

The Game of Rules: Why Monitoring Government Regulations Is Essential

A LexisNexis® White Paper

Highlights

- Virtually every segment of the U.S. economy is subject to government regulations.
- Some 23,000 measures are proposed annually.
- Staying abreast of regulations involves dealing with considerable variation in the ways nearly 11,000 state and federal agencies make rules available.
- Regulations often change without sufficient notice.
- Compliance is expensive, and non-compliance can be even more expensive.
- Consultants and lawyers have a role in helping businesses comply—or litigate when it's warranted.
- It's essential for legal professionals to stay on top of emerging regulations relevant to their areas of practice and be prepared for any needed action.

Overview

“Regulations cover life, death and everything in between,” the saying goes. That wry outlook is supported by another inescapable reality: virtually every segment of the U.S. economy—from agriculture, manufacturing and utilities to finance, entertainment and health care—is subject to government mandates.

Not surprisingly, complying with so many rules can be extremely difficult at times. But for those whose livelihood is directly connected to government regulation, there's an even greater challenge. The rules frequently change—often without sufficient notice—and a potential flood of new regulations is always on the horizon. Keeping up with those changes can appear to be an insurmountable task to some individuals and organizations.

50-State Regulatory Volume by Issue Year-to-date as of mid-July 2014

Issue	Proposed	Adopted
Agriculture	811	799
Business & Corporations	3,577	3,425
Chemicals & Pharmaceuticals	951	880
Communications & Records	2,481	2,389
Consumer Issues	375	343
Education	2,011	1,972
Energy	937	848
Environment	2,294	2,211
Financial Institutions & Svcs	874	847
Food & Beverage	607	577
Health & Human Services	7,091	6,893
Insurance	1,274	1,340
Labor & Employment	1,670	1,612
Law & Justice	2,075	1,946
Politics & Government	4,207	3,922
Real Estate & Construction	3,340	3,276
Recreation & The Arts	1,264	1,176
Resource Management	3,641	3,407
Tax—Misc.	194	197
Transportation	2,848	2,552
Utilities & Appliances	1,182	1,085
Special Measures	213	222

Source: LexisNexis® State Net®

The large volume of regulations proposed and adopted during the first six-and-a-half months of 2014 spans a wide variety of topics.

What's at Stake

To compound the uncertainty, no one knows for sure what all those regulations actually cost in terms of compliance. Estimates vary widely, although one respected study puts the sum in 2008 at more than \$1.75 trillion, or just over \$8,000 per employee in the United States.¹ That figure includes:

- *Direct costs*, such as the wages of employees carrying out regulatory responsibilities and capital expenditures (e.g., pollution control equipment)
- *Indirect costs*, such as lost productivity and missed opportunities while being occupied with paperwork

What is certain is that the costs of noncompliance with government regulation may be even greater, a fact that makes monitoring regulatory activity so critical. The Department of Labor's Occupational Safety and Health Administration (OSHA), for example, levies approximately \$100 million in fines each year.

Some recent examples of the stiff penalties issued by OSHA:

- In January 2011, grain elevator operator Haasbach LLC in Mount Carroll, IL, was issued citations totaling \$555,000 following the deaths of two young workers
- In May 2011, AMD Industries in Cicero, IL, was fined \$1,247,400 for allowing five untrained and unprotected workers to remove asbestos-containing materials from its facility
- In June 2011, Phenix Lumber Co. in Phenix City, AL, was fined \$1,939,000 for exposing workers to amputation and fall hazards

Other federal agencies and their counterparts at the state level are just as aggressive—those responsible for corporate and securities, employment, environmental and health-care regulations come to mind—and large penalties are not uncommon.

Matters get even more entangled when intra-agency rivalries come into play. For example, a 2012 case resulted in the Alaska Department of Health and Human Services paying the federal Department of Health and Human Services (HHS) an eye-opening \$1.7 million settlement² over a potential security breach involving confidential patient health information.

Monitoring Regulatory Activity Isn't Easy

Because of all the ways that regulations affect individuals and businesses, keeping a watchful eye on state and federal regulatory activity is a complicated task. On top of the sheer volume—some 23,000 measures are proposed annually—there is considerable variation in the ways that the nearly 11,000 state and federal agencies make rules available. This can make it extremely time-consuming to determine which measures will actually affect a particular organization.

Identifying which agencies regulate a specific industry can also be a challenge. California manufacturing firms, for example, are overseen on matters relating to the workplace and employment by the Department of Labor, the Equal Employment Opportunity Commission and the National Labor Relations Board at the federal level, and by the California Department of Industrial Relations and the Department of Fair Employment and Housing at the state level.

The Bane of Many Is a Boon to Others

Staying abreast of what's happening in the regulatory landscape is not entirely a "doom and gloom" exercise, however. A benefit that tends to be overlooked is the potential for business opportunities associated with ever-changing rules. Compliance consulting provides an example. The industry has grown rapidly in recent years as companies have sought assistance with meeting their mandated requirements.

For lawyers, too, new and revised regulations are often "the gift that keeps on giving." That view was explored by *Forbes*[®] senior editor Daniel Fisher in a 2012 year-end preview³ of an expected flurry of litigation over government regulations. In particular, rules stemming from the Patient Protection and Affordable Care Act, commonly referred to as "Obamacare," could make 2013 a lucrative year for lawyers, said Fisher.

He also predicted that environmental restrictions and new financial regulations could be heavily litigated, along with suits over privacy and libel in social media, as well as consumer class actions targeting manufacturers and retailers based on rules for product labeling.

Conclusion: Be Ready for Change

Of course, anything could happen—and in real law, that's the point about regulations: they can and do change, often with game-altering consequences.

To stay in play, individuals and those in affected organizations need to take a forward-looking view of what's going on in state capitols and at the federal level so they can quickly identify, assess and respond to regulatory activity that's critical to them, as well as their stakeholders and clients.

Staying on top of regulatory activity

To explore information on LexisNexis® resources for monitoring state regulations, visit www.lexisnexis.com/statenet.

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1 "The Impact of Regulatory Costs on Small Firms," Nicole V. Crain and W. Mark Crain, Lafayette College, Easton, PA, for the Small Business Administration Office of Advocacy, September 2010.

2 "Alaska DHSS settles HIPAA security case for \$1,700,000," Health Information Privacy, www.hhs.gov.

3 "Litigation Outlook For 2013: Obamacare, Banks, Pensions Will Make Lawyers Rich," www.forbes.com.

