

# **ACTS AND POLICIES AFFECTING SMALL BUSINESSES**

Activities of the programs are influenced by several pieces of legislation, federal programs, and policies. Three acts specifically are cited in Section 507 of the CAA; other acts and policies that affect small businesses also are discussed in this module.

According to Section 507 of the CAA, SBA's are encouraged to follow the intent of the provisions of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act in conducting their activities. Summaries of these three acts and actions that programs can take to follow the intent of the acts are discussed below. Other acts and policies affect the activities of the state programs, including the CAPs; summaries of these are also included in this section.

## **Paperwork Reduction Act**

The Paperwork Reduction Act was designed to minimize the burden and maximize the practical utility and public benefit associated with the collection of information by or for a federal agency. (The Act is not related to paper recycling, paper use conservation strategies, or double-sided copying.)

Activities that support the Paperwork Reduction Act include:

- Reviewing compliance documents
- Encouraging regulators to provide small businesses with required forms and industry-specific information electronically, including permit applications, frequently requested reports, fact sheets, and rule notices
- Promoting the implementation of general permits for industrial categories to state legislators/policy makers
- Providing concise and easy to understand summary documents, such as fact sheets, case studies, and regulatory summaries
- Suggesting that the state permitting office streamline or consolidate permits/forms and reporting/recordkeeping requirements
- Encouraging legislative action to state legislators/policy makers to eliminate or reduce redundant requirements and increase exemptions for "insignificant" actions

## **Small Business Paperwork Relief Act (SBPRA) of 2002**

The Small Business Paperwork Relief Act (SBPRA) was passed by the 107<sup>th</sup> Congress in 2002. It requires Federal agencies to take several steps to make it easier for businesses to find information needed to comply with Federal requirements and it establishes an interagency task force to examine collection and dissemination of information. SBPRA amends U.S.C. 44, Chap. 35 to impose five very different requirements on Federal agencies.

Requirement 1: *Annually publish a list of compliance assistance resources in Federal Register and on web.*

Requirement 2: *Establish an agency point of contact as liaison for small business concerns.*

Requirement 3: *“Make efforts to further reduce information collection burden for small business concerns with fewer than 25 employees.”*

Requirement 4: *Interagency Task Force to study the feasibility of streamlining requirements with respect to small business concerns about the collection of information and strengthening dissemination of information.*

Requirement 5: *Report to Congress on the number of enforcement actions taken with civil penalty, number taken against small entity, number where the penalty was reduced or waived, and the total dollar value of any reductions for fiscal years 2003 and 2004.*

You can find the SBPRA text and the US Code through the THOMAS web site, <http://thomas.loc.gov/> EPA’s point of contact for the SBPRA is Karen V. Brown, 202-566-2816, [brown.karen@epa.gov](mailto:brown.karen@epa.gov).

## **Paperwork and Regulatory Improvements Act of 2004**

The purpose of this Act is to reduce the paperwork burden facing the Nation’s small businesses.

Section 3 of the Act requires the Director of the Office of Management and Budget (OMB) in consultation with the IRS and the Office of Tax Policy of the Department of the Treasury and the Office of Advocacy of the Small Business Administration to determine whether information requested by the IRS can be reduced on small businesses.

## **Regulatory Flexibility Act (RFA)**

The Regulatory Flexibility Act of 1980 (RFA) recognized that the size of a business, unit of government, or nonprofit organization affects its ability to comply with Federal rules. The RFA directs agencies to review the effects of rules on small businesses and other small entities and, if regulations will have a significant impact on a substantial number of small entities, a regulatory analysis must be performed to explore options for minimizing those impacts. The Act specifically requires federal agencies to do the following:

- Consider alternatives that are less burdensome to small entities
- Publish brief descriptions of proposed rules likely to have significant economic impacts on a substantial number of small entities in the Semiannual Regulatory Agenda
- Prepare a preliminary Regulatory Flexibility Analysis for a proposed rule, which includes an estimate of the potential economic effect upon small entities, unless the agency director certifies in the Federal Register that the proposed rule “will not have a significant economic impact on a substantial number of entities.”

- Prepare a final Regulatory Flexibility Analysis with the final rule, which addresses issues raised by public comments to the proposed rule and to the preliminary Regulatory Flexibility Analysis.

Examples of activities to follow the intent of the provisions of the Regulatory Flexibility Act include:

- Reviewing compliance documents
- Reviewing/commenting on new regulations
- Implementing the use of simplified/consolidated permits or forms.
- Developing an amnesty program
- Eliminating unnecessary permits by increasing exemptions for insignificant actions

### **Equal Access to Justice Act**

The purpose of the Equal Access to Justice Act is to provide certain parties who prevail over the Federal government in covered litigation with an award of attorney's fees and other expenses under appropriate circumstances.

Examples of activities to follow the intent of the provisions of the Equal Access to Justice Act include:

- Reviewing regulatory agency enforcement documents for clear direction on appeal process
- Reviewing compliance documents for information regarding appeal process
- Encouraging flexibility in penalty assessments for small business
- Offering *pro bono* legal services
- Reviewing regulatory enforcement process to ensure small business has equal access to justice when funds are limited for legal council
- Providing technical assistance for groups aggrieved by regulatory actions

### **Other Acts and Policies**

Other Acts and policies affecting small businesses are described below. State programs should familiarize themselves with these acts and policies, so that they can share this information with small businesses and help determine how they could be integrated into their SBEAPs.

### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) became law in March, 1996 to foster a government environment that is more responsive to small businesses and other small entities. The Act is comprised of the following six key areas:

- **Regulatory Compliance Simplification:** Federal regulatory agencies must develop compliance guides, written in plain English, to help small businesses understand how to comply with regulations that may have a significant effect on them. Agencies must also develop a program for providing small entities with informed guidance on complying with applicable laws and regulations.
- **Equal Access To Justice Act Amendments:** Under certain circumstances, small businesses can recover attorney's fees and court costs in a court or administrative hearing, even when they lose.
- **Congressional Review:** Congress has provided itself with a process by which it can review and, if necessary, disapprove regulations with which it takes issue.
- **Regulatory Enforcement Reform of Penalties:** Each regulatory agency must establish a policy to reduce and, where appropriate, waive civil penalties for minor violations under certain circumstances.
- **Small Business Advocacy Review Panels:** For proposed rules subject to the Regulatory Flexibility Act, EPA must solicit input from the small businesses that will be subject to the rules and make these findings public. SBA's Office of Advocacy and the Office of Management and Budget aid this process.
- **Regulatory Enforcement Reforms:** The Act created the Small Business and Agriculture Regulatory Enforcement Fairness Ombudsman. In August 2001, President Bush appointed Michael L. Barrera as National Ombudsman under the Small Business Administration (SBA). The Act also created the Regional Regulatory Fairness Boards, the members of which assist the National Ombudsman in receiving small businesses' comments about enforcement activities of federal regulatory agencies. The appointed Fairness Board members are small business owners and operators.

The SBA National Ombudsman and the Fairness Boards will receive comments about federal compliance and enforcement activities from small businesses, and report these findings to Congress every year. The report will give each agency a kind of "customer satisfaction rating" by evaluating the enforcement activities of regulatory agency personnel and rating the responsiveness of the regulatory agencies to small business regional and program offices.

#### SBA's Regulatory Enforcement Ombudsman

- Receives comments from small businesses on federal agencies' compliance and enforcement actions
- Reviews small businesses' comments
- Rates federal agencies on their responsiveness to small businesses' comments
- Reports annually to Congress

#### 10 Regional Fairness Boards

- Members are small business owners/operators
- Report to the National Ombudsman about comments and issues specific to their regions
- Provide input regarding federal agency compliance activities affecting small entities in their region
- Contribute to the annual report to Congress

For additional information about the Ombudsman or the Regulatory Fairness Boards, call SBA's toll free number: 1-888-REG-FAIR (734-3247) or visit their Web site at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

## **Small Business Compliance Policy**

EPA's *Small Businesses Compliance Policy* (SBO Items # I-13 and B-22) provides small businesses with incentives to participate in compliance assistance activities and programs, or conduct environmental audits. Under this policy, EPA will eliminate or reduce civil penalties provided the small business satisfies all of the following four criteria:

- The small business voluntarily discovers a violation. Violations may be discovered by the business through participation in compliance assistance programs, mentoring, use of checklists from the Internet or by voluntary audits.
- The small business voluntarily discloses the violation within 21 days. The disclosure must be sent in writing to EPA or the appropriate State or Tribal agencies if they have similar policies.
- The small business corrects the violation and remedies any associated harm within 180 days of discovery; an additional 180 days may be granted if pollution prevention technologies are being used.
- The small business has not used this policy or been subject to enforcement action for the same or similar violation in the past three years and has not been subject to two or more enforcement actions for environmental violations in the past five years. The violation has not caused serious harm to public health, safety, or the environment; it does not present imminent and substantial endangerment to public health or the environment; and it does not involve criminal conduct.

The Policy is available by calling (800) 368-5888 or online at <http://www.epa.gov/compliance/incentives/smallbusiness/index.html>.

## **Policy on Incentives For Self-Policing**

EPA's Policy on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (commonly known as the EPA Audit Policy) (SBO Item # I-13) provides regulated entities of all sizes with incentives to voluntarily discover, disclose, and correct violations of environmental laws and requirements. Under the Audit Policy:

- EPA will not seek gravity-based penalties from entities that systematically discover potential environmental violations, promptly disclose them to EPA, expeditiously correct them and meet all other conditions of the Policy.
- For entities that disclose violations that were not systematically discovered, EPA will reduce gravity-based penalties by 75% provided all other policy conditions are met.
- EPA will generally not recommend criminal prosecution for entities that discover, promptly disclose, and expeditiously correct violations, which are potentially criminal, provided all other policy conditions are met.

- The policy excludes repeat violations, violations that result in serious actual harm and violations that may present an imminent and substantial endangerment. EPA retains its discretion to recover any economic benefits realized as a result of noncompliance.

The Policy is available by calling (800) 368-5888 or online at <http://www.epa.gov/compliance/incentives/smallbusiness/index.html>.

## **Enforcement Response Policy**

EPA's *Enforcement Response Policy* (SBO Item # I-13) provides small businesses with a limited grace period to correct violations revealed during requested assistance from a State Small Business Environmental Assistance Program (SBEAP) established under Section 507 of the Clean Air Act. Under the *Enforcement Response Policy*, two options are provided:

- SBEAPs may offer small businesses a limited correction period for violations detected during compliance assistance. Small businesses may have up to 90 days to receive compliance assistance from the SBEAPs, with the possibility of an additional 90 days to correct any violations discovered under the program. After that time, violations would be subject to existing enforcement policies.
- SBEAPs may offer compliance assistance on a confidential basis. Under this option, the state retains the ability to investigate and/or take enforcement actions at any time for violations discovered independently from the Section 507 program. Under the *Small Business Compliance Policy*, small businesses that receive confidential assistance from the SBEAP may receive a correction period if the small business voluntarily discloses the violation to the appropriate regulatory agency.

The Policy is available by calling (800) 368-5888 or online at <http://www.epa.gov/compliance/incentives/smallbusiness/index.html>.

## **Public Involvement Policy**

The Public Involvement Policy is meant to encourage development of new tools for public involvement and should not limit the degree or types of public involvement already in use at EPA. The goal of this Policy is to improve the effectiveness of EPA's public involvement activities, ensure well-informed decisions, and encourage innovative methods for involving the public. As EPA implements the Policy, the Agency plans to share its experiences with states, tribes, local governments and other partners and interested parties. The Policy's core elements are the following seven basic steps for effective public involvement:

1. Plan and budget for public involvement activities
2. Identify the interested and affected public
3. Consider providing technical or financial assistance to the public to facilitate involvement
4. Provide information and outreach to the public
5. Conduct public consultation and involvement activities

6. Review and use input, and provide feedback to the public
7. Evaluate public involvement activities

Agency guidance, which EPA is issuing simultaneously with this Policy, provides specific recommendations for accomplishing each of these seven steps, while also acknowledging the need for EPA officials to use discretion when planning and implementing public involvement activities.

*For more information about this policy visit <http://www.epa.gov/publicinvolvement>*

## **Alternative Dispute Resolution Policy (ADR)**

The U.S. Environmental Protection Agency (EPA or the Agency) strongly supports the use of alternative dispute resolution (ADR) to deal with disputes and potential conflicts. ADR refers to voluntary techniques for preventing and resolving conflict with the help of neutral third parties. Experience within this Agency and elsewhere shows that ADR techniques for preventing and resolving conflicts can have many benefits including:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

ADR techniques can be effective in both internal Agency disagreements and external conflicts. ADR allows the Agency to have a more productive work environment and to work better with State, Tribal, and local governments, the regulated community, environmental and public health organizations, and the public. This policy is intended to be flexible enough to respond to the full range of disputes EPA faces, and to achieve these objectives:

- Promote understanding of ADR techniques;
- Encourage routine consideration of ADR approaches to anticipate, prevent, and resolve disputes;
- Increase the use of ADR in EPA business;
- Highlight the importance of addressing confidentiality concerns in ADR processes;
- Promote systematic evaluation and reporting on ADR at EPA; and
- Further the Agency's overall mission through ADR program development.

The Policy and several useful publications including the Resource Guide: can be viewed on-line at [www.epa.gov/adr](http://www.epa.gov/adr).

## **Project XL**

Project XL, which stands for "eXcellence and Leadership," is a national pilot program that allows state and local governments, businesses and federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the experiment. To date, under Project XL private businesses, federal facilities, business sectors and state and local governments are conducting experiments that address the eight Project XL selection criteria:

1. Produce superior environmental results beyond those that would have been achieved under current and reasonably anticipated future regulations or policies;
2. Produce benefits such as cost savings, paperwork reduction, regulatory flexibility or other types of flexibility that serve as an incentive to both project sponsors and regulators;
3. Supported by stakeholders;
4. Achieve innovation/pollution prevention;
5. Produce lessons or data that are transferable to other facilities;
6. Demonstrate feasibility;
7. Establish accountability through agreed upon methods of monitoring, reporting, and evaluations; and
8. Avoid shifting the risk burden, i.e., do not create worker safety or environmental justice problems as a result of the experiment.

As of January 2003 EPA is no longer accepting proposals for new XL projects. The pilot projects continue their work, which is tracked at the XL, website:

<http://www.epa.gov/ProjectXL/>.