

Advocacy Testifies on Greenhouse Gas Regulation and Small Business

by David Rostker, Assistant Chief Counsel

On April 6, Deputy Chief Counsel for Advocacy Claudia Rodgers testified before a subcommittee of the House Committee on Oversight and Government Reform. In the hearing, “Assessing the Impact of EPA Greenhouse Gas Regulations on Small Business,” Rodgers testified that EPA had fallen short in several respects. It had not convened a Small Business Advocacy Review panel and had not conducted the analysis of impacts on small businesses required by the Regulatory Flexibility Act (RFA). Advocacy believes that these steps, along with the greater outreach to small entities throughout the rulemaking, would have improved the rules.

Citing the Office of Advocacy’s public comments on these rules, Rodgers emphasized that Advocacy’s concerns were limited to the effect of EPA’s greenhouse gas

(GHG) rules on small business, not on whether EPA was justified in regulating GHG emissions.

Rodgers appeared on a panel alongside EPA Assistant Administrator for Air, Gina McCarthy. McCarthy defended EPA’s actions, stating that EPA was in full compliance with the RFA and that EPA believed that its outreach efforts to small businesses were sufficient. In response, Rodgers told the subcommittee that Advocacy and EPA have had a long and productive working relationship over the last 15 years, but that on these particular rules, there was a fundamental disagreement.

Representatives sought information about how EPA’s regulations on greenhouse gas emissions affected small business, including regulation of emissions from passenger vehicles, which triggered

In This Issue

Small Business Week Returns 2

Message from the Chief Counsel

Impact of Regulations on Small Business Studied 3

Research Notes

New Report Examines Legal Form of Ownership 4

Regulatory News

Advocacy Testifies on Greenhouse Gas Rules. 1

Form I-9 Handbook, E-Verify Self-Check Program. 2



Chief Counsel Winslow Sargeant participated in Start Up America’s Reducing Barriers panel in Minneapolis on April 6. Also on the panel were Sean Greene, associate administrator of the Small Business Administration; Ginger Lew, senior counselor of the National Economic Council; Patricia Rae, deputy director of the U.S. Patent and Trademark Office; and Michael Fitzpatrick, associate administrator of the Office of Information and Regulatory Affairs.

permitting of stationary sources under the Clean Air Act, and the “Tailoring Rule,” which provided some temporary regulatory relief from Clean Air Act permitting for small GHG sources.

The committee also heard from the National Lime Association (represented by former Assistant Chief Counsel for Advocacy Keith Holman) on the shortcomings of the tailoring rule, its failure to provide regulatory relief to lime producers, and the new permitting requirements’ dampening effects on new investment.

Later in the week, the House Committee on Energy and Commerce cited Rodgers’ testimony in support of proposed legislation to require an assessment of the cumulative impact of EPA’s rules on consumers and small businesses.

Rodgers’ testimony is at www.sba.gov/advocacy/2675, dated April 6, 2011.

National Small Business Week, May 18–20

by Kathryn Tobias, Senior Editor

On April 30, 1964, President Lyndon Johnson issued the first proclamation of Small Business Week, urging the nation to recognize “the great contribution made by the 4.6 million small businesses of this country.” This month, with 47 years and another 25 million businesses between us and that first event, the annual celebration of Small Business Week begins.

More than 100 outstanding small business owners from across the country will receive awards while gathering for three days at the city’s Mandarin Oriental Hotel. They will meet with administration officials, congressional representatives and national business leaders. The celebration culminates in the announcement of the National Small Business Person of the Year.

Men and women also will be recognized for their involvement in

disaster recovery, government contracting, and their support for small businesses and entrepreneurship. Awards will be presented to SBA partners in financial and entrepreneurial development, including the year’s top SCORE Chapter, Small Business Development Center, and Women’s Business Center.

The Office of Advocacy has a history with Small Business Week. Advocacy helped develop the Champion Awards, which recognize national achievement by advocates of veterans, minorities, and women in business, as well as home-based and family-owned businesses, and financial services providers. The awards also honor a young entrepreneur, a small business exporter, and an entrepreneurial success award winner.

Advocacy salutes all the winners, who are outstanding achievers

The Small Business Advocate

Editor Rebecca Krafft

Managing Editor Rob Kleinsteuber

Production Assistant Tymillia Johnson

The Small Business Advocate (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration’s Office of Advocacy and is distributed to SBA field staff, members of the U.S. Congress, and the public. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, MC 3114, Washington, DC 20416; advocacy@sba.gov; (202) 205-6533. For delivery changes, send your current address label with your request to the above address. For electronic delivery of this newsletter, visit, <http://web.sba.gov/list>.



Federal Recycling Program
Printed on recycled paper.

in their fields.

For details about National Small Business Week, visit <http://nationalsmallbusinessweek.com>.

Regulatory News

USCIS Issues Updated Form I-9 Handbook for Employers and Launches E-Verify Self-Check Program

by Janis Reyes, Assistant Chief Counsel

The U.S. Citizenship and Immigration Services (USCIS) recently released two tools to help employers and employees with the employment eligibility verification process—a revised handbook on Form I-9 and the new E-Verify Self-Check Program.

The *Handbook for Employers: Instructions for Completing Form I-9* helps employers better understand the employment eligibility verification process. By law, all employers must verify the identity and employment authorization of each worker. To comply with the law, employers must complete Form I-9, “Employment Eligibility Verification.” U.S. Immigration

and Customs Enforcement (ICE) recently increased I-9 inspections and audits of both large and small businesses nationwide. All employers should evaluate their I-9 process to comply with these requirements.

USCIS has also created the E-Verify Self Check service, a free, Internet-based application that can be used by U.S. workers over the age of 16 to confirm their employment eligibility. Self Check is part of E-Verify, a program administered by USCIS in partnership with the Social Security Administration; E-Verify allows employers to verify the employment eligibility of their newly hired employees. While participation in E-Verify is voluntary

for most businesses, some companies may be required by state law or federal contract law to use it.

Employers can contact USCIS with questions regarding the I-9 process or E-Verify at (888) 464-4218 or E-Verify@dhs.gov. USCIS also offers free live webinars about the Form I-9 process. For E-Verify Self Check, employees should call (888) 897-7781 or email E-VerifySelfCheck@dhs.gov. The revised *Handbook for Employers* is available at www.uscis.gov/files/form/m-274.pdf.

Message from the Chief Counsel

The Importance of Studying the Impact of Regulations on Small Business

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

Small businesses's ongoing role in creating employment and wealth in our society is vital for the American economy to grow and prosper. The Office of Advocacy, created in 1976 by the U.S. Congress, provides small businesses with an independent voice before federal agencies. Advocacy's research on wide-ranging small business topics helps inform federal agencies and policymakers.

Under the Regulatory Flexibility Act (RFA) signed into law in 1980, agencies are required to conduct a regulatory flexibility analysis to consider the burden that regulations have on small businesses. The disproportionate impact of regulation on small businesses can put the most vital and innovative sector of the American economy at a competitive disadvantage, jeopardizing America's status as the world's most dynamic and creative economy. The health and vitality of small business is inextricably linked to understanding and, where appropriate, eliminating this regulatory cost disadvantage.

It was with this in mind that Advocacy decided to research the issue of the costs associated with small businesses' complying with federal regulations. Many reputable researchers have tackled this important issue over the years. Advocacy's current research series dates to 1995 and the publication of *A Survey of Regulatory Burdens* by Thomas D. Hopkins, currently professor of economics at the Rochester Institute of Technology and a former deputy administrator of the Office of Information and Regulatory Affairs, the regulatory arm of the White House Office of

Management and Budget (OMB).

The entire repository of studies my office has done can be found on Advocacy's webpages (see box). The earliest such study was released in 1979 and was titled *Analysis of Regulatory Cost on Establishment Size for the Small Business Administration*. Mark Crain, who co-authored a 2002 study with Hopkins, subsequently published two more studies on this subject, in 2005 and 2010. Like Hopkins, Crain also has ties to OMB; he was assistant to the director from 1987 to 1988.

Advocacy's most recent study on the impact of the cost of regulations to small businesses, *The Impact of Regulatory Costs on Small Firms* by Mark Crain and Nicole Crain, documents the total cost of all regulations at \$1.75 trillion. While this is a record-setting sum, it is important to point out that the number associated with the cost of regulations is not the study's main finding or even its central aim. Instead, it is an input into the equation to compare how regulatory costs affect small firms versus large firms. The results of the 2010 study—along with the research findings over the years—have been very consistent: small firms bear a disproportionate cost of compliance relative to larger firms. On average, very small employers are incurring regulatory costs at least 30 percent higher than their larger counterparts (36 percent in the 2010 study).

This cost disparity has remained relatively consistent over the past 30 years. And it has remained despite the enactment of the RFA 30 years ago, in which Congress mandated that federal regulatory

agencies consider small business impacts when promulgating new regulations.

As chief counsel for advocacy, I know what it is like to lead a small business that feels the impact of regulations. Before coming to Advocacy, the majority of my career was spent either running a small business myself, or providing support to other small businesses. Being in a small business has provided me with the highest of highs and also the lowest of lows. It is an experience that I wouldn't trade for anything.

I continue to hear from small businesses on a daily basis that regulatory uncertainty remains a major concern. I am encouraged that President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review," renewed the focus on reducing unnecessary and burdensome regulations. Advocacy will work with federal agencies to make this a priority. Our economic recovery and America's well-being will require us to work together at all levels to make sure that innovation and entrepreneurship remain a hallmark of the U.S. economy.

To Learn More

The history of Advocacy's research into the impact of regulations on small business is available at www.sba.gov/advocacy/853 (current research); www.sba.gov/advocacy/853/12238 (1995–2007); and <http://archive.sba.gov/advo/research/summaries/catalog/chapt16.html> (1979–1992).

New Advocacy Research: Taxing Decisions

by Brian Headd, Economist

If you are a small business and have just filed your taxes, you may have dreaded the tax form you filled out and realized that it is too late to reconsider whether some other business form might suit your operation better. Some decisions are too tangled to unravel, like choosing your legal form of organization, or LFO.

The Office of Advocacy—funded report, *How Do Firms Choose Legal Form of Organization?* finds that less than 10 percent of firms change their legal form of organization within their first four years of business.

And of those firms that do change their legal status, it is driven by real changes in the business, not basic tax concerns or liability issues. The report's author, Rebel Cole, notes, "For those firms

that do change LFO, this decision is primarily driven by changes in ownership structure. The choice of a more complex LFO is more likely when the firm has changed location, experienced an increase in the number of owners or the ownership share of the primary owner, but is less likely when the firm has experienced a decrease in the number of owners."

The findings seem to contradict the life-cycle belief that businesses start simple then evolve to more complex legal forms of organization. The changes could be happening later than the first four years of the firm's life, but the study notes that the probability of changing legal form decreases as a firm ages. As the data source, the Kauffman Firm Survey, gathers a few more years' worth of statistics,

Follow Us On Twitter

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.

other trends may emerge. But so far, the founders' decision on the business's legal structure appears pretty much final.

Sometimes you get a chance to fix your mistakes; when starting a business, however, you're better off getting it right the first time.

The new report is located at www.sba.gov/sites/default/files/files/rs383tot.pdf and the research summary at www.sba.gov/sites/default/files/files/rs383.pdf.

U.S. Small Business Administration
Office of Advocacy
Mail Code 3114
409 Third Street, S.W.
Washington, DC 20416

Official Use
Penalty for Private Use, \$300

Return Service Requested

