

## Advocacy Regulatory Reviews Save \$11.7 Billion for Small Business

by Kathryn Tobias and Rebecca Krafft

On February 14, the Office of Advocacy released the *Report on the Regulatory Flexibility Act, FY 2011*. This congressionally mandated report summarizes federal agencies' compliance with the Regulatory Flexibility Act (RFA).

In FY 2011, agency compliance with the RFA saved small business \$11.7 billion in first year regulatory costs and \$10.7 billion in annually recurring costs. The RFA requires agencies to review the effects of their proposed regulations on small entities and to consider alternatives that would minimize small entity impacts while still meeting the regulations' purposes.

In FY 2011, Advocacy reviewed hundreds of regulations to assess RFA compliance. Advocacy's rule-making activity involved:

- Convening dozens of roundtables seeking small business input,
- Submitting more than 50 public comment letters to federal agencies on regulatory proposals,

- Planning or participating in 13 Environmental Protection Agency small business advocacy review panels, and

- Providing RFA compliance training to regulatory staff at federal agencies including the new Consumer Financial Protection Bureau.

These regulations cover the spectrum of American life, from clean air to workplace safety. Three examples show the range of regulatory cost savings. The Department of Energy saved \$400 million for small firms carrying out new water efficiency standards for show-erheads. In keeping with one of Advocacy's recommendations, the agency gave small manufacturers a grace period of two years to sell remaining inventory and phase in the new design standards.

A general safe harbor recommended by the Office of Advocacy and adopted by the Department of Justice gave small businesses a

reprieve from certain provisions of the Americans with Disabilities Act. This flexibility is estimated to have saved small businesses more than \$8 billion annually.

And perhaps the most visible accomplishment was mentioned by President Obama in his State of the Union Address on January 24: "We got rid of one rule from 40 years ago that could have forced some dairy farmers to spend \$10,000 a year proving that they could contain a spill—because milk was somehow classified as an oil." This rule, the Environmental Protection Agency's Milk and Milk Products; Oil Spill Prevention, Control, and Countermeasures Rule, is described on page 26 of the report. Removing milk and milk processing plants from the rule saved small businesses an estimated \$146 million annually.

Visit Advocacy's website to read the entire report, [www.sba.gov/advocacy/823/4798](http://www.sba.gov/advocacy/823/4798).



Advocacy hosted a roundtable on truck and motor coach safety in February. Among the presenters were Ann Ferro, administrator of the Federal Motor Carrier Safety Administration; Bruce Lundegren, assistant chief counsel; and Winslow Sargeant, chief counsel for advocacy. (See story, page 2.)

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## Regulatory News

### Advocacy Hosts Small Business Roundtable on Compliance, Safety, Accountability Program

by Bruce Lundegren, Assistant Chief Counsel

On February 14, the Office of Advocacy hosted a small business roundtable to discuss the Federal Motor Carrier Safety Administration's (FMCSA) new Compliance, Safety, Accountability (CSA) program. CSA is designed to improve highway safety of trucks and buses by tracking and comparing motor carrier and driver safety information in a publicly accessible database. (It replaces FMCSA's SafeStat program.)

Following remarks by Chief Counsel for Advocacy Winslow Sargeant, FMCSA Administrator Ann Ferro and CSA Program Manager Bryan Price discussed CSA and explained the program's new Safety Measurement System (SMS). SMS uses a motor carrier's data from roadside inspections, including all safety-based violations, state-reported crashes, and the federal motor carrier census to quantify performance in seven

categories, known as Behavior Analysis and Safety Improvement Categories (BASICs). These categories include things like unsafe driving, fatigued driving, vehicle maintenance, and driver qualification to assess performance and target carriers and drivers for intervention.

While most in the trucking and motor coach industries support CSA conceptually, attendees at the roundtable noted several pressing concerns. For example, Henry Seaton, representing the National Association of Small Trucking Companies, complained that the database contained insufficient data and used arbitrary measures to compare and rank carriers. Other attendees noted that the system prejudices carriers by operational type and geographic area because some states issue more speeding tickets and conduct more rigorous safety inspections than others. Still

### IRS Withdraws Requirement to Reconcile Gross Receipts and Credit Card Payments

On February 10, the IRS amended its informational webpage on credit card reporting requirements to announce that it will not require reconciliation of gross receipts and merchant card transactions on Forms 1120, "U.S. Corporate Income Tax Return," and other business income tax forms. The Housing Assistance Tax Act of 2008 requires credit card companies to report merchants' annual gross credit, debit, and third-party network payment card transactions to the IRS using Form 1099K. Small businesses had expressed concern about the burdens and costs associated with reconciling discrepancies between their own sales records and the 1099K forms issued by credit card processors. The IRS announcement directly addressed these small business concerns by removing this requirement. Their website states, "There will be no reconciliation required on the 2012 Form 1099K, nor do we intend to require reconciliation in future years."

Go to [www.irs.gov/newsroom/article/0,,id=253979,00.html](http://www.irs.gov/newsroom/article/0,,id=253979,00.html) for the updated IRS guidance.

—Dillon Taylor, Assistant Chief Counsel

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others complained that data errors are difficult to correct and that carriers should not be penalized for the records of past drivers they have terminated.

While acknowledging certain limitations to the system and problems with the data, Administrator Ferro remained steadfast that CSA was beneficial and would result in fewer highway accidents, injuries, and fatalities. She also pledged to continue to work with industry to improve and refine the program going forward.

One of the next steps in the development of CSA will be publication of FMCSA's proposed Carrier Safety Fitness Determination Rule, expected later this year. This rule will seek to establish the methodology for determining whether a carrier is fit to operate a commercial motor vehicle and integrate that method into the CSA program.

For further information, please contact Assistant Chief Counsel Bruce Lundegren at [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov) or (202) 205-6144.

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## Message from the Chief Counsel

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### Advocacy Introduces Small Business Input into the Federal Rulemaking Process

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

Although our economy has yet to recover to pre-recession levels, a recent Wells Fargo/Gallup survey shows that small business owners' confidence continues to rise. The resilience of entrepreneurs and small business owners has made our country great. We know entrepreneurs seek to do the unprecedented even when the rules that govern their industry are not clear. I have witnessed this first hand. Small businesses, however, still need support; one way that the Office of Advocacy contributes to this is by being the champion of the Regulatory Flexibility Act (RFA). The RFA enables small businesses to participate in the regulatory process when important rules governing their activities are being considered by federal agencies.

It has been a little more than a year since President Obama reinforced the need for regulatory flexibility with Executive Order 13563. In the last year, Advocacy has had a productive year working with federal agencies on behalf of small businesses. How has Advocacy done this? The process is quite simple when followed. Advocacy's Office of Interagency Affairs' work with federal agencies includes:

- Training rule writers in the requirements of the RFA;
- Working closely with agencies in confidential pre-proposal discussions;
- Conducting outreach to small entities and trade associations through electronic notification, roundtables, and formal panels;
- Providing written comments to the agencies; and
- Reporting annually on agency compliance.

This working relationship has been quite effective. Congress initiated this process when it passed the Regulatory Flexibility Act in 1980. The law requires agencies to consider the impact of new rules on small entities using a formal process of information gathering and analysis. It assigned the Office of Advocacy with responsibility for monitoring federal agencies' observance of the law, and it requires Advocacy to report on this once a year.

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**“Advocacy helped saved small businesses \$11.7 billion in forgone regulatory costs in fiscal year 2011. These are real dollars that can be reinvested back into their businesses.”**

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Our latest RFA report shows that the law continues to have a significant effect. In fiscal year 2011, Advocacy helped saved small businesses \$11.7 billion in forgone regulatory costs. These are real dollars that can be reinvested back into their businesses. This year's *Annual Report on the Regulatory Flexibility Act, FY 2011* also shows these changes resulting in savings of \$10.7 billion in annually recurring costs.

In 2002, Executive Order 13272 included a provision that federal agencies consider and respond to comments submitted by the chief counsel during the rulemaking process. In FY 2011, Advocacy filed more than 50 comment letters. In these letters, two deficiencies stood

out: one was the improper certification that a proposed rule would have no significant impact on small entities (cited 15 times). Second was the absence of a thorough initial regulatory flexibility analysis, or IRFA (cited 18 times).

This year's RFA report goes one step further and analyzes the shortcomings in certifications and IRFAs. One of the major areas in need of improvement is the analysis of small entity impacts. In the positive column, however, agencies seem to be doing a good job of small entity outreach. The report's analysis maps out the areas in greatest need of improvement and provides our office and federal agencies with a focus for training in FY 2012.

There is real reason for small business owners to be optimistic. By reducing uncertainty in the regulatory process, we will improve the environment in which entrepreneurs can create business that will endure and grow.

#### To Learn More

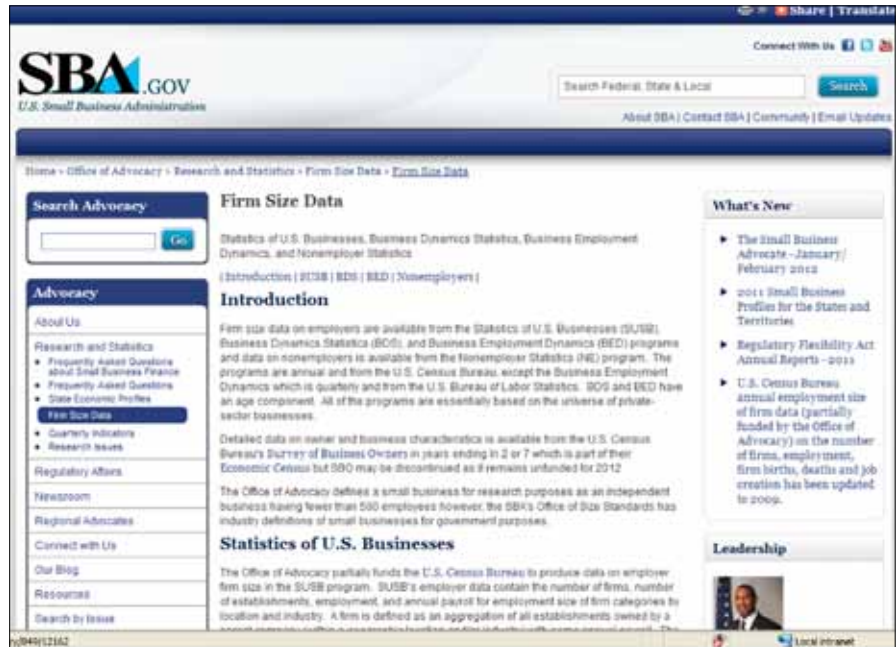
For more on the recent Wells Fargo/Gallup Small Business Index, visit [www.gallup.com/poll/152864/small-businesses-plan-increase-capital-spending.aspx](http://www.gallup.com/poll/152864/small-businesses-plan-increase-capital-spending.aspx).

## Research Notes

### Latest Firm Size Data Posted on Advocacy Website

The Office of Advocacy's Firm Size Data webpage was updated in February. It contains dozens of files and links breaking out small firm data in many ways.

The U.S. Census Bureau's annual employment-size-of-firm data (partially funded by Advocacy) on the number of firms, employment, firm births, deaths, and job creation has been updated to 2009. As with the economy in general, small businesses struggled from 2008 to 2009. The 20-plus years' worth of data presented here provide an opportunity to evaluate how small businesses have weathered business cycles. Visit [www.sba.gov/advocacy/849/12162](http://www.sba.gov/advocacy/849/12162) to explore the wealth of small firm information.



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