

An Example of the Importance of Regulatory Flexibility for Small Business

Washington's Industrial Safety and Health Act Safety and Health Core Rules

The Occupational Safety and Health Administration (OSHA), the federal program that provides safety and health protection to workers of America, can authorize states to adopt their own rules. In 1973, Washington State did just that and established the Washington Industrial Safety and Health Act (WISHA). In 1999, the Washington State Legislature approved funding for periodic review of WISHA called the "Innovations Project."

The Department of Labor and Industries (L & I), which is charged with implementing WISHA, formed the Innovations Task Force (ITF) consisting of large and small business owners, safety and health professionals, and staff from the agency. The goal of the project was to eliminate conflicting and duplicative rule requirements; provide safety and health information to a broader group of employers and employees; reach small employers with easy to use and understandable workplace safety and health information; achieve greater awareness of workplace hazards among Washington State's workforce; and to reduce worker injury, illness and deaths.

Approximately 80 percent of the businesses impacted by L & I regulations are small non-manufacturing employers with 50 or fewer employees. Recognizing that small business owners are an important information source that agencies can use to understand the economic impact on small entities and less burdensome alternatives, small employers had an active role in the review process. In addition to concentrating on areas that needed simplification, ITF also worked to avoid new technical requirements to the rules. This occurred with minimal cost to the agency resulting in an outcome and product that the stakeholders were satisfied with and helped to make possible.

While 27 safety and health rules were reviewed and revised, an example of one rule involved training requirements for the use of portable ladders. Previously the rule was difficult to understand using long complicated sentences and not logically organized. For example, portable ladders that are not self-supporting were required to support "at least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladders shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this section must be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction when the ladder is placed at an angle of 75 1/2 degrees from the horizontal."

Through the review process, the rule was rewritten in plain language eliminating conflicting and duplicative requirements. What is now required is simply for the ladder to meet the American National Standards Institute standard, which is clearly indicated by a sticker on a commercially manufactured portable ladder. Hours of work and frustration were saved as well as the need for a small business owner, with limited resources, to hire a safety and health professional to interpret the rules.

The Innovations Project validated a key element of a strong regulatory flexibility law which is the periodic review of existing rules. This requires agencies to determine whether existing rules should be continued without change or should be amended to minimize the economic impact of the rule on small businesses. As a result of L & I's review of its regulations, complicated rules were amended to be less burdensome and rewritten into an 'easy to use and understand' format without compromising the agency's objective of ensuring the health, safety and welfare of citizens.