

Government Regulations Small Business Can Help Curb Burdensome Actions

By Frank Swain

NECES, a small consulting firm in Jasper, Indiana, specializes in vehicle fleet services, including fuel tax and sales tax issues, as well as vehicle licensing and titling. It helps clients navigate the tricky and overlapping roadmap of federal, multi-state and sometimes local fuel and highway tax regulations.

In June 2002 an NECS analyst saw a note in an industry report about a proposed Internal Revenue Service (IRS) change in fuel tax rules. That note, as it turned out, related to a proposed reversal by IRS of a 25-year policy on certain fuel tax issues, a change that would significantly disadvantage many small and large companies operating mobile machinery.

NECS was the canary in the mineshaft, and immediately complained to congressional small business committees and the U.S. Small Business Administration (SBA) Office of Advocacy. The advocacy office convened a meeting of potentially affected trade associations in August 2002 to assess the significance of the IRS proposal. It was clear the IRS had not done any public analysis of the need for this change or the impact the change would have on small business. The IRS blandly mentioned the impact would not be over \$100 million annually, but later information produced by the IRS contradicted that claim.

Part of the process

The rest of the mobile machinery tax story is still being written, now with affected companies playing a major role. Prodded by the SBA, several industry groups came together to form a coalition to fight this IRS rule change. The IRS has since announced it would wait for Congress to act. Congress is now debating potential refinements in the machinery tax law. The coalition also filed a friend of the court brief in a key federal case interpreting the law.

But it's always difficult for business to play catch-up to an agency that's off and running on a regulatory mission. And many of the key issues are not necessarily big, well-publicized battles, such as OSHA's longstanding interest in workforce ergonomics.

Fortunately, several years of strengthening the small business role in the regulatory process may be beginning to show results. The regulatory process is moving toward greater "transparency," a 50-cent word meaning "no surprises." And no surprises means that business gets meaningful participation in the process before final decisions are made. Federal rules cost small (under 20 employees) firms nearly \$7,000 per employee per year, according to an SBA advocacy study, and business needs a place at the table when these decisions are made.

Tools of the trade

Here are a few items that businesses, chambers and associations should know about:

- Semiannual regulatory agendas. Every agency must publish

twice per year a complete list of the regulations they're working on. With rare exception, most major regulatory projects are on that list months before the decision is made. Importantly, President Bush has ordered all agencies to specifically notify SBA very early in the process of making or changing rules that will significantly affect small business.

- The SBA, which to many is known primarily for its loan and counseling programs, is a serious player in regulations. I'm biased, as I led those SBA regulatory efforts in the Reagan administration, but the SBA Office of Advocacy is more targeted and effective now than ever. It is training federal agencies on writing better rules for small business. And it is willing to take an active role in specific rulemaking issues, forcing mission-driven agencies such as IRS, EPA and Labor to let small business in on the process.
- The White House Office of Management and Budget is a powerful player on cost of regulation issues. They raise the issue: Are we as a nation incurring these high regulatory costs to solve our most dangerous problems, or are we swatting gnats with sledgehammers? OMB forces agencies to answer hard questions before a rule is approved.
- Congress is still focused on regulatory reform. The House passed HR 2728 this year, which would make the Paperwork Reduction Act much more effective by increasing coverage of the IRS and strengthening Congress' regulatory investigation powers. The House Small Business Committee is also pushing a bill to strengthen the Regulatory Flexibility Act. And Congress can also respond to widespread business pressure on a specific regulation, as the House did in July in directing the Federal Communications Commission to change the onerous "do not fax rules."

More than two decades of fighting regulatory battles confirms for me the truth that the squeaky wheel gets the grease. And the squeaking is most effective when it comes directly from home or Main Street, in terms of cost incurred and jobs lost because of unnecessary regulation. We are too complicated a society to do away with regulation, but we can sure do a better job with what has to be done, especially if Main Street makes the squeaking heard.



Frank Swain

INFORMATION LINK

Author: Frank Swain is a partner with Baker & Daniels law firm in its Washington, D.C. office. He is the former Chief Counsel for Advocacy at the U.S. Small Business Administration. Swain can be contacted at (202) 312-7416 or **e-mail:** frank.swain@bakerd.com