

Coburn Amendment 1897 - Applies small business review panel provisions from the Regulatory Flexibility Act (RFA) to Department of Energy. (Coburn-Risch)

This amendment would make the Department of Energy (DOE) equivalent to a “covered agency” under the RFA, so that small business review panel provisions would apply to DOE and that small business impacts are considered in regulatory actions and alternatives that DOE considers.

Currently the Environmental Protection Agency (EPA), Consumer Financial Protection Financial Bureau (CFPB), and the Department of Labor’s Occupational Safety and Health Administration (OSHA) are subject to these provisions. The U.S. Department of Agriculture may also be, depending on the outcome of the House farm bill. Regardless, any agency that promulgates numerous regulations – especially those likely to have a major economic impact – on small businesses, should be subject to small business advocacy panels.

DOE Should Be Required To Consider Small Business Concerns During Regulatory Rulemaking

If this amendment is adopted, small business advocacy panels, created by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and signed into law by then President Clinton in 1996, would apply to DOE. These small business panels have been extremely successful in helping to shape EPA, CFPB, and OSHA rules so that they fully consider small business economic impact during the rulemaking process – and they would do the same for DOE.

According to the Census Bureau, there are tens of thousands of energy companies in the U.S., many of which are very small startups. In fact, many of the companies experimenting with groundbreaking renewable energy research and technology are very small startups – it just makes sense to take their concerns into account when promulgating regulations likely to have a major effect on them.

Small Business Are the Major Economic Engine of the United States, and Face Heavy Regulatory Burdens

This amendment would ensure that when DOE promulgates rules and regulations, it fully considers the economic impact that those rules and regulations would impose on our nation's almost 30 million small firms, who have created 64 percent of all new jobs over the past 15 years and will undoubtedly drive our nation's economic recovery.

Onerous regulations are crushing the entrepreneurial spirit of America's small businesses. In 2009 alone, there were close to 70,000 pages in the Federal Register, and the annual cost of federal regulations now totals \$1.1 trillion. Furthermore, according to research by the Small Business Administration's (SBA's) Office of Advocacy, small firms bear a disproportionate burden, paying approximately 45 percent more per employee in annual regulatory compliance costs than larger firms.

If regulations are to continue being promulgated at this rapid rate, regulators should at least be sensitive to the specific effects a new rule may have on small business, and should consider alternative approaches that would be less burdensome. DOE in particular should be subject to these RFA requirements because a large proportion of the businesses it regulates are small, innovative startups.

This Amendment Enhances, and Does Not Hamper, the Regulatory Process

This amendment will not undermine or "ossify" the rulemaking capacity of DOE. In fact, according to an SBA Office of Advocacy report, "[t]he panel process does not replace, but enhances, the regular notice-and-comment process." The SBA Office of Advocacy has also found that these small business review panels have facilitated "revisions or adjustments to be made to an agency draft rule that mitigated its potentially adverse effects on small entities, but did not compromise the rule's public policy objective."