

Implementation of Regulatory Flexibility Act Saves Small Business \$10.7 Billion

by Jamie Belcore Saloom, Assistant Chief Counsel

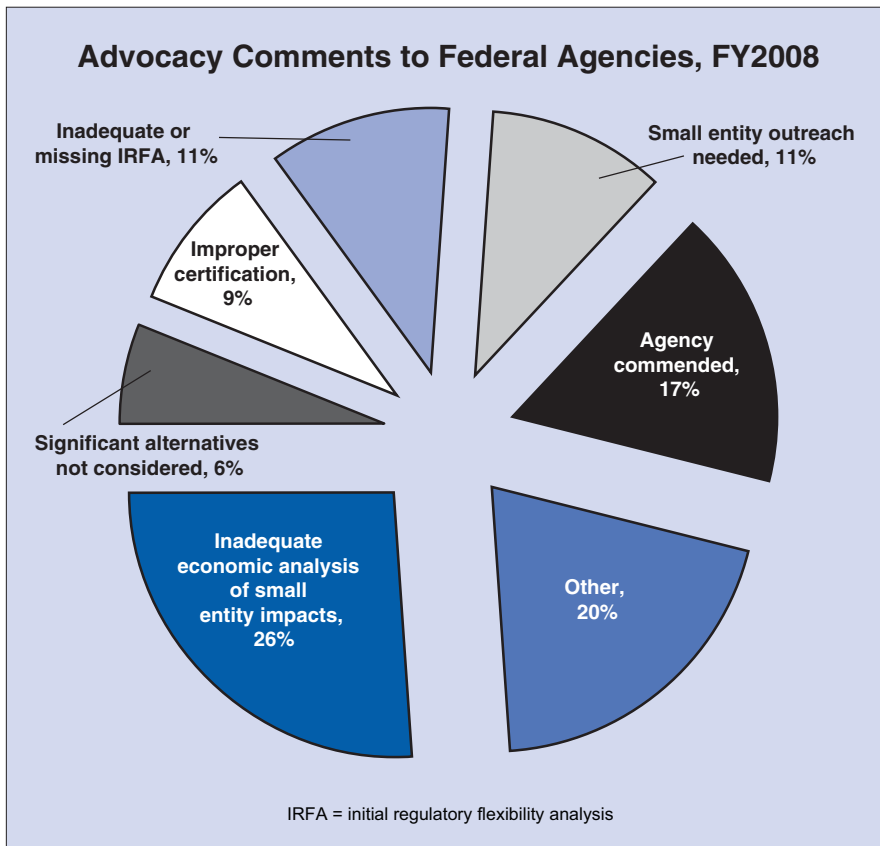
During fiscal year 2008, the Office of Advocacy achieved nearly \$10.7 billion in regulatory cost savings that would have otherwise fallen on small businesses through its implementation of the Regulatory Flexibility Act (RFA). These savings were the result of modifications to draft rules that were finalized by six federal agencies in FY 2008:

- The Department of Defense,
- The Environmental Protection Agency,

- The Federal Aviation Administration,
- The Federal Communications Commission,
- The Federal Acquisition Regulation Council, and
- The Securities and Exchange Commission.

The *Report on the Regulatory Flexibility Act, FY 2008* explains how Advocacy worked with federal agencies to secure these cost savings for small businesses.

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The most frequent concern raised in Advocacy's 2008 comment letters was the inadequate economic analysis of proposed regulations' impacts on small business.

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Economic News

Office of Economic Research Catalog, 2008

by Rebecca Krafft, Editor

In 2008, the Office of Advocacy published 28 reports relevant to small businesses in the American economy. While some contain exclusive data, others address issues of concern to small businesses. The new Office of Economic Research catalog lists all of these publications.

Topics covered in the catalog include:

- Banking and financial issues,
- Energy,
- General small business and entrepreneurship,
- Human capital and employment benefits,

- International trade,
- Innovation and technology,
- Owner demographics,
- Procurement,
- Regional economic development,
- Regulation and law, and
- Taxation.

The online report is an especially helpful tool in that it contains hot links to each publication's web address. You can find it at www.sba.gov/advo/research/res_pub08.pdf.

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RFA Report,

from page 1

Advocacy continues to work with these and other agencies on a host of rules that have significant small business impacts. Progress on these ongoing efforts is also described in the report.

The report is a congressionally mandated account summarizing Advocacy's RFA efforts and federal agencies' RFA compliance from October 2007 through September 2008. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires federal agencies to examine the impact of their new and existing regulations on small entities. The RFA also requires agencies to consult with small business stakeholders during the rulemaking process to determine ways to minimize disproportionate impacts on small entities.

Advocacy not only oversees federal agency compliance with the RFA, but also acts as a bridge

between the small business community and federal regulators. Through research and outreach, Advocacy plays an important role in introducing the small business perspective into policymaking, while helping federal agencies achieve their regulatory goals.

Advocacy's RFA activities during FY 2008 included:

- Submitting 33 public comment letters to federal agencies on regulatory proposals (the chart on page 1 shows the nature of the office's comments),
- Conducting RFA training sessions for more than 100 federal regulatory officials,
- Facilitating two new small business review panels with the Environmental Protection Agency, and finalizing one small business review panel report with the Occupational Safety and Health Administration,
- Convening 28 roundtables to gather the opinions, views, and comments of small entity stake-

holders on regulatory proposals, and

- Presenting testimony or positions on pending legislation before Congress three times.

The report also documents an important state-level initiative that is an outgrowth of the RFA's success. Advocacy's state model legislation initiative has led to the enactment of several state-level regulatory flexibility laws and executive orders. Advocacy's regional advocates have been on the front line of the initiative, helping to convince state legislatures to ease the burden of state regulations on small entities.

Small entities have stressed to Advocacy that the current economic climate makes it even more important for Advocacy to work with policymakers to minimize unnecessary regulatory burdens on small entities at both the federal and state levels.

The report is available at www.sba.gov/advo/laws/flex/08regflx.pdf.

Message from the Acting Chief Counsel

What's Advocacy's Story? Small Business Matters

by Shawne McGibbon, Acting Chief Counsel for Advocacy

In the past week, I've had two things come across my desk that really sum up for me what the Office of Advocacy is all about. Yes, we're about small business research and advocacy; but sometimes the key message gets lost in technical topics and legal intricacies.

Our story is simple. Small business matters. Big time. This comes through in glorious, high definition in our two newest reports.

Small Business Profiles for the States and Territories show how important small businesses are to the United States as a whole and to each state and territory individually. The country overall has slightly more than 6 million small employers, or 99.7 percent of all employer firms. (Firms with more than 500 employees are very few in number—there are only about 18,000 of them.) Small firms provide 50.4 percent of our private sector jobs, and they generate more than half of U.S. private non-farm gross domestic product. They are also the

nation's most reliable job creation engine. Between 2004 and 2005, small businesses created 78.9 percent of the nation's net new jobs.

"In every state, almost all firms are small and they provide roughly half the jobs. In some rural states, small firms provide as many as two-thirds of private-sector jobs."

Through all 50 states, these statistics form a pattern. In every state, almost all firms are small and they provide roughly half the jobs. In some rural states, small firms provide as many as two-thirds of private-sector jobs. Small firms had positive net job creation in all but five states in the most recent year studied, and small businesses created all of the net new jobs in 14 states and the District of Columbia.

It should be very clear by now why small businesses matter. Their ingenuity, their community roots, and their resilience are the nation's best hope for future job creation and economic recovery.

Congress created the Office of Advocacy because small business is so important; yet when it comes to regulation and policymaking, small business is at a disadvantage. Small firms annually pay 45 percent more per employee than large firms to meet their federal regulatory obligations. And their size makes it difficult for them to commit resources needed to participate in policymaking and to get their message out.

This is where the Regulatory Flexibility Act (RFA) comes in. It's Advocacy's big stick to wave at federal rulemaking agencies. The RFA requires agencies to listen to the small business message—that they are important and that things cost more for them. This year's *Report on the Regulatory Flexibility Act, FY 2008* shows that agencies are listening to Advocacy's message and that they are taking it to heart. The proof that they are listening is the \$10.7 billion in first-year cost savings that have resulted from their changes to proposed rules that took small businesses into consideration.

You can read more about both of these reports in this newsletter, and as always, the entire text of the reports is on our website: www.sba.gov/advo. Between them, they tell a great story which we at Advocacy never tire of sharing: Small business matters. Period.

The Key to Recovery

Small businesses created all of the net new jobs in 14 states and the district in 2004-2005* . . .

Connecticut	North Dakota
Delaware	Ohio
District of Columbia	Pennsylvania
Georgia	South Dakota
Kansas	Virginia
Maryland	Wisconsin
Nebraska	
New Jersey	
New York	

. . . and over half of the net new jobs in 22 others.

*Latest available data.

Source: *Small Business Profiles for the States and Territories*, www.sba.gov/advo/research/profiles

Regulatory News

Advocacy Files Comments on OSHA's Proposed Cranes and Derricks in Construction Rule

by Bruce Lundegren, Assistant Chief Counsel

On January 16, the Office of Advocacy filed comments on the Occupational Safety and Health Administration's (OSHA's) proposed rule on cranes and derricks in construction. Advocacy's comments reflected concerns raised by small businesses and their representatives over the scope and complexity of the proposed rule.

OSHA's proposed rule would impose new obligations on employers in the construction industry to ensure the safe operation of cranes and hoisting equipment used in construction, including assessment of ground conditions, power line safety, assembly and disassembly, inspections, controlling entities, and third-party operator certification. The proposed rule also has special provisions concerning the operation of tower cranes.

The proposal has been under consideration for several years. The proposed rule was drafted by the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC) as part of a negotiated rulemaking in 2002, and the rule was the subject of a Small Business Advocacy Review Panel in 2006. A

number of small entity representatives from the construction industry took time from their busy schedules to participate in the small business review panel, and they reviewed the draft rule and provided advice and recommendations.

In establishing the negotiated rulemaking committee, OSHA committed to publishing the draft rule prepared by the C-DAC as the proposed rule. However, OSHA is specifically required by the Regulatory Flexibility Act to "consider any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." This requirement applies even if it means deviating from the C-DAC draft.

Advocacy hosted two small business roundtables (on November 21, 2008, and January 8, 2009) to obtain additional input from small business representatives. While all small business representatives support the training and qualification of crane operators, others raised a number of concerns, including the

provision that would require crane operators be certified by third-party entities. Advocacy's comments also reflected concerns over the "controlling entity" provisions in the proposed rule and recommended that OSHA clarify the definition of "construction" under the rule and exempt equipment used solely to deliver materials to a construction site. Advocacy also expressed concern over the requirement that employers follow all manufacturers' recommendations because the provision could unduly limit the safe operating parameters of cranes.

A copy of Advocacy's comments to OSHA are available at www.sba.gov/advo/laws/comments/osha09_0116.html. If you need more information, please contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov.

The RFA, SBREFA, and Small Business Review Panels

Small businesses' participation in the federal rulemaking process is authorized by the Regulatory Flexibility Act (RFA), which requires federal agencies to consider the impact of their rules on small entities and examine significant alternatives that minimize small entity impacts. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) amended the RFA; it requires OSHA to convene a Small Business Advocacy Review Panel for any proposed rule that is expected to "have a significant economic impact on a substantial number of small entities.

Small Businesses Nominate 38 Regulations in Need of Review and Reform

by John McDowell, Press Secretary

Small business owners and their representatives have nominated 38 existing regulatory requirements as candidates for review and reform. The nominations came in response to the second year of the Office of Advocacy's long-term Regulatory Review and Reform (r3) initiative. The 2009 nominations can be found on the r3 webpage at www.sba.gov/advo/r3/nominations01_09.pdf.

The nominations include recommendations to review and reform rules from the Internal Revenue Service, the Department of Transportation, the Department of Labor, the Environmental Protection Agency, the Centers for Medicare and Medicaid Services, and the Small Business Administration. Several of this year's r3 nominators also submitted nominations in 2007.

"Advocacy's r3 initiative is a vigorous program to right regulatory wrongs," said Shawne McGibbon, acting chief counsel for advocacy. "These nominations will allow us to work with federal agencies so they can review or reform rules that are outdated, ineffective, duplicative, or overly complex. This results in rules that are more efficient, effective, and easier to comply with."

In 2009, Advocacy will add two nominations to the current Top 10 list, replacing two rules already reviewed or reformed by federal agencies. Advocacy will transmit the 2009 Top 10 list to agencies in the spring and will work toward action on the listed rules.

In order to track agency progress, the recommended reforms will be posted on Advocacy's website and an update on the status of reforms will be published twice a year. Advocacy encourages small

businesses and their representatives to follow the progress of the reforms and to comment to the agencies on their progress.

Two of the 2008 Top 10 rules were reviewed and reformed during the past year. In October, EPA reformed the definition of "solid waste," encouraging recycling rather than disposal of certain spent materials. And in December, the Federal Aviation Administration (FAA) finalized its Special Flight

Rules Area rule for the Washington, D.C., area. The final rule creates a smaller restricted airspace than was originally imposed, addressing many of the economic concerns raised by small businesses.

Find out more about the r3 initiative and agency progress in reviewing and reforming the Top 10 rules by visiting www.sba.gov/advo/r3.

Nominator of 2008 r3 Top 10 Rule Hails Advocacy Initiative

by Rebecca Krafft, Editor

When David Wartofsky, the owner of Potomac Airfield in Fort Washington, Maryland, heard about the r3 initiative in 2007, he knew just what to do. Wartofsky nominated the Federal Aviation Administration's Special Flight Rules Area for the national capital area for the r3 Top 10. He felt that the flight restrictions imposed in the aftermath of the 9/11 terrorist strikes were too burdensome and that FAA had not adequately considered their economic impact to the region. In 2008, the rule he nominated was selected for the r3 Top 10. In December, Wartofsky's idea came full circle, as the FAA published a final rule that significantly scaled back the burden on small airport owners. In reviewing and finalizing the rule, FAA conducted a regulatory impact analysis and narrowed the size of the restricted airspace. The result was a more cost-effective, flexible rule that still maintained FAA's security parameters.

Here's what Wartofsky had to say in the aftermath of the r3 victory:

"I offer that SBA Office of Advocacy's role in FAA's Special Flight Rules Area, and other matters, both in security and more general regulatory activities, has fundamentally changed the way the U.S. government does business, all to the better. . .

"I believe SBA and regflex have taught various agencies to step more carefully, and more lightly. . .

"I am optimistic that as a result of SBA activities, our government has achieved a far better balance between security and economy, bringing complex and often conflicting objectives into a more mutually stable position. That's a good day's work!"

And that's the r3 initiative in a nutshell.

Collecting Small Business Financial Information

by Charles Ou, Senior Economist

Over the past two decades, small business researchers and policy-makers have relied heavily on small business financial statistics collected by the Federal Reserve Board in the National Survey of Small Business Finances. For example, the Office of Advocacy has used the data in its flagship report, *The Small Business Economy*, among many other uses.

The Survey of Small Business Finances was conducted every five years from 1987 to 2003. The Federal Reserve's decision to discontinue the survey after the completion of the 2003 survey has caused much concern about the future availability of high quality statistics about small business finances. The Federal Reserve has promised to rely on another important finance survey, its tri-annual Survey of Consumer Finances, to collect business financial information. The question is whether a household survey can adequately provide useful and comprehensive small business financial information.

The Federal Reserve staff who conduct the Survey of Consumer Finances are preparing to add business finance data to the 2010 survey. In a recent meeting with staff of the SBA's Office of Advocacy and Office of Strategic Alliances, Dr. Traci Mach, an economist with the Federal Reserve, talked about their progress.

Mach explained that the Survey of Consumer Finances provides high quality household wealth data for the United States, and that it has been conducted every three years with consistent design since 1989. Data are collected from about 4,500 households in each survey. It is the only national survey collecting comprehensive information about household assets and debts (tangi-

bles as well as financial assets, and secured and non-secured debts such as credit cards and credit lines). It also collects data about respondents' use of financial institutions, work history, job characteristics, pensions, demographics, attitudes, and income in the prior year.

Advocacy economists do not expect the new data set to produce the same type of business data formerly found in the Survey of Small Business Finances.

Because the Survey of Consumer Finances is a household survey, information about business financing will come from asking business-owning households about their acquisition of various assets and their uses of various household debts that pertain to the businesses they actively own and manage. New proposed questions add greater detail about personal assets used as guarantees or collateral for business borrowing, the owner's loans to the business, and loans from the business to the household.

To obtain information about the uses of outside financing by the business proper, a limited set of additional questions will be included in the new survey. For example, there will be one question about the sources of money used to start or acquire the business. A comparable question about the external sources of money used to finance the ongoing operations or improvements in the business over the previous year will be asked.

The survey will also add a set of new questions related to the borrowing experiences of actively managed businesses—experiences

in applying for and obtaining additional finances over the previous five years.

One advantage of collecting business financing data from the Survey of Consumer Finances will be a better understanding of the uses of household assets and debts for business purposes—the intermingling of personal and business finances so common to most privately held businesses. However, most information about loans and assets of the business that are not related to the household will *not* be collected.

Mach added two important caveats. First, the Survey of Consumer Finances is a household survey, not a business survey, and the population it studies encompasses families that own businesses, not the universe of businesses. Second, the new questions are still to be pre-tested in 2009, and substantial revisions should be expected including the deletion of some questions so as to reduce the interview burden.

Advocacy economists do not expect the new data set to produce the same type of business data formerly found in the Survey of Small Business Finances.

For further information on the Survey of Consumer Finances, please refer to the survey's website, www.federalreserve.gov/pubs/oss/oss2/scfindex.html.

Small Business Profiles Show State-by-State Economic Impact

by Victoria Williams, Economist

The Office of Advocacy's latest *Small Business Profiles for the States and Territories* show the economic contribution of small businesses in great detail. (Small businesses are defined as firms with fewer than 500 employees.)

On the national level, small businesses employ 50.2 percent of the private-sector workforce. Small business employment ranges from a high of 69.8 percent in Montana to a low of 44 percent in Florida.

In terms of the number of firms, at the national level, small firms make up 99.7 percent of all U.S. firms. State-by-state, the District of Columbia had the smallest share of small firms, at 93.1 percent, followed by Delaware with 93.5 percent of its firms being small. California had the highest state share at 99.2 percent.

Both the state and national data show a similar pattern. Almost all businesses are small. Of these small businesses, firms without employees (nonemployers) are by far the most numerous (see chart). The number of large businesses (with 500 or more employees) is a very

The top 10 states with the biggest share of small business employment are:

Montana	69.8%
Wyoming	66.2%
Vermont	63.5%
North Dakota	63.3%
South Dakota	63.2%
Maine	60.6%
Idaho	58.6%
Oregon	57.2%
Rhode Island	57.1%
New Mexico	57.0%

Source: Small business employment, 2006; Office of Advocacy, based on data from the U.S. Census Bureau, Statistics of U.S. Businesses.

The top 10 states with the biggest share of small businesses are:

California	99.2%
New York	99.1%
Florida	99.0%
Texas	98.7%
New Jersey	98.5%
Michigan	98.4%
Pennsylvania	98.4%
Illinois	98.4%
Washington	98.2%
Ohio	98.2%

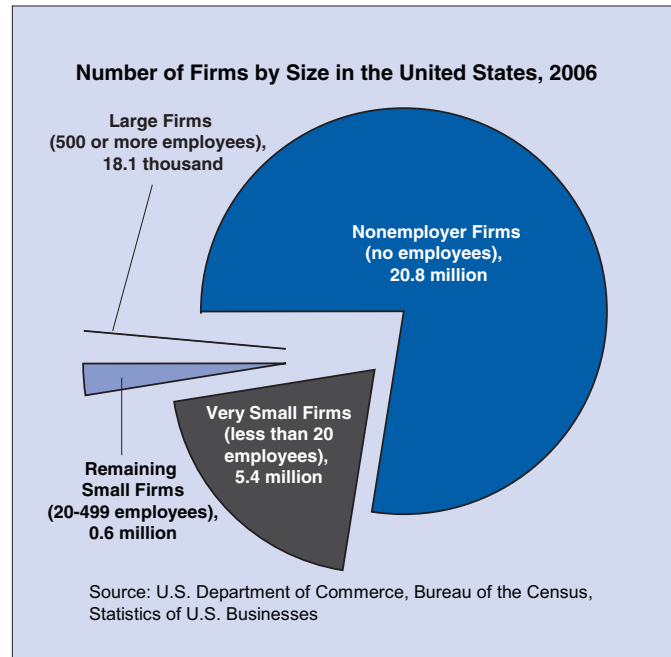
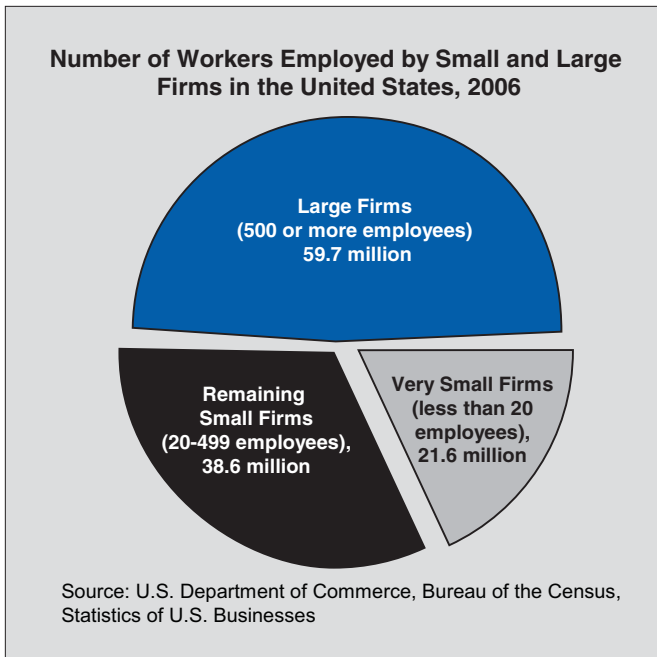
Source: Small business as a share of all business, 2006; Office of Advocacy, based on data from the U.S. Census Bureau, Statistics of U.S. Businesses.

small percentage of the total—less than one-half of one percent nationally. The share of large businesses at the state level ranges from less than 1 percent to a high of around 6.5 percent.

But the most dramatic part of the small business story lies in their job creation powers. Nationally, small businesses created 78.9 percent of the net new jobs in 2005. At the

state level, small businesses created all of the net new jobs in 14 states in 2005, and significant shares of them in 31 others.

How did your state's small businesses perform? Visit Advocacy's website and find out: www.sba.gov/advo/research/profiles.





The New Small Business Profiles are here!

To see the latest figures on your state, go to
www.sba.gov/advo/research/profiles

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