

ARTICLE 4A
Small Business Regulatory Relief Act

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14-4A-1. Short title.

This act may be cited as the "Small Business Regulatory Relief Act".

14-4A-2. Legislative findings.

The legislature finds that:

- A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- B. small businesses bear a disproportionate share of regulatory costs and burdens;
- C. fundamental changes that are needed in the regulatory culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- D. when adopting rules to protect the health, safety and economic welfare of the state, agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small businesses;
- E. uniform regulatory reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting and consulting costs, upon small businesses with limited resources;
- F. the failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation and restrict improvements in productivity;
- G. unnecessary rules create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- H. the practice of treating all regulated businesses as equivalent may lead to inefficient use of agency resources, enforcement problems and, in some cases, to actions inconsistent with stated legislative intent of health, safety, environmental, economic welfare and other legislation;
- I. alternative regulatory approaches that do not conflict with applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and
- J. the process by which state rules are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the effect of proposed and existing rules on such businesses and to review the continued need for existing rules.

14-4A-3. Definitions.

As used in the Small Business Regulatory Relief Act:

- A. "agency" means every department, agency, board, commission, committee or institution of the executive branch of state government;
- B. "commission" means the small business regulatory advisory commission;
- C. "proposed rule" means a proposal by an agency for a new rule or for a change in, addition to or repeal of an existing rule;
- D. "rule" means any rule, regulation, order, standard or statement of policy, including amendments to or repeals of any of those, issued or promulgated by an agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed a rule nor shall it constitute specific adoption of a rule by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of inmates of any penal or charitable institution, the New Mexico boys' school, the girls' welfare home or a public hospital; or rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from an educational institution; and
- E. "small business" means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees.

14-4A-4. Rules affecting small business.

- A. Prior to the adoption of a proposed rule that may have an adverse effect on small business, an agency shall provide a copy of the proposed rule to the commission at the same time as persons who have requested advance notice of rulemaking.
- B. Prior to the adoption of a proposed rule that the agency deems to have an adverse effect on small business, the agency shall consider regulatory methods that accomplish the objectives of the applicable law while minimizing the adverse effects on small business.

14-4A-5. Small business regulatory advisory commission created; membership; powers and duties.

- A. The "small business regulatory advisory commission" is created. The commission shall consist of nine members who are current or former small business owners, five appointed by the governor and two each appointed by the speaker of the house of representatives and the president pro tempore of the senate. Each member shall be from a different geographic region of the state. Members shall serve two-year terms. A member shall not serve more than three consecutive terms. Members shall name the chairperson of the commission. The commission shall meet at the call of the chairperson. A majority of the members constitutes a quorum for the conduct of business. Members are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.
- B. The commission is administratively attached to the economic development department, and staff for the commission shall be provided by the department.

C. The commission may:

- (1) provide state agencies with input regarding proposed rules that may adversely affect small business;
- (2) consider requests from small business owners to review rules adopted by an agency;
- (3) review rules promulgated by an agency to determine whether a rule places an unnecessary burden on small business and make recommendations to the agency to mitigate the adverse effects; and
- (4) provide an annual evaluation report to the governor and the legislature, including recommendations and evaluations of agencies regarding regulatory fairness for small businesses.

D. The commission does not have authority to:

- (1) interfere with, modify, prevent or delay an agency or administrative enforcement action;
- (2) intervene in legal actions; or
- (3) subpoena witnesses to testify or to produce documents, but it may request witnesses to voluntarily testify or produce documents.

14-4A-6. Periodic review of rules.

A. By July 1, 2010, each agency shall have reviewed all of its rules that existed on the effective date of the Small Business Regulatory Relief Act to determine whether the rules should be continued without change or should be amended or repealed to minimize the economic impact of the rules on small businesses, subject to compliance with the stated objectives of the laws pursuant to which the rules were adopted.

B. Rules adopted and promulgated after the effective date of the Small Business Regulatory Relief Act shall be reviewed every five years to ensure that they continue to minimize economic impacts on small businesses while implementing the state objectives of the laws pursuant to which the rules were adopted.

C. In reviewing its rules to minimize economic impacts on small businesses, an agency shall consider the following factors:

- (1) continued need for the rule;
- (2) the nature of complaints or comments received from the public concerning the rule;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state and local government rules; and
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the topical area affected by the rule.