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The regulatory tidal wave surges forward



For nearly two years, NFIB's Small Businesses for Sensible Regulations campaign has worked to alert America about the overwhelming tidal wave of federal regulation flowing out of Washington, D.C.

Indeed, that tidal wave continues to surge. Since Election Day last fall until mid-March, more than 1,200 regulations had been finalized by federal agencies – nearly 10 each day.

Thousands of other proposed rules and notices have been issued as well. An analysis of the Federal Register by the Sensible Regulations campaign showed that between February 2012 and January 2013, more than 28,000 final rules, proposed rules, and other regulatory notices were published.

Small businesses need relief from excessive red tape more than ever. That's why the NFIB campaign will continue to showcase the need for regulatory reform. The campaign has developed a list of principles that Congress should require of federal agencies.

For more information on the campaign and to share how overregulation has affected your business, visit www.sensiblereg.org.

These principles are:

- **Risk Assessment.** Regulations are designed to mitigate risks, but before a regulation is issued, the risks should be measured and assessed using the best-available data and science.
- **Cost Benefit Analysis.** Every major regulation should be analyzed so that the costs are fully understood, and the benefits are significant enough to justify the costs.
- **Objective Peer Review.** The peer review process shouldn't be a rubber stamp for agency regulations; instead, they should include a range of opinions in a transparent process.
- **Judicial Review.** To encourage accountability, regulations should be subject to congressional oversight and review by the courts.
- **Prioritize Compliance Over Enforcement.** Federal agencies should always place greater emphasis on promoting compliance than they do on issuing harsh penalties, particularly on small businesses.

For more information on these and other upcoming NFIB regulations, contact Dan Bosch, NFIB's manager of regulatory policy, at dan.bosch@nfib.org.

Senate bill would alleviate lead rule burdens

Senator James Inhofe has introduced legislation that would provide much-needed relief for contractors performing renovations in houses and other residences. The bill would address many concerns and unnecessary burdens of the U.S. Environmental Protection Agency's "Lead: Renovation, Repair, and Painting" (LRRP) rule.

NFIB strongly supports the legislation.



The LRRP rule prescribes certification, training, and work practices to address the threat of lead dust in homes built before 1978. When the rule went into effect in April 2010, homeowners with no children less than six years old or pregnant women could choose to skip these expensive requirements because EPA had determined that only

young children faced substantial risk of poisoning from lead dust. Just weeks later, EPA withdrew this provision, known as the "opt-out", because of a lawsuit from environmental groups. The move increased the cost of the rule from about \$800 million to \$1.3 billion – with the costs passed along from contractors to homeowners.

In addition, EPA has been unable to inadequately enforce the

rule. NFIB believes that EPA should focus on finding uncertified contractors doing renovations in pre-1978 homes. These contractors are able to offer lower bids than properly certified firms and put children at risk. Instead, EPA has focused its enforcement on making sure certified firms have properly filled out and provided homeowners with the necessary paperwork, while illegal contractors go unscathed.

Another problem is that when EPA implemented the final LRRP rule the agency was supposed to have approved a commercially-available lead test kit which produced no more than 10 percent false positives (detecting lead when it is not actually present) and 5 percent false negatives (detecting no lead when it is actually present). As of today, no such kit is available on the market and some kits can produce false positives as high as 60 percent of the time. Instead, EPA requires contractors to collect paint chips and mail them to a testing facility. This process takes weeks and poses considerable costs.

Sen. Inhofe's bill, S. 484, would help address these problems. Among its key provisions, S. 484 would restore the "opt-out" clause, suspend the rule for owner-occupied housing built between 1960 and 1978 without a pregnant woman or small child living there if EPA cannot approve a test kit meeting its own standard for false positives, prohibit expansion of the rule to commercial buildings until EPA conducts research demonstrating the need for such action, and provide an exemption for minor, first-time paperwork violations.

NFIB supports legislation to give small businesses time to fix minor violations

NFIB recently announced its support of legislation that would give small businesses a grace period to correct regulatory issues before being issued a penalty. The bill, H.R. 746, was introduced by Rep. Kerry Bentivolio of Michigan.

Complying with federal regulations can be extremely complicated for small business. In NFIB's monthly surveys of its members, small-business owners consistently rank government requirements and red tape as one of the top problems facing their company.

Given the size and scope of the regulatory code, and the fact that most small businesses lack staff dedicated solely to regulatory compliance, NFIB believes agencies need to work with small companies rather than simply issue fines and penalties. Compliance should be the top priority of federal agencies, not the issuance of penalties that can threaten the viability of small businesses – especially when mistakes are made in good faith and present no danger.

The legislation helps ensure this by requiring a grace period of six months from the time a citation or notice of violation is issued by an agency to the time a penalty is enforced. When a small business addresses the issue during the grace period, the agency can determine that no enforcement action is necessary.

Importantly, the grace period would not apply when the violation presents a dangerous health or safety issue for the public or a company's employees.

NFIB supports this important regulatory reform that will have a practical effect on small businesses. Rather than paying a costly fine or other burdensome penalty for minor violations, a small business can learn from its mistake, bring itself into compliance, and continue to invest in its employees and business.

Reminder: ADA pool-lift requirement now in effect

Americans with Disabilities Act regulations that require businesses with pools open to the public to have fixed lifts installed for disabled customers went into effect on January 31. Businesses must be in compliance with the rule before opening their pools to customers this season.

The regulations mandate that any business with a pool or spa that is open for use by customers have a fixed lift, which is a device capable of delivering a customer from a wheelchair into a pool. Those businesses that are especially affected are hotels, motels, gyms and spas.

NFIB was successful in helping to get a delay of the compliance date, which was originally March 15, 2012.

NFIB continues to pursue legislation that would make the rule easier to comply with. Such legislation would allow temporary lifts rather than fixed, and remove a requirement that businesses have a lift for each pool they have on premises.