-1034 <sup>1</sup> 41-1056.01	41-1005 41-1057	N/A <sup>3</sup>
Arkansas	Ark. Code T. 25 Ch. 15	EO Sec.1	15-204(d) <sup>1</sup> EO Sec.3	EO Sec.3	25-15-216	25-15-207 <sup>1</sup>	25-15-202(2)(C)	Executive Order in effect <sup>4</sup>
California	Cal. Gov. Code T. 2 Div. 3 Ch. 3.5	11342.610	11346.3 <sup>1</sup> 11346.5(a)(7)	11346.2(b)(3) 11346.5(a)(7) 11346.9(a)(4) 11346.9(a)(5)	11349.1 11349.7	11350 <sup>1</sup>	11340.9 11346.1	None.
Colorado	Col. Rev. Stat. T. 24 Art. 4	24-4-102(18)	24-4-103(2.5)	24-4-103(2.5)	None.	24-4-106 <sup>1,5</sup>	24-4-102(3) 24-4-103	None.
Connecticut	Conn. Gen. Stat. T. 4 Ch.54	4-168a	None.	4-168a(b)	None.	4-175 <sup>1,5</sup> 4-183	4-166(1) 4-168(a)(d)	N/A <sup>3</sup>
Delaware	Del. Code T. 29 Ch. 101	10403(3)	10404	10404	10407	10141 <sup>1</sup>	10102(1) 10161	None.
District of Columbia	DC Code T. 1	None.	None.	None.	None.	Sec.110	None.	None.
Florida	Fla. Stat. T. X Ch. 120	288.703	120.54 120.541(2)(d)	120.54(3)(b)	120.74	120.68 <sup>1</sup>	120.50 120.63 120.80 120.81	None.
Georgia	Ga. Code T. 50 Ch. 13	50-13-4(a)(3)	None.	50-13-4(a)(3) 50-13-4(a)(4)	None.	50-13-10 <sup>1</sup>	50-13-2(1) 50-13-4(b) 15-13-42	None.
Guam	5 GCA Ch. 9	None.	9301(f) <sup>1</sup>	None.	None.	9309 <sup>5</sup>	9301(i) 9302	None.
Hawaii	Haw. Rev. Stat. Ch. 201M	201M-1	201M-2	201M-2	201M-7	201M-6 91-7 <sup>1</sup>	201M-2(c)	HB 602 SB 422
Idaho	Idaho Code T. 67 Ch. 52	None.	67-5223(2) <sup>1</sup>	None.	None.	67-5271 <sup>1,5</sup>	67-5201(2)	None.
Illinois	5 Ill. Comp. Stat. 100	100/1-75	100/5-30(c)	100/5-30(a)	100/5-130	5-150 <sup>1,5</sup>	1-5(c)	None.
Indiana	Ind. Code T.4 Art. 22	4-22-2.1-4	4-22-2.1-5	4-22-2.1-5	4-22-2.5-3.1	4-22-2.1-8	4-22-2-13(b)	HB 1822, <sup>6</sup> effective

Note: All section numbers in columns 3 through 8 refer to the law cited in column 2, except as noted otherwise.

<sup>1</sup> Not small business specific.

<sup>2</sup> Alaska passed its regulatory flexibility legislation in the summer of 2005. A small business definition, small business specific economic impact statement, and small business regulatory flexibility analysis were added to current law as a result of this bill.

<sup>3</sup> This column is not applicable to this state because it has a regulatory flexibility statute in active use.

<sup>4</sup> Governor Huckabee implemented regulatory flexibility through Executive Order 05-04 in February of 2005. This executive order provides a small business definition and requires agencies to prepare a small business economic impact statement and to consider alternative means for accomplishing the objectives of the proposed rule that may be less burdensome to small businesses.

<sup>5</sup> Petitioner must first exhaust administrative remedies.

State	Citation	Small Business Definition	Economic Impact Analysis	Regulatory Flexibility Analysis	Periodic Review	Judicial Review	Exemptions	Legislation Introduced in 2005
Iowa	Iowa Code T. 1, Subt. 6 Ch. 17A	17A.4A	17A.4(3) <sup>1</sup> 17A.4A(2)(a)	17A.4A(2)(b)	17A.33	17A.19 <sup>1,5</sup>	None.	SF 65
Kansas	Kan. Sta. Ch. 77	None.	77-416(b) <sup>1</sup>	77-416(b) <sup>1</sup>	None.	77-607 <sup>1,5</sup> 77-612 77-621	None.	None.
Kentucky	Ky. Rev. Stat. T. 3 Ch. 13A	13A.010	13A.240 <sup>1</sup>	13A.210	None.	13A.337 <sup>1</sup>	None.	None.
Louisiana	La. Rev. Stat. T. 49 Ch. 13	49:965.1	49:953 <sup>1</sup>	None.	None.	49:963 <sup>1,5</sup> 49:964 49:965.1	49:967	None.
Maine	Me. Rev. Stat. T. 5, Pt. 18 Ch. 375	8052.5-A	8057-A.1(D)	8052.5-A	None.	8058 <sup>1</sup>	8054	None.
Maryland	Md. Code State Govt.	None.	10-124 <sup>1</sup>	10-124 <sup>1</sup>	10-132.1 10-133	10-125 <sup>1</sup>	10-102(b) 10-110(a)	None.
Massachusetts	Mass. Gen. Law T. III Ch. 30A	None.	30A-5 EO (Sec.5) <sup>4,7</sup>	30A-5 EO (Sec.5)	None.	30A-7 <sup>1</sup>	None.	None.
Michigan	Mich. Comp. Laws Ch. 24 Act 306	24.207a 24.240(2)	24.240 24.245(3)	24.240	None.	24.264 <sup>1,5</sup> 24.301	24.315	N/A <sup>3</sup>
Minnesota	Minn. Stat. Ch. 14	None.	14.131 <sup>1</sup>	14.131 <sup>1</sup> 14.055	14.05 (subd.5)	14.44 <sup>1</sup>	14.03	None.
Mississippi	Miss. Code T. 25 Ch. 43	None.	25.43- 3.105(2)(d)	25.43- 3.105(2)(f) <sup>1</sup> 3.105(2)(g) <sup>1</sup>	25.43-3.114	25-43- 3.105(3) 25-43-17	25-43-3.108 25-43-6	HB 1472 SB 2795
Missouri	Mo. Rev. Stat. T. 36 Ch. 536	536.010	536.300	536.300.2	536.325	536.328	536.025 536.300(4)	HB 576 <sup>8</sup> effective 8/28/05
Montana	Mt. Code T. 2 Ch. 4	None.	2-4-302 <sup>1</sup> 2-4-405 <sup>1</sup>	2-4-405 <sup>1</sup>	2-4-314	2-4-506 <sup>1</sup>	2-4-102(2)	HB 630
Nebraska	Ne. Rev. St. Ch. 84	None.	84-907 <sup>1</sup>	None.	None.	84-911 <sup>1</sup>	84-901	None.
Nevada	Nev. Rev. Stat. T. 18 Ch. 233B	233B.0382	233B.0608 233B.0609	233B.0608 233B.0609	233B.050 (1)(e)	233B.105 233B.110 <sup>1,5</sup>	233B.039	N/A <sup>3</sup>
New Hampshire	N.H. Rev. Stat. T. LV Ch. 541A	541-A:5(IV)(e)	541-A:5(IV)(e)	None.	None.	541-A:24 <sup>1</sup>	541-A:21	None.
New Jersey	N.J. Stat. T. 52, Subt. 3 Ch. 14B	52:14B-17	52:14B-19	52:14B-18	None.	None.	None.	A 3973 S 2754
New Mexico	N.M. Stat. Ch. 12 Art. 8	HB 869 Sec.3.E	None.	HB 869 Sec.4.B	HB 869 Sec.6	12-8-8(A) <sup>1</sup>	None.	HB 869 <sup>9</sup> SB 842 effective

Note: All section numbers in columns 3 through 8 refer to the law cited in column 2, except as noted otherwise.

<sup>6</sup> Indiana passed its regulatory flexibility legislation in the 2005 legislative session and it became effective July 1, 2005. HB 1822 added all of the key elements of Advocacy's model legislation to Indiana's current administrative procedure laws.

<sup>7</sup> Governor Romney implemented regulatory flexibility through Executive Order No. 453 (No. 03-11) in September of 2003. This executive order requires agencies to prepare a small business economic impact statement and regulatory flexibility analysis and creates a Small Business Advocate position.

<sup>8</sup> HB 576 added periodic review and judicial review provisions to existing Missouri administrative procedure law in the 2005 legislative session.

State	Citation	Small Business Definition	Economic Impact Analysis	Regulatory Flexibility Analysis	Periodic Review	Judicial Review	Exemptions	Legislation Introduced in 2005
New York	NY CLS St. Admin. P Act	102(8)	202-b	202-b	207	205 <sup>1,5</sup>	202-b(3)	N/A <sup>3</sup>
North Carolina	N.C. Gen. Stat. Ch. 150B	None.	150B-21.4(b1) <sup>1</sup>	None.	None.	150B-43 <sup>1,5</sup>	150B-1 150B-21.1A 150B-21.5	HB 757 SB 664 SB 622
North Dakota	N.D. Cent. Code T. 28 Ch. 32	28-32-08.1	28-32-08.1	28-32-08.1	28-32-08.1	28-32-08.1	28-32-08.1	N/A <sup>3</sup>
Ohio	Ohio Rev. Code T.1 Ch. 119	121.24	121.24(B) 127.18	None.	119.3.2 121.24(D)	119.12 <sup>1,5</sup>	119.01 119.03(H)	SB 15
Oklahoma	Okla. Stat. T. 74	75-502	75-303 75-504	75-303(A)(4) 75-504	75-250.10 75-307.1	75-306 <sup>1</sup> 75-505	75-250.4 75-250.5	N/A <sup>3</sup>
Oregon	Or. Revised Stat. Ch. 183	183.310	183.335(2)(b) HB 3238 Sec.2	183.540	HB 3238 Sec.3	183.400 <sup>1</sup>	183.315	HB 3238 <sup>10</sup>
Pennsylvania	71 Pa. Cons. Stat. Ch. 4A	None.	745.5(a) <sup>1</sup>	745.5(a)	745.8.1	None.	None.	HB 236 SB 842
Puerto Rico	PR St T. 3 Ch. 79	2251(d)	2254	2254	2259	2260	2251(a)	N/A <sup>3</sup>
Rhode Island	R.I. Gen. Laws T. 42 Ch. 35	42-35-1	42-35-3.3	42-35-3.3	42-35-3.4	42-35-7 <sup>1</sup>	42-35-1.1 42-35-3.3(d)	None.
South Carolina	S.C. Code T. 1, Ch. 23	1-23-270(B)	1-23-270(C)	1-23-270(D)	1-23-270(F)	1-23-270(E)	1-23-120(G)	N/A <sup>3</sup>
South Dakota	S.D. Codified Laws T. 1 Ch. 26	1-26-1(8A)	1-26-2.1	None.	None.	1-26-14 <sup>1</sup>	None.	None.
Tennessee	Tenn. Code T. 4, Ch. 5	None.	4-5-226(j) <sup>1</sup>	None.	4-5-226(e)	4-5-225 <sup>1,5</sup>	4-5-106 4-5-208	HB 279 SB 1276
Texas	Tex. Govt. Code T. 10 Ch. 2006	2006.001	2006.002	2006.002	2001.39	2001.038 <sup>1,5</sup>	2006.012	None.
Utah	Utah Code T. 63 Ch. 46a	None.	63-46a-4 <sup>1</sup>	63-46a-4 <sup>1</sup>	63-46a-9	63-46a-12.1	63-46a-7	HB 209
Vermont	Vt. Stat. T. 3 Ch. 25	3-801	3-838(c)	3-832a 3-838(c)(3)	834	3-807 <sup>1</sup>	3-816 3-832	None.
Virgin Islands	None.	None.	None.	None.	None.	None.	None.	None.
Virginia	Va. Code T. 2.2 Ch. 40	2.2-4007.1(A)	2.2-4007(H)	2.2-4007.1(B)	2.2-4007.1(D), (E), (F)	2.2-4027	2.2-4002 2.2-4006	HB 1948 <sup>11</sup> SB 1122 effective

Note: All section numbers in columns 3 through 8 refer to the law cited in column 2, except as noted otherwise.

<sup>9</sup> New Mexico passed its regulatory flexibility legislation, titled the Small Business Regulatory Relief Act, in the 2005 legislative session. This bill added a small business definition, a small business regulatory flexibility analysis, and periodic review of existing regulations to its current administrative procedure laws.

<sup>10</sup> Oregon passed its regulatory flexibility legislation in the 2005 legislative session. HB 3238 enhances Oregon's current regulatory flexibility laws by requiring the small business economic impact statement to include the elements outlined in Advocacy's model legislation and to conduct periodic review of existing regulations.

State	Citation	Small Business Definition	Economic Impact Analysis	Regulatory Flexibility Analysis	Periodic Review	Judicial Review	Exemptions	Legislation Introduced in 2005
<b>Washington</b>	Wash. Rev. Code T. 19, Ch. 85 T. 34, Ch. 5	19.85.020	19.85.030 19.85.040	19.85.030	34.05.630	34.05.570 <sup>1</sup>	19.85.025 34.05.030	HB 1445
<b>West Virginia</b>	W. Va. Code Ch. 29A	None.	EO <sup>12</sup>	EO	EO	29A-4-2 <sup>1</sup>	29A-1-3	None.
<b>Wisconsin</b>	Wis. Stat. Ch. 27	227.114(1)	227.19(3)(e)	227.114(2) 227.19(3)(e)	227.30	227.40 <sup>1</sup>	227.24	N/A <sup>3</sup>
<b>Wyoming</b>	Wyo. Stat. T. 16, Ch. 3	None.	None.	None.	None.	16-3-114 <sup>1,5</sup>	16-3-103(b)	None.

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Note: All section numbers in columns 3 through 8 refer to the law cited in column 2, except as noted otherwise.

<sup>11</sup> Virginia passed its regulatory flexibility bill in the 2005 legislative session. The bill added all of the key components of Advocacy's model legislation to current Virginia administrative procedure laws.

<sup>12</sup> Governor Wise signed Executive Order No. 20-03 in 2003, which included a small business specific economic impact statement, regulatory flexibility analysis, and periodic review of existing regulations.