LEXISNEXIS® STATE NET® THOUGHT LEADERSHIP SERIES

The Challenges—and High Stakes—of State Regulatory Compliance

The state regulatory process can be a bewildering landscape for any organization seeking to have an input on proposed rules that might impact its operations or merely stay in compliance with all applicable rules that are ultimately adopted. But failing to navigate that terrain effectively can be very costly.

Monitoring Regulatory Activity Isn't Easy

The thousands of state agencies scattered across the country propose tens of thousands of regulations each year. Some of those agencies propose hundreds of rules while others propose just one. In some states, like Texas, nearly all proposed rules end up being adopted, while in others the adoption rate is considerably lower.

Some rules progress from proposal to adoption in days, while others go years without final action, since the regulatory process doesn't have a hard stop like the adjournment of a legislative session. And the volume of such dormant proposals, which are never adopted, ranges widely among agencies.

There's also broad variation in the rulemaking process. For instance, some states have a formal legislative review process—and a handful even have a legislative veto stage—for adopted executive agency rules. Some states also have a formal process for reviewing prospective rule changes before they are officially proposed, while other states that conduct such pre-proposal review do so only informally and without public notice. Some agencies don't provide text when they publish notice of proposed regulations. And rule adoption notices and the availability of adopted text versions also differ significantly.

The high volume and inconsistency of regulatory information make it both difficult and time-consuming to determine and keep tabs on what is relevant for a particular organization. What's more, rule changes happen frequently, often without much notice. That is particularly true of emergency rules, which have roughly doubled in number during the coronavirus pandemic.

On top of the regulations, agencies also issue other documents, including bulletins, notices, and advisories. Although these documents don't generally carry the same weight as regulations, they've grown in importance recently. That's partly because the documents can give some indication of regulatory action an agency might be considering or the direction it's moving on a particular issue. In addition, some documents provide guidance on how agencies will apply adopted rules.

State emergency declarations issued during the pandemic have also prompted bulletins, such as those sent out by state insurance agencies prohibiting the cancelation of policies while their state's emergency remains in effect, according to Kevin Schmidt, customer service manager for State Net.

"Most of our insurance clients get both executive orders and agency documents from us because they go hand in hand," he said. "This is extremely critical for them."

What's at Stake

The costs of complying with state regulations are substantial. They include both direct costs, such as for additional labor or capital improvements needed to meet new regulatory requirements, and indirect costs, like lost productivity and missed business opportunities due to the allocation of resources to compliance.

Exactly how much complying with state regulations costs U.S businesses is unclear; estimates aren't abundant. But a 2009 study found that state regulations cost California businesses—mostly small businesses, which make up over 99 percent of all businesses in the state—roughly $493 billion in 2007. The total cost per small business was over $134,000. A 2019 study showed that Oregon hospitals spent $126 million a year, or an average of $3.9 million per hospital, just on the labor required to comply with the more than 2,000 state regulations they are subject to.

Knowing about proposed regulations as early as possible can potentially reduce some compliance costs by allowing more time to prepare for required changes. Knowing about every pertinent regulation that's adopted can be even more critical, given the risks associated with noncompliance.

In 2019 state insurance departments across the country collected $190.8 million in fines and penalties from insurers, according to the National Association of Insurance Commissioners. One fine that year, imposed by New York's Department of Financial Services (DFS) on Metlife Inc. for failing to pay pensions to more than 13,000 residents of the state, was for $19.75 million.
The insurance industry certainly isn't the only one subject to such state penalties. In 2020 New York's DFS fined Deutsche Bank $150 million for its lax oversight of high-risk customers, including convicted sex offender Jeffery Epstein. In 2019 Nevada's Department of Health and Human Services fined 21 diabetes drug makers over $17 million for failing to comply with the state's drug transparency law.

Even the tech industry, which has generally been loosely regulated to avoid stifling innovation, has been coming under increasing scrutiny from state governments. For instance, Virginia just became the second state to enact its own data privacy law. And in the first state to pass such a law, California, voters recently authorized the creation of an entirely new regulatory agency dedicated solely to privacy protection.

Key takeaway: Staying on top of state regulations is a tough job that it pays to do well.

Learn how State Net makes the job of monitoring state government regulatory activity manageable.

Be on the lookout for more thought leadership from the State Net service.

Much of the information in this article is based on research conducted by State Net and W. Mark Crain, William E. Simon Professor of Political Economy at Lafayette College, and a leading authority on quantitative analysis of government activity.