

## **An Example of the Importance of Regulatory Flexibility for Small Business**

### **Colorado's Cork and Go Rule Regulation 47-918**

Under Colorado law, hotels and restaurants are permitted to reseal, and allow a customer to remove from the premise, an open bottle of partially consumed wine purchased at the hotel or restaurant with some limitations.

To implement this law, the Colorado Department of Revenue proposed an amendment to a rule which would require hotels and restaurants offering resealing of opened bottles to purchase commercially manufactured stoppers and sealable containers such as bags or boxes. The overall cost of compliance for this regulatory proposal was estimated at approximately \$1,771,500 to \$3,275,000.<sup>1</sup>

According to the definition of small business under the Colorado Administrative Procedure Act (500 or less employees) over 4000 firms in the state operate with an active liquor license and would have been affected by the rule. Under Colorado's regulatory flexibility structure the Department of Regulatory Agencies (DORA) reviews proposed rules affecting small businesses and can request that an agency prepare an analysis on the economic impact of a proposed rule on small entities. In this circumstance, DORA requested that the Department of Revenue determine the cost that would be incurred by small businesses to comply with the proposed rule.

During the rule review process DORA held that the law, under which the rule was promulgated, did not specify how bottles were required to be re-corked nor did it specify that sealable containers, in addition to the stoppers, are required. The Colorado Restaurant Association, on behalf of its small members, also objected to the rule on the basis that the cost of compliance would be overly burdensome to the regulated small entities.

After discussions with DORA and the Colorado Restaurant Association, and before going further with the rulemaking process, the Department of Revenue agreed to revise its initial proposal. The revised rule was a success for small business as it provides a more economical way for them to comply with the rule by allowing the use of the original cork to re-cork the bottle. While they are still required to use sealable bags they are no longer required to incur the expense of commercially manufactured stoppers and corks.

The Department of Revenue, DORA and small businesses worked together under Colorado's regulatory flexibility law. In addition, DORA's small business outreach was an important tool. Small business owners are the greatest source that agencies can use to understand how regulations affect small entities and what alternatives may be less burdensome. Here, the end result was a cost savings to small business without compromising the agency's objective. This example demonstrates how agencies, as well as small businesses, in other states would benefit greatly by implementing a comprehensive regulatory flexibility system.

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<sup>1</sup> This number is approximate and based on the cost of a commercially manufactured stopper, corks and overstocking charges multiplied by the number of small businesses in Colorado subject to the rule.

## Colorado – Cash and Professional Bail Bonding Agents Example Proposed Rule 1-2-13

A cash bail bondsman in Colorado furnishes bail in any court in the state in connection with a judicial proceeding. For this service, the bail bonding agent charges a premium and Colorado law permits premium charges of up to 15 percent of the bail amount set by the court. Bail bond agents are required to pay an annual a premium tax of one percent of their income to the Colorado Division of Insurance (“Division”).

The Division was concerned that the cash bail agents were not accurately reporting their earnings and were underpaying the premium tax owed to the state. As a result, the Division proposed a rule that would require these bondsmen to hire an independent certified public accountant (CPA) to assure the agents’ reports included complete and accurate financial data so that the premium tax owed to the State of Colorado could be appropriately calculated. This rule would impact 37 cash bail agents that meet the definition of small business under Colorado law (less than 500 employees).

Under Colorado’s Administrative Procedure Act, agencies are required to prepare a cost-benefit analysis of a proposed rule when the Colorado Department of Regulatory Agencies (DORA) determines that the rule may have a negative impact on small business. In preparing the cost benefit analysis agencies must consider the economic implications of the rule on small business and alternative regulatory solutions.

After reviewing the Division’s proposed rule, DORA’s Office of Policy, Research and Regulatory Reform (OPRRR) requested that the Division prepare a cost-benefit analysis to determine the economic impact and benefit of the proposed rule on cash bail bondsmen. Using the CPA industry norm of \$200 to \$300 per hour for attestation services, and the Division’s estimate that it would require 50 hours per examination, the analysis showed that the cost to comply with the proposed this rule would be \$10,000 to \$15,000 annually per licensee or between \$370,000 and \$555,000 annually to the bail industry.

By preparing a cost-benefit analysis the Division found that the cost to comply with the proposed rule may significantly outweigh the amount of underpaid premium taxes that would be collected and that the CPA attestation would not necessarily give them an accurate portrayal of all of an agent’s bond activity. The Division also considered other regulatory alternatives but was unable to find a solution that would increase the accuracy of the reporting information and the amount of premium tax that would be collected without costing these small businesses a substantial amount of money.

As a result, the Division of Insurance is continuing to study the bail bonding agent premium tax issue. This example demonstrates the importance of the economic impact statement and regulatory flexibility analysis to create awareness in agencies of the effect of a rule on small entities and to facilitate a collaborative effort between agencies and small business stakeholders to develop good regulations.