Report on the Regulatory Flexibility Act, FY 2015

Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272

January 2016

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF ADVOCACY

REGULATION • RESEARCH • OUTREACH

The Office of Advocacy of the U.S. Small Business Administration was created by Congress in 1976 to be an independent voice for small business within the federal government. The office is led by the Chief Counsel for Advocacy who is appointed by the President and confirmed by the U.S. Senate. The chief counsel advances the views, concerns, and interests of small business before the White House, Congress, federal agencies, federal courts, and state policymakers. The office relies on economic research, policy analyses, and small business outreach to identify issues of small business concern. Ten regional advocates around the country and an office in Washington, D.C., support the chief counsel's efforts.

This report is mandated under section 612 of the Regulatory Flexibility Act. This and previous years' editions are available on Advocacy's website, www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports.

Information about Advocacy's initiatives on behalf of small businesses is accessible via the website; three Listservs (regulatory communications, news, and research); and social media including a blog, Twitter feed, and Facebook page.

Website: www.sba.gov/advocacy
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To President Obama and the U.S. Congress:

In 1976, Congress recognized the need for small business inclusion in policy deliberations and created the Office of Advocacy. Thirty-nine years after its inception, it is with great pride that the office continues to elevate the concerns of the 28.4 million small businesses that make up the backbone of the U.S. economy. As part of this mission Advocacy is pleased to present the *Report on the Regulatory Flexibility Act, FY 2015*. The year 2015 marked the thirty-fifth anniversary of the signing of the RFA in 1980 by President Jimmy Carter.

Advocacy works hard to foster strong relationships with the small business community in three ways: outreach to small businesses across the United States, research highlighting small business issues, and participation in the regulatory process to represent the small business point of view. The RFA is Advocacy's most effective tool for bringing small business concerns into rulemaking.

This annual report details Advocacy's monitoring of federal agency implementation of the RFA and compliance with requirements under Executive Order 13272. It reports key results in several areas: federal agency training, small business roundtables, SBREFA panels, comment letters, and regulatory cost savings.

Advocacy's RFA training has helped the office build strong relationships with the federal agencies. In FY 2015, Advocacy trained 126 federal agency officials, and since the inception of training in 2003, the office has conducted training for 18 cabinet departments; 67 separate component agencies and offices within these departments; 22 independent agencies; and various special groups including congressional staff, business organizations, and trade associations. (Appendix A contains details.) As a result, agency rule-writers, with increasing frequency, are reaching out to small businesses and clearly analyzing the impact of their proposals prior to promulgating rules.

Advocacy hosted 21 small business roundtables this year. Most took place in Washington, D.C., (with out-of-town participants phoning in via conference call). Advocacy staff also traveled to other cities for several of them. Agency officials frequently participate, and the roundtables facilitate sharing of information and airing of concerns between regulators and regulated entities.

SBREFA panels are a vehicle for small business input into major regulatory activities of three agencies: the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and Consumer Financial Protection Bureau (CFPB).[1] Small entity representatives donate their time and expertise to prepare and participate in these complex information-gathering sessions. In FY 2015, Advocacy participated in six SBREFA panels: one each at CFPB and OSHA, as well as three EPA panels convened in FY 2015 and one that continued from FY 2014.

1 SBREFA panels are named for the Small Business Regulatory Enforcement Act of 1996 that created them. They are also referred to as small business advocacy review or SBAR panels.

Although federal agencies continue to work to improve their rules, there are many examples of proposals that still impose a significant economic impact on small businesses. In these instances Advocacy utilizes the independence afforded it by Congress to submit formal public comments to agencies. In FY 2015, Advocacy submitted 28 letters to 20 agencies calling attention to the small business impact of proposed rules.

As a result of Advocacy's involvement in the rulemaking process in 2015 and previous years, the office is pleased to announce first-year cost savings amounting to $1.6 billion. This cost savings comes from work on 11 rules that were made final in FY 2015. Some of these rulemakings had stretched over more than a decade, and Advocacy attorneys continuously monitored these processes throughout.

Cost savings are one measure of Advocacy's effectiveness. While this measure has not been in place over the RFA's entire history, since the office started tracking savings in 1998, Advocacy's work on behalf of small business has resulted in cumulative cost savings of $128.7 billion dollars.

Advocacy is not alone in the conversation on behalf of small business. If not for the small businesses themselves, the office's success would not be possible. Advocacy relies on small businesses and small business stakeholders for their real world insight into the effect of regulations. And the office relies on individual small business owners who donate their time and speak up on behalf of their own businesses and others in their industries to help improve federal rules and compliance.

The Office of Advocacy looks forward to another productive year working on behalf of the American small business owner. The office will continue to work with Congress, federal agencies, and the Administration as they foster the social and economic goals of federal regulation while reducing disproportionate regulatory burdens on small businesses.

Darryl L. DePriest
Chief Counsel for Advocacy
January 2016

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Chapter 1
The Regulatory Flexibility Act's Role in the Federal Rulemaking Process

Nearly 40 years ago, the Office of Advocacy entered the federal rulemaking process with the mission of providing small businesses across the United States with an independent advocate in the regulatory process. For some time, small business leaders had expressed concerns that federal administrative action could "literally mean life or death to a business enterprise."[1] Small businesses did not have the same level of personal influence and well-funded lobbying that big businesses enjoyed throughout the federal government.

However, in 1976, Congress balanced the scales by creating the Office of Advocacy led by a presidentially appointed, Senate-confirmed Chief Counsel for Advocacy. Under the chief counsel's independent leadership, the office would assess the effects of government regulations and act as a credible voice for small business in the regulatory process. This was initially accomplished through studies on the impacts of government regulation on small business, as well as planning the first White House Conference on Small Business, a high-profile event that engaged small business representatives from across the United States.

The RFA's Origins

Despite these efforts, small business representatives continued to express concerns that one-size-fits-all regulations made it difficult for them to compete in U.S. markets. President Jimmy Carter, a one-time small business owner himself, understood the necessity for greater protections for small businesses in the regulatory process and helped facilitate administrative and legislative changes. In 1979, President Carter issued a memorandum to the heads of all executive departments and agencies, instructing them to "make sure that federal regulations [would] not place unnecessary burdens on small businesses and organizations."[2] More specifically, President Carter directed federal agencies to apply regulations "in a flexible manner, taking into account the size and nature of the regulated businesses,"[3] and he asked Advocacy to ensure that the agencies' implementation would be consistent with government-wide regulatory reform.

Following the first White House Conference on Small Business in 1980, Congress enacted the Regulatory Flexibility Act (RFA).[4] The new law mandated that agencies consider the impact of their regulatory proposals on small businesses, analyze equally effective alternatives, and make their analyses available for public comment. This

1 William Ruder and Raymond Nathan, The Businessman's Guide to Washington, Englewood Cliffs, N.J.: Prentice Hall, Inc., 1964, 1.

2 Jimmy Carter, "Regulation of Small Businesses and Organizations Memorandum from the President," November 16, 1979, available online at http://www.presidency.ucsb.edu/ws/?pid=31709.

3 Jimmy Carter, "Regulation of Small Businesses Memorandum."

4 5 U.S.C. § 601 et seq.

new approach to federal rulemaking was viewed as a remedy for the disproportionate burden placed on small businesses by one-size-fits-all regulation, "without undermining the goals of our social and economic programs."[5]

RFA Requirements

Under the RFA, when an agency proposes a rule that would have a "significant impact on a substantial number of small entities," the rule must be accompanied by an impact analysis, known as an initial regulatory flexibility analysis (IRFA), when it is published for public comment.[6] The agency must publish a final regulatory flexibility analysis (FRFA) with the final rule.[7] Alternatively, if a federal agency determines that a proposed rule would not have such an impact on small entities, the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.[8]

During a November 2015 interview, Frank Swain, Chief Counsel for Advocacy from 1981 to 1989, noted that "The RFA is the only regulatory reform that is statutorily required. Most of the regulatory reforms are largely executive orders." Executive orders frequently expire at the end of a president's term. "The RFA, because of its statutory basis, is going to be around indefinitely," Swain said.

Interpreting the RFA and the Need To Strengthen It

During the first half of the 1980s, the federal courts were influential in developing the RFA's role in the regulatory process. One question that required the courts' intervention was whether a federal agency had to consider a proposed rule's indirect effects on small businesses, in addition to its direct effects. In *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC)*, the D.C. Circuit found that "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy."[9] This interpretation—that federal agencies must only consider the direct effects on small businesses within the jurisdiction of the rule—has continued, even after subsequent amendments to the RFA.[10]

In the run-up to the second White House Conference on Small Business in 1986, conference planners noted that "the effectiveness of the RFA largely depends on small business' awareness of proposed regulations and [their] ability to effectively voice [their] concerns to regulatory agencies."[11] They also voiced concern that "the courts' ability to review agency compliance with the law is limited." Eight years later, the Government Accounting Office reported that agency compliance with the RFA varied widely across the federal government, a condition that likely impaired efforts to address the disproportionate effect of federal regulation on small business.

While Advocacy was statutorily required to report annually on federal agency compliance, compliance with the RFA was not itself reviewable by the courts at the time. The RFA did allow the chief counsel for advocacy to appear as *amicus curiae* (friend of the court) in any action to review a rule, expanding the chief counsel's role in representing small business interests in policy development. However, the courts' inability to judicially review compliance with the RFA left petitioners and the chief counsel to challenge the regulation primarily under the Administrative Procedure Act.

After the third White House Conference on Small Business in 1995 renewed the call for strengthening the RFA, Congress and President Bill Clinton enacted the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The amendments to the RFA under SBREFA provided new checks on federal agency compliance with the RFA's requirements, as well as additional procedures specifically addressing small business

5 Jimmy Carter, "Regulation of Small Businesses Memorandum."

6 5 U.S.C. § 603; see 5 U.S.C. § 601(3-6) (defining "small entity" as comprising the definitions for "small business," "small organization," and "small government jurisdiction").

7 5 U.S.C. § 604.

8 5 U.S.C. § 605(b).

9 *Mid-Tex Elec. Coop. v. FERC,* 773 F.2d 327, 341 (D.C. Cir. 1985).

10 *American Trucking Ass'ns v. EPA,* 175 F.3d 1027 (D.C. Cir. 1999).

11 *The Small Business Advocate* newsletter, U.S. Small Business Administration, Office of Advocacy, September 2005.

concerns regarding environmental and occupational regulations. The SBREFA amendments also made a federal agency's compliance with certain sections of the RFA judicially reviewable, meaning petitioners could challenge regulations based on the agency's failure to supply a FRFA or sufficient reason for certification.

After amending the RFA to allow for judicial review of agency compliance, the courts again provided assistance in delineating the RFA's requirements on federal agencies. In *Southern Offshore Fishing Associations v. Daley*, the court held that the National Marine Fisheries Service failed to make a "reasonable, good-faith effort" to inform the public about the potential impacts of a proposed rule imposing fishing quotas and to consider less harmful alternatives.[12] The agency had published a final regulatory flexibility analysis (FRFA) with its certification of the rule, but it did not publish an initial regulatory flexibility analysis (IRFA). The court's holding established that an IRFA must precede a FRFA for an agency to have "undertak[en] a rational consideration of the economic effects and potential [regulatory] alternatives."[13]

SBREFA Panels

The SBREFA amendments also required the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to convene small business advocacy review panels whenever the agency proposes a rule that may have a significant impact on a substantial number of small entities. These panels consist of officials from the promulgating agency, the Office of Information and Regulatory Affairs, and the Office of Advocacy. Their task is to consult with small business representatives on the agency's regulatory proposals to ensure that the agency has identified and considered regulatory alternatives that could attain the policy objectives while minimizing the impacts on small businesses. After each collaborative panel has concluded, the panel issues a report of its findings and any recommendations for providing flexibility for small entities.

SBREFA panels have introduced specific small business alternatives into federal rules. Jere Glover, Chief Counsel for Advocacy during the passage of SBREFA, made two key observations about the rulemaking process. First, "If you get to the agency early in the process, they are more likely to change their mind." And second, the mission of these efforts is to "make the regulation work for the industry," not to "kill the regulation." Glover's perspective comes not only from his tenure as chief counsel from 1994 to 2001; he was also present at the creation of the RFA as deputy to Milton Stewart, the first chief counsel for advocacy.

Executive Order 13272

As the George W. Bush Administration began to consider small business priorities, improved RFA compliance was one key goal. To this end, President Bush issued Executive Order (E.O.) 13272, "Proper Consideration of Small Entities in Agency Rulemaking" in 2002.[14] This E.O. tasked Advocacy with training federal agencies and other stakeholders on the RFA. The training sessions helped apprise agencies of their responsibilities under the RFA and educated agency officials on the best RFA compliance practices. In addition, E.O. 13272 required Advocacy to track agency compliance with these requirements and report on them annually to the White House Office of Management and Budget.

E.O. 13272 instituted new procedures to help facilitate a collaborative relationship between agencies and the Office of Advocacy. First, the E.O. required agencies to notify Advocacy of any draft proposed rule that would impose a significant impact on a substantial number of small entities. Second, it required agencies to provide a response in the *Federal Register* to any written comment on the proposed rule from the Office of Advocacy when the final rule was published.

Thomas M. Sullivan, Chief Counsel for Advocacy during the Bush Administration, discussed E.O. 13272's pivotal role in furthering RFA compliance. Above all, because of the executive order, Sullivan said, "Advocacy became a part of the fabric of federal rulemaking." The aspect most responsible

12 *Southern Offshore Fishing Ass'ns v. Daley,* 995 F.Supp 1411, 1437 (M.D. Fla. 1998).

13 Id.

14 E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," www.gpo.gov/fdsys/pkg/FR-2002-08-16/pdf/02-21056.pdf, (Aug. 13, 2002).

for this evolution in Sullivan's view was federal agency training. "Training really helped accomplish this," he said. "The goal is to create regulations that meet the regulatory purpose and are sensitive to small business requirements." Sullivan added that "The biggest misperception is how hard it is to work with an agency for a win-win solution as opposed to just being critical of regulation."

Eight years and one presidential administration later, Congress and President Barack Obama enacted the Small Business Jobs Act of 2010,[15] which codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.[16] The new law created the Consumer Financial Protection Bureau and required that the new agency's major rules come under the SBREFA panel provisions of the RFA.

As the Obama Administration took office in the midst of the Great Recession, it looked to Advocacy for ways of encouraging economic activity. Again, the RFA was an important part of the answer. Executive Order 13563, "Improving Regulation and Regulatory Review,"[17] signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review. President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, "Identifying and Reducing Regulatory Burdens,"[18] which placed greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.

Executive Orders 13563 and 13610 bolstered the retrospective review requirements of the RFA by requiring all executive agencies to conduct periodic retrospective review of existing rules. President Obama also issued an administrative action, Executive Order 13579, which recommended that all independent agencies do the same.[19] This emphasis on the principles of regulatory review and the sensitivity to small business concerns in the federal rulemaking process further increased federal agency compliance.

Dr. Winslow Sargeant, Chief Counsel for Advocacy during this period, stressed that these executive orders sought to "make federal regulation more clear, predictable, and transparent." Sargeant identified two key areas, "retrospective review of existing regulation and deregulation when rules are no longer needed," as important future challenges for regulatory improvement.

Future Perspective

Since its passage in 1980, the RFA has demonstrated remarkable staying power. It has helped establish small business consideration as a necessary part of federal rulemaking. Over these 35 years, federal agency compliance with the RFA has evolved. With Advocacy's ongoing monitoring, this important tool will continue to help agencies write effective rules that guard against "significant economic impacts on a substantial number of small entities."

15 Small Business Jobs Act, Pub. L. 111–240 (2010).

16 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).

17 E.O. 13563, "Improving Regulation and Regulatory Review," www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf (Jan. 18, 2011).

18 E.O. 13610, "Identifying and Reducing Regulatory Burdens," www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf (May 10, 2012)

19 E.O. 13579, "Regulation and Independent Regulatory Agencies," www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf (July 11, 2011).

Chapter 2
Implementation and Compliance with Executive Order 13272 and the Small Business Jobs Act of 2010

Introduction

In August 2002, President George W. Bush signed Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking." Thirteen years later, Advocacy continues to find that E.O. 13272 has improved its relationship with federal agencies and overall compliance with the Regulatory Flexibility Act.

E.O. 13272 altered the terrain of federal rulemaking, establishing new responsibilities for both federal agencies and Advocacy to level the playing field for small businesses across the United States. Under this directive, federal agencies and Advocacy each have specific duties for facilitating greater regulatory cooperation.

Two of Advocacy's primary duties under E.O. 13272 are to educate federal agency officials on compliance with the RFA and to provide resources to support their continued compliance. Over the past 13 years, Advocacy has offered RFA training sessions to every rule-writing agency in the federal government, in most cases multiple times. These training sessions are often attended by the federal agency's attorneys, economists, and policymakers. A list of the agencies trained as of FY 2015 appears in Appendix A.

In addition to these training sessions, Advocacy has provided federal agencies with updated guidance on how to comply with the RFA. The office has published a practical compliance guide entitled *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*. This document is periodically updated based on legislative amendments and important cases.[20]

The primary duties of federal agencies under E.O. 13272 are aimed at creating greater procedural transparency and at ensuring small business concerns are represented in the federal rulemaking process. Foremost, federal agencies are required to publicly show how they take small business concerns and the RFA into account when creating regulations. Shortly after E.O. 13272 was signed, most agencies made their RFA policies and procedures available on their websites.

To ensure small business voices are being heard, agencies are also required to engage Advocacy during the rulemaking process. If a draft

20 The most recent edition of this publication can be found at www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.

regulation may have a significant impact on a substantial number of small entities, including small businesses, the promulgating agency must send copies of the draft regulation to Advocacy.

In addition, if Advocacy submits written comments on a proposed rule, the agency must consider these comments and address them in the final rule published in the *Federal Register.* This requirement was codified in 2010 as an amendment to the RFA by the Small Business Jobs Act.

Another of Advocacy's duties under E.O. 13272 is to report annually to the director of the Office of Management and Budget on agency compliance with these requirements. A summary of federal agency compliance can be found in Table 2.1.

As federal agencies have become more familiar with the RFA and have established cooperative relationships with Advocacy, the regulatory environment under E.O. 13272 and the Small Business Jobs Act has led to more successful and less burdensome federal regulation. In FY 2015, this more transparent and cooperative approach yielded more than $1.6 billion in foregone regulatory costs, as well as many other regulatory success stories. Detailed information on these cost savings and success stories can be found in Chapter 5.

Table 2.1 Agency Compliance with the Small Business Jobs Act of 2010 and E.O. 13272, FY 2015

Department	Written Procedures	Notify Advocacy	Response to Comments*	Comments
Cabinet Agencies				
Agriculture	√	n.a.	n.a.	
Commerce	√	√	√	
Defense	√	√	√	
Education	√	√	√	
Energy	√	√	√	
Environmental Protection Agency	√	√	√	
General Services Administration	√	√	√	
Health and Human Services	√	√	√	
Homeland Security	√	√	√	
Housing and Urban Development	√	√	n.a.	
Interior	√	X	X	The Fish and Wildlife Service does not notify Advocacy of its rules and consistently fails to respond adequately to Advocacy comments.
Justice	√	√	n.a.	
Labor	√	√	√	
Small Business Administration	√	√	√	
State	X	√	n.a.	
Transportation	√	√	√	
Treasury	√	√	n.a.	
Veterans Affairs	√	√	n.a.	

*Agencies are required to respond to Advocacy's comments pursuant to E.O. 13272 and the JOBS Act of 2010.
Key:
√ = Agency complied with the requirement.
X = Agency did not comply with the requirement.
n.a. = Not applicable in FY 2015 because Advocacy did not publish a public comment letter in response to an agency rule or because the agency is not required to do so.

Table 2.1 Agency Compliance with the Small Business Jobs Act of 2010 and E.O. 13272, FY 2015 (continued)

Department	Written Procedures	Notify Advocacy	Response to Comments*	Comments
Other Agencies with Regulatory Powers				
Consumer Financial Protection Bureau	n.a.	√	√	
Consumer Product Safety Commission	√	√	√	
Equal Employment Opportunity Comission	√	n.a.	n.a.	
Federal Acquisition Regulation Council	√	√	√	
Federal Communications Commission	√	√	√	
Federal Reserve Board	X	n.a.	n.a.	
National Labor Relations Board	n.a.	n.a.	n.a.	
Securities and Exchange Commission	√	√	√	

*Agencies are required to respond to Advocacy's comments pursuant to E.O. 13272 and the JOBS Act of 2010.
Key:
√ = Agency complied with the requirement.
X = Agency did not comply with the requirement.
n.a. = Not applicable in FY 2015 because Advocacy did not publish a public comment letter in response to an agency rule or because the agency is not required to do so.

Chapter 3
Advocacy's Communication with Small Businesses and Federal Agencies

Regulatory Agendas

Section 602 of the Regulatory Flexibility Act facilitates greater participation from the public, especially small business owners, by requiring agencies to publish their regulatory flexibility agendas twice a year in the *Federal Register*. These agendas must specify the subjects of upcoming proposed rules and whether these rules are likely to have a significant impact on a substantial number of small entities, including small businesses. Agencies are specifically required to provide these agendas to the Chief Counsel for Advocacy and make them available to small businesses and their representatives. Often, these agendas alert Advocacy and interested parties to forthcoming regulations, and they are sometimes discussed in Advocacy's roundtables.

The regulatory flexibility agendas for FY 2015 were published on December 22, 2014, and June 18, 2015, as part of the *Biennial Unified Agenda of Regulatory and Deregulatory Actions*. A compilation of current regulatory flexibility agendas can be found at www.reginfo.gov.

SBREFA Panels

The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require certain agencies to convene review panels whenever a potential regulation is expected to have a significant economic impact on a substantial number of small entities.[21] These are commonly called SBREFA or SBAR panels (for small business advocacy review). Today, three agencies are covered by this requirement: the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and Consumer Financial Protection Bureau (CFPB).

Since 1996, Advocacy has participated in 69 SBREFA panels, five of which were convened in FY2015. Specifically, OSHA and CFPB convened one panel each, and EPA convened three panels and continued one that began in FY 2014. A complete list of SBREFA panels since 1996 can be found in Appendix B, Table B.1.

21 The Dodd-Frank Wall Street Reform and Consumer Protection Act, passed in July 2010, established the CFPB to supervise certain activities of financial institutions. Section 1100G, entitled "Small Business Fairness and Regulatory Transparency," amends 5 U.S.C. § 609(d), to require the CFPB to comply with the SBREFA panel process, making it the third agency with this responsibility, joining EPA and OSHA.

Retrospective Review of Existing Regulations

Under section 610 of the RFA, agencies are required to conduct a retrospective review of existing regulations to examine their impact on small entities, including small businesses. President Obama bolstered this mandate through Executive Orders 13563 and 13610, requiring all executive agencies to conduct periodic retrospective reviews of all existing regulations. Executive Order 13579 provides additional support for periodic retrospective review by recommending independent agencies also meet these regulatory goals. As a result, agencies publish retrospective review plans in the *Unified Agenda of Regulatory and Deregulatory Actions* semiannually. Advocacy monitors these retrospective review plans and their implementation, and accepts input from small entities regarding any rules needing review. Overall agency compliance with this provision has been improving, but still needs work.

Interagency Communications

Advocacy utilizes numerous methods of communication to present the concerns of small businesses and other small entities to federal officials promulgating new regulations. Meetings with officials, comment letters to agency directors, and trainings on RFA compliance help facilitate meaningful participation by all interested parties and produce more effective federal regulation.

In FY2015, Advocacy's communications with federal agencies included 28 comment letters (listed in Table 4.1) and RFA compliance training sessions for 126 federal officials from a variety of agencies (see Appendix A). Both of these methods of communication have helped avoid excessive burdens on small business through more effective federal regulation. These positive results are detailed in Chapter 5.

Small Business Roundtables

Another method that Advocacy uses to advocate for small businesses is to host roundtables that bring together federal officials, small business owners, and other interested parties. These roundtables present a unique opportunity for those involved in promulgating federal regulations to hear directly from the public as Advocacy facilitates an open discussion.

In FY 2015, Advocacy hosted 21 roundtables nationwide. Most took place in Washington, D.C. All are listed on Advocacy's website at www.sba.gov/category/advocacy-navigation-structure/regulatory-roundtables.

The roundtables listed in the next sections are grouped under three headings:

- Safety, Labor & Transportation;
- Environmental; and
- Finance, Capital and Taxes.

They are listed under the appropriate category, alphabetically by agency, then by date.

Department of Labor, Occupational Safety and Health Administration and Mine Safety and Health Administration

November 14, 2014

Chemical Management; Permissible Exposure Limits. This roundtable covered several occupational safety and health topics. The director of OSHA's Directorate of Standards and Guidance provided an overview of the agency's request for information on chemical management and permissible exposure limits. Representatives of the National Safety Council, a national nonprofit organization, provided an overview of its new safety management tool, "Journey to Safety Excellence," which is designed to help small businesses prevent occupational injuries and illnesses. Advocacy staff gave an update on OSHA's planned SBREFA panel on infectious diseases, and two health and safety experts discussed what small businesses need to know about infectious diseases, including Ebola. Finally, SBA's National Ombudsman discussed how his office assists and advocates on behalf of small business.

January 30, 2015

OSHA's Regulatory Agenda. This roundtable featured an overview of OSHA's new *Unified Agenda of Regulatory and Deregulatory Actions* by the deputy assistant secretary of labor for occupational safety and health. OSHA staff from the Office of Construction Standards and Guidance and the Directorate of Construction discussed a possible OSHA SBREFA panel on vehicle backover hazards. Other topics included forthcoming revisions to OSHA's Cranes and Derricks in Construction standard and an assessment of legal issues surrounding the D.C. Circuit Court of Appeals' recent decision on the so-called "Volks II" case. Finally, Advocacy provided a debriefing on the recently completed OSHA SBREFA panel on occupational exposure to infectious diseases.

March 20, 2015

Process Safety Management; Prevention of Major Chemical Accidents. This roundtable focused on OSHA's upcoming SBREFA panel on process safety management (PSM). OSHA's lead technical expert on PSM provided an update on the rulemaking and the results of the agency's request for information on chemical safety. Next, an expert on environmental health and safety discussed some of the key regulatory concerns with OSHA's PSM rulemaking from the small business perspective. Advocacy provided an overview of the SBREFA panel process, as well as key issues discussed at the American Bar Association's recent Occupational Safety and Health Law Committee meeting.

May 15, 2015

Communication Tower Safety; Confined Spaces in Construction. Three OSHA officials and a small business representative gave presentations at this roundtable. The director of the Office of Construction Standards and Guidance and a regulatory analyst from the Directorate of Construction discussed the agency's request for information on communication tower safety and its newly released Confined Spaces in Construction rule. The deputy director of OSHA's Directorate of Enforcement discussed new OSHA enforcement data and trends, particularly with respect to small business. Finally, the roundtable heard from the director of sales operations at a small business that designs and manufactures robots and aerial drones. He discussed the potential safety benefits of the use of unmanned aircraft systems across a host of industries.

July 17, 2015

Chemical Safety; Process Safety Management. This roundtable focused on two upcoming SBREFA panel topics: OSHA's Process Safety Management (PSM) and EPA's Risk Management Program (RMP). First, Advocacy provided an overview of the SBREFA panel process and discussed the role of small entity representatives (SERs) in the process. Next, an expert on environmental health and safety gave an overview of the PSM and RMP regulations, and their similarities and differences from a small business perspective. The meeting concluded with an expert panel discussion on PSM and RMP and their small business impact in various industries.

Department of Labor, Wage and Hour Division

July 16, 2015, Louisville, Ky.

July 22, 2015, Washington, D.C.

August 12, 2015, New Orleans, La.

Overtime Regulations Under the Fair Labor Standards Act. In July and August 2015, Advocacy hosted three small business roundtables in Kentucky, Louisiana, and Washington, D.C., on the Department of Labor's proposed rule that amends the overtime regulations under the Fair Labor Standards Act. The proposal would amend the "white collar" exemption from overtime pay for executive, administrative, and professional employees. Agency officials were present at all roundtables to provide briefings and answer questions.

Department of Transportation, Federal Aviation Administration

April 9, 2015

Small Unmanned Aircraft Systems (Drones). This well attended roundtable dealt with the small business implications of the Federal Aviation Administration's (FAA) proposed Small Unmanned Aircraft Systems rule (also known as the small UAS or "small drones" rule). An official from the Department of Transportation's (DOT) Office of Chief Counsel, plus a team of experts from FAA and DOT attended the roundtable and gave a detailed briefing about the proposed rule. The owner of a small air surveying business, who is also the executive director of the Management Association for Private Photogrammetric Surveyors, discussed the potential societal benefits from commercial drones, as well as regulatory obstacles and the importance of facilitating technology and innovation. The meeting wrapped up with a lengthy open discussion during which FAA and DOT answered questions and took comments on the proposal.

Federal Acquisition Regulatory Council

July 2, 2015, Des Moines, Iowa

July 22, 2015, Washington, D.C.

July 29, 2015, Albuquerque, N.M.

Fair Pay and Safe Workplaces Requirements. Three roundtables were held across the United States on the Federal Acquisition Regulatory (FAR) Council proposed regulation to implement Executive Order 13673, "Fair Pay and Safe Workplaces." Small businesses and small business advocates attended each roundtable and shared their concerns about the proposed regulation and guidance document with agency representatives. Advocacy conveyed these concerns to the FAR Council and Department of Labor in comment letters.

Environmental Roundtables

Environmental Protection Agency

December 5, 2014

Brick MACT; EPA Unified Agenda. EPA's proposed national emission standards for hazardous air pollutants (NESHAP) for the brick production industry were the main focus of this roundtable. This NESHAP, also known as the brick MACT (i.e., maximum achievable control technology), has the potential to bankrupt a significant portion of the small businesses in the industry. EPA staff gave a presentation on the proposed rule, and a representative of the Brick Industry Association gave a response. In addition, EPA's fall 2014 entries in the *Unified Agenda of Regulatory and Deregulatory Actions* were discussed.

January 23, 2015

Ozone NAAQS; EPA Small Business Environmental Assistant Programs. Advocacy staff moderated a discussion of EPA's proposed national ambient air quality standards (NAAQS) for ozone; one chief area of concern was the likely impacts on small businesses in nonattainment areas. EPA staff presented information about the agency's Small Business Environmental Assistance Programs.

February 20, 2015

Significant New Use Rules; Definition of Solid Waste. This roundtable focused on three EPA actions: two proposed Significant New Use Rules (SNURs) and the final rule for the Definition of Solid Waste. EPA presented a discussion focused on the inapplicability of the article exemption for the proposed SNURs for two classes of chemicals: (1) toluene diisocyanates and related compounds and (2) long-chain perfluoroalkyl carboxylate and perfluoroalkyl sulfonate chemical substances. EPA staff also provided a detailed overview of the final Definition of Solid Waste rule.

May 1, 2015

Emission Standards for Oil and Gas Production; Reporting and Recordkeeping Requirements for Nanoscale Materials. EPA presented two topics at this roundtable. First was the agency's development of a proposed rule to reduce emissions of greenhouse gases, including methane and volatile organic chemicals, under its New Source Performance Standards for the oil and natural gas industry. Second was EPA's proposed rule to require reporting and recordkeeping for certain chemical substances when manufactured or processed at the nanoscale.

July 29, 2015

Greenhouse Gas Emissions from Heavy Duty Vehicles; Reduction of the Use of Hydrofluorocarbons (HFCs). This roundtable focused on two topics. First was an EPA presentation and discussion of the proposed amendments to EPA's regulation of greenhouse gases from heavy duty vehicles. This rulemaking was the subject of a SBREFA panel in 2014, and would bring trailer manufacturers under EPA Clean Air Act regulation for the first time. The second topic was EPA's final amendments under the Significant New Alternative Program (SNAP) to reduce the use of hydrofluorocarbons, a potent greenhouse gas. EPA presented the rule, and two trade associations presented small businesses' concerns with the regulatory requirements and deadlines.

September 11, 2015

Clean Power Plan; Proposed Federal Plan and Model Trading Rules; Emission Standards for Oil & Gas Production. This roundtable dealt with two EPA proposed rules, which had been the subject of SBREFA panels earlier in the year. First, EPA officials discussed the proposed Federal Implementation Plan and Model Trading Rules. These are scheduled to be published with the final Clean Power Plan, which will contain the emission guidelines for greenhouse gas emissions from fossil-fueled power plants. Second, EPA presented and discussed its proposed emission standards for volatile organic chemicals and methane generated by new oil and gas production.

Finance, Capital & Taxes Roundtables

Department of Labor, Employee Benefits Security Administration

June 10, 2015

Proposed Definition of "Fiduciary." This roundtable dealt with the Employee Benefits Security Administration's (EBSA) proposed rule, Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice. The proposed rule would expand the definition of "fiduciary" of an employee benefit plan (i.e., anyone providing investment advice to a plan, its participants, or beneficiaries). The proposal would extend the fiduciary standard of care to all advisers of workplace retirement plans and IRAs, requiring them to disclose any potential conflicts of interests and prohibiting them from engaging in certain transactions. At the roundtable, the deputy assistant secretary of EBSA made a presentation on the proposed rule, and small business owners and representatives provided feedback.

Department of the Treasury, Internal Revenue Service

January 21, 2015

Tax Reform Proposals Affecting Small Business Retirement Plans. This roundtable focused on recent legislative and policy proposals affecting small business retirement plans. One small business owner made a presentation on the potential small business impact of changes to deferred compensation arrangements under Internal Revenue Code section 409A. Another small business owner discussed tax reform proposals that would affect small business employee benefit plans.

February 12, 2015

Tax Reform Proposals Affecting Small Business Owners. This roundtable gave small business owners an opportunity to discuss tax reform changes that affect them. Congressional tax reform proposals have centered on measures such as tax simplification, the tax treatment of pass-through entities, and small business tax expenditure extenders.

Chapter 4
Advocacy's Public Comments to Federal Agencies in FY 2015

This chapter summarizes Advocacy's formal input into agency rulemaking. Advocacy filed 28 public comment letters in FY 2015. Chart 4.1 shows the primary issues raised in these letters. The most frequent purpose of Advocacy's letters was to press for an alternative regulatory approach that would ameliorate a rule's economic impact on small business. The second most frequent concern was an agency's inadequate analysis of a proposed rule's small business impact.

Advocacy's formal comment letters are listed in Table 4.1 in chronological order. All of these comment letters are available online at the Office of Advocacy website, www.sba.gov/advocacy.

Chart 4.1 Number of Specific Issues of Concern in Agency Comment Letters, FY 2015

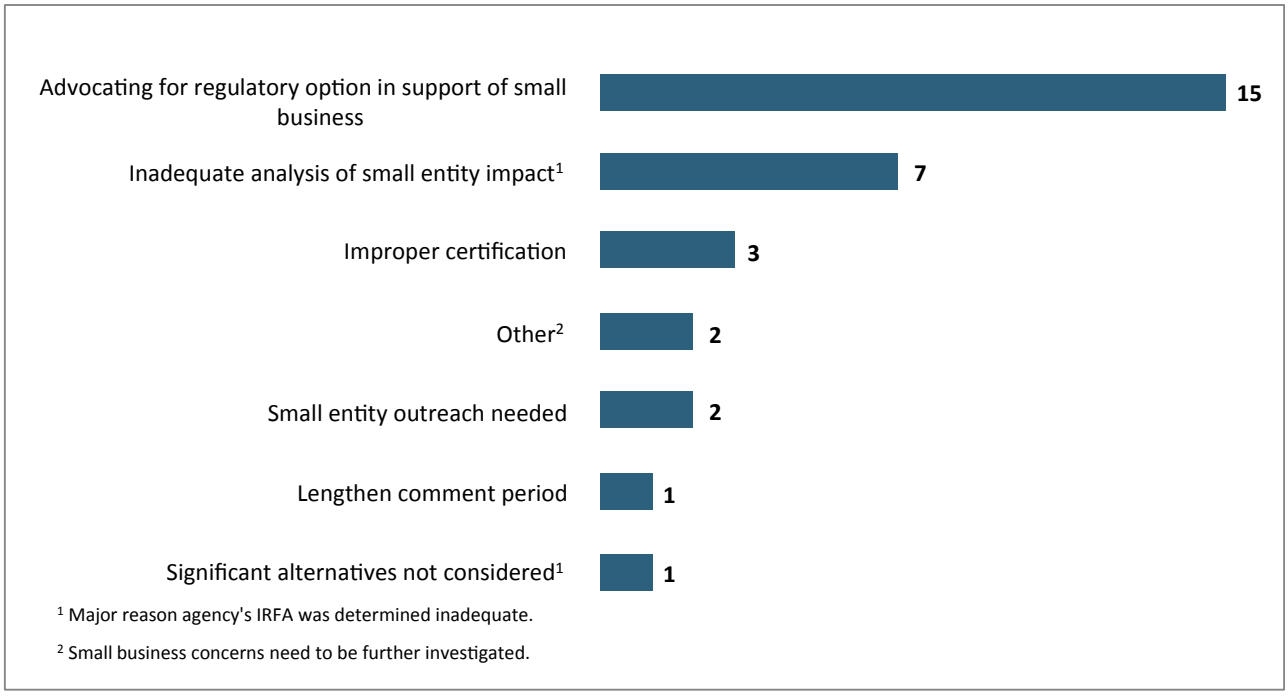


Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2015

Note: All letters are available online at the Office of Advocacy website, www.sba.gov/advocacy.

Date	Agency*	Topic	Citation to Rule
10/01/2014	EPA / CORPS	Definition of "Waters of the United States" Under the Clean Water Act	79 *Fed. Reg.* 22,188 4/21/2014
10/02/2014	CPSC	Safety Standard for Sling Carriers	79 *Fed. Reg.* 42,724 7/23/2014 CPSC–2014-0018
10/27/2014	CFPB	Home Mortgage Disclosure (Regulation C)	79 *Fed. Reg.* 51,732 8/29/2014
10/28/2014	EPA	Petroleum Refinery Sector Risk, Technology Review, and New Source Performance Standards	79 *Fed. Reg.* 36,879 6/30/2014
11/13/2014	DOE	Energy Conservation Program; Proposed Energy Efficiency Standards for Automatic Commercial Ice Makers	79 *Fed. Reg.* 14,846 3/17/2014
11/24/2014	DOJ	Nondiscrimination on the Basis of Disability by Public Accommodations—Movie Theaters, Movie Captioning and Audio Description	79 *Fed. Reg.* 43,467 8/1/2014
12/18/2014	DOD	Limitations on Terms of Consumer Credit Extended to Service Members and Dependents	79 *Fed. Reg.* 58,602 9/29/2014
3/17/2015	EPA	National Emission Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay Product Manufacturing	79 *Fed. Reg.* 75,621 12/18/2014
3/24/2015	TREAS IRS	Changes in Accounting Periods and in Methods of Accounting	Rev. Proc. 2015-20, 2015-9 I.R.B. 694
4/03/2015	DOE	Energy Conservation Standards for Commercial Warm Air Furnaces	80 *Fed. Reg.* 6,182 2/4/2015
4/21/2015	EPA	Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements	80 *Fed. Reg.* 3,379 1/22/2015
4/24/2015	DOT FAA	Proposed Operation and Certification of Small Unmanned Aircraft Systems Rule	80 *Fed. Reg.* 9,544 2/23/2015
5/04/2015	GSA	Transactional Data Reporting (GSAR Case 2013-G504)	80 *Fed. Reg.* 1,160 3/4/2015
5/08/2015	EPA	Convening of Panel on Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed On or Before January 8, 2014	www2.epa.gov/regflex/sbar-panel-federal-plan-regulating-greenhouse-gas-emissions-electric-generating-units
5/08/2015	DOE	Energy Conservation Standards for Hearth Products	80 *Fed. Reg.* 7,082 2/9/2015
5/13/2015	HHS FDA	Electronic Distribution of Prescribing Information for Human Prescription Drugs, Including Biological Products	79 *Fed. Reg.* 75,506 12/18/2014 FDA-2007-N-0363

Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2015 (continued)

Date	Agency*	Topic	Citation to Rule
5/22/2015	DOL	Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Open Range in the United States	80 *Fed. Reg.* 20,300 4/15/2015
6/08/2015	FCC	*Ex Parte Letter*: Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding Rules	WT Docket No. 14-170
6/12/2015	FCC	*Ex Parte Letter*: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	GN Docket No. 12-268 MB Docket No. 03-185
6/23/2015	FCC	*Ex Parte Letter*: Technology Transitions; Policies and Rules Governing the Retirement of Copper Loops by Incumbent Local Exchange Carriers	GN Docket No. 13-5; RM-11358
7/17/2015	DOL EBSA	Definition of the Term "Fiduciary"; Conflict of Interest Rule, Retirement Investment Advice	80 *Fed. Reg.* 21,927 4/14/2015
8/05/2015	EPA	Reporting and Recordkeeping Requirements for Chemical Substances When Manufactured or Processed as Nanoscale Materials under the Toxic Substance Control Act	80 *Fed. Reg.* 18,330 4/6/2015
8/21/2015	DOL	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees	80 *Fed. Reg.* 38,516 7/6/2015
8/26/2015	DOL	Implementation of Executive Order 13673 "Fair Pay and Safe Workplaces"	80 *Fed. Reg.* 30,547 5/28/2015
8/26/2015	FAR	Implementation of Executive Order 13673, "Fair Pay and Safe Workplaces"	80 *Fed. Reg.* 30,547 5/28/2015 FAR Case 2014-025
9/04/2015	DOL	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees	80 *Fed. Reg.* 38,516 7/6/2015
9/08/2015	FCC	Reply Comments Protecting and Promoting the Open Internet	GN Docket No. 14-28
9/21/2015	DOI FWS	Revision of the Section 4(d) Rule for the African Elephant	80 *Fed. Reg.* 45,154 7/29/2015

***Agency Abbreviations**

CFPB	Consumer Financial Protection Bureau	EPA	Environmental Protection Agency
CORPS	Army Corps of Engineers	FAA	Federal Aviation Administration
CPSC	Consumer Product Safety Commission	FAR	Federal Acquisition Regulatory Council
DOD	Department of Defense	FCC	Federal Communications Commission
DOE	Department of Energy	FDA	Food and Drug Administration
DOI	Department of the Interior	FWS	Fish and Wildlife Service
DOJ	Department of Justice	GSA	General Services Administration
DOL	Department of Labor	HHS	Department of Health and Human Services
DOT	Department of Transportation	IRS	Internal Revenue Service
EBSA	Employee Benefits Security Administration	TREAS	Department of Treasury

Descriptions of Comment Letters Filed in FY 2015

In FY 2015, the Office of Advocacy filed 28 comment letters with federal agencies. The descriptions of the letters that follow are listed by agency, then by date. All of Advocacy's public comment letters are on the Office of Advocacy website, www.sba.gov/advocacy.

Consumer Financial Protection Bureau

Issue: Home Mortgage Disclosure (Regulation C)

On October 27, 2014, Advocacy submitted a comment letter to the Consumer Financial Protection Bureau (CFPB) on the proposed rule, Home Mortgage Disclosure (Regulation C). The proposal amends the Home Mortgage Disclosure Act (HMDA) pursuant to section 1094 of the Dodd-Frank Act. HMDA requires lenders who meet certain coverage tests to report information about mortgage applications and loans. The law informs the public about how financial institutions are serving the housing needs of their communities and promotes access to fair credit in the housing market.

CFPB's proposed Regulation C would require financial institutions to report all closed-end loans, open-ended lines of credit, and reverse mortgages secured by dwellings. It would eliminate the requirement to report unsecured home improvement loans. The rule was the subject of an earlier SBREFA panel, which was the source of many of Advocacy's comments.

Advocacy expressed concerns about the requirement to report additional types of transactions, such as open-ended lines of credit, since this may be burdensome to small entities. Advocacy encouraged CFPB not to include the additional loan types in the rule.

The proposed rule set a reporting threshold of 25 loans, excluding open-ended lines of credit. Small entity representatives at the SBREFA panel recommended thresholds ranging from 100 to 500 loans. Advocacy encouraged CFPB to perform a thorough analysis of alternative thresholds.

The Dodd-Frank Act amended HMDA to require the collection and reporting of several new data points. The proposed rule included the statutorily mandated changes and additional discretionary changes. Advocacy encouraged CFPB to consider exempting small entities from the discretionary data collection until the CFPB has had an opportunity to determine whether the additional information furthers the goals of HMDA.

In addition, the CFPB sought comments on whether it should eliminate the requirement that financial institutions make their modified loan application registers available to the public. During the SBREFA panel, the small entity representatives stated that they rarely receive requests for their registers. Advocacy encouraged CFPB to eliminate this requirement for small entities. As of the end of FY 2015, the final rule had not yet been issued.

Consumer Product Safety Commission

Issue: Safety Standard for Sling Carriers

On July 23, 2014, the Consumer Product Safety Commission (CPSC) published a proposed rule that sought to establish safety requirements, including a product testing regimen, for infant and toddler sling carriers. The CPSC determined that the proposed rule would have a significant impact on a substantial number of small businesses and published an initial regulatory flexibility analysis (IRFA) with the rule. While supportive of the public policy objective underlying the proposed rule—infant safety—Advocacy suggested ways that the CPSC could improve its economic analysis of the small entities that would be affected by the rule.

The CPSC was able to identify 47 suppliers of sling carriers to the U.S. market, but acknowledged that there were hundreds more suppliers that produce small quantities of slings. The CPSC assumed that these hundreds of sling

manufacturers were very small businesses. Because the CPSC was unable to acquire data on the very small businesses, it made assumptions about their make-up and revenue. It concluded that the proposed rule would likely impose significant economic impacts on a large number of very small manufacturers. CPSC sought comment on whether the rule's effective date should be extended, and by how much, so that any impacts could be reduced. In light of this, it proposed extending the effective date of the final rule by 12 months.

A number of small sling carrier manufacturers approached Advocacy about the rule. Most of these business owners were stay-at-home moms who supplement their income by creating the slings. While all of these small business persons supported the regulatory goal of increased child safety, they believed that the rule could adopt a balanced approach to protect child safety while not driving the majority of small sling makers out of business. The proposed testing regimen was a particular concern, since most small makers lack the resources to implement such a program.

Advocacy suggested that the lack of data on the very small sling manufacturers made it hard to determine if the CPSC's assumptions on the industry were valid. Advocacy recommended that the CPSC gather more information on small sling makers' market share, production costs, and revenues in order to get a clearer view of the rule's likely impact. Advocacy also asked the CPSC to consider additional alternatives, including finalizing a 12-month extension of the effective date, to minimize the impacts of the rule. To date, CPSC has not finalized the sling carrier rule.

Department of Defense

Issue: Terms of Consumer Credit For Service Members and Dependents

On December 18, 2014, Advocacy submitted a comment letter to the Department of Defense (DOD) on the proposed rule, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents. The proposed changes implement portions of the Military Lending Act (MLA).

The proposed rule provides protections to service members or their dependents in certain types of consumer credit transactions. It limits interest to 36 percent, prohibits arbitration and prepayment penalties, and requires certain disclosures before consummation of the transaction. Prior to the proposed rule, the MLA rule covered only three types of consumer credit: closed-end payday loans up to 91 days and $2,000; closed-end vehicle title loans up to 181 days; and closed-end tax refund anticipation loans.

The proposed rule would extend MLA protections to a broader range of products. It would limit interest charged on all payday loans, vehicle title loans, refund anticipation loans, deposit advance loans, installment loans, unsecured open-end lines of credit, and credit cards. It would also require creditors to screen all applicants against a DOD database before offering products with rates above 36 percent in order to be eligible for a safe harbor.

The DOD certified the rule would not have a significant economic impact on a substantial number of small entities. Advocacy's letter expressed concerns about the factual basis for the certification. Advocacy advised DOD to determine the number of small entities that would be affected by the proposal and the nature of the economic impact, or else to provide information for a stronger factual basis if a certification was appropriate. To mitigate the economic impact on small entities, Advocacy recommended that small entities be allowed to continue to operate under a safe harbor that requires service members and their dependents to self-identify.

The DOD finalized the rule on July 22, 2015. The final rule extended the safe harbor to allow creditors to use the DOD's database or a credit report from a nationwide consumer reporting agency to determine whether a borrower is a covered borrower.

Department of Energy

Issue: Energy Efficiency Standards for Automatic Commercial Ice Makers

On November 12, 2014, Advocacy sent a letter to the Department of Energy (DOE) forwarding small manufacturers' concerns with the Appliance and Equipment Standards program under the Energy Policy and Conservation Act (EPCA). Small manufacturers of commercial ice makers believed that DOE's proposed efficiency levels for automatic commercial ice makers would reduce their industry net present value by 78.6 percent. Advocacy's letter highlighted the importance of small manufacturing from both an energy efficiency and economic standpoint, and it discussed ways in which DOE could exercise its discretion under EPCA to address small business concerns. Advocacy recommended that DOE (1) use its discretion to adopt an alternative to the proposed standard that would be achievable for small manufacturers of automatic commercial ice makers, and (2) give similar consideration to small manufacturers in all future energy efficiency rulemakings. DOE ultimately finalized an alternative efficiency standard that reduced impacts to small entities by 27 percent.

Issue: Energy Conservation Standards for Commercial Warm Air Furnaces

On April 3, 2015, Advocacy filed public comments with the DOE in response to the proposed rule "Energy Conservation Standards for Commercial Warm Air Furnaces." Advocacy was concerned that the proposed rule would have a significant economic impact on the sole small manufacturer of gas-fired commercial warm air furnaces identified by DOE. DOE estimated conversion costs at $4.4 million per manufacturer. The affected small business is concerned that the proposed standards are not economically feasible to comply within the three-year period prescribed by DOE. Advocacy recommended that DOE use its discretion to adopt an alternative to the proposed standard that is achievable for small manufacturers of gas-fired commercial warm air furnaces. In April of 2014, DOE decided to pursue a negotiated rulemaking and has not yet come out with a new draft proposed rule.

Issue: Energy Conservation Standards for Hearth Products

May 8, 2015, Advocacy filed public comments with the Department of Energy on the proposed rule, Energy Conservation Standards for Hearth Products. The proposed rule would create energy efficiency standards that would require hearth product manufacturers to replace standing pilot lights with electronic ignition systems. Advocacy was concerned that DOE's analysis of small business impacts did not calculate the cost of complying with the rule relative to small business revenue. As such, the economic impact of the proposed rule on the hearth product industry was unclear. Advocacy encouraged DOE to reach out to affected small manufacturers to get a better idea of the proposal's small business impact and to consider other regulatory alternatives. DOE is currently reviewing comments in advance of its final regulation.

Department of Health and Human Services, Food and Drug Administration

Issue: Electronic Distribution of Prescribing Information for Human Prescription Drugs

On December 18, 2014, the Food and Drug Administration (FDA) published a rule to require prescribing information to be distributed electronically and to require that paper inserts containing prescribing information be discontinued. The FDA complied with the RFA by concluding that the proposed rule would have a significant impact on a substantial number of small businesses and published an IRFA. The agency acknowledged that there were areas in the rule where its economic assumptions relative to costs and benefits were difficult to analyze.

A number of small businesses and their representatives approached Advocacy concerned that the proposed regulation would have a negative impact on their businesses. They were primarily comprised of small independent pharmacies and

small paper and print companies that currently produce the prescription drug inserts. Advocacy submitted a comment letter on May 13, 2015, to provide the FDA with these industries' concerns and to suggest ways that the agency could improve its economic analysis of the rule's small entity impacts.

Advocacy encouraged the FDA to give increased weight to the comments voiced by affected entities in the final rule, given the considerable uncertainty surrounding the agency's assumptions and cost estimates on the costs necessary for the affected pharmacy industry to transition to an exclusively electronic prescription information system. As part of its review of comments submitted by interested parties to this regulation, Advocacy suggested that the FDA should analyze how the anticipated impacts of this rule would affect costs in the final rule. Advocacy also maintained that the FDA should entertain reasonable alternatives designed to reduce impacts on affected small entities, including analyzing the costs and benefits of using the dual-system alternative suggested by affected small entities. To date, the FDA has not published the final rule.

Department of Justice

Issue: Movie Theater Accessibility Equipment

On November 24, 2014, Advocacy filed a comment letter with the Department of Justice (DOJ) regarding a proposed rule under the Americans with Disabilities Act requiring movie theaters to purchase special accessibility equipment in order to provide closed captioning and audio description at all showings of films produced with this capability. Under this rule, theaters with digital screens would have six months to comply. DOJ also sought comments on compliance for analog screens, whether the agency should adopt a four-year compliance date or defer rulemaking until later.

Advocacy's comment letter highlighted concerns raised at a small business roundtable with DOJ officials and small theater owners. Small businesses told Advocacy that the compliance costs of this rule are greater than agency estimates, and they will have a significant economic impact on small theater owners who have just completed a costly conversion to digital cinema. They also noted that the device requirements in the rule far exceed the demand in their theaters, and that the timeline of six months to purchase and install this equipment is too short. Small theater owners suggested alternatives such as setting a lower ratio of required devices, creating a deferral for a subset of small theaters, and providing a longer compliance window for small businesses. Advocacy recommended that DOJ adopt these regulatory alternatives to give flexibility to small theater owners while providing sufficient access to movie theaters for patrons with disabilities. DOJ has not finalized this rule.

Department of Interior, Fish and Wildlife Service

Issue: The African Elephant

On July 29, 2015, the Fish and Wildlife Service (FWS) published the proposed rule, Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant. The African elephant was listed as threatened under the Endangered Species Act in 1978. However, a longstanding FWS rule allowed for the import and use of African elephant ivory in the United States under certain conditions. The proposed rule would eliminate these exemptions and end all commercial trade in African elephant ivory that does not meet the strict standards set forth in the Endangered Species Act. On September 21, 2015, Advocacy published a public comment letter relaying the concerns of small entities engaged in importing, exporting, and interstate transit of items containing ivory. These entities expressed concerns that the proposed rule would be costly and potentially unworkable as proposed. The comment period on this rule has closed and the agency has not yet submitted a final rule.

Issue: H-2A Visa Program for Temporary Foreign Workers in Herding Occupations

On May 22, 2015, Advocacy sent a letter to the Department of Labor on its proposed rule amending the H-2A visa program procedures for hiring temporary agricultural foreign workers in sheepherding, goat herding, and production of livestock on the open range. The rulemaking was undertaken as a result of a court decision that DOL's guidance documents on this issue were subject to the notice and comment requirements of the Administrative Procedure Act.

This proposed rule changes the wage methodology for H-2A workers in these special occupations. It increased the wage rate for these workers two- or three-fold over a five-year period. Based on feedback from owners of small herding operations, Advocacy expressed concern that these wage increases may significantly reduce or eliminate the profitability of these small enterprises, causing them to reduce operations or close. Advocacy also noted that DOL may have underestimated the cost of this rule, because these small employers may hire more H-2A workers than DOL estimated, and such extra costs as housing and workers' compensation insurance were not accounted for. Advocacy recommended that DOL publish a supplemental IRFA re-analyzing compliance costs, and that the agency consider small business alternatives that may minimize the economic impact of this rulemaking. DOL did not finalize this rule in FY 2015.

Issue: Fair Pay and Safe Workplaces

On May 28, 2015, the Department of Labor published a proposed guidance document pertaining to Executive Order 13673, "Fair Pay and Safe Workplaces," regarding labor practices by federal contractors and subcontractors. The DOL document is a companion to a rule proposed by the FAR Council to implement the executive order. DOL's proposed guidance defines administrative merits determinations, civil judgment, and arbitral award or decisions; it also specifies the information that contractors and subcontractors must report vis-à-vis these determinations. The document provides guidance to federal agency contracting officers and labor compliance advisors on how to assess reported labor law violations. In addition the guidance document ensures that DOL will work with the agency labor compliance advisors to minimize the information that contractors have to provide on each contract. On August 26, 2015, Advocacy sent public comments to DOL. The letter voiced concerns regarding DOL's method for calculating the number of affected small businesses and advised DOL to follow the formal rulemaking process, in that its guidance document was more a regulatory nature. This guidance document was scheduled to be published in final form by the end of 2015.

Issue: Overtime Regulations

Advocacy submitted two comment letters on the Department of Labor's proposed rule amending the Fair Labor Standards Act (FLSA) overtime regulations, and specifically the "white collar" exemption from overtime pay for executive, administrative, and professional employees. The proposed rule implements a 2014 presidential memorandum that directed DOL to update and modernize these overtime regulations. DOL proposed to change the salary threshold for employees who are eligible for overtime pay from $23,660 to $50,440. The agency also proposed a mechanism to automatically update the salary threshold annually, and sought comment on whether to change the test for the duties of exempt employees. Based on small business feedback, Advocacy asked for an extension of the 60-day comment period in an August 21, 2015 public comment letter. DOL did not extend this comment deadline.

The overtime revisions have been the subject of great small business concern. After the presidential memorandum was published in 2014, Advocacy held two small business listening sessions with DOL to gather initial feedback on this broad directive. After the publication of the proposed rule, Advocacy held small business roundtables in Washington, D.C.; Louisville, Ky.; and New Orleans, La. DOL officials attended all of these. Advocacy also heard directly from small businesses and their representatives, and small businesses conveyed concerns through Advocacy's 10 regional advocates.

Advocacy's September 4, 2015, comment letter discussed feedback and concerns raised over this

extended information-gathering process. Small businesses told Advocacy that increasing the salary threshold and the number of workers eligible for overtime pay will add significant compliance costs and paperwork burdens. Businesses in low-wage regions and in industries that operate with low profit margins will be particularly burdened. Advocacy expressed concern that the agency's IRFA underestimates the number of small businesses affected by the rule and these entities' compliance costs. Advocacy asked DOL to publish a supplemental IRFA with further analysis of the rule's economic impact and to consider recommended small business alternatives. DOL has not finalized this proposed rule.

Department of Labor, Employee Benefits Security Administration

Issue: Definition of "Fiduciary"; Conflict of Interest, Retirement Investment Advice

On July 17, 2015, Advocacy submitted a comment letter to the Employee Benefits Security Administration (EBSA) in response to the proposed rule, Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice. The proposed rule would expand the definition of a "fiduciary" of an employee benefit plan by extending the fiduciary standard of care to anyone who provides advice about workplace retirement plans and IRAs. The proposed rule would require these advisers to disclose any potential conflicts of interest and prohibit them from engaging in certain transactions.

Based on input from small business owners and representatives, Advocacy's comment letter expressed concern that the IRFA contained in the proposed rule lacked essential information required under the RFA. Advocacy recommended that EBSA publish a supplemental IRFA giving more accurate estimates of the number of small entities affected by proposal and of the costs of the proposal. Advocacy also encouraged EBSA to consider ways to decrease the potential small business burdens of the proposed rule, including expanding the scope of exemptions. At the end of FY 2015, EBSA was still considering and weighing comments, and the rule had not yet been finalized.

Department of Transportation, Federal Aviation Administration

Issue: Small Unmanned Aircraft Systems (Drones)

On April 24, 2015, Advocacy submitted comments on the Federal Aviation Administration's (FAA) proposed rule, Operation and Certification of Small Unmanned Aircraft Systems (known as the "small UAS" or "small drones" rule). FAA's proposed rule would amend existing regulations to allow the commercial operation of drones weighing less than 55 pounds in the national airspace system (NAS). The proposed rule would address the operation of small drones, the testing and certification of operators, drone registration, and the display of registration markings. While the proposed rule would reduce barriers to the use of small drones for commercial, private, and research purposes, it also includes significant operational restrictions of concern to small business.

The proposal was discussed with at a small business roundtable on April 9, 2015. Officials from FAA and the Department of Transportation participated, providing an overview and answering questions about the rule. Small businesses and their representatives stated that they would like FAA to issue a final rule as quickly as possible in order to allow some commercial drone operations that are currently prohibited. They also asked FAA to adopt a risk-based, technology-neutral approach so as not to lock in any particular technology.

Advocacy's comment letter made three main points. First, FAA should articulate and quantify the framework or parameters for assessing risk going forward. Second, the agency should reassess the alternatives to the proposed rule to determine whether some operational restrictions could

be relaxed without significantly increasing risk. Third, the agency should provide timely mechanisms for approvals, waivers, or exemptions from the final rule where an operator can demonstrate adequate safety. As of the end of FY 2015, the FAA's final rule had not been published.

Department of the Treasury, Internal Revenue Service

Issue: Changes in Accounting Periods and Methods under the Repair Regulations

On February 13, 2015, the Internal Revenue Service (IRS) published a revenue procedure to provide guidance related to accounting requirements commonly referred to as the "repair regulations." The repair regulations set forth accounting requirements related to the acquisition, production, or improvement of tangible property. They spell out when businesses must capitalize purchases of property and when businesses are permitted to deduct expenses in the year the taxpayer incurs the expenditure.

The agency requested comment on whether the $500 safe harbor threshold contained in the repair regulations should be raised. The repair regulations provide a safe harbor which permits a business to immediately expense the cost of property in the year that the cost was incurred as long as the property does not exceed a certain dollar amount. Currently, businesses without an applicable financial statement are limited to a $500 deduction amount per invoice item. Businesses with applicable financial statements may deduct up to $5,000 per invoice item.

Based on input from small business stakeholders, Advocacy submitted a comment letter on March 24, 2015, encouraging the IRS to increase the $500 safe harbor threshold. Many small business owners and representatives expressed concern to Advocacy that the $500 safe harbor was too low. These stakeholders indicated that the cost of most property subject to the repair regulations exceeds $500, and small businesses generally cannot afford applicable financial statements to take advantage of the higher $5,000 threshold. At the close of FY 2015, IRS was still considering and weighing comments.

Environmental Protection Agency

Issue: Petroleum Refinery Sector Risk, Technology Review; New Source Performance Standards

In 2011, EPA convened a SBREFA panel on a range of possible amendments to the national emission standards for hazardous air pollutants (NESHAP) and new source performance standards (NSPS) for petroleum refineries, including the possibility of greenhouse gas standards. The panel did not complete its findings, and EPA suspended it. Instead, the agency separated the provisions under consideration into separate rulemakings. On June 30, 2014, EPA published a proposed rule, Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (NSPS). On October 28, 2014, Advocacy filed public comments.

Small refiners raised significant concerns about the proposed requirement for continuous fenceline monitoring at all petroleum refineries, regardless of the risk imposed by those facilities. Advocacy recommended EPA exempt small entities to the extent that they do not pose a significant public health or environmental risk. If small entities are not exempt, Advocacy recommended that EPA only require the minimum reporting necessary to assure compliance.

EPA signed the final rule on September 29, 2015, and did not adopt Advocacy's recommendations, imposing the fenceline monitoring on all refineries with minor changes to reduce the burden.

Issue: Hazardous Air Pollutants from the Brick Production Industry

On March 17, 2015 Advocacy filed public comments on EPAs proposed rule, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay Product

Manufacturing. EPA originally issued this rule in 2003, with a compliance date of 2006. However, the D.C. Circuit Court of Appeals vacated and remanded the rule in 2007, after the industry had come into compliance. By EPA's interpretation of the Clean Air Act, the agency was required to start the rulemaking over, and it set even tighter standards based on the successful reductions already achieved by the industry.

EPA convened a SBREFA panel for this rule in June 2013, and the panel completed its report in December 2013. EPA published this proposed rule on December 18, 2014. Small brick producers believe that this rulemaking will put many of them out of business, even with the small business flexibilities that EPA has proposed. They also believe that EPA's analysis does not reflect the realities of compliance. Advocacy therefore recommended that EPA adopt all flexibilities proposed by the SBREFA panel, and that it consider alternatives to a single mercury emission standard for the whole industry, even if the data gathering process delayed the rule.

EPA signed the final rule under court order on September 24, 2015. EPA adopted many of the proposed flexibilities, but still projected significant closures in the industry. Industry representatives believe this agency projection underestimates the extent of likely closures.

Issue: Oil and Hazardous Substances Pollution Contingency Plan; Oil Dispersants

On April 21, 2015 Advocacy filed public comments on EPA's proposed rule, Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements. This rule would revise the testing requirements for listing oil spill mitigation products on the National Contingency Plan (NCP) schedule. It would also limit protections for confidential business information (CBI) of products on the NCP schedule.

EPA certified that this rule would not have a significant economic impact on a substantial number of small entities. Advocacy questioned this certification because of EPA's assumptions about financing for small businesses, the lack of information on the costs of research and development, the cost of being removed from the NCP schedule, or the value of intellectual property that must be forfeited to remain listed on the NCP schedule. Advocacy recommended that EPA re-propose this rule after consulting affected small businesses and preparing an IRFA. Advocacy also recommended EPA extend the testing and compliance period, provide short-term extensions for products recently added to the schedule, and retain existing CBI protections. At the end of FY 2015, there was no timeline for final action.

Issue: Federal Implementation of the Clean Power Plan

The Clean Power Plan is a regulation of greenhouse gas emissions from existing fossil-fueled power plants. Under section 111(d) of the Clean Air Act, this regulation takes the form of guidelines for state laws and regulations that directly regulate emitters. For this reason, EPA certified section 111(d) emission guidelines under the RFA.

However, if EPA does not approve a state's plan to regulate these emissions or a state declines to submit a plan, EPA must directly regulate the existing facilities through a Federal Plan. In January 2015, EPA committed to issuing a proposed Federal Plan concurrently with the final Clean Power Plan. Advocacy received formal notification on March 26 of EPA's intent to convene a rulemaking panel on the Federal Plan, and EPA convened the panel on April 30.

On May 8, 2015, Advocacy wrote to EPA, raising concerns with the way the panel was convened. First, EPA did not prepare sufficient materials to adequately inform the other panel members (Advocacy and the Office of Information and Regulatory Affairs) or the participating small entities. Second, EPA presented a framework for possible regulation, but did not present the details that would have informed small entities as to the likely cost of the regulation or possible alternative compliance strategies. Third, the Clean Power Plan, on which the Federal Plan depended, was not yet final, further complicating the ability to determine the small business impacts. Advocacy warned that a panel conducted under these circumstances would be unlikely to develop reasonable regulatory alternatives from the small business participants.

The SBREFA panel completed its report on July 31, 2015, and EPA signed the proposed rule on August 3, 2015.

Issue: Nanoscale Materials

On August 3, 2015, Advocacy submitted a comment letter to EPA on the proposed rule, Toxic Substance Control Act Reporting and Recordkeeping Requirements for Chemical Substances when Manufactured or Processed as Nanoscale Materials. In its proposal, the agency sought to impose one-time electronic reporting and recordkeeping of nanoscale materials on manufacturers and processors, to require both manufacturers and processors to report on the same submission form, and to lower the threshold for the small business exemption. Advocacy was concerned that the rule would impose unnecessary and unjustified burdens on small businesses, as well as substantial costs. Advocacy urged EPA to consider increasing the total annual sales value for the small business exemption, to provide additional data and clarity for the regulation of processors, to account for the growth rate of the nanoscale industry in its economic analysis, and to clarify the research and development exemption. At the end of FY 2015, EPA was reviewing comments in advance of its final regulations.

Environmental Protection Agency and Army Corps of Engineers

Issue: Waters of the United States

On April 21, 2014, the Environmental Protection Agency and the Army Corps of Engineers published a proposed rule, Definition of "Waters of the United States" under the Clean Water Act. The agencies certified that this rule had no significant economic effect on a substantial number of small entities. However, Advocacy heard from many small entities that this rule would have a substantial impact. Advocacy held a small business roundtable on July 21, 2014, and those attending expressed concerns that the rule would be costly and that the agencies had not complied with the legal requirement to convene a SBREFA panel before publishing the proposed rule. On October 1, 2014, Advocacy submitted public comments stating that the agencies had improperly certified the proposed rule under the RFA because it would have direct significant effects on small businesses. Advocacy recommended that the agencies withdraw the rule and that the EPA conduct a SBREFA panel before proceeding any further with the rulemaking. On June 29, 2015, the agencies published the final rule without making the changes that Advocacy suggested.

Federal Acquisition Regulatory Council

Issue: Fair Pay and Safe Workplaces

On May 28, 2015, the Federal Acquisition Regulatory (FAR) Council published a proposed regulation that would implement Executive Order 13673, "Fair Pay and Safe Workplaces." The proposed rule would require agencies to review a contractor's compliance with fourteen federal labor laws or any equivalent state laws for the previous three years in determining contractor responsibility. The requirement would apply to any company competing for a contract estimated to exceed $500,000. To accomplish this review, the proposed rule would impose significant new reporting and recordkeeping requirements on prime and subcontractors. It would also impose new requirements regarding paychecks and complaint and dispute resolution. This provision was designed to ensure that workers receive the necessary information each pay period to verify the accuracy of what they are paid.

Advocacy held three small business roundtables around the country to allow small firms to discuss the ramifications of the proposal and their concerns with it. On August 26, 2015, the office submitted public comments to the FAR Council urging a phase-in of the requirements and warning that the cost of compliance would serve to deter small businesses from participating in the federal acquisition system. This proposed regulation was scheduled to be published as a final rule before the end of 2015.

Issue: Competitive Bidding Rules

On June 8, 2015, Advocacy filed a notice of *ex parte* meeting with the Federal Communications Commission (FCC) detailing a meeting on June 4, 2015, where Advocacy staff met with officials in the FCC's Wireless Telecommunications Bureau. During the meeting Advocacy discussed ways the FCC can improve its wireless spectrum auction policies to encourage greater competition, small business entry, and growth in the wireless marketplace. Advocacy expressed strong support for the use of small business credits in spectrum auctions and encouraged the FCC to incentivize small business participation in future auctions by updating some of its competitive bidding rules. Advocacy cautioned against measures that would result in decreased competition and participation by small businesses.

Specifically, Advocacy recommended that the FCC (1) eliminate its attributable material relationship (AMR) rule, and evaluate the eligibility of "designated entities" (DEs) using a case-by-case approach to determine whether an eligible small business licensee retains control over the spectrum for which it received small business benefits; (2) allow DEs more flexibility, not less, in their ability to lease spectrum; (3) limit the availability of bidding credits to small entities, as defined by SBA-approved size standards; and (4) decline to institute arbitrary caps on DE credits. Ultimately, the FCC eliminated its AMR rule and adopted several new flexibilities for DEs, including reform of its "former defaulter" rule. The FCC instituted a policy to set caps on the amount of credit any DE is entitled to at auction, to a level not less than $25 million. It appears that the FCC will set DE caps on a case-by-case basis. The FCC also raised the size standard for eligible DEs and established a new rural credit; the credit allows rural carriers that exceed the size standard to be eligible for a $15 million dollar credit.

Issue: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

On June 12, 2015, Advocacy filed a notice of *ex parte* meeting with the FCC detailing a meeting on June 11, 2015, where Advocacy's Interagency staff met with officials from the FCC's Wireless Telecommunications Bureau. During the meeting Advocacy staff forwarded the concerns of small low-power television (LPTV) licensees with regard to the upcoming broadcaster incentive auction. Advocacy stressed that the FCC has an obligation to preserve localism and diversity in broadcasting, and expressed concern that the FCC had not yet given the LPTV community sufficient reassurances that those stations who wish to continue broadcasting would be able to do so. Advocacy highlighted the investments and added value that LPTV owners have made in their communities, and urged the FCC to protect those investments through its auction policy. Specifically, Advocacy recommended that the FCC (1) make vacant channels available post-auction for displaced LPTV and translator stations before expanding unlicensed white spaces; (2) allow voluntary channel-sharing arrangements to the extent possible so LPTV stations can continue to broadcast in their existing service areas; and (3) use its optimization software to assist LPTV licensees with identifying suitable channels to relocate post-auction. The FCC is still considering the record on these issues.

Issue: Policies and Rules Governing the Retirement of Copper Loops

On June 23, 2015, Advocacy filed an *ex parte* letter with the FCC regarding several agency proposals that would govern incumbent local exchange carriers' (ILEC) obligations with regard to both consumers and competitive carriers when modernizing their networks. In its notice of proposed rulemaking, the FCC stressed that technology transitions must preserve the five principles of the Communications Act that have defined the relationships between those who build and operate networks and those who use them—competition, consumer protection, universal service, public safety, and national security. Advocacy offered support to the FCC's goal of preserving competition as network technology evolves, and made two specific suggestions: that the FCC adopt a rebuttable presumption requiring applications for the discontinuance of wholesale service offerings under the FCC Section 214 copper retirement rules; and second, that the FCC require incumbent providers to offer equivalent wholesale rates, terms, and

services to competitive providers when it grants such applications.

The FCC ultimately adopted new copper retirement rules that would require ILECs planning copper retirements to provide direct notice to all entities within the affected service area that directly interconnect with their network. These network change disclosures must not only include the information already required by Section 51.327(a) of FCC rules, but also a description of any changes in prices, terms, or conditions that will accompany the planned changes. The FCC also adopted interim rules requiring ILECs that seek Section 214 permission to discontinue, reduce, or impair a TDM-based service that is currently used as a wholesale input by competitive carriers to provide competitive carriers reasonably comparable wholesale access at reasonably comparable rates, terms, and conditions. The FCC is continuing to examine is special access and copper retirement rules, and will revisit these changes at the termination of the ongoing special access proceeding.

Issue: Protecting and Promoting the Open Internet

On September 8, 2015, Advocacy submitted public comments to the FCC encouraging the agency to continue to exempt small broadband Internet service providers from certain network transparency and disclosure requirements promulgated under the FCC's 2015 Open Internet Order. During the public comment period for the 2015 Open Internet Order, many small business stakeholders raised concerns regarding the disproportionate impact that the FCC's proposals would have on small broadband providers. Because of those concerns, the FCC temporarily exempted providers with 100,000 or fewer broadband connections from certain enhancements of the FCC's existing transparency rules that govern the content and format of disclosures made by providers of broadband Internet access service. The FCC also directed its Consumer and Governmental Affairs Bureau to seek comment on the continued implementation of the exemption. On June 22, 2015, the FCC released a notice seeking comment on the exemption. Advocacy's comments offered the agency three recommendations: (1) that it continue to exempt small businesses from its enhanced transparency requirements; (2) that it attempt to mitigate the cost of compliance for small entities and then determine whether such costs are justified in light of consumer benefits; and (3) that it follow the SBA procedures for determining the appropriate size threshold to use when determining eligibility for the exemption. The FCC is currently still considering the record on this issue.

General Services Administration

Issue: Transactional Data Reporting Requirements

On March 4, 2015, the General Services Administration (GSA) proposed a regulation that would create a transactional data reporting clause. The proposed rule would require contractors to report prices paid for products and services delivered during the performance of a federal contract using an online reporting system. The requirement would apply immediately to GSA's government-wide non-federal supply schedule (FSS) vehicles, where transactional data is not already collected through other methods. For FSS vehicles, the reporting clause would be introduced in phases, beginning with a pilot for selected products and commoditized services. The proposed rule would create a common acquisition platform (CAP), an online marketplace to identify best-in-class contracts issued by GSA or other agencies. On May 4, 2015, Advocacy published comments relaying the concerns of small businesses. Advocacy urged GSA to conduct a more detailed impact assessment of the proposed rule on small businesses and to look specifically at the unintended consequences of the rule on small business resellers. This proposed regulation has not been published as a final rule, and there is no timetable for such.

Chapter 5
RFA Results: Regulatory Cost Savings and Success Stories for Small Business

Introduction

In FY 2015, several rules on which Advocacy provided comments on behalf of small business were made final and contained flexibilities reflecting this input. As a result of these flexibilities, Advocacy achieved regulatory cost savings of more than $1.6 billion on behalf of small businesses.

Table 5.1 summarizes the cost savings from eleven rules on which Advocacy intervened on behalf of small businesses and which yielded quantifiable savings. Several of these regulatory actions represent the conclusion of processes that stretched over many years. For instance, OSHA's final rule on Confined Spaces in Construction concluded a rulemaking process that dates to 2003, when a SBREFA panel was held. EPA's updated Underground Storage Tank standards were a revision to standards proposed in 1988.

Table 5.2 lists six small business regulatory success stories resulting from Advocacy's small business representation (four final rules and two regulatory issue areas). Four rules finalized in FY 2015 reflected Advocacy's input and ameliorated negative small business impacts, yet the changes were not quantifiable. They include two telecommunications procedures related to wireless spectrum auctions and copper retirement, an FDA rule that would have restricted the use of spent hops for animal feed, and guidelines for the use of reverse auctions in federal procurement. In addition, Advocacy's representation of small business concerns in international trade agreements and cybersecurity yielded positive results.

Detailed discussions of these cost savings and success stories follow Tables 5.1 and 5.2.

Table 5.1: Summary of Small Business Regulatory Cost Savings, FY 2015

Agency	Rule	First-year Costs	Annual Costs
Department of Energy	Efficiency Levels for Automatic Commercial Ice Makers[1]	$83,000	$22,000
Department of Health and Human Services, Food and Drug Administration	Labeling Requirements for Restaurants, Similar Retail Food Establishments and Vending Machines[2]	$29,650,000	$29,650,000
Department of Labor, Occupational Safety and Health Administration	Confined Spaces in Construction[3]	$8,200,000	$8,200,000
Department of Labor, Occupational Safety and Health Administration	Cranes and Derricks in Construction: Operator Certification[4]	$40,000,000	
Department of the Interior, Bureau of Land Management	Exploration on Federal and Indian Lands including Hydraulic Fracturing[5]	$15,900,000	
Environmental Protection Agency	Definition of Solid Waste[6]	$242,000,000	$242,000,000
Environmental Protection Agency	Final Rule for Coal Combustion Residuals (CCR) from Electric Utilities[7]	$28,120,000	
Environmental Protection Agency	Multi-Sector General Permit (Industrial Stormwater Requirements)[8]	$600,000,000	
Environmental Protection Agency	National Emission Standards for Hazardous Air Pollutants from Mineral Wool Production[9]	$473,000	$473,000
Environmental Protection Agency	Revision of New Source Performance Standards for New Residential Wood Heaters[10]	$5,600,000	$5,600,000
Environmental Protection Agency	Underground Storage Tanks—Updated Standards[11]	$640,000,000	$640,000,000
Total Regulatory Cost Savings, FY 2015		**$1,610,026,000**	

Note: The Office of Advocacy generally bases its cost savings estimates on agency estimates. Cost savings for a given rule are captured in the fiscal year in which the agency agrees to changes in the rule as a result of Advocacy's intervention. Where possible, we limit the savings to those attributable to small business. These are best estimates. First-year cost savings consist of either capital or annual costs that would be incurred in the rule's first year of implementation. Recurring annual cost savings are listed where applicable.

Footnotes continue on next page.

Table 5.1: Summary of Small Business Regulatory Cost Savings, FY 2015 (continued)

Footnotes, continued

1 Final Rulemaking, 80 *Fed. Reg.* 4645 (Jan. 28, 2015).

2 Final Rulemaking, 79 *Fed. Reg.* 711 (Dec. 1, 2014).

3 Final Rulemaking, 80 *Fed. Reg.* 25366 (May 4, 2015).

4 Final Rulemaking, 79 *Fed. Reg.* 57785 (Sept. 26, 2014)

5 Final Rulemaking, 80 *Fed. Reg.* 16128 (Mar. 20, 2015).

6 Final Rulemaking, 80 *Fed. Reg.* 1694 (Dec. 10, 2015).

7 Final Rulemaking, 80 *Fed. Reg.* 21302 (Apr. 17, 2015).

8 Final Rulemaking, 80 *Fed. Reg.* 34403 (Jun. 16, 2015).

9 Supplemental Rulemaking, 79 *Fed. Reg.* 68012 (Nov. 13, 2014). Final rule published on EPA website on July 22, 2015, www3.epa.gov/airtoxics/minwool/minwopg.html, accessed Dec. 16, 2015.

10 Final Rulemaking, 80 *Fed. Reg.* 13671 (Mar. 16, 2015)

11 Final Rulemaking, 80 *Fed. Reg.* 41566 (Jul. 15, 2015).

Department of Energy

Automatic Commercial Ice Makers

The Department of Energy (DOE) proposed efficiency levels for automatic commercial ice makers. The proposed rule would have reduced the industry net present value of small manufacturers of commercial ice makers by 78.6 percent. On November 12, 2014, Advocacy sent a letter to the Department of Energy highlighting the importance of small manufacturing from both an energy efficiency and economic standpoint. Advocacy recommended that DOE use its discretion to adopt an alternative to the proposed standard that is achievable for small manufacturers of automatic commercial ice makers. Advocacy also recommended that DOE give similar consideration to small manufacturers in all future energy efficiency rulemakings. DOE ultimately finalized an alternative efficiency standard that reduced impacts to small entities by 27 percent. ***The first year cost savings from the Automatic Commercial Ice Makers rule is $83,000 with recurring annual cost savings estimated at $22,000.***

Department of Health and Human Services, Food and Drug Administration

Labeling Requirements for Restaurants, Similar Retail Food Establishments, and Vending Machines

Section 4205 of the Affordable Care Act required that the Food and Drug Administration (FDA) promulgate rules requiring certain chain restaurants and similar retail food establishments with 20 or more locations disclose certain nutrient information for standard menu items. Section 4205 also required that vending machines have a sign in close proximity that includes a clear and conspicuous statement disclosing the number of calories contained in the food items for sale (if the nutrition facts panel or other information is not visible and the vending machine owner operates at least 20 vending machines). In 2011, the FDA published the caloric labeling regulations for restaurants and vending machines in the *Federal Register*. FDA initially estimated that the total cost of Section 4205 and this rulemaking would be approximately $80 million, annualized over 10 years, with a low annualized estimate of $33 million and a high annualized estimate of $125 million over 10 years. The proposed costs included an initial cost of $320 million with an annually recurring cost of $45 million. Affected industry representatives supported the goals of

the regulations; however, they were concerned about the costs associated with the rules. Advocacy worked closely with the restaurant and vending machine industry stakeholders and the FDA in an effort to minimize the costs of the rules while supporting their regulatory intent. ***As a result of Advocacy's intervention, the final rules modified some labeling requirements that resulted in annual cost savings of $24.99 million to small restaurants and $4.66 million to small vending machine operators, for a total of $29.65 million in cost savings for small entities.***

Department of Labor, Occupational Safety and Health Administration

Confined Spaces in Construction

On November 28, 2007, the Occupational Safety and Health Administration (OSHA) proposed its Confined Spaces in Construction rule. The proposed rule was designed to protect employees from physical, atmospheric, or other hazards associated with confined spaces in the construction industry. However, OSHA proposed a complex rule that included four separate classifications of confined spaces, each requiring separate provisions. This four-part system had specifically been rejected by the small entity representatives (SERs) who participated in the SBREFA panel OSHA convened on the topic in 2003. The SERs preferred that the rule closely follow the existing general industry rule, which included a single type of permitted confined space, in order to avoid complication and uncertainty. Advocacy filed public comments on the proposed rule on February 28, 2008, recommending that OSHA streamline the rule and keep it as close as possible to the general industry standard. OSHA issued its final rule on May 4, 2015. The final rule was significantly streamlined, tailored closely to the general industry standard, and did not include the proposed four-classification system. ***This resulted in cost savings, at a minimum, of $16.5 million per year, of which $8.2 million is attributed to small business.***

Cranes and Derricks in Construction: Operator Certification

Effective November 9, 2014, OSHA delayed the effective date of certain provisions of its final Cranes and Derricks in Construction rule for three years, until November 10, 2017. Specifically, the rule delays the requirement that employers ensure that employees are certified to operate cranes and derricks based on their type and capacity. The delay is intended to give OSHA time to resolve ambiguities in the rule.

Advocacy has been involved in this rulemaking for many years. Advocacy was a member of the SBREFA panel on cranes and derricks in construction in 2006. Following publication of the proposed rule in 2008, the proposal was discussed at several of Advocacy's labor safety roundtables. Advocacy filed public comments January 16, 2009, raising several issues pertinent to small business. After OSHA issued the final rule on August 8, 2010, small business representatives contacted Advocacy and complained about several ambiguities that made compliance problematic, including the type and capacity issue. In response, Advocacy hosted a small business roundtable where OSHA staff, including the head of the Directorate of Construction, discussed the final rule and listened to concerns. After the roundtable, OSHA proposed to extend the effective date of the rule for three years while it addresses the ambiguous provisions.

OSHA's final rule is expected to affect some 167,575 small business crane operators. Delaying the effective date for three years will result in an aggregate cost savings to small businesses of $40 million.

Department of the Interior, Bureau of Land Management

Exploration on Federal and Indian Lands including Hydraulic Fracturing

On May 11, 2012, the Bureau of Land Management proposed a rule concerning exploration for oil and gas using hydraulic fracturing on federal and Indian lands, and on May 24, 2013, the agency proposed a supplemental rule. Several changes were made after Advocacy intervention, including allowing a range of cement evaluation methods for wells and allowing a "representative well" to demonstrate well integrity without requiring testing of all wells. On March 26, 2015, the rule was issued as a final rule with many of the changes suggested by Advocacy. ***The changes will result in cost savings of $15.9 million in the first year.***

Environmental Protection Agency

Definition of Solid Waste

The Environmental Protection Agency proposed a revision to the 2008 final rule under the Resource Conservation and Recovery Act (RCRA) in July 2011 which would limit the scope of recycled hazardous secondary materials that would be excluded from the full regulation as hazardous wastes.

With Advocacy's help, EPA developed an alternative approach which preserves the exclusion with a few additional requirements. The new rule was published in the *Federal Register* on January 15, 2015. ***The cost savings from the new definition of solid waste is estimated at $242 million annually.***

Final Rule for Coal Combustion Residuals from Electric Utilities

EPA's proposed rule for the disposal of coal combustion residuals (CCR) from electric utilities included a proposal to regulate CCR as a "special waste" under Subtitle C of the RCRA; this would have required costly permits and direct regulation by EPA. Instead, EPA finalized the regulations for CCR landfills and surface impoundments under Subtitle D of the RCRA, which establishes national minimum standards and relies on state regulatory programs. ***This regulatory flexibility saves small businesses up to $28.12 million.***

Multi-Sector General Permit (Industrial Stormwater Requirements)

EPA completed its revision to the Multi-Sector General Permit (MSGP) on June 5, 2015. This general permit authorizes industrial facilities to discharge stormwater to the waters of the United States while limiting discharge of pollutants, and it includes requirements to establish Best Management Practices (BMP). EPA and the authorized states administer this permit program, which affects about 100,000 industrial facilities nationwide.

EPA agreed to the requests of Advocacy and other small business commenters to reduce the costs of chemical monitoring and related BMP requirements that are triggered by the monitoring results. About 50,000 small firm permits are covered by the MSGP or state equivalent standards. Advocacy estimates the savings at about $20,000 per facility. Approximately 60 percent of all facilities exceed one or more of the benchmark standards, according to EPA's data analysis. ***This results in about $600 million in one-time savings.***

National Emission Standards for Hazardous Air Pollutants from Mineral Wool Production

In 2011, EPA convened a SBREFA panel on emissions standards for mineral wool production. In the initial outreach, small businesses were very concerned that they would need to install additional control equipment or switch their fuels. By the time the first proposed rule was published, EPA certified that the rule would not have a significant economic impact on a substantial number of small entities. Further revisions in 2013 and 2014 reduced the impact of the rule even more. The final rule issued in 2015 only required small entities to perform additional emissions monitoring. ***The change resulted in savings of $473,000 annually to small mineral wool producers.***

Revision of New Source Performance Standards for New Residential Wood Heaters

In March 2015, EPA completed rulemaking on revised emission standards for residential heaters that burn wood. EPA convened a SBREFA panel on this rule in August 2010, which concluded in October 2011. The proposed rule was published in February 2014. ***Advocacy estimates that the small business costs between the proposal and the final rule were reduced by approximately $5.6 million per year.*** These savings are due to changes in the stringency of the proposed step 2 standard, a streamlined eligibility for some hydronic heaters, making some labelling optional, and excluding masonry heaters.

Underground Storage Tanks—Updated Standards

In 1988, EPA promulgated the original underground storage tank standards to prevent leaks and require remedial action. More recently, in a major update to these standards, EPA proposed very stringent and frequent walk-through inspections of the gasoline tanks at 220,000 nationwide facilities. The Petroleum Marketers Association of America estimated the proposal costs at $3,600 per facility, amounting to $803 million annually. ***In the final rule published in the Federal Register on July 15, 2015, EPA reduced the stringency and frequency of these requirements, lowering costs by approximately 80 percent, for a savings of $640 million annually.***

Table 5.2 Summary of Small Business Regulatory Successes, FY 2015[1]

Agency	Rule
Department of Commerce, National Institute of Standards and Technology	Cybersecurity Framework[2]
Department of Health and Human Services, Food and Drug Administration	Preventative Controls for Food for Animals[3]
Federal Communications Commission	Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding rule[4]
Federal Communications Commission	Technology Transitions, GN Docket No. 13-5; Policies and Rules Governing the Retirement of Copper Loops by Incumbent Local Exchange Carriers, RM-11358[5]
Office of Federal Procurement Policy	Effective Use of Reverse Auctions[6]
U.S. Trade Representative	Transatlantic Trade and Investment Partnership

1 Table 5.2 addresses regulatory successes that do not have quantified cost savings. In contrast, Table 5.1 addresses regulatory successes with quantified cost savings.

2 Notice, Request for Comments, 78 *Fed. Reg.* 64478 (Oct. 29, 2013)

3 Final Rulemaking, 80 *Fed. Reg.* 56169 (Sept. 17, 2015)

4 WT Docket No. 14-170 (Jul. 21, 2015)

5 GN Docket No. 13-5 (May 10, 2013); RM-11358 (Jan. 26, 2007)

6 Office of Federal Procurement Policy, guidance memorandum dated June 1, 2015. www.whitehouse.gov/sites/default/files/omb/procurement/memo/effective-use-of-reverse-auctions.pdf, accessed December 1, 2015.

Department of Commerce, National Institute of Standards and Technology

Cybersecurity Framework

Advocacy worked with the National Institute of Standards and Technology (NIST) on behalf of small business in the early stages of developing a federally mandated cybersecurity framework. As a result of Advocacy's engagement and the knowledge the office gathered about the impact of cybersecurity regulations on small federal contractors, the U.S. Department of Justice, Northern District of Alabama, reached out to Advocacy to help develop a panel discussion for small businesses on federal cybersecurity regulations. Advocacy has become a voice for small business in the evolving cybersecurity framework.

Department of Health and Human Services, Food and Drug Administration

Preventative Controls for Food for Animals

On October 29, 2013, the FDA published Current Good Manufacturing Practices and Hazard Analysis and Risk-Based Preventative Controls for Food for Animals, a regulation applicable to pet food and livestock feed. The rule would regulate the manufacturing, processing, packing,

or holding of animal food in two ways. It would implement new current good manufacturing practice (CGMP) regulations, and it would include new preventative control provisions on most animal food facilities. Advocacy heard from small food producers, breweries, and farmers who were concerned that the proposed regulation was too broad and that the FDA had not adequately analyzed its economic impact on their industries. Advocacy filed a comment letter with the FDA on April 9, 2014. The final rule was published on September 17, 2015, with an effective date of November 16, 2015. FDA included three small business flexibilities in the final rule: it increased the small business revenue threshold, which resulted in fewer small businesses having to comply with the regulation; it extended the compliance dates for small businesses; and it exempted small breweries from the rule.

Federal Communications Commission

Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding rules

Advocacy met with the FCC's Wireless Telecommunications Bureau on June 4, 2015, to discuss ways the FCC can improve its wireless spectrum auction policies to encourage greater competition, small business entry, and growth in the wireless marketplace. Advocacy expressed strong support for the use of small business credits in spectrum auctions and encouraged the FCC to incentivize small business participation in future auctions by updating some of its competitive bidding rules. Advocacy cautioned against measures that would result in decreased competition and participation by small businesses.

Ultimately, the FCC eliminated its attributable material relationship rule and adopted several new flexibilities for "designated entities" (DEs), including reform of its "former defaulter" rule. The FCC instituted a policy to set caps on the amount of credit any DE is entitled to at auction, to a level not less than $25 million. It appears that the FCC will set DE caps on a case-by-case basis. The FCC also raised the size standard for eligible DEs and established a new rural credit; the credit allows rural carriers that exceed the size standard to be eligible for a $15 million dollar credit.

Policies and Rules Governing the Retirement of Copper Loops

On June 23, 2015 Advocacy filed an *ex parte* letter with the Federal Communications Commission (FCC) regarding several proposals the FCC was considering adopting that would govern incumbent local exchange carriers' (ILEC) obligations with regard to both consumers and competitive carriers when modernizing their networks. Advocacy offered support to the FCC's goal of preserving competition as network technology evolves, and specifically suggested that the FCC take two actions: adopt a rebuttable presumption requiring applications for the discontinuance of wholesale service offerings, under the FCC Section 214 copper retirement rules; and require incumbent providers to offer equivalent wholesale rates, terms, and services to competitive providers when it grants such applications.

The FCC ultimately adopted some of Advocacy's recommendations, requiring ILECs to provide notice to all entities within the affected service area that directly interconnect with their network, and provide them with a description of any changes in prices, terms, or conditions. The FCC also adopted interim rules requiring ILECs to provide competitive carriers with wholesale access on reasonably comparable rates, terms, and conditions when retiring legacy facilities. The FCC is continuing to examine its special access and copper retirement rules, and will revisit these changes at the termination of the ongoing special access proceeding.

Office of Federal Procurement Policy

Effective Use of Reverse Auctions

On June 1, 2015, the Office of Federal Procurement Policy (OFPP) issued a memorandum to chief acquisition officers and senior procurement executives on the effective use of reverse auctions. A reverse auction is a process for pricing contracts supported by an electronic tool where offerors bid down (as opposed to the traditional auction which requires buyers to submit sequentially higher bids), the main goal of which is to drive prices downward. Advocacy has been engaged with

small stakeholders from across the country on the negative impact of reverse auctions: holding roundtables, meeting with senior OFPP managers, and testifying before Congress expressing the concerns of small businesses. The most prominent small business concern was the lack of clear OFPP policy on how agencies were to use reverse auctions as an acquisition tool. The memorandum of June 1, 2015, is an initial step to ensure that small businesses continue to play on a level playing field.

Office of the U.S. Trade Representative

Transatlantic Trade and Investment Partnership

The Office of Advocacy has expanded its representation and advocacy for small businesses in the export marketplace. In connection with ongoing trade pact discussions this year, Advocacy has provided strong regulatory advice to the Department of Commerce's Bureau of Industry and Trade and the Office of the U.S. Trade Representative. Advocacy is emerging as an expert in regulations, regulatory databases, and general commercial issues that affect small businesses involved in international trade. In this capacity, Advocacy participated in several rounds of the Transatlantic Trade and Investment Partnership between the United States and the European Union.

Appendix A
RFA Training and Case Law

Federal Agencies Trained in RFA Compliance, 2003—2015

Executive Order 13272 directed the Office of Advocacy to provide training to federal agencies in RFA compliance. In FY 2015, Advocacy trained 126 officials from a variety of departments and agencies. Since RFA training began in 2003, Advocacy has conducted training for 18 cabinet-level departments and agencies, 67 separate component agencies and offices within these departments, 22 independent agencies, and various special groups including congressional staff, business organizations and trade associations. The following agencies have participated in RFA training.

Cabinet Agencies

Department of Agriculture
- Animal and Plant Health Inspection Service
- Agricultural Marketing Service
- Grain Inspection, Packers, and Stockyards Administration
- Forest Service
- Rural Utilities Service
- Office of Budget and Program Analysis

Department of Commerce
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Office of Manufacturing Services
- Patent and Trademark Office

Department of Defense
- Defense Logistics Agency
- Department of the Air Force
- Department of the Army, Training and Doctrine Command
- U.S. Strategic Command

Department of Education

Department of Energy

Department of Health and Human Services
- Center for Disease Control and Prevention
- Center for Medicare and Medicaid Services
- Center for Tobacco Products
- Food and Drug Administration
- Indian Health Service
- Office of Policy
- Office of Regulations

Department of Homeland Security
- Federal Emergency Management Agency
- National Protection and Programs Directorate
- Office of the Chief Procurement Officer
- Office of the General Counsel
- Office of Small and Disadvantaged Business Utilization
- Transportation Security Administration
- U.S. Citizenship and Immigration Service
- U.S. Coast Guard
- U.S. Customs and Border Protection
- U.S. Immigration and Customs Enforcement

Department of Housing and Urban Development
- Office of Community Planning and Development
- Office of Fair Housing and Equal Opportunity
- Office of Manufactured Housing
- Office of Public and Indian Housing

Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Ocean Energy Management, Regulation and Enforcement
- Fish and Wildlife Service
- National Park Service
- Office of Surface Mining Reclamation and Enforcement

Department of Justice
- Bureau of Alcohol, Tobacco, and Firearms
- Drug Enforcement Administration
- Federal Bureau of Prisons

Department of Labor
- Employee Benefits Security Administration
- Employment and Training Administration
- Employment Standards Administration
- Mine Safety and Health Administration
- Occupational Safety and Health Administration
- Office of Federal Contract Compliance Programs

Department of State

Department of Transportation
- Federal Aviation Administration
- Federal Highway Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- Federal Transit Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Pipeline and Hazardous Materials Safety Administration
- Research and Special Programs Administration

Department of the Treasury
- Alcohol and Tobacco Tax and Trade Bureau
- Financial Crimes Enforcement Network
- Financial Management Service
- Internal Revenue Service
- Office of the Comptroller of the Currency
- Surface Transportation Board

Department of Veterans Affairs
- National Cemetery Administration

Office of the Director of National Intelligence

Office of Management and Budget
- Office of Federal Procurement Policy

Small Business Administration

Independent Federal Agencies

Access Board

Consumer Financial Protection Bureau

Consumer Product Safety Commission

Commodity Futures Trading Commission

Environmental Protection Agency

Farm Credit Administration

Federal Communications Commission

Federal Deposit Insurance Corporation

Federal Election Commission

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Maritime Commission

Federal Reserve System

Federal Trade Commission

General Services Administration / FAR Council

National Credit Union Administration

National Endowment for the Arts

National Endowment for the Humanities

Nuclear Regulatory Commission

Pension Benefit Guaranty Corporation

Securities and Exchange Commission

Trade and Development Agency

United States Association of Reptile Keepers, Inc. v. Jewell[1]

U.S. District Court for the District of Columbia

In 2012, the Department of Interior issued a final rule that listed four snake species as "injurious" and prohibited the importation and interstate transportation within the United States and its territories. In 2015, the Department added an additional four constricting snake species. The plaintiffs—a group of zoos, keepers, breeders, and educators—argued that their members would suffer irreparable harm if the rule took into effect. In addition, the plaintiffs alleged that the department failed to comply with the RFA because it impermissibly relied on the same 2012 initial regulatory flexibility analysis (IRFA) for the 2015 rule. The plaintiffs argued that the department failed to consider "alternatives tailored to the circumstances in the reptile breeding industry" and that these "circumstances put more pressure on reptile breeders." The defendant countered by stating the IRFA is not subject to the judicial review provisions of the RFA. The court concluded the plaintiff did not show how the department "failed to 'respond to significant points raised during the public comment period' or 'consider significant alternatives' in its final Rule." The court has no jurisdiction to review an agency's compliance with the IRFA requirement and therefore, the plaintiffs were unable to succeed on the merits of their claim under the RFA.

Associated Dog Clubs of N.Y. State, Inc. v. Vilsack[2]

U.S. District Court for the District of Columbia

Prompted by this expansion of sight-unseen sales over the Internet, the Department of Agriculture, through the Animal and Plant Health Inspection Service (APHIS), issued a new rule that redefined "retail pet store"—a statutory category of pet sellers exempt from regulation by the agency. Whereas APHIS previously exempted from regulation all outlets that sold certain animals directly to the public, its revised retail pet store definition exempted only face-to-face sellers. Many online sellers thus became subject to regulation for the first time. The plaintiffs—a collection of 42 dog and cat club registries, and breeders who saw potential costs of regulatory oversight—argued that the agency exceeded its statutory authority in issuing the new rule. APHIS published a regulatory impact analysis and initial regulatory flexibility analysis (IRFA) acknowledging "there is a great deal of uncertainty surrounding the number of facilities that will be affected by this." APHIS believed that its rule would result in modest additional costs. The plaintiff argued that APHIS violated the RFA because the agency failed to prepare a regulatory flexibility analysis that included "the significant issues raised by public comments, an estimate of the number of small entities the rule will affect, and a description of the steps the agency has taken to minimize the economic effect on those entities." The court dismissed the plaintiff's allegations under the RFA, stating the allegations impermissibly attacked the merits of the analysis instead of a flawed procedure. In explanation, the court stated the RFA is "purely procedural" and only requires certain action by the agency, such as description of the required topics in the regulatory flexibility analysis.

Council for Urological Interests v. Burwell[3]

U.S. District Court for the District of Columbia

In 1998, the Department of Human Health and Services (HHS) issued a rule that prevented physicians who leased medical equipment to hospitals from referring their Medicare patients to those same hospitals for outpatient care involving that equipment. While the rule was initially finalized in 2001, it was reconsidered in 2007 with

1. *U.S. Ass'n of Reptile Keepers, Inc. v. Jewell,* No. 13-2007, 2015 WL 2207603 (D.D.C. May 12, 2015).

2. *Associated Dog Clubs of N.Y. State, Inc. v. Vilsack,* No. 1:13-cv-01982, 2014 WL 579520 (D.D.C. Nov. 7, 2014).

3. *Council for Urological Interests v. Burwell,* 790 F.3d 212 (D.D.C. 2015).

a second proposed rulemaking that was eventually adopted in 2008. The plaintiffs, an association of doctor-owned equipment lessors, argued that the regulations violate the RFA because HHS failed to provide an analysis of the rule's effect on small businesses. Specifically, HHS failed to include "a statement of the need for the rule, the agency's response to any significant comments, an estimate of the number of small entities to which the rule will apply, a description of the rule's compliance requirements, and a description of the steps the agency has taken to minimize the economic impact on small entities." HHS argued that while it did not perform a regulatory flexibility analysis, the rule would not have a significant impact on small businesses. The court agreed with HHS that the rule would not have a "significant impact on physicians, other health care providers and suppliers, or the Medicare or Medicaid programs and their beneficiaries. In addition, the court stated that the HHS's certification ultimately satisfied the RFA requirements and that each portion of the rule was discussed within the final regulatory flexibility analysis. The court concluded that HHS demonstrated a "reasonable, good-faith effort' to comply with the RFA's "'[p]urely procedural' requirements" and therefore, satisfied RFA requirements.

Willie R. Etheridge Seafood Co. v. Pritzker[4]

U.S. District Court for the Eastern District of North Carolina

In 2014, the National Oceanographic and Atmospheric Administration (NOAA) promulgated regulations implementing Amendment 7 to the Consolidated Atlantic Migratory Species Fishery Management Plan, which aims to "minimize the number of Bluefin tuna as bycatch and dead discards in the pelagic longline fishery [(*e.g.* Atlantic Highly Migratory Fishery)] while providing a flexible quota system." Individuals and corporations in the pelagic longline fishing industry must hold permits for Bluefin tuna because they often catch Bluefin tuna by mistake (i.e., bycatch). The plaintiffs believed that NOAA's new regulations would decrease swordfish yields from the Atlantic Highly Migratory Fishery while compliance costs would reduce profitability and force some businesses out of the market.

The plaintiffs—a group of eighteen pelagic longline fishermen or fishing companies that operated in North Carolina, New York, and Florida—asserted that NOAA violated the RFA because its final regulatory flexibility analysis was inadequate. The plaintiffs contended that because NOAA did not submit an adequate initial regulatory flexibility analysis, then the final regulatory flexibility analysis provided must be inadequate under the RFA. The court found that the plaintiffs failed to provide any supporting evidence for these claims, and further held that failure to complete an initial regulatory flexibility analysis is not judicially reviewable under the RFA.

4. *Willie R. Etheridge Seafood Co. v. Pritzker,* No. 2:13-CV-73-BO, 2015 WL 4425659 (E.D.N.C. July 17, 2015).

Appendix B
SBREFA Panels Convened Through FY 2015

The RFA requires three federal agencies to conduct review panels prior to engaging in rulemakings expected to have a major small business impact. These agencies are the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB). These panels are named for the Small Business Regulatory Enforcement Fairness Act (SBREFA) which created them, and they are also referred to as Small Business Advocacy Review or SBAR panels. Table A.1 lists all the SBREFA panels convened from 1997 through September 30, 2015. In FY 2015, EPA initiated three new panels and continued one from FY 2014. CFPB and OSHA each convened one panel.

Table B.1 SBREFA Panels Convened through FY 2015

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Environmental Protection Agency				
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
Industrial Laundries Effluent Guidelines	06/06/97	08/08/97	12/17/97	Withdrawn 8/18/99
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Transportation Equipment Cleaning Effluent Guidelines	07/16/97	09/23/97	06/25/98	08/14/00
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03 01/13/99	12/22/00
UIC Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
FIP for Regional NOx Reductions	06/23/98	08/21/98	10/21/98	04/28/06
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking

Table B.1 SBREFA Panels Convened through FY 2015, continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02
LDV/LDT Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	04/22/08
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Stage 2 Disinfectant Byproducts Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03 08/18/03	01/04/06 01/05/06
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 4/26/04
Nonroad Large SI Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Lime Industry – Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Nonroad Diesel Engines – Tier IV	10/24/02	12/23/02	05/23/03	06/29/04
Cooling Water Intake Structures Phase III Facilities	02/27/04	04/27/04	11/24/04	06/15/06
Section 126 Petition (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
FIP for Regional Nox/So2 (2005 Clean Air Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Non-Road Spark-Ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Total Coliform Monitoring (TCR Rule)	01/31/08	01/31/08	07/14/10	
Renewable Fuel Standards 2 (RFS2)	07/09/08	09/05/08	05/26/09	03/26/10
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	3/19/2014	09/28/2015
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/2015	
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking

Table B.1 SBREFA Panels Convened through FY 2015, continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11		
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	
National Emission Standards for Hazardous Air Pollutants Risk and Technology Review for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Proposed rule published without completion of the SBREFA panel report.	04/14/13	4/13/12 1/8/14 6/2/14
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Proposed rule published without completion of the SBREFA panel report.	6/30/14	
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13		
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	1/16/14	12/18/14	
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	
PCB Use Authorizations Update Rule	02/07/14	04/07/14		
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/2015	07/13/15	
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15		
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking

Table B.1 SBREFA Panels Convened through FY 2015, continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Occupational Safety and Health Administration				
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03
Safety and Health Program Rule	10/20/98	12/19/98		
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03		
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Beryllium	09/17/07	01/15/08		
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Consumer Financial Protection Bureau				
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Home Mortgage Disclosure Act (Regulation C)	02/27/14	04/24/14	08/29/14	10/15/15
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15		

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking

Appendix C
Text of the Regulatory Flexibility Act

The following text of the Regulatory Flexibility Act of 1980, as amended, is taken from Title 5 of the United States Code, sections 601–612. The Regulatory Flexibility Act was originally passed in 1980 (P.L. 96-354). The act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), and the Small Business Jobs Act of 2010 (P.L. 111-240).

Congressional Findings and Declaration of Purpose

(a) The Congress finds and declares that —

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act [enacting this chapter and provisions set out as notes under this section] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

Regulatory Flexibility Act

§ 601 Definitions
§ 602 Regulatory agenda
§ 603 Initial regulatory flexibility analysis
§ 604 Final regulatory flexibility analysis
§ 605 Avoidance of duplicative or unnecessary analyses
§ 606 Effect on other law
§ 607 Preparation of analyses
§ 608 Procedure for waiver or delay of completion
§ 609 Procedures for gathering comments
§ 610 Periodic review of rules
§ 611 Judicial review
§ 612 Reports and intervention rights

§ 601. Definitions

For purposes of this chapter—

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;

(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the *Federal Register*;

(6) the term "small entity" shall have the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information" —

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either —

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping requirement — The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the *Federal*

Register a regulatory flexibility agenda which shall contain —

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the *Federal Register* at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the *Federal Register* for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain —

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d) (1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain —

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;

(6)[5] for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the *Federal Register* such analysis or a summary thereof..

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the *Federal Register* at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

5. So in original. Two paragraphs (6) were enacted.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the *Federal Register*, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the *Federal Register* of a final rule by publishing in the *Federal Register*, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than *de minimis* impact on a substantial number of small entities.

(d) For purposes of this section, the term "covered agency" means

(1) the Environmental Protection Agency,

(2) the Consumer Financial Protection Bureau of the Federal Reserve System, and

(3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the *Federal Register*. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the *Federal Register* and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental 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 area affected by the rule.

(c) Each year, each agency shall publish in the *Federal Register* a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

§ 611. Judicial review

(a)

(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3) (A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to —

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as *amicus curiae* in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

Appendix D
Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

Presidential Documents

Executive Order 13272 of August 13, 2002

The President

Proper Consideration of Small Entities in Agency Rulemaking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *General Requirements.* Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the ''Act''). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

Sec. 2. *Responsibilities of Advocacy.* Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

Sec. 3. *Responsibilities of Federal Agencies.* Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the **Federal Register** of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

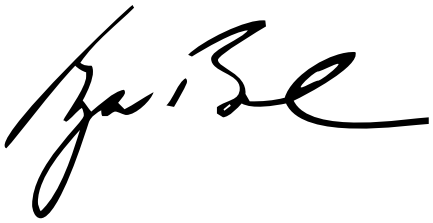
Sec. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term ''agency,'' shall have the same meaning in this order.

Sec. 5. *Preservation of Authority.* Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85–09536 (15 U.S.C. 633(b)(1)).

Sec. 6. *Reporting.* For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

Sec. 7. *Confidentiality.* Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
August 13, 2002.

Appendix E
Executive Orders on Regulatory Review

Appendix E contains the text of three executive orders issued by President Barack Obama in 2011 and 2012 to strengthen federal agency compliance with the RFA:

- E.O. 13563, Improving Regulation and Regulatory Review, and Memorandum on Regulatory Flexibility, Small Business and Job Creation;
- E.O. 13579, Regulation and Independent Regulatory Agencies;
- E.O. 13610, Identifying and Reducing Regulatory Burdens

Federal Register
Vol. 76, No. 14
Friday, January 21, 2011

Presidential Documents

Title 3—

The President

Executive Order 13563 of January 18, 2011

Improving Regulation and Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 18, 2011.

[FR Doc. 2011–1385
Filed 1–20–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Memorandum of January 18, 2011

Regulatory Flexibility, Small Business, and Job Creation

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing "differences in the scale and resources of regulated entities" and of considering "alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions." 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, "Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account,

among other things, and to the extent practicable, the costs of cumulative regulations."

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

- extended compliance dates that take into account the resources available to small entities;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements for large and small firms; and
- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 18, 2011

[FR Doc. 2011–1387
Filed 1–20–11; 8:45 am]
Billing code 3110–01–P

Federal Register
Vol. 76, No. 135
Thursday, July 14, 2011

Presidential Documents

Title 3—

The President

Executive Order 13579 of July 11, 2011

Regulation and Independent Regulatory Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *Policy.* (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, ''Improving Regulation and Regulatory Review,'' directed to executive agencies, was meant to produce a regulatory system that protects ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

Sec. 2. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 3. *General Provisions.* (a) For purposes of this order, ''executive agency'' shall have the meaning set forth for the term ''agency'' in section 3(b) of Executive Order 12866 of September 30, 1993, and ''independent regulatory agency'' shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
July 11, 2011.

[FR Doc. 2011–17953
Filed 7–13–11; 11:15 am]
Billing code 3195–W1–P

Federal Register
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Monday, May 14, 2012

Presidential Documents

Title 3—

The President

Executive Order 13610 of May 10, 2012

Identifying and Reducing Regulatory Burdens

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

Section 1. *Policy.* Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system ''must measure, and seek to improve, the actual results of regulatory requirements.'' To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in ''periodic review of existing significant regulations.'' Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to ''determine whether any such regulations should be modified, streamlined, expanded, or repealed.'' The purpose of this requirement is to ''make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

Sec. 2. *Public Participation in Retrospective Review.* Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 13563, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)), public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable.

Sec. 3. *Setting Priorities.* In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the

public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

Sec. 4. *Accountability.* Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

Sec. 5. *General Provisions.* (a) For purposes of this order, ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 10, 2012.

[FR Doc. 2012–11798
Filed 5–11–12; 11:15 am]
Billing code 3295–F2–P

Appendix F
Abbreviations

AMR	attributable material relationship
APHIS	Animal and Plant Health Inspection Service
CAP	common acquisition platform
CBI	confidential business information
CCR	coal combustion residuals
CFPB	Consumer Financial Protection Bureau
CGMP	current good manufacturing practice
CORPS	Army Corps of Engineers
CPSC	Consumer Product Safety Commission
D.C.	District of Columbia
DEs	designated entities
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
EBSA	Employee Benefits Security Administration
E.O.	executive order
EPA	Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulatory Council
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FIP	federal implementation plan
FLSA	Fair Labor Standards Act
FR	Federal Register
FRFA	final regulatory flexibility analysis
FSS	federal supply schedule
FWS	Fish and Wildlife Service
FY	fiscal year
GSA	General Services Administration
HFCs	hydrofluorocarbons
HHS	Department of Health and Human Services
ILEC	incumbent local exchange carriers
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
JOBS Act	Jumpstart Our Business Startups
LDT	light duty trucks
LDV	light duty vehicles
LPTV	low-power television
MACT	maximum achievable control technology
MSGP	multi-sector general permit
NAAQS	national ambient air quality standards
NCP	national contingency plan
NESHAP	national emission standards for hazardous air pollutants
NIST	National Institute of Standards and Technology
NOAA	National Oceanographic and Atmospheric Administration
NOx	nitrogen oxide
NPRM	notice of proposed rulemaking
NSPS	new source performance standards
OFPP	Office of Federal Procurement Policy
OSHA	Occupational Safety and Health Administration
PCB	polychlorinated biphenyls
PSM	process safety management
RCRA	Resource Conservation and Recovery Act
RESPA	Real Estate Settlement Procedures Act
RFA	Regulatory Flexibility Act
RMP	risk management program
RTR	risk and technology review
SBA	Small Business Administration
SBAR	small business advocacy review
SBREFA	Small Business Regulatory Enforcement Fairness Act
SI	spark ignition
SNAP	significant new alternative program
SNURs	significant new use rules
SO2	sulfur dioxide
TCR-RFS2	total coliform renewable fuel standards 2
TDM	time division multiplexing
TILA	Truth in Lending Act
TREAS	Department of Treasury
TSCA	Toxic Substance Control Act
UIC	underground injection control
U.S.C.	United States Code