

Reassessing Implementation of the Regulatory Fairness Act

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Office of the
Washington
State Auditor
Pat McCarthy



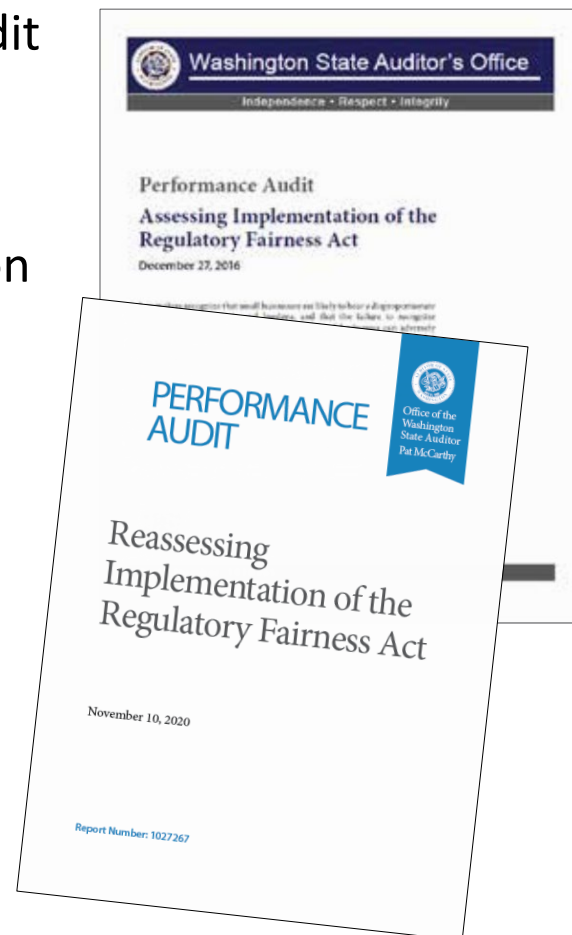
Audit background



How well have agencies met requirements of the Regulatory Fairness Act compared to our 2016 audit

Following that audit, the Legislature required:

- ✓ The Governor's Office of Regulatory Innovation and Assistance (ORIA) to provide tools and assistance to regulatory agencies
- ✓ Our Office to conduct follow-up audits



Overview of audit results



Since the previous audit, agencies:

- Significantly improved implementation
- Told us ORIA's assistance has been helpful and is appreciated
- Still find challenges in locating relevant data and in applying correct exemptions to proposed rules

State agencies must consider financial effects of proposed rules



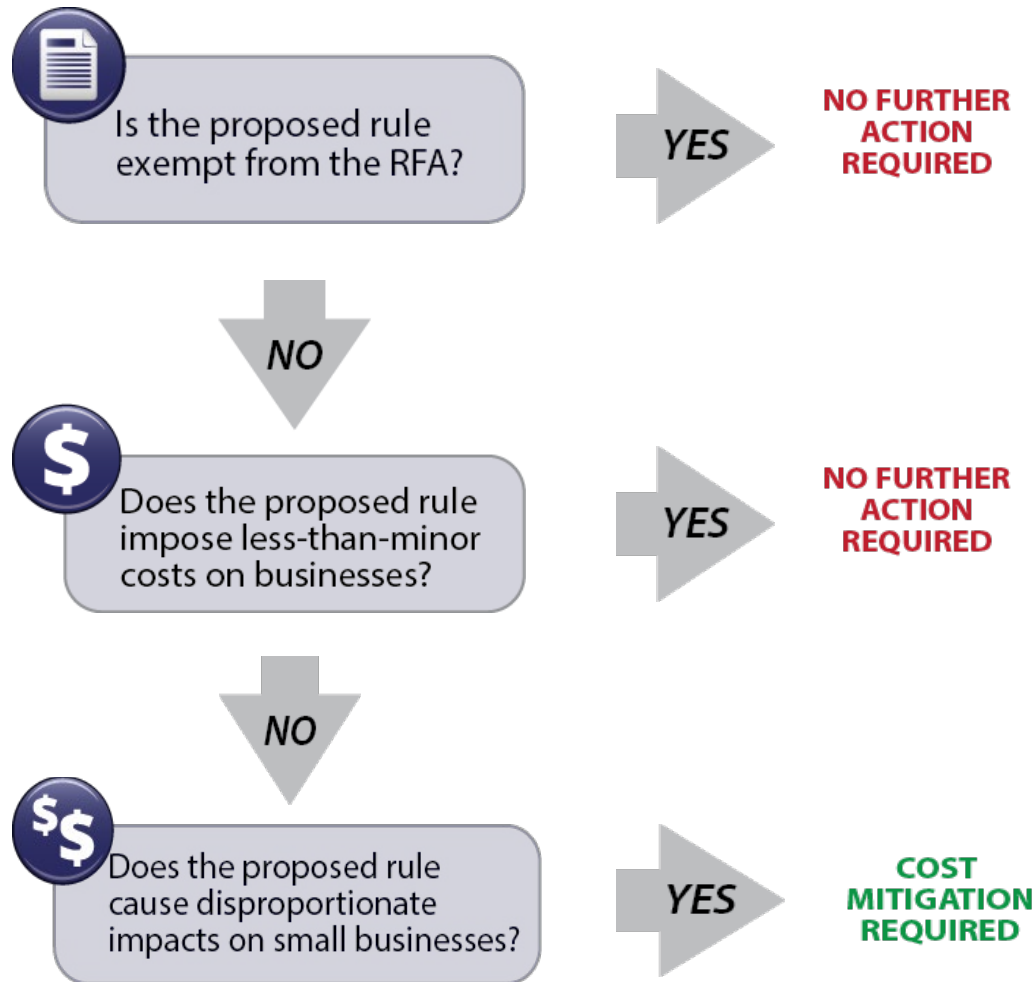
1982 Regulatory Fairness Act requires agencies to:

- ✓ Make numerous complex calculations using data specific to businesses affected
- ✓ Prepare a Small Business Economic Impact Statement (SBEIS) in certain circumstances

Agencies must mitigate disproportionate cost impacts on small businesses where legal and feasible



The law has three key decision points



For rules subject to the Act's requirements...



Does the proposed rule impose less-than-minor costs on businesses?



The Act prescribes formulas to calculate “minor cost,” such as:

- ✓ 0.3 percent of annual revenue or income
- ✓ One percent of annual payroll

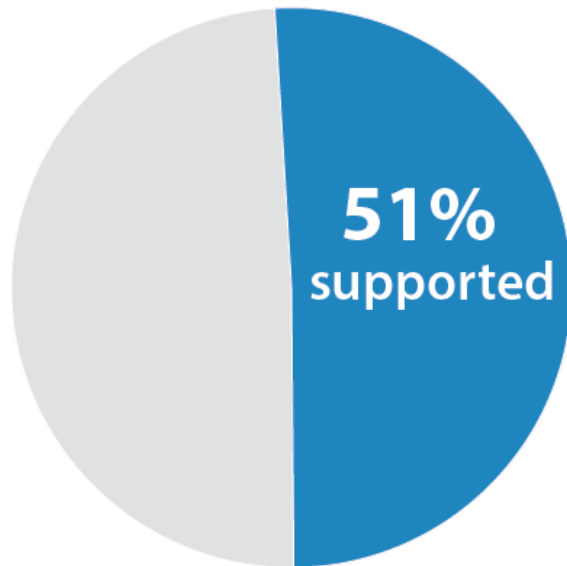
We asked agencies for cost analysis documentation

We considered cost analyses sufficient with a basic level of credible support

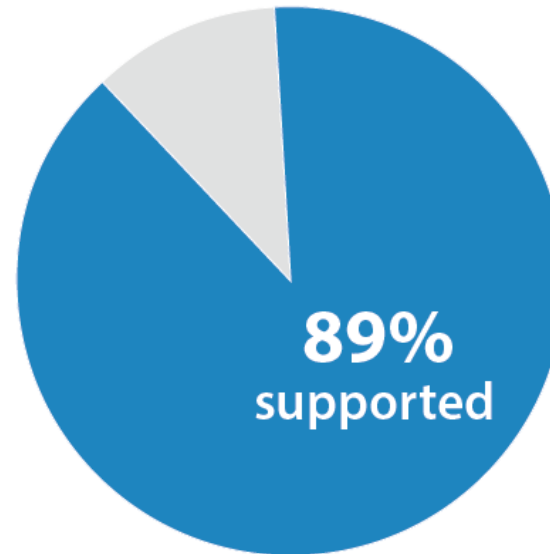
Significant improvement in support for minor-cost claims since 2016



In this audit, 89 percent of less-than-minor cost claims were fully supported



2016 audit results



2020 audit results

SBEIS required for rules that will impose more-than-minor costs on businesses

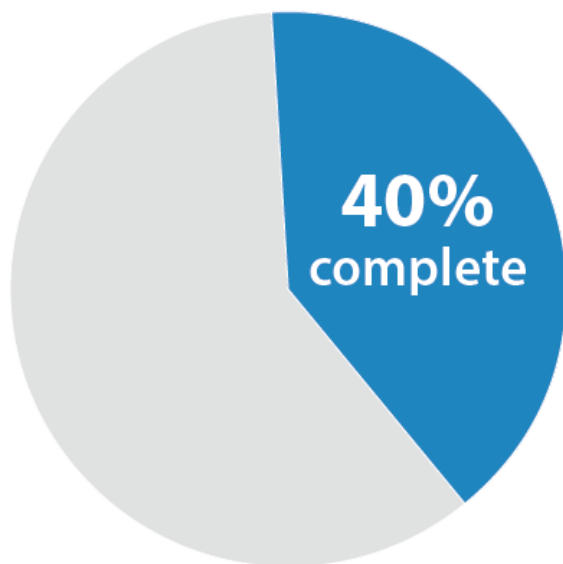


Does the proposed rule cause disproportionate impacts on small businesses?

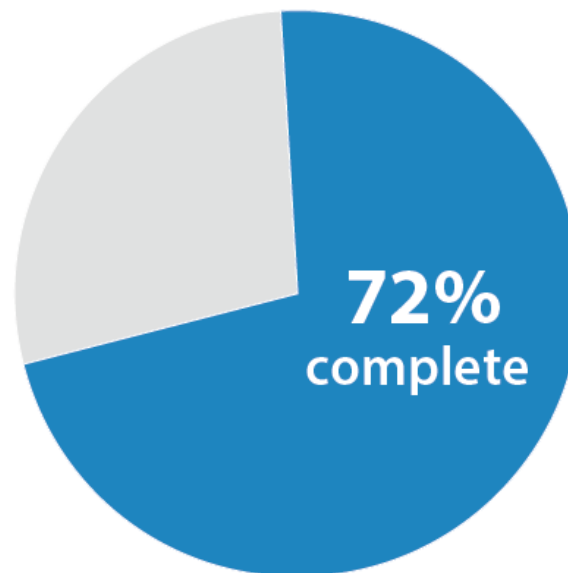
We reviewed SBEIS for all required elements

- ✓ Costs of compliance
- ✓ Potential lost sales and revenue
- ✓ Analysis of disproportionate costs
 - *Comparison of costs of compliance for small businesses to those for the largest 10% of businesses*
- ✓ Mitigation strategies, if disproportionate costs exist

Complete SBEIS also improved significantly in this audit



2016 audit results



2020 audit results

All claimed exemptions in this audit were legally allowable



Is the proposed rule exempt from the RFA?

We looked for exemptions that were allowable by law

- For example, rules are exempt from the Act if they:
 - ✓ Correct typographical errors
 - ✓ Adopt a statute without material change
 - ✓ Do not affect small businesses
- In the previous audit, only about half of exemptions claimed were actual legal exemptions



This audit also looked at whether exemptions were accurately applied



Applying exemptions is complex

- For some proposed rules, one exemption applies to the entire rule
- For many rules, different exemptions apply to different sections of the proposed rule

Agencies were only entitled to about 2/3 of the exemptions they claimed

Agency staff recognized that exemptions are complex, and asked for additional help



Agencies praised ORIA's assistance

Most agencies reported they:

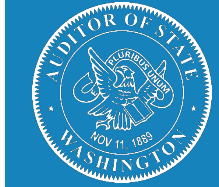
- ✓ Regularly used ORIA's online tools
- ✓ Participated in trainings and cross-agency discussions
- ✓ Reached out for direct assistance

All agencies who received ORIA's help said:

- ✓ Found the tools and assistance helpful
- ✓ Greatly appreciate the help
- ✓ Would like ORIA to expand training



Agencies consistently asked for ORIA's help with specific challenges



- Finding data specific to the businesses affected by proposed rules
- Applying the correct exemptions to proposed rules
- Exploring improvements to the CR-102 (rulemaking form)
- Facilitating additional cross-agency discussions



We recommend ORIA:

- Help facilitate the sharing of data among agencies, where feasible
- Serve as a repository for sharable data
- Work with agencies and the Code Reviser to explore possible improvements to the rulemaking form
- Expand help focused on applying exemptions



Questions



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