Criteria Used to Define a Small Business in Determining Thresholds for the Application of Federal Statutes

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Abstract

This paper reviews federal workplace, environmental, economic regulations. It describes the purpose of and requirements associated with the regulations, any penalties associated with regulatory violations and how requirements or penalties differ for small v. large firms. The paper also describes programs designed to support small businesses and the firm characteristics that determine eligibility for such programs. This review reveals that in the regulatory sphere, there is no single definition of small business that applies across policy areas. Businesses that might be considered “small” for the purposes of one regulation may be considered “large” for the purposes of another.
1 Introduction

As the economic power of private sector business has grown over the past century, so too has the number of laws regulating business activity. Government regulation of private business tends to serve two overriding public objectives: (1) to promote market competition and control the market power of large firms over customers and smaller firms, and (2) to mitigate any adverse effects of business activity on individuals and other organizations. The first objective is addressed primarily through federal and state antitrust laws (and, outside the regulatory environment, through policies designed to support small business). The second objective is tackled through an expansive array of environmental laws, securities laws, employment laws and health and safety regulations. It is widely acknowledged that business regulations impose costs as well as benefits, and any costs typically fall most heavily on the businesses being regulated. The direct costs of regulatory compliance include capital costs associated with compliance, the costs associated with gathering information about what compliance entails, and the costs associated with reporting and recordkeeping. There is also a fair bit of empirical evidence that at least some regulations pose a disproportionate cost burden on small businesses. Research also suggest that this disproportionate burden is due primarily to costs of compliance that don’t vary by firm size and that are incurred on an on-going (rather than one-time) basis. (Bradford, 2004). Because of this, regulatory activity designed to mitigate the adverse effects of business activity can unintentionally stymie market competition. In the course of devising regulations, therefore, policymakers strive to weigh the costs of regulations against their benefits.

When establishing environmental, employment and other regulations, policymakers often place special consideration on the impact that such policies will have on smaller firms. At the federal level, two main approaches are used to grant special consideration to small firms in the regulatory process. The first is the establishment of thresholds that exempt small businesses from regulations. The second is the development of special programs that support small businesses in their efforts to comply with regulations.

There is no one definition of size used to determine when an organization is a small business, but separating the applicable federal statutes into broad categories does provide some general guidance as how the threshold for defining a “small business” is applied. We have divided the relevant federal statutes into four broad categories:

1. Workplace regulations
2. Environmental regulations
3. Economic regulations
4. Programs providing support to small businesses
The federal statutes within each of these categories use a variety of criteria to define a small business for the purpose of determining whether or not the statute is applicable. That said, it is possible to discern some commonality in the approaches to defining a small business used within each of these categories. We briefly describe some of these commonalities.

What follows is a list of federal statutes that regulate firm behavior by category, and a summary of statutes specifically designed to support small business operations. We use the four categories described above to structure the document. Workplace regulations are regulations that govern employer behavior vis-a-vis current or potential employees. They cover a wide range of issues including anti-discrimination, wages, working conditions, workplace health and safety, and health insurance. Small businesses are exempt from most workplace regulations. The threshold for exemption in this area is typically defined in terms of the number of employees, and the specific threshold varies widely from 11 to 100. In general, workplace regulations that have been enacted more recently have higher thresholds. Environmental regulations govern firm behavior related to hazardous or toxic substances that may be generated in the course of business operations. Firms are not exempt from such regulations based on firm size. Economic regulations govern the relationship between firms and their customers, shareholders or other stakeholders. These thresholds are typically defined by the scale of the economic activity being regulated. The final category addresses programs designed to benefit small businesses or to help them to comply with regulations. All programs in this category have thresholds that determine eligibility. The definition of these thresholds is industry and context specific. Each entry includes a brief summary of regulatory requirements and potential penalties, along with information on the threshold for inclusion or coverage under the statute. These descriptions are not intended to be comprehensive or exhaustive in either case, as many statutes carry several pages of specific requirements and penalties. It is also worth noting that all of these regulations are federal, and individual states may have stricter regulations in some cases, to which small firms could still be subject.
2 Exemption from Federal Workplace Regulations

Many federal workplace regulations provide an exemption from the application of these regulations for small businesses. For workplace regulations, threshold for exemption is typically defined by the number of employees within a firm. The specific number of employees that determine whether or not a business is a small business varies by statute. For example, certain provisions, such as the record-keeping requirements of the Occupational Safety and Health Act (OSHA), do not apply to a firm with fewer than 11 employees. At the other extreme, firms with fewer than one hundred employees are exempt from the Worker Adjustment and Retraining Notification Act (WARN). Generally, more recent workplace regulations have higher thresholds. In at least one case, Fair Labor Standards Act, a small business is defined for the purpose of exemption by the volume of gross sales per year ($500,000).

2.1 Family and Medical Leave Act

Citation: 29 U.S.C. § 2601 et seq.

Year of Original Passage: 1993

Intent of Statute

To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition

Requirements

Employers covered by this regulation must:

1. allow eligible employees to take up to a total of 12 work weeks of leave during any 12-month period for: medical reasons, to bond with a new child, or to care for a seriously ill child, spouse, or parent

2. upon return from such leave, restore employee to their position or an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment

3. maintain records that document compliance

An eligible employee is defined as an employee who has been employed - (i) for at least 12 months by the employer, and (ii) for at least 1,250 hours of service during the previous 12-month period.
Penalties

Any employer who violates the rights guaranteed to employees by this statute is liable to any eligible affected employee:

(A) for damages equal to

1. the amount of any wages, salary, employment benefits, or other denied compensation (as a result of the violation); or

2. (in the case where leave is not granted, and so wages, benefits etc. are not lost), any actual monetary losses sustained by employee, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the affected employee

3. the interest on amount determined in (1) above

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

Both affected employees and the Secretary of Labor may bring action in any court to recover the damages described above.

Thresholds that Provide Exemptions

Firms employing fewer than 50 employees within a 75 mile radius are exempt.

(Citation: 29 U.S.C. § 2611 (2) (B) (ii))

2.2 Americans with Disabilities Act (ADA)

Citation: 42 U.S.C. § 12101 et seq

Year of Original Passage: 1990

Intent of Statute

To provide enforceable standards addressing discrimination against individuals with disabilities.

The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.
Requirements

Employers may not discriminate against potential employees with disabilities (as defined above), and are required to make reasonable accommodations to existing employees with disabilities.

The term “reasonable accommodation” may include—
(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Penalties

A charge may be filed by an aggrieved individual or by a representative of the Equal Employment Opportunity Commission (EEOC). After conducting an investigation, if the EEOC findings support the claim, restitution may be sought in court. The court may require the employer to alter existing employment practices, to reinstate or hire an employee, with or without back pay (up to two years, payable by the employer responsible), or undertake other equitable relief.

Thresholds that Provide Exemptions

Firms employing fewer than 15 employees for more than thirty-two weeks in each of the prior two calendar years, are owned by Indian Tribes, or are tax exempt private membership clubs are exempt.

(Citation: 42 U.S.C. § 12111 (5)(A))

Legislative Note

The original threshold defining a small business, as specified in the statute, was 25 employees. This threshold was legislated to be in effect for the first two years of this statute, after which time the current threshold of 15 employees became the standard (in 1994).
2.3 Worker Adjustment and Retraining Notification Act (WARN)

Citation: 29 U.S.C. § 2101 et seq.

Year of Original Passage: 1988

Intent of Statute

The purpose of the WARN Act is to ensure that workers and their communities receive advance notice of their loss of employment in the context of plant closings and/or mass layoffs so that they may begin search for other employment or obtain training for another occupation.

The term “mass layoff” is defined as a reduction in force which
(a) is not the result of a plant closing
(b) results in employment loss at the single site of employment during any 30 day period for
   (i) at least 33 percent of employees (excluding part time employees)
   (ii) at least 50 employees (excluding part time employees)
   (iii) at least 500 employees (excluding part time employees)

Requirements

At least 60 days before a plant closing or mass layoff, an employer must serve written notice to

(1) each representative of the affected employees as of the time of the notice or, if there is no such representative at that time, to each affected employee; and

(2) the State or entity designated by the State to carry out rapid response activities under section 2864 (a)(2)(A) of this title, and the chief elected official of the unit of local government within which such closing or layoff is to occur.

Penalties

Any employer who orders a plant closing or mass layoff without providing the advance notice described above, shall be liable to each aggrieved employee who suffers an employment loss as a result of such closing or layoff for—
(A) back pay for each day of violation;
(B) benefits under an employee benefit plan (either welfare or pension) including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred.

Such liability shall be calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer.
Thresholds that Provide Exemptions

A firm with fewer than 100 full time employees, or a firm with 100 or more employees that work an aggregate of less than 4,000 hours per week is exempt. (Citation: 29 U.S.C. § 2101 (a))

2.4 Consolidated Omnibus Budget Reconciliation Act (COBRA)

Citation: 29 U.S.C. § 1161 et seq.

Year of Original Passage: 1986

Intent of Statute

To ensure individuals have continued access to their current health insurance in spite of an event that would otherwise lead to a termination of coverage.

Qualifying events include:
(1) The death of the covered employee.
(2) The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.
(3) The divorce or legal separation of the covered employee from the employee’s spouse.
(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].
(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.
(6) A proceeding in a case under title 11, commencing on or after July 1, 1986 with respect to the employer from whose employment the covered employee retired at any time.

Requirements

(1) The group health plan shall provide written notice to each covered employee and spouse of the employee of the rights provided by this Act
(2) The employer shall maintain records with respect to notifications, payments made by and correspondence with beneficiaries, and COBRA administration procedures
(3) The employer must notify the plan administrator of a qualifying event within 30 days
(4) The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of:
(i) 18 months for termination or reduction in hours worked
(ii) 36 months for multiple qualifying events, and qualifying events other than employee termination, hours reduction, and employer bankruptcy);
(iii) the date when the employer ceases to offer the employee benefit plan; or
(iv) the date when the beneficiary fails to make timely payment of any necessary coverage premium.

Penalties

The Technical and Miscellaneous Revenue Act of 1988, commonly known as TAMRA, authorizes the IRS to assess excise taxes for failure to follow COBRA rules. Internal Revenue Code section 4980B sets out the IRS’ COBRA provisions and incorporates the excise tax penalties as they apply to violations after 1988.

In general the amount of the tax imposed on any failure with respect to a qualified beneficiary shall be $100 for each day the employer is in noncompliance (with a $200 per day limit for families with more than one qualified beneficiary).

Penalties for an employer may be as high as $2500 for each beneficiary affected by the failure to comply, or the total amount based on the length of the noncompliance period, whichever is less. If the IRS finds a violation that it considers to be more than just minimal, employers may be subject to a penalty of as much as $15,000. In the case of a plan other than a multi-employer plan, the employer and each person responsible for administering benefits under the plan who caused the violation is liable for the tax.

The employer can also be held liable for legal costs, court costs, and even medical claims filed by a qualified beneficiary under this Act.

Thresholds that Provide Exemptions

The continuation requirement of this statute shall not apply to any group health plan for any calendar year offered by an employer that normally employed fewer than 20 employees on a typical business day during 50 percent of the preceding calendar year. Part-time employees are counted as fractions of full-time employees; determined by number of hours worked. (Citation: 29 U.S.C. § 1161 (b))

Note: this statute does not apply to a firm that chooses not to offer a group health plan, regardless of firm size.

2.5 Employee Retirement Income Security Program

Citation: 29 U.S.C. § 1001 et seq.
Intent of Statute

To protect the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

Requirements

This statute requires the disclosure and reporting of financial and other information. It also establishes standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans by requiring them to meet minimum standards of funding, and requiring plan termination insurance. A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024 (b) of this title. The summary plan description shall include the information described in subsection (b) of this section (see citation 29 U.S.C. § 1022 (b)), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. An annual report of such a plan must be filed with the Secretary of Labor, and shall be made available and furnished to participants.

Penalties

Any individual who willfully violates any provision of part 1 of this subtitle (section addressing disclosure and reporting requirements, see citation 29 U.S.C. § 1021 et seq. for a full description), or any regulation or order issued under any such provision, shall upon conviction be fined not more than $100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a corporation or small business enterprise (not an individual), the fine imposed shall not exceed $500,000.

Thresholds that Provide Exemptions

Small firms are not exempt from the regulations of this statute because of their size. This statute is not applicable if firm does not have an employee benefit plan in place, or if such plan is maintained solely for the purpose of complying with applicable workmens compensation laws or unemployment compensation or disability insurance laws, or if such plan is an excess
benefit plan (as defined in section 1002 (36) of this title) and is unfunded. (Citation: 29 U.S.C. § 1002 (5))

2.6 Occupational Safety and Health (OSHA)

Citation: 29 U.S.C. § 651 et seq.

Year of Original Passage: 1970

Intent of Statute

To assure so far as possible every working man and woman safe and healthful working conditions, encourage employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions.

Requirements

Each employer (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; (2) shall comply with occupational safety and health standards promulgated under this chapter. Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

Each employer must maintain appropriate records (as determined by the Secretary of Labor or the Secretary of Health and Human Services) regarding:

(i) the causes and prevention of occupational accidents and illnesses,
(ii) work-related deaths,
(iii) employee exposure to volatile chemicals and toxic substances
(iv) injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

Furthermore, employers are required to conduct inspections and post information for employees regarding safety and health standards.

For a complete description of regulations and standards (which is beyond the scope of this document) refer to 29 U.S.C. § 651 et seq.

(OSHA also supports small businesses by providing resources to aid in compliance - such as
appropriate regulation descriptions, a free inspection walk-through, and reduced fines based on number of employees. See the OSHA Small Business handbook for more detail.)

Penalties

Any employer who willfully or repeatedly violates the requirements or the standards set forth in this Act (in sections 654 and 655, respectively) or regulations set forth by OSHA, may be assessed a civil penalty of not more than $70,000 for each violation, but not less than $5,000 for each willful violation. A first time violation, that is determined to be a serious violation, will result in a civil penalty of up to $7,000 for each such violation.

Failure to correct a violation for which an employer has been cited (within the predetermined time frame) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.

Any employer who willfully violates a rule or standard of this Act, and that violation causes the death of an employee shall (upon conviction) be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

Any employer who violates any of the posting requirements described in this statute shall be assessed a civil penalty of up to $7,000 for each violation.

Note: for a complete list of civil and criminal penalties, see section 666

Thresholds that Provide Exemptions

Employers who employ fewer than 11 workers are exempt from most OSHA recordkeeping requirements for recording and reporting occupational injuries and illnesses. Citation: 29 U.S.C. § 657(d)
OSHA is also prohibited from conducting scheduled inspections of employers with 10 or fewer employees in low hazard industries by an annual rider on OSHA’s appropriations bills which has been renewed annually for many years.

2.7 Age Discrimination in Employment Act

Citation: 29 U.S.C. § 621 et seq.

Year of Original Passage: 1967
Intent of Statute

Promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

Note: the prohibitions in this chapter are limited to individuals of at least 40 years of age.

Requirements

It shall be unlawful for employers to refuse to hire, to discharge, or otherwise discriminate against an individual with respect to terms and conditions of his employment because of such individual’s age.

The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

In particular, employers are forbidden from altering or segregating employee benefit programs based on age - and are required to maintain records demonstrating the contrary. Many of the requirements are specific to benefit plan type (for a full description of compliance requirements, see 29 U.S.C. § 623).

Penalties

Action may be brought against an employer by either an individual (who believes that he is the victim of age discrimination by an employer) or a representative of the Equal Employment Opportunity Commission.

The court may rule on this action, either dismissing the claim or requiring the employer to:

(i) hire, reinstate, or promote the employee against whom discrimination has occurred
(ii) compensate the employee in the amounts of unpaid minimum wages or unpaid overtime compensation (relevant to the claim)

Any employer who fails to cooperate in the investigation of a claim (of a violation of guaranteed rights under this statute) may be punished by fine of up to $500 or, if the interfering party has been convicted of previous interference, up to one year of imprisonment.

Thresholds that Provide Exemptions

A firm that employs fewer than 20 employees each working day for 32 weeks in the current or preceding year is exempt. (Citation: 29 U.S.C. § 630 (b))
Legislative Note

The original draft of this act allowed for a threshold of 50 employees before the date of June 30, 1968.

This statute does not prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.
2.8 Civil Rights Act of 1964

Citation: 42 U.S.C. § 2000e et seq.

Year of Original Passage: 1964

Intent of Statute

Enacted to assure equality of employment opportunities by eliminating those practices and other devices that discriminate on basis of race, color, religion, sex, or national origin.

Requirements

The requirements of this statute really just amount to following the non-discriminatory labor practices described in this section. While it is beyond the scope of this document to list them all, an adequate summary applied with common sense is useful. In particular, it shall be an unlawful employment practice for an employer

(1) to fail to hire, to discharge, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individuals race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individuals race, color, religion, sex, or national origin.

(For a complete description of unlawful discriminatory employment practices, see 42 U.S.C. § 2000e-2.)

Furthermore, every employer, employment agency, and labor organization must: (i) make and keep records for the purpose of defending the firm from accusations of unlawful labor practices, (ii) preserve these records and make such reports as deemed necessary by the Equal Employment Opportunity Commission.

Penalties

The Equal Employment Opportunity Commission is responsible for investigating claims of unlawful employment practices. The Commission shall either dismiss the claim or try to eliminate any such alleged unlawful employment practice. If the court finds that the respondent has intentionally engaged in an unlawful employment practice, the court may:

(i) enjoin the respondent from engaging in such unlawful employment practice
(ii) order the reinstatement or hiring of employees, with or without back pay (up to two years, payable by the employer, employment agency, or labor organization), or any other equitable relief as the court deems appropriate.

Note: Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

Thresholds that Provide Exemptions

A firm that employs fewer than 15 employees for more than thirty-two weeks in each of the prior two calendar years are exempt from recordkeeping requirements. 42 U.S.C. § 2000e (b)

2.9 Fair Labor Standards Act

Citation: 29 U.S.C. § 202 et seq.

Year of Original Passage: 1938

Intent of Statute

To establish a federal minimum wage and overtime requirements, and more generally promote minimum standard of living necessary for health, efficiency, and general well-being of workers.

Requirements

The Fair Labor Standards Act requires employers to pay employees a wage not less than $4.25 an hour during the period ending on September 30, 1996, not less than $4.75 an hour during the year beginning on October 1, 1996, and not less than $5.15 an hour beginning September 1, 1997

The Act also requires employers to pay employees at a rate not less than one and one-half times the regular rate for hours worked in excess of forty hours in a week.

This statute also sets requirements for the use of child labor. A detailed description is given by 29 U.S.C. § 212.

Penalties

(1) Any individual, corporation, or partnership who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more
than $10,000, or (if convicted of previous violations) to imprisonment for not more than six months, or both.

(2) Any employer who violates the **minimum wage** or **maximum hours** provisions of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

(3) Any employer who discharges an employee for filing unfair labor charges shall be liable for such legal or equitable relief as may be appropriate, including employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages.

(4) Any employer who violates the provisions of this title relating to child labor or any regulation issued under section 212 or section 213 (c)(5) of this title, shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates the minimum wage or maximum hours provisions of this title shall be subject to a civil penalty of not to exceed $1,000 for each such violation.

**Thresholds that Provide Exemptions**

A firm with gross sales under $500,000 is exempt from the regulations of this act (Citation: 29 U.S.C. § 203 (s)(1)(A)).

Minimum wage and maximum hour requirements do not apply to the following types of employees:

1. Any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools); or
2. Any employee employed by an establishment which is an amusement or recreational establishment (excluding skiing companies), organized camp, or religious or non-profit educational conference center (under certain conditions; or
3. Any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products; or
4. Any employee employed in agriculture (for the details of this exemption, see 29 U.S.C. § 213 (a)(6)); or
5. Any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which
circulation is within the county where published or counties contiguous thereto.

Additional categories of employees are exempt from the maximum hour requirements. For a comprehensive list of these exemptions, see 29 U.S.C. § 213 (b).

Legislative Note

The original law, declared that an employee employed by an enterprise subject to this chapter by the Fair Labor Standards Amendments of 1966 (A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966, (B) for a workweek longer than forty-two hours during the second year from such date, or (C) for a workweek longer than forty hours after the expiration of the second year from such date, must receive compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.
2.10 National Labor Relations Act (NLRA)

Citation: 29 U.S.C. § 151 et seq

Year of Original Passage: 1935

Intent of Statute

Provides employees with the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as well as the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in 29 U.S.C. § 158 (a)(3).

Requirements

The Act makes it illegal for employers to engage in unfair labor practices. Such practices are those that:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;
(2) dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it;
(3) to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;
(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter

Penalties

The National Labor Relations Board (NLRB), or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person (corporation, association, business concern, or organized group of individuals) a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency. (29 U.S.C. § 160 details the powers of the Board, and the conditional role of the courts in resolving labor issues covered under this statute.)

When the NLRB finds that an employer has engaged in unfair labor practices (in violation of this Act), it may order the employer to cease and desist from all unfair labor practices and reinstate employees (as may be necessary) with or without back pay.
Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

Thresholds that Provide Exemptions

Any wholly owned government corporation, or any state or political subdivision thereof are exempt. Also, any person or enterprise subject to the Railway Labor Act is exempt from the regulations of this act. (Citation: 29 U.S.C. § 152 (2))
3 Environmental Regulations

The majority of federal environmental regulations do not provide an exemption from these regulations for a business because of its small size. Even when there is an explicit size exemption, such as in the Small Business Liability Relief and Brownfields Revitalization Act of 2001, the exemption is determined by the volume of material released by a firm rather than the size of the firm itself.

The federal government has recognized that compliance with environmental regulations can be particularly costly for small businesses - especially those engaged in manufacturing. Compliance with many regulations carries with it disproportionately large fixed costs, which can be a heavy burden for small firms. Rather than provide exemption from environmental regulation compliance for small firms, the Environmental Protection Agency (the organization responsible for enforcing these regulations) has created a wealth of resources to aid small business operations with the compliance process.

In addition to this report, more information about environmental compliance for small businesses can be found in the environmental assistance resource guide.

Note: as used in these environmental statutes, the term “person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

3.1 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Citation: 42 U.S.C. § 9601 et seq.

Year of Original Passage: 1980

Intent of Statute

CERCLA was enacted to promote the public health and address other threats posed by sites where hazardous substances have been, or may be, released into the environment.

Requirements

The Administrator of the Environmental Protection Agency issues rules and requires the maintenance of records specifying the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited in a facility.
Beginning with December 11, 1980, for fifty years thereafter or for fifty years after the date of establishment of a record (whichever is later), it shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records required by this Act.

**Penalties**

(1) The owner and operator of a vessel or a facility where hazardous substances were produced or disposed of

(2) Any person who arranged for disposal or treatment, of hazardous substances at any facility or incineration vessel owned or operated by another party, and

(3) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance,

shall be liable for - all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe, including - damages for injury to, destruction of, or loss of natural resources (including the reasonable costs of assessing the damage caused by such a release) and the costs of any health assessment or health effects study carried out under section 9604 (i).

The liability under this section of a responsible person for each incident involving release of a hazardous substance shall not exceed the total of all costs of response plus $50,000,000 for any damages under this subchapter.

Lower limits apply to vessels other than incineration vessels (motor vehicles, aircraft, hazardous liquid pipeline facility) carrying hazardous substances.

### 3.1.1 Small Business Liability Relief and Brownfields Revitalization Act

In 2001, Congress amended section 107 of CERCLA with the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. § 9607 et seq.) to provide relief for small business concerns.

There is a conditional exemption (from CERCLA) for waste generators or transporters who disposed of only very small volumes of materials containing hazardous substances. In particular, firms who disposed of less than 110 gallons of liquid, less than 220 lbs. of solid waste, or had all or part of disposal treatment (or transport) occur before April 1, 2001 are conditionally exempt.

Such generators receive the designation “conditionally exempt small quantity generators” (CESQG), and are subject to the limited requirements defined for this class. (Citation: 42
The statute further declares that a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under 42 U.S.C. § 9607 (a)(3) for municipal solid waste disposed of at a facility if the person can demonstrate that the person is a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that it is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility.

Note that municipal hazardous waste is intended to mean waste that contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

**Legislative Note**

The Act combined two earlier bills the Small Business Liability Protection Act, and the Brownfields Revitalization and Environmental Restoration Act. These two bills reflect the dual purpose of the Act - of providing relief from Superfund liability for small businesses and certain property owners, and to promote the revitalization of “brownfields,” properties where redevelopment is hindered by the presence or potential presence of contamination. The Act provides clarification to the pre-existing “innocent landowner” defense under CERCLA and the new “bona fide prospective purchaser” defense to CERCLA liability the Act provides for.
3.2 Resource Conservation and Recovery Act (Solid Waste Disposal)

Citation: 42 U.S.C. § 6901 et seq.

Year of Original Passage: 1965

Intent of Statute

Through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes, act to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

Requirements

The Act requires firms to follow standards and requirements established by the EPA regarding -

(1) recordkeeping practices that accurately identify the quantities, constituents, and the disposition of hazardous wastes;
(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste;
(3) use of appropriate containers for such hazardous waste;
(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;
(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal, and arrives at treatment, storage, or disposal facilities;
(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out
   (A) the quantities and nature of hazardous waste generated during the year;
   (B) the disposition of all hazardous waste reported above;
   (C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
   (D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

Note: For a complete description of hazardous waste management, see subchapter 3 of chapter 82 of title 42.
Penalties

Whenever, on the basis of any information, the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

Any order issued pursuant to 42 U.S.C. 6928 (summarized here) may include a suspension or revocation of any permit issued by the Administrator or a State. The order shall state, with reasonable specificity, the nature of the violation. Any penalty assessed in the order shall not exceed $25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

Furthermore, any person who: knowingly transports hazardous waste without a permit; knowingly generates, treats, stores, or disposes of hazardous waste in violation of this chapter (including inappropriate documentation thereof); or knowingly falsifies records,

shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a more egregious violation), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

Thresholds that Provide Exemptions

none

Legislative Note

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq., 33 U.S.C. 1401 et seq., 2801 et seq.], or the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.


3.3 Clean Air Act

Citation: 42 U.S.C. § 7401 et seq.

Year of Original Passage: 1955

Intent of Statute

To protect and enhance the quality of the nation’s air.

Requirements

The Administrator of EPA may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have necessary information regarding emission standards or violations thereof to

(A) establish and maintain such records, reporting these to EPA;
(B) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;
(C) sample such emissions;
(D) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
(E) submit compliance certifications; and
(F) provide such other information as the Administrator may reasonably require.

Note: for a detailed description of Clean Air Act requirements, refer to the subchapter on Air Quality and Emissions Limitations in the U.S. Code.

Penalties

Any person who knowingly

(A) makes any false statement or representation (either explicitly or by omission), or alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required to be either filed or maintained;
(B) fails to notify or report as required under this chapter; or
(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed;

shall, upon conviction, be punished by a fine pursuant to title 18 (describing legal consequences of specific crimes) or by imprisonment for not more than 2 years, or both.

If a conviction of any person for violations described above is a second such conviction, the maximum punishment shall be doubled with respect to both the fine and imprisonment.
Thresholds that Provide Exemptions

While there is no explicit exemption based on firm size, there does exist the Clean Air Act - Small Business Assistance Program (see page 39 of this document).
4 Exemptions from Economic Regulation

The federal regulations categorized here as economic regulations tend to utilize size thresholds based on the scale of the specific economic activity being regulated. Thus, the labeling provisions of the Food, Drug and Cosmetics Act are only applicable to companies with an aggregate of consumer sales in excess of $500,000 or consumer food sales in excess of $50,000. Exemptions from the federal regulation of securities offerings are offered primarily based on the size of the firm making the offer, the size of the offering, the number and sophistication of potential investors, and whether or not investors are actively solicited.

4.1 Federal Food, Drug and Cosmetic Act

Citation: 21 U.S.C. § 301 et seq.

Year of Original Passage: 1997

Intent of Statute

To provide customers with nutritional information about food offered for sale, in order to assist consumers in maintaining healthy dietary practices. This statute also provides guidelines for labeling of drugs and cosmetic products in the interest of consumer safety.

Requirements

A more complete description of labeling requirements appears in 21 U.S.C. § 343. The Secretary of Health and Human Services sets regulations regarding packaging, labeling, nutritional information, quality, and identity of food intended for public consumption. Many of these regulations either vary by type of food (perishable, non-perishable, produce) or pertain to specific foods and often control for things like additives, color enhancement, and chemical residues that may be present. (For a comprehensive description of Food regulations, see 341 et seq.).

This Act describes standards under which a drug will be considered adulterated (21 U.S.C. § 351), misbranded (21 U.S.C. 352), or conditionally exempt from labeling requirements and sales and distribution restrictions (21 U.S.C. § 353). It also addresses circumstances under which it is appropriate for a pharmacist to engage in compounding of prescription drugs, setting specific guidelines regarding identification requirements of patients, necessary qualifications to compound a drug, and regulating the quality of substances that are used to compound a drug (21 U.S.C. § 353a).

New drugs are regulated by this Act in the following ways:

(1) describing the specific contents and filing procedures of new drug applications
(2) detailing the review and approval process for new drug applications
(3) exemptions requirements relating to drugs for research and investigational use by scientific experts.

There is an extensive list of prohibited acts in the statute (see 21 U.S.C. § 331 et seq.), and a comprehensive description of drug regulations.

**Penalties**

These are merely some of the highlights of the section describing penalties. For a complete treatment, see 21 U.S.C. § 333.

(1) Any person who violates a provision of section 331 (an extensive list of prohibited actions regarding food, drugs, and cosmetics) shall be imprisoned for not more than one year or fined not more than $1,000, or both.

(2) If any person commits a violation (of the provisions in section 331) after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000, or both.

Any person who violates section 331 (t) by importing, distributing, purchasing or trading a prescription drug or drug sample (clearly defined in 21 U.S.C. § 331), shall be imprisoned for not more than 10 years or fined not more than $250,000, or both.

Note: fines for inappropriate distribution of prescription drugs begin at $50,000 for each of the first two violations in a 10 year period, followed by $1,000,000 for each additional violation within that same 10 year period.

Any person that the Secretary finds has interfered or is interfering with the Department of Health and Human Services' discharge of its responsibilities in connection with an abbreviated drug application (through misdirection, bribery, or evidence tampering) shall be liable to the United States for a civil penalty for each such violation in an amount not to exceed $250,000 in the case of an individual and $1,000,000 in the case of any other person.

Any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated within the meaning of section 342 (a)(2)(B) shall be subject to a civil penalty of not more than $50,000 in the case of an individual and $250,000 in the case of any other person for such introduction or delivery, not to exceed $500,000 for all such violations adjudicated in a single proceeding.

**Thresholds that Provide Exemptions**

A firm with total sales to consumers of not more than $500,000 or sales of food to consumers not more than $50,000 is exempt from the list of requirements above unless the label or labeling of food offered by such person provides nutrition information or makes a nutrition claim. (Citation: 21 U.S.C. § 343 (q)(5)(D))
4.2 Federal Corporate Income Tax

Citation: 26 U.S.C. § 1361 et seq.

Year of Original Passage: 1982

Intent of Statute

To ease the tax burden of small business firms. S corporations are domestic corporations that can avoid double taxation by electing to be taxed under Subchapter S of the Internal Revenue Code - effectively declaring themselves to be Small Business Corporations for the tax-year in question. Any corporation that does not qualify as an S corporation is deemed a C corporation.

Tax Provisions for S Corporations

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that
(1) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, shall be separately stated,
(2) the deductions referred to in 26 U.S.C. § 703 (a)(2) shall not be allowed to the corporation,
(3) The organizational expenditures of a corporation may, at the election of the corporation be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business),
(4) If the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years, 26 U.S.C. § 291 shall apply.

Penalties

In the case of Federal Income Tax, appropriate penalties for general tax evasion apply. However, in the context of this document, it could be considered a “violation” if a corporation was forced to change its filing status to a C corporation, or fail to qualify as an S corporation in the first place. In that case, such a corporation would subject to the stricter tax requirements imposed on larger corporations. In particular, such a corporation would be subject to the normal taxes and surtaxes imposed by the code.

Thresholds Defining S Corporation

To meet the definition of an S corporation (small business corporation), a firm must not have more than 75 shareholders, have as a shareholder a person who is not an individual,
have a nonresident alien as a shareholder, have more than one class of stock. Corporation must also meet eligibility criteria as defined in 26 U.S.C. § 1361(b)(2). (Citation: 26 U.S.C. § 1361 (b))

Furthermore, the statute also provides for specific instances in which the definition of small business corporation may be relaxed - in particular with regard to the number of shareholders, and which trusts may be legally be shareholders (without changing the status of the corporation).

**Legislative Note**

Thresholds for subchapter S Corporations are less significant with the growing use of LLC’s, which also allow investors to avoid double taxation. For LLC’s in most states there are not restrictions on ownership: members may include individuals, corporations, other LLCs and foreign entities. There is also typically no maximum number of members in an LLC.

### 4.3 Securities Ongoing Disclosure

**Citation:** 15 U.S.C. § 78l

**Year of Original Passage:** 1934

**Intent of Statute**

Protect investors by requiring that publicly held firms disclose material information about the nature, financial structure, organization (etc) of the business.

**Requirements**

A security may be registered on a national securities exchange by the issuer filing an application with the exchange containing such information, as the Commission may require as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;
(B) the terms, position, rights, and privileges of the different classes of securities outstanding;
(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;
(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 percent of any class of any equity security of the issuer (other than an exempted
security), nature of holder’s relationship with the issuer and any person directly or indirectly controlling or controlled by the issuer;

(E) bonus and profit-sharing arrangements;

(F) management and service contracts;

(G) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing;

(H) balance sheets for not more than the three preceding fiscal years, certified if required by the Commission by a registered public accounting firm;

(I) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm; and

(J) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

The Commission may further require copies of articles of incorporation, bylaws, trust indentures, or material contracts.

**Penalties**

Failure to meet the requirements above may cause a security to remain unregistered until such time as all relevant requirements are met to the satisfaction of SEC.

**Thresholds that Provide Exemptions**

Fewer than 500 stockholders and less than $1 million in assets. (Citation: 15 U.S.C. § 78l (g))
4.4 Securities New Issue Registration

Citation: 15 U.S.C. § 77a et seq.

Year of Original Passage: 1933

Intent of Statute

Protect investors by requiring public firms to disclose material information relevant to the decisions of potential investors.

Requirements

Any security may be registered with the Commission by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer).

At the time of filing a registration statement, the applicant shall pay to the Securities and Exchange Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that for the years 2003 through 2011, the Commission shall by order adjust the rate required for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections that are equal to the target offsetting collection amount for such fiscal year.

The registration statement shall contain the information, and be accompanied by the documents, specified in 15 U.S.C. § 77aa.

Penalties

Any person who violates the provisions of this subchapter, or who willfully, in a filed registration statement, makes any untrue statement of material fact (either directly or by omission) shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

Whenever it appears to the Commission that any person has violated any provision of this subchapter or the rules specified by the Commission, it may bring an action in a United States district court to seek, a civil penalty to be paid by the person who committed such violation.

The possible civil penalties are three tiered. The ranges of the tiers are

(1) Less than or equal to $5,000 for a natural person or $50,000 for any other person
(2) Less than or equal to $50,000 for a natural person or $250,000 for any other person
(3) Less than or equal to $100,000 for a natural person or $500,000 for any other person,
Or the gross amount of pecuniary gain to such defendant as a result of the violation for all
three tiers, as described in 15 U.S.C. § 77t.

Thresholds that Provide Exemptions

1. Regulation A - raise up to $5 million every 12 months, can solicit, but must also file with
   the SEC; 2. Regulation D - Rule 504 - raise up to $1 million, can solicit, but most investors
   cannot resell; 3. Regulation D - Rule 505 - raise up to $5 million, but only accredited
   investors plus 35 non-accredited, and cannot resell easily; 4. Regulation D - Rule 506 - no
   dollar limit, but only accredited investors plus 35 sophisticated investors, cannot solicit or
   resell easily; and 5. sales to accredited investors only of less than $5 million.
   (Citation: 15 U.S.C. § 77c(a))

Legislative Note

Final Registration Rate Adjustment: For fiscal year 2012 and all of the succeeding fiscal
years, the Commission shall by order adjust the rate required for all of such fiscal years to
a rate that, when applied to the baseline estimate of the aggregate maximum offering prices
for fiscal year 2012, is reasonably likely to produce aggregate fee collections in fiscal year
2012 equal to the target offsetting collection amount for fiscal year 2011.
5 Legislation Supportive of Small Businesses

The federal government has funded various programs to support small business operations. The most prominent of these is the Small Business Act of 1958, which created the Small Business Administration. That legislation used a definition of when a firm is a small business that was industry and context specific, and the majority of federal legislation supporting small business activity relies on similar context-specific definitions of a small business.

5.1 Small Business Act

Citation: 15 U.S.C. § 631 et seq.

Year of Original Passage: 1958

Intent of Statute

To aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, and to insure that a fair proportion of the total sales of Government property be made to such enterprises.

Provisions

15 U.S.C. § 633 provides for the creation of the “Small Business Administration”, the purpose of which is to carry out the policies declared in this statute. The Administration also oversees small business loans, provided documentation concerning all previous refused loans from other lenders. This statute also establishes “Small Business Innovation Research Program” or “SBIR”, a program under which a portion of a Federal agency’s research or research and development effort is reserved for award to small business concerns through a uniform process.

A provision in this statute establishes funding for the creation of State level “Small Business Development Centers”. Small business development centers are authorized to form an association to pursue matters of common concern. Furthermore, on an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National and a State basis.

Special contracting considerations are also made for small businesses. In particular priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those
contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.

**Thresholds that Provide Coverage**

A small-business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. The appropriate standard may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors, and the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

According to U.S. Small Business Administration, the most common (current) size standards (by industry) are:
500 employees for most manufacturing and mining industries
100 employees for all wholesale trade industries
$5 million for most retail and service industries
$27.5 million for most general & heavy construction industries
$11.5 million for all special trade contractors
$0.75 million for most agricultural industries

(Citation: 15 U.S.C. § 632 (a))
5.2 Regulatory Flexibility Act (RFA)

Citation: 5 U.S.C. § 601 et seq.

Year of Original Passage: 1980

Intent of Statute

Protect small entities from undue burdens created by imposing federal rules by requiring that for any proposed rule, the relevant agency shall prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.

Provisions

Federal agencies are required to prepare and make publicly available an initial regulatory flexibility analysis, before new rulemaking. This analysis shall describe the impact of the proposed rule on small entities, as well as an estimate of the number of small entities likely to be affected by the proposed rule. Finally, the analysis shall include a description of reporting and recordkeeping requirements.

Each initial regulatory flexibility analysis shall also contain a description of 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. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as

1. the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. the clarification, consolidation, or simplification of compliance and reporting requirements for small entities;
3. the use of performance rather than design standards; and
4. an exemption from coverage of the rule, or any part thereof, for such small entities.

Thresholds that Provide Exemptions

Same as Small Business Act

(Citation: 5 U.S.C. § 601 (3))
5.3 Executive Order 13272

Citation: 5 U.S.C. § 601 Notes

Year of Original Passage: 2002

Intent of Statute

Require agencies to establish policies and procedures to promote compliance with the Regulatory Flexibility Act.

Provisions

The Office of Advocacy for the Small Business Administration shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies. Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Regulatory Flexibility Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Regulatory Flexibility Act.

Thresholds that Provide Coverage

Same as Small Business Act (Citation: 15 USC 632 (a))

5.4 Small Business Paperwork Relief Act of 2002

Citation: 44 U.S.C. § 3501 et seq.

Year of Original Passage: 2002

Intent of Statute

Requires the Office of Management and Budget and other Federal agencies to publish on the Internet a list of the compliance assistance resources available at federal agencies for small businesses.

Provisions

With respect to the collection of information and the control of paperwork, each agency shall certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director (of the Office of Management and Budget) for review under section 3507

(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601 (6) of title 5, the use of such techniques as

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;

Thresholds that Provide Coverage

Firms with fewer than 25 employees are defined to be small businesses. (Also applies to firms defined as small businesses under the Small Business Act.)

(Citation: 44 USC 3506(c)(3))

5.5 Paperwork Reduction Act of 1995

Citation: 44 U.S.C. § 3501 et seq.

Year of Original Passage: 1995

Intent of Statute

Minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government.
Provisions

With respect to the collection of information and the control of paperwork, each agency shall in addition to the requirements of this chapter regarding the reduction of information collection burdens for small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.

Thresholds that Provide Coverage

Fewer than 25 employees. Also applies to firms defined as small businesses under the Small Business Act.

(Citation: 44 U.S.C. § 3506 (c ) (4))

5.6 Small Business Regulatory Enforcement and Fairness Act

Citation: Amendment to Regulatory Flexibility Act, text

Year of Original Passage: 1996

Intent of Statute

Insure federal agency compliance with the Regulatory Flexibility Act.

Provisions

For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall ensure that the guide is written using sufficiently plain language, likely to be understood by affected small entities.

The SBA Ombudsman is granted authority to work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel.
Thresholds that Provide Coverage
Same as Small Business Act (Citation: 15 USC 632 (a))

5.7 Clean Air Act - Small Business Assistance Program

Citation: 42 U.S.C. § 7661f

Year of Original Passage: 1990

Intent of Statute
To assist small business stationary sources with pollution prevention and accidental release detection and prevention, providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

Provisions
Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator plans for establishing a small business stationary source technical and environmental compliance assistance program. Programs should include:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.
(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan.

Thresholds that Provide Coverage

A firm designated as a “small business stationary source” must: (1) have fewer than 100 employees; (2) meet the definition of a small business under the Small Business Act (3) not be identified as a major stationary source; (4) not emit 50 tons or more per year of any regulated pollutant; and (5) emit less than 75 tons per year of all regulated pollutants.

(Citation: 42 U.S.C. § 7661f (c))
6 Conclusions

The federal statutes and programs reviewed in this paper use a variety of criteria to define a small business for the purpose of determining whether or not the statute is applicable. A business that is considered a “small business” for the purposes of one statute may not be considered small for other purposes. Most workplace regulations provide exemptions for small businesses, but the threshold used to determine whether a business is small for the purpose of such exemption is defined by the number of employees and varies widely from 11 to 100. In general, recently enacted workplace regulations have higher employment thresholds. Environmental regulations do not provide exemptions based on firm size, although the regulatory process often establishes special programs to help small businesses comply with the regulations or establishes different enforcement procedures for smaller businesses. Economic regulations typically exempt or do not apply to small businesses. In the case of economic regulations, the threshold is defined not in terms of the number of employees, but through some measure that reflects the scale of the economic activity being regulated. All programs that are designed to benefit small businesses have thresholds that determine eligibility. Even within this set of programs, there is no single definition of small business. Rather, eligibility thresholds are industry and context specific.

This review highlights the complexity of the federal regulatory environment facing small businesses and the challenges involved in evaluating the impact of regulations on small business. Given the wide range of thresholds that exist under different regulatory regimes, there is no simple answer to the question of how regulation impacts small business. The review raises an obvious question of how regulatory thresholds are determined and whether the threshold is appropriate or effective. Future research within the Kauffman-RAND Center will begin to examine this question in specific contexts.