

Thirty Agencies Publish Regulatory Review Plans

by Charles Maresca, Director of Interagency Affairs

Saying that the establishment of “a 21st century regulatory system” that “must promote economic growth, innovation, and job creation” was overdue, Office of Information and Regulatory Affairs Administrator Cass Sunstein announced on May 26 that regulatory review plans of 30 federal agencies and departments are now available.

The review plans were mandated by President Barack Obama in Executive Order 13563 on January 18, 2011. In that executive order, agencies were given 120 days to establish procedures for a systematic periodic review of their regulations “that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.”

Sunstein emphasized that the agencies have already begun to review their rules, and these immediate

reviews are saving “hundreds of millions of dollars” in foregone regulatory costs. His examples included the Environmental Protection Agency’s determination that it would no longer classify milk as an oil, thereby relieving dairy farms and others from the requirements of EPA’s Spill Prevention, Control and Countermeasures rule. Sunstein said that this change will save \$1.4 billion over the next 10 years. As an example of outdated regulations soon to get updated Sunstein mentioned certain requirements for film X-rays instead of digital.

“Our goal is to change the regulatory culture of Washington by constantly asking what’s working and what isn’t,” he said. The plans specifically include participation by the public that will help the agencies “draw on the experience and wisdom of the American people.”

The Office of Advocacy has been reviewing these plans and will continue to work toward regulatory relief for small businesses.

For the announcement, visit www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system. To read the agency plans and comment, visit www.whitehouse.gov/regulatoryreform.



Chief Counsel for Advocacy Winslow Sargeant, with Rynel Site Supervisor Jim Detert and Assistant Chief Counsel Thad Inge at Rynel, Inc., in Wiscasset, Maine. For more about the May 5 listening tour of Maine small businesses, turn to [page 3](#). Photo courtesy of the Lincoln County News.

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Regional Updates

Region III: Lehigh Valley Roundtable: What Regulations Are Affecting Your Business?

by Ngozi Bell, Region III Advocate

On May 10, the Office of Advocacy held a roundtable with local businesses in the Lehigh Valley (Pennsylvania/New Jersey). The event was called “SBA Advocacy Roundtable: What Regulations are Affecting Your Business?” and was sponsored by the Nazareth Area Chamber of Commerce. Also participating were the Whitehall Chamber and the Slate Belt Chamber; an SBA business development specialist was on hand to answer questions on SBA programs.

The roundtable started promptly at 7 a.m. on a crisp May morning. In attendance were 10 small

business representatives from the cement, community banking, real estate, consulting, financial services, and engineering industries. The lively two-hour discussion began with an expression of gratitude that the Office of Advocacy exists and has representatives willing to come to them and listen to their issues.

Discussions on regulations ranged from concern with the Consumer Financial Protection Bureau adding another layer of rulemaking, to the one-size-fits-all tax regulations imposed on community banks alongside multina-

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New England's regional advocate, Lynn Bromley, talks with Vermont Governor Peter Shumlin at the 27th Annual Vermont Chamber of Commerce Business and Industry EXPO on May 25. Governor Shumlin was on hand to present the 2011 Deane C. Davis Outstanding Business of the Year award to Small Dog Electronics, a consumer electronics and information technology firm based in Waitsfield, Vermont. Governor Shumlin made particular note of the many businesses in Vermont that “capture the spirit of Vermont—innovative, entrepreneurial and committed to excellence.” He added that today's award winner, as well as the other nominees (the Foley Family of Companies and Green Mountain Power) are committed to “exporting the best products from Vermont—not exporting Vermont jobs from Vermont.”

tional banks. Another hot button was the proposed 3 percent withholding to be imposed on government contractors, which they saw as counterproductive and unworkable for small businesses. Other issues were the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT) rules, which they said would stifle or even eliminate several small manufacturers and cement producers.

Upon adjourning, the team of small business owners pledged to continue the dialog by forming discussion teams in order to provide key input to the Office of Advocacy on regulations as a group. In the weeks since the meeting, Advocacy has provided the good news update on the 3 percent withholding and the boiler MACT rules; federal agencies have agreed in both cases to hold off on putting them into effect.

Message from the Chief Counsel

Small Business Innovation on Display at Maine Manufacturing Summit

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

Over the past few months, the economy has continued to add jobs. We all know (or have heard) that small businesses produce the majority of net new jobs in the economy. What has been encouraging in the net job growth figure is the resurgence of jobs in the manufacturing sector of the economy. While it is true that manufacturing is not where it was in 2009, we have seen a deceleration of job loss in the manufacturing sector. There are some subsectors that have actually added jobs, and some large companies are bringing work back to the United States.

Why is this important? I believe manufacturing is the fuel that keeps the innovation engine running. As someone who has been trained in the physical sciences and appreciates theoretical design and analysis, I also fully understand that many breakthroughs happen as a result of rolling up one's sleeves and building a prototype—hence manufacturing.

Recently I visited Owls Head, Maine, to be a featured speaker at the Manufacturing Summit sponsored by the Manufacturers Association of Maine. The event, titled “Maine Ingenuity—Manufacturing the Future,” took place at the Owls Head Transportation Museum, which has one of the finest collections of pioneer-era aircraft and automobiles in the world. The museum’s fascinating displays helped reinforce attendees’ shared belief that innovation and ingenuity is driven by entrepreneurs working in small businesses.

After my talk, I joined a roundtable of small business owners to discuss how the federal government could reduce barriers their businesses face. The issues of concern

to this group included the need to reduce taxes on small business owners, the frustration with OSHA rules and penalties, and how President Obama’s Executive Order 13563 will affect EPA’s regulatory agenda.

While in Maine, I took the opportunity to visit three innovative manufacturers that have weathered the economic crisis and are now

looking to expand and grow their operations. The first company, Rynel, Inc., based in Wiscasset, is a premier manufacturer of specialty absorbent polyurethane foam products for use in a variety of medical applications. The foam and engineered composites

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The chief counsel’s May 5 listening tour included two other small firms. At Artel, Inc., Chief Counsel Sargeant met with Kirby Pilcher, cofounder and president. At Southern Maine Industries, Sargeant met with Cheryl Bolduc, SMI owner and president, and Ken Davis, SMI operational manager.

Regulatory News

SBREFA Featured in ABA Section's National Institute

by Jennifer Smith, Assistant Chief Counsel

On May 3, the American Bar Association's Administrative Law and Regulatory Practice Section presented its Seventh Annual National Institute, providing continuing education for practicing attorneys. The theme of this year's institute was influencing and improving the regulatory process. It offered an opportunity for attorneys to learn about such important topics as

- The role of judicial settlements in driving rulemaking;
- First recommendations to emerge from the reconstituted Administrative Conference of the United States;
- Regulatory reform—current legislative proposals and Obama Administration initiatives; and
- Other developments in administrative law.

One program, "A New Era for SBREFA Panels," explored the latest developments in the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process. In July 2010, Congress passed the Dodd–Frank Wall Street Reform Act. The Act created the Consumer Financial Protection Bureau (CFPB) and made it subject to the SBREFA panel process. Until



Appearing on the ABA panel on SBREFA compliance were Deputy Chief Counsel Claudia Rodgers (moderator), Assistant Chief Counsel Jennifer Smith, Lynelle Wiggins of the Environmental Protection Agency, and Jane Luxton from Pepper Hamilton.

now, SBREFA has applied only to the Environmental Protection Agency and the Occupational Safety and Health Administration; it requires these agencies to convene small entity advisory panels when they develop rules that will have a significant economic impact on a substantial number of small entities.

The panelists explained the SBREFA process and its impact on the rulemaking process, the agencies, and the business com-

munity. Assistant Chief Counsel Jennifer Smith provided background information about the Regulatory Flexibility Act and SBREFA. Lynelle Wiggins from the Environmental Protection Agency discussed an agency's role in the process. Jane Luxton from Pepper Hamilton explained the role of the small entity representatives. Advocacy's Deputy Chief Counsel Claudia Rodgers moderated the session.

Assistant Chief Counsel Clark Keynotes Chicago Conference

On May 17, Assistant Chief Counsel Major L. Clark, III was a keynote presenter at the Industrial Supply Association (ISA) 2011 Conference in Chicago.

ISA is the leading trade association for the maintenance, repair, operations and production (MROP) supply channel. ISA is made up of companies that manufacture abrasive products, power driven hand-

held tool manufacturers, hardware stores, and other related trades. Many of the companies are small businesses and some provide their services to the federal government.

Clark's presentation was part of the conference's educational and training session. The presentation focused on the regulatory and contractual framework for small businesses in the federal market-

place. This included the Regulatory Flexibility Act requirements and their significance to small businesses, compliance with the Federal Acquisition Regulations, the changing landscape that is requiring contractors (prime and subs) to be more accountable, and emerging contracting opportunities for small businesses.

Assistant Chief Counsel Keynotes On-Site Consultation Conference

On May 4, Assistant Chief Counsel Bruce Lundegren served as keynote speaker on Day 2 of the Occupational Safety and Health Administration's On-Site Consultation Conference in Orlando, Florida. Lundegren discussed the Office of Advocacy and the importance of the Regulatory Flexibility Act in reducing regulatory burdens on small business.

On-Site Consultation is a voluntary, OSHA-funded program that offers free and confidential advice from safety consultants to small businesses in order to identify workplace hazards, comply with OSHA standards, and establish

effective safety and health programs. The consultant inspects the site and works with the employer to abate any hazards in a timely manner.

One of the hallmarks of the On-Site Consultation program has always been a "wall of separation" between the voluntary consultation process and OSHA enforcement activities. In fact, employers who abate hazards identified during the consultation are guaranteed confidentiality from OSHA enforcement. Further, successful participants in the On-Site Consultation program become eligible for OSHA's Safety and Health Achievement

Recognition Program (SHARP), which recognizes businesses that complete the On-Site Consultation program and maintain an exemplary safety and health program.

The On-Site Consultation program is popular with small business and has resulted in safer workplaces for employees across the country. Lundegren drew applause when he noted that the Office of Advocacy had questioned recently proposed changes to the program that were seen as blurring the separation between voluntary consultation and enforcement. Lundegren stated that small businesses will be reluctant to voluntarily invite OSHA onto their site if they think they will be turned over to enforcement. For further information, please contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov.



Advocacy Holds Science Roundtable

by Kevin Bromberg and David Rostker, Assistant Chief Counsels

On May 5, the Office of Advocacy held its first Environmental Roundtable on the science used to support Environmental Protection Agency rulemakings. As a regulatory agency, EPA's mission is to protect public health and the environment, and EPA prepares risk assessments for chemicals suspected of having an impact on public health or the environment. These risk assessments in turn become the factual basis for future rulemakings. If the risk assessments are flawed, the resulting regulations could be insufficiently protective or overly protective.

In a widely attended meeting,

small business representatives heard presentations on formaldehyde and three other chemicals for which EPA is conducting risk assessments. EPA's risk assessment for formaldehyde is the subject of a recent National Academy of Science critique, and the Academy's recommendations to improve EPA risk assessments served as a framework for the discussion. The presenters and roundtable participants were critical of EPA's procedures for developing its risk assessment and raised significant concerns about whether EPA's conclusions were in fact supported by the full range of available

scientific data. The roundtable participants also expressed a general endorsement of the Academy of Science recommendations.

Advocacy intends to work with the small business community and EPA regarding additional steps to improve the quality and reliability of EPA's scientific determinations.

Smalls Shipping and Handling Exports

by Brian Headd, Economist

You don't need a boat to go where most small businesses export. China's economy may get a lot of our press, but our neighbors, Canada and Mexico, get a lot more of our exports. Total U.S. exports of goods to Canada and Mexico in 2009 were \$154.8 billion and \$116.4 billion, respectively, while exports to China were \$65.6 billion.

The International Trade Administration's recently released *Small & Medium-Sized Exporting Companies: Statistical Overview, 2009* finds 275,843 exporters in 2009. Of this number, 269,269 or 97.6 percent were small businesses. But small businesses only accounted for 32.8 percent or \$308 billion of the total export revenue in 2009.

For both small and large exporters, most of the exports came from the manufacturing and wholesale trade industries, which is not surprising considering the data does not cover services exports. These two industries combined represented about 85 percent of exporting value and 60 percent of the exporting businesses.

How to grow U.S. exports? The International Trade Administration notes that increasing the number of exporting firms is not the only strategy. About 60 percent of small exporters only traded with one market. You could argue that firms that have already figured out how to overcome exporting barriers in one country are a better bet to increase the value of exports to other nations

than firms looking to overcome the initial trade hurdles.

Later this summer the U.S. Census Bureau's Survey of Business Owners will release business owner characteristics information on goods and services exporting.

To Learn More

ITA's *Small & Medium-Sized Exporting Companies: Statistical Overview, 2009* is online at www.trade.gov/mas/ian/smeoutlook/tg_ian_001925.asp. It is based on ITA's versatile Exporter Database, online at <http://tse.export.gov/EDB>.

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have applications in the treatment of wound care, including diabetic sores. Although Rynel was recently purchased by the Swedish company, Molnlycke Health Care, the good news is that Rynel will expand operations in nearby Brunswick, adding more manufacturing jobs. Rynel's issues of concern include higher taxes and rising electricity and health care costs. State regulations imposed by Maine's Department of Environmental Protection were also of concern.

The next company visited was Artel, Inc., a worldwide leader in liquid handling quality assurance. According to Artel, its 55 employees have been called "a miniature 2,000 person company" because of their impressive productivity.

Artel is an interesting story for those concerned with regulations, because the genesis of the company lies in chemical industry regulations that called for precision measurement of chemical components. Although Artel got its start from regulations, the company continues to feel the effects of the regulatory process because any uncertainty their customers experience affects orders for Artel's products.

My last stop was to a metal finishing company, Southern Maine Industries (SMI), in Gorham, a suburb of Portland. According to SMI's owner, the metal finishing industry is the "second most regulated field next to nuclear power." SMI has worked hard to put in place a good pollution control system. The challenges for SMI remain access to capital, consistency in regulations, and the overlap

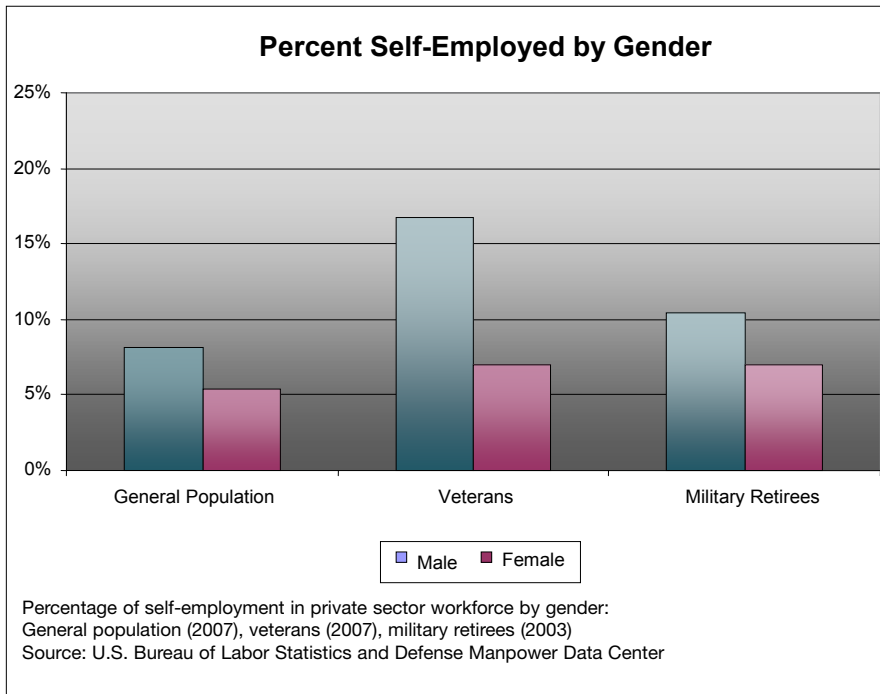
of different rules.

A recurring theme I heard throughout my trip is the need for consistency between federal and state regulations, as well as reduced overlap among the numerous rules. Each of the companies I visited would like to comply with state and federal regulations. The challenge of small businesses knowing how to comply, especially with federal regulations, remains a problem. The Office of Advocacy will continue to work with the White House, Congress, and federal agencies to ensure that small businesses are heard throughout the regulatory process. This will allow small businesses to continue to do what they know how to do best: bring innovative products to the marketplace, create jobs, and continue to build on the great legacy of American entrepreneurs.

Research Notes

Study Finds Vet Population More Entrepreneurial than Average

by Joseph Sobota, Assistant Chief Counsel



Are veterans more likely to become entrepreneurs than nonveterans? Using one measure of entrepreneurship, self-employment, the answer is “Yes.” Both past research sponsored by SBA’s Office of Advocacy and current data from the U.S. Bureau of Labor Statistics indicate that for more than 30 years, year in and year out, veterans have had and do have a higher rate of self-employment than nonveterans. What could account for this finding?

In May, Advocacy released a new contract research study that examines why veterans are more likely to choose self-employment than nonveterans. *Factors Affecting Entrepreneurship among Veterans*, by John Hope, Brian Oh and Patrick Mackin, tests the hypothesis that military service imparts some unique training or acculturation that makes veterans more likely to become self-employed than otherwise similar individuals.

The study finds that military service is indeed highly correlated with self-employment probability. This confirms the findings of earlier studies that show such a significant correlation. However, the study did not find any evidence that it is military training, education, or culture that predisposes individuals toward entrepreneurship.

Although veterans do have higher rates of self-employment, these rates actually go down with the length of service, suggesting that it is not military training or acculturation that fuels the entrepreneurial spark or desire, but rather something within the individuals themselves. Those who choose to join the military seem also to be those who later choose self-employment.

An exception to the correlation of length of service with decreasing likelihood of self-employment occurs for those career military veterans with 20 or more years

of service. For this group, each additional year of service past 20 years increases the chance of self-employment by 7.5 percent. The study’s authors suggest that this may be due to a wealth effect related to the size of a retiree’s pension, which goes up with length of service.

The study is online at www.sba.gov/content/factors-affecting-entrepreneurship-among-veterans.

Region II Advocate Presents Veterans’ Info to New York City Council

On May 10, the Office of Advocacy’s Region II Advocate, Teri Coaxum, testified before a joint hearing of two New York City Council committees—the Committee on Small Business and the Committee on Veterans, chaired by Diana Reyna and Mathieu Eugene.

Coaxum shared the newly released Advocacy-funded study, *Factors Affecting Entrepreneurship among Veterans*, by John Hope, Brian Oh, and Patrick Mackin. At the hearing, titled “Oversight: Reintegration of Veterans into the Workforce and the Small Business Community,” Coaxum related the authors’ findings that military service is highly correlated with the probability of self-employment. In the private sector workforce, the study found that veterans were at least 45 percent more likely than those with no active-duty military experience to be self-employed.

OSHA Offers Small Businesses Additional Opportunity to Comment on MSD Proposal

by Rebecca Krafft, Editor

On May 17, the Occupational Safety and Health Administration published its report on the recent small business teleconferences on its proposed Musculoskeletal Disorder (MSD) Reporting Rule in the *Federal Register*. The rule would add a separate column to the OSHA 300 Log (Summary of Work-Related Injuries and Illnesses), a report that employers are required to keep for recording certain work-related MSDs.

OSHA hosted the teleconferences jointly with the Office of Advocacy in order to obtain additional small business input on the proposed rule. OSHA has reopened its comment docket in order to accept further comments on the report, and comments are due to OSHA by June 16, 2011. The teleconferences and report were also discussed at Advocacy's small business labor safety roundtable on May 20.

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The Office of Advocacy now has a Twitter account, [@advocacysba](https://twitter.com/advocacysba). The daily Tweets will update you on the latest Advocacy happenings.

To Learn More

Advocacy's previous comments on the rule can be found in a March 30, 2010, comment letter http://archive.sba.gov/advo/laws/comments/osha10_0330.pdf and a factsheet http://archive.sba.gov/advo/laws/comments/factsosha10_0330.pdf.

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