Report on the Regulatory Flexibility Act, FY 2014

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

January 2015

Advocacy: the voice of small business in government

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policymakers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional Advocates and an office in Washington, D.C., support the Chief Counsel's efforts.

The full text of this report is available on the Office of Advocacy's website at **www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports**. Information about Advocacy's initiatives on behalf of small businesses is widely accessible: via three Listservs (regulatory communications, news, and research) and social media including a blog, Twitter feed, and Facebook page. All of these are accessible from the Advocacy website, **www.sba.gov/advocacy**.

We welcome your support of Advocacy's efforts on behalf of America's dynamic small business sector.

January 2015

To President Obama and the U.S. Congress:

This report covers federal agencies' compliance with the Regulatory Flexibility Act (RFA) and Executive Order 13272 in FY 2014. The RFA requires federal agencies to consider the impact of their proposed rules on small entities—small businesses, small government jurisdictions, and small nonprofits. It requires them to review proposed regulations that would have a significant economic impact on a substantial number of small entities and to consider significant alternatives that minimize the regulatory burden on them while achieving the rules' purposes. E.O. 13272 requires agencies to take additional specific steps demonstrating their consideration of small entities in their rulemakings.

The Office of Advocacy encourages agency compliance throughout the year along many avenues. This year, Advocacy hosted 19 roundtables to gather input from small business and their representatives. On many occasions, officials from federal agencies and Congress participated in these roundtables and had direct exchanges with small businesses.

Since 2002, Advocacy has offered training on RFA compliance to every rule writing agency in the federal government, in most cases multiple times. Advocacy has conducted training for 18 cabinet-level departments and agencies, 67 separate component agencies and offices within these departments, and 22 independent agencies. This year, Advocacy provided training to rule writers from 16 agencies.

In FY 2014, Advocacy filed 22 formal comment letters conveying small business concerns on specific regulatory proposals. The two issues identified most often were the inadequate analysis of a rule's small entity impacts and inadequate consideration of small business alternatives.

Advocacy has participated in 64 Small Business Regulatory Enforcement Fairness Act (SBREFA) panels since 1996. In FY 2014, Advocacy participated in three SBREFA panels convened by the Environmental Protection Agency and one by the Consumer Financial Protection Bureau.

In FY 2014, 13 of the rules on which Advocacy provided small business input were made final and contained flexibilities reflecting this input. As a result of these flexibilities, Advocacy achieved cost savings of more than $4.8 billion on behalf of small businesses. The primary source of cost savings was EPA's modification of its

construction and development stormwater runoff regulations. The final rule allowed flexibility in the standards for measuring and managing construction site runoff.

Other success stories resulted from RFA compliance, although the exact amounts of savings were not estimated. These include:

- The Consumer Financial Protection Bureau's mortgage rules, which relaxed electronic recordkeeping requirements and maintained the traditional definition of the five-day business week in mortgage transactions;
- Several Federal Communications Commission flexibilities affecting small businesses, for instance granting small businesses more time to phase in video displays accessible to the blind; and
- The Occupational Safety and Health Administration's final rule on cranes and derricks, which gave small employers more time to meet training standards for crane and derrick operators while important terms in the rules are more precisely defined.

Advocacy listens to small businesses throughout the year and serves as the voice of small business in the federal government. Advocacy's role in encouraging compliance with the RFA is one of the office's primary ways of speaking up for small businesses.

Small businesses—the inventions they devise, the workers they employ, and the opportunities they create—are the catalysts of America's economic growth. Small businesses underlie millions of individual American Dreams, as well as the products and services that earn America respect around the world. The creators of the Regulatory Flexibility Act understood that small businesses face outsized competition because of their small scale. By encouraging RFA compliance, the Office of Advocacy helps small businesses reach their potential as the robust and flourishing engines of America's economic power.

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

Charles Maresca
Director of Interagency Affairs

Contents

1 The Regulatory Flexibility Act in the Rulemaking Process

Small businesses' importance as generators of innovation, employment, economic growth, and competition in the U.S. economy has been recognized for decades.[1] The need for policies that support the development, growth, and health of small business led to the creation in 1976 of the Office of Advocacy, an independent office within the U.S. Small Business Administration (SBA). Advocacy serves as the voice of small business within the federal government. Within a few years of Advocacy's inception, Congress was debating the merits of the bill which was ultimately passed in 1980, the Regulatory Flexibility Act (RFA).[2]

On September 8, 1980, rising in support of the Regulatory Flexibility Act which had recently passed the Senate, Rep. Neil Smith (D-Iowa) spoke directly and forcefully on the legislation—it was designed to "[give] clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business." In addition, he added, it would help small businesses address key competitiveness issues:

An Office of Advocacy roundtable on the Securities and Exchange Commission's proposed crowdfunding regulation, Washington, D.C., January 2014.

1 For a summary of recent data on small businesses in the economy see Frequently Asked Questions about Small Businesses, **www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf**.

2 For the history of the RFA, see Appendix B. For the complete text of the RFA, see Appendix C.

"Overregulation of small entities is one of the ways big business has gained advantages over small business… Small business cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies."

In three days of hearings in the summer of 1979, members of the Senate Subcommittee on Administrative Practice and Procedure considered the disparate impact of federal regulation on small business. They heard dozens of practical examples of this impact from representatives of small businesses, small organizations, and small governmental jurisdictions, along with advice on how rules could be made more flexible. What was needed, they said, was not special advantages for small business, but a mechanism to equalize the impact of federal regulations and programs on entities of varying sizes.

Thirty-four years later the Regulatory Flexibility Act has become the primary legal tool that gives small businesses a voice in the rulemaking process. The RFA established in law the principle that government agencies must analyze the effects of their regulatory actions on small entities—small businesses, small nonprofits, and small governments—and consider alternatives that would be equally effective in achieving their regulatory objectives without unduly burdening these small entities.

Advocacy has the responsibility of overseeing and facilitating federal agency compliance with the RFA. Since it was enacted in 1980, the RFA has been strengthened by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA); four executive orders (13272, 13563, 13579, and 13610); the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; and the Small Business Jobs Act of 2010.[3]

In 1996, Senator Christopher Bond (R-Missouri) introduced the Small Business Regulatory Enforcement Fairness Act to strengthen the small business hand in dealing with the federal agencies in the rulemaking process. In testimony on the floor of the House, Senator Bond referred to the White House Conference on Small Business which concluded its work in 1995 with 60 recommendations to help small business. Senator Bond said, "The common theme of all recommendations is the need to change the culture of government agencies, the need to provide a responsive ear and a responsive attitude toward small business and small entities." Citing letters he had received from representatives of small businesses in every conceivable industry, Senator Bond noted there was strong bipartisan support for reforms to the RFA.

SBREFA provided for judicial review of agency compliance with key sections of the RFA. It also established a requirement that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) convene panels consisting of the head of the agency, the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA), and the chief counsel for advocacy, whenever the agencies were developing a rule for which an IRFA would be required.[4] The Small Business Jobs act added the Consumer Financial Protection Bureau (CFPB) to the list of agencies required to convene SBREFA panels.

3 The text of E.O. 13272 is reprinted in Appendix D. The three executive orders and the memorandum pertaining to regulatory review are in Appendix E (E.O. 13563, 13579, and 13610).

4 An IRFA, or initial regulatory flexibility analysis, is required for any proposed regulation that would have a significant economic impact on a substantial number of small entities.

On August 13, 2002, President Bush, seeking to promote compliance with the RFA, signed Executive Order 13272, requiring Advocacy to notify the leaders of the federal agencies from time to time of their responsibilities under the RFA. The executive order for the first time required Advocacy to provide training to the agencies on how to comply with the law, and to report annually on agency compliance with the executive order. Agency compliance is detailed in the remainder of this report.

The executive order also added a requirement that the agencies provide notice to Advocacy of any draft proposed rule that would impose a significant economic impact on a substantial number of small entities, and to provide "in any explanation or discussion accompanying publication in the *Federal Register*," a response to any written comment it has received on the rule from Advocacy. These requirements of early notification and written responses have since been codified by the Small Business Jobs Act of 2010.

Monitoring Federal Regulatory Activity

Advocacy's Office of Interagency Affairs monitors new federal regulatory proposals through a variety of means, including publicly available sources such as the *Federal Register* and the agencies' periodic publication of their regulatory agendas. Many agencies also notify Advocacy directly in advance of planned regulations, particularly when these proposals have significant costs or will affect substantial numbers of small entities. Advocacy's outreach to small businesses and their representatives plays an important role in monitoring such federal activity.

Soliciting the Views of Stakeholders

Advocacy reaches out to its many stakeholders to solicit their views on issues of concern to small firms. Roundtables on specific topics, at which representatives of small businesses, industries, and government agencies meet, provide important input. The chief counsel regularly meets with small business owners, business organizations, small business trade associations, and other stakeholders around the country. Advocacy's ten regional advocates are the office's eyes and ears outside of Washington, and the office also receives a steady flow of input on small business concerns from stakeholders.

Engagement with Federal Agencies

After an issue of concern has been identified, Advocacy's Office of Interagency Affairs works with regulatory officials and policymakers to ensure that the views of small entities are known and considered in the agency's actions. Advocacy interventions can occur at all stages of the rule development process, from confidential pre-decisional deliberative consultations before a proposal is made, to formal public comments after a proposed rule has been published, to comments after a rule has been finalized.[5] Advocacy maintains a cooperative and ongoing dialog with agency rule writers throughout the process. This year's comment letters are summarized in Chapter 4 and described in detail in Chapter 5.

5 For a listing of Advocacy regulatory comment letters, see **www.sba.gov/advocacy/816**.

SBREFA Panels

Three agencies—EPA, OSHA, and CFPB—must convene panels under SBREFA. The purpose of these panels is to ensure that the views and needs of small entities are considered early in the process of drafting rules that could have significant effects on those entities. They develop information solicited from small entity representatives and other sources concerning the potential impacts of a new agency proposal, consider alternatives that minimize burdens, and prepare a report that includes recommendations to the agency head for consideration in the proposed rule. A complete list of panels convened through FY 2014 is in Appendix A, Table A.1.

RFA Compliance Training

The RFA requires federal regulatory agencies to consider the effects of planned regulatory actions on small entities and to take actions to minimize effects when possible, including considering alternatives for rules with significant impacts. E.O. 13272 requires Advocacy to provide training to federal regulatory development officials on RFA compliance, and agencies have been responsive to Advocacy's training. Appendix A lists the agencies that have participated in RFA training.

Retrospective Review of Regulations

RFA Section 610 requires federal agencies to examine the burden of existing rules on small entities. Reviews must be performed every ten years for final rules that have a significant economic impact on a substantial number of small entities. Reviews should "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."

In January 2011, President Obama issued Executive Order 13563, Improving Regulation and Regulatory Review.[6] The executive order imposed on the executive agencies new requirements of heightened public participation, consideration of overlapping regulatory requirements and flexible approaches, and ongoing regulatory review. It was accompanied by a presidential memorandum titled Regulatory Flexibility, Small Business and Job Creation. This memo reminded the agencies of their responsibilities under the RFA, and directed them "to give serious consideration" to reducing the regulatory impact on small business through regulatory flexibility, and to explain in writing any decision not to adopt flexible approaches. The executive order and accompanying memo support section 610 of the RFA.

On May 11, 2012, President Obama issued Executive Order 13610, Identifying and Reducing Regulatory Burdens, which established regulatory review as a rulemaking policy, and also established public participation as a key element in the retrospective review of regulations.[7] E.O. 13610 also established as a priority "initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory

6 The text of the executive orders and memoranda on regulatory review are in Appendix E.

7 See Appendix E.

requirements imposed on small business," and ordered the agencies to "give consideration to the cumulative effects" of their own regulations.

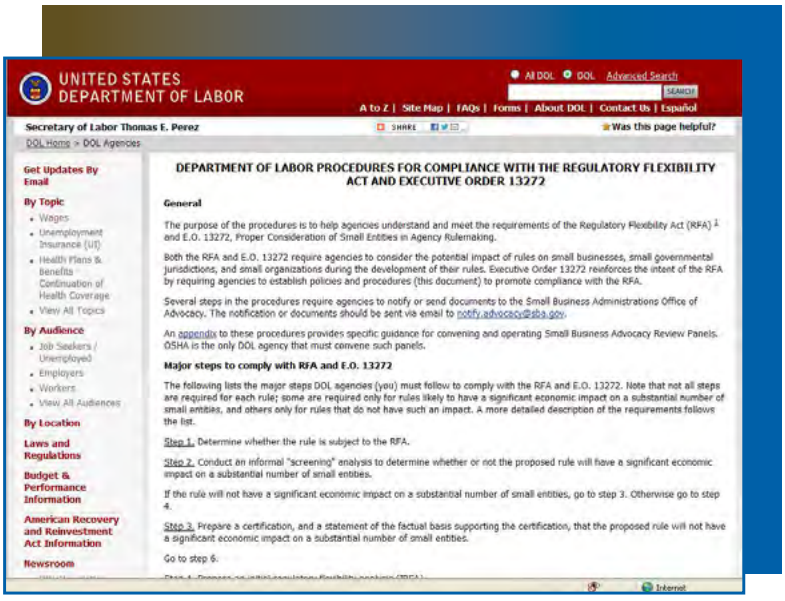
With this emphasis on the principles of regulatory review and sensitivity to the special concerns of small businesses in the rulemaking process, federal agencies have increased their efforts to comply with the RFA; the Office of Advocacy, consistent with its statutory mission, provides assistance and guidance to the agencies in achieving this compliance.

2 Executive Order 13272 Implementation and Compliance

When Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, was signed in August 2002, the chief counsel for advocacy wrote to the heads of all the federal agencies and their general counsels to make them aware of it:

> The purpose of the Executive Order is to ensure that we work closely together to ensure that small business issues, particularly as they relate to disproportionate regulatory burden, are addressed as early as possible in the regulation writing process…The Office of Advocacy is excited about this opportunity to work more closely with federal agencies, such as yours, towards the goal of reducing the regulatory burden on small businesses.

In the intervening 12 years, Advocacy has consistently found that the executive order has improved the relationships between Advocacy and the agencies and also improved these agencies' RFA compliance.



In compliance with E.O. 13272, federal agencies made their RFA policies and procedures available to the public. The Department of Labor's webpage is pictured.

Implementation and Compliance

Overseeing federal agencies' compliance with the Regulatory Flexibility Act and E.O. 13272 is the responsibility of the Office of Advocacy. Legislative improvements to the RFA and executive orders have required greater Advocacy involvement in the federal rulemaking process. As agencies have become more familiar with the role of Advocacy and have adopted the cooperative approach Advocacy encourages, the office has had more success in urging burden-reducing alternatives. In FY 2014, this more cooperative approach yielded at least $4.8 billion in foregone regulatory costs as well as additional savings of indeterminate size (Tables 6.1, 6.2 and 6.3).

The provisions of E.O. 13272 have given Advocacy and federal agencies additional tools for implementing the RFA, and parts of the executive order have been codified in the RFA.

E.O. 13272 Implementation

Under E.O. 13272, federal agencies are required to make publicly available information on how they take small businesses and the RFA into account when creating regulations. By the end of 2003, most agencies had made their RFA policies and procedures available on their websites.

Agencies must also send Advocacy copies of any draft regulations that may have a significant economic impact on a substantial number of small entities. They are required to do this at the same time such rules are sent to OIRA or at a reasonable time prior to publication in the *Federal Register*.

E.O. 13272 also requires agencies to consider Advocacy's written comments on a proposed rule and to address these comments in the final rule published in the *Federal Register*. This section of the executive order was codified in 2010 as an amendment to the RFA by the Small Business Jobs Act. Most agencies complied with this provision in FY 2014.

Advocacy has three duties under E.O. 13272. First, Advocacy must notify agencies of how to comply with the RFA. This was first accomplished in 2003 through the publication of *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*. A revised version of this guide was provided to agencies in 2009 and 2012. The 2012 revision incorporated the later amendments to the RFA.

Second, Advocacy must report annually to OIRA on agency compliance with the executive order. In FY 2014, most agencies complied with E.O. 13272. However, a few agencies continue to ignore the requirements and failed to provide Advocacy with copies of their draft regulations. A summary of agencies' FY 2014 compliance with E.O. 13272 is found in Table 2.1.

Third, Advocacy is required to train federal regulatory agencies in how to comply with the RFA. After 12 years of E.O. 13272, Advocacy has offered RFA training to every rule writing agency in the federal government, in most cases multiple times. The training remains popular with the federal agencies' attorneys, economists and policy offices.

Table 2.1 Agency Compliance with the Small Business Jobs Act of 2010 and E.O. 13272, FY 2014

Department	Written Procedures	Notify Advocacy	Response to Comments	Comments
Cabinet Agencies				
Agriculture	√	n/a	n/a	
Commerce	√	√	√	
Defense	√	√	√	
Education	√	√	√	
Energy	√	√	√	DOE does not specifically refer to Advocacy's public comments in its final rules.
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	

Key:
√ = Agency complied with the requirement.
X = Agency did not comply with the requirement.
n.a. = Not applicable in FY 2014 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 2014, 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	√	√	√	

Key:
√ = Agency complied with the requirement.
X = Agency did not comply with the requirement.
n.a. = Not applicable in FY 2014 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.

3 Advocacy's Communication with Small Businesses and Federal Agencies

This chapter provides an overview of Advocacy's engagement with agencies to achieve compliance with the RFA and E.O. 13272 in FY 2014.

Regulatory Agendas

Section 602 of the RFA requires each agency to publish its regulatory flexibility agenda in April and October in the *Federal Register*. The agenda must specify the subject of upcoming proposed rules and whether they are likely to have a significant economic impact on a substantial number of small entities. Agencies are also required to provide their agendas to the chief counsel for advocacy and to small businesses or their representatives. The regulatory agendas alert Advocacy and small entities to forthcoming regulations, and they are frequently discussed at Advocacy roundtables.

In FY 2014, regulatory flexibility agendas were published in the *Federal Register* on May 23 and September 19, 2014, and they were also provided to Advocacy on these dates.

Advocacy's September 2014 roundtable gathered small theater operators' concerns about newly proposed Department of Justice requirements.

SBREFA Panels

Section 609 of the RFA requires three agencies to convene review panels (abbreviated as SBREFA or SBAR panels) whenever a draft regulation is anticipated to have a significant economic impact on a substantial number of small entities.[8] Since 1996, Advocacy has participated in 64 SBREFA panels. In FY 2014, EPA initiated two new panels and continued one from FY 2013. CFPB convened one panel and OSHA convened no panels. A complete list of SBREFA panels to date is in Appendix Table A.1.

Retrospective Review of Existing Regulations

RFA section 610 requires federal agencies to examine the burden of existing rules on small entities. Agencies announce planned section 610 reviews in the fall edition of the *Unified Agenda of Regulatory and Deregulatory Actions*.[9] President Obama issued two executive orders in 2011 to strengthen the review requirement. Executive Order 13563, signed January 18, 2011, instructed agencies to develop a plan for periodic retrospective review of all existing regulations. E.O. 13579, signed July 11, 2011, directed independent agencies to promote the goals outlined in the January executive order.[10] OMB followed suit by issuing a series of memoranda implementing these requirements.[11] As a result, agencies twice a year develop retrospective review plans (some after significant public input) and publish them online.[12] Agency plans and updates are also posted on the White House webpage.[13]

Advocacy has provided comments through OMB on agency plans and is monitoring agency compliance beyond the initial implementation period. Advocacy welcomes input from small entities to identify future rules in need of retrospective review.

Interagency Communications

Meetings and training sessions are two opportunities Advocacy uses to present the views of the small business community to federal agencies and to refresh their knowledge of their compliance obligations. Advocacy's work with federal agencies has increased in scope and effectiveness as its training program has grown and as agencies have become more open to Advocacy assistance. In FY 2014, Advocacy's communications with agencies included 22 formal comment letters (Table 4.1).

8 The panels are termed SBREFA panels for the Small Business Regulatory Enforcement Fairness Act, which mandated them. They are also referred to as SBAR panels, for "small business advocacy review."

9 The *Unified Agenda* is available online at **www.reginfo.gov**. Section 610 reviews can be found using the "advanced search" feature.

10 Appendixes D and E contain the complete text of the executive orders and the OMB memoranda.

11 M-11-10, Executive Order 13563, Improving Regulation and Regulatory Review (February 2, 2011), M-11-19, Retrospective Analysis of Existing Significant Regulations (April 25, 2011), and M-11-25, Final Plans for Retrospective Analysis of Existing Rules (June 14, 2011).

12 For example, EPA posts its plan at **www.epa.gov/improvingregulations**. DOT posted information on its regulatory portal, **http://regs.dot.gov/retrospectivereview.htm.**

13 All agencies regulatory review plans are posted on the White House webpage at **www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system.**

More effective regulations that avoid excessive burdens on small firms are the result of these efforts. In FY 2014, 13 of the rules on which Advocacy has provided small business input were made final and contained flexibilities reflecting this input. These results are detailed in Chapter 6.

Roundtables

Advocacy listens to small businesses and their representatives at numerous roundtables throughout the year. On many occasions, officials from federal agencies as well as congressional staff attend Advocacy roundtables to hear from small businesses directly and to discuss agency activities and approaches. These roundtables are a unique means of bringing small businesses and agency officials together. The 19 roundtables held in FY 2014 are listed in the following sections.

Department of Justice, Civil Rights Division

Movie Theater Accessibility Equipment. On September 15, 2014, Advocacy hosted a roundtable to gather feedback on a proposed rule under the Americans with Disabilities Act which would require movie theaters to purchase special accessibility equipment and exhibit all showings with closed captioning and audio description (if the films are produced with this capacity). Under this rule, theaters with digital screens have six-months to comply. The Department of Justice (DOJ) was seeking public comment on whether it should adopt a four-year compliance date or should defer rulemaking on analog screens until a later date. DOJ officials, including Rebecca Bond, chief of the disability rights section, and Eve Hill, deputy assistant attorney general of DOJ's civil rights division, gave an overview of the proposed rule. Small theaters and small business representatives from 19 states were represented.

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

Tracking of Workplace Injuries and Illnesses; Resource Tools for Hazardous Chemicals. On November 15, 2013, Advocacy hosted a roundtable on several Occupational Safety and Health Administration and Mine Safety and Health Administration's (OSHA/MSHA) topics. First was the proposed Improved Tracking of Workplace Injuries and Illnesses Rule presented by Dave Schmidt of OSHA's Directorate of Evaluation and Analysis. Representatives of OSHA's Directorate of Standards and Guidance also gave a presentation on new resource tools for hazardous chemicals. Third was an open discussion of the small business effects of OSHA's proposed rule, Occupational Exposure to Respirable Crystalline Silica.

Process Safety Management. On January 24, 2014, Advocacy hosted a roundtable that included updates on OSHA's activities under E.O. 13650, Improving Chemical Facility Safety and Security, and on the agency's request for information on its process safety management standard. There was also a discussion about OSHA's public meeting on its Improve Tracking of Workplace Injuries and Illnesses Rule and small business concerns with the proposed rule. Other topics included how OSHA's proposed Occupational Exposure to Respirable Crystalline Silica Rule would affect small business and a look at OSHA and MSHA's fall 2013 Regulatory Agendas.

Lowering Miners' Exposure to Respirable Coal Mine Dust. On May 16, 2014, Advocacy hosted a roundtable that included an overview of two new rules: Lowering Miners' Exposure to Respirable Coal Mine Dust, presented by Patricia Silvey, MSHA's deputy assistant secretary for operations; and Electric Power Generation, Transmission, and Distribution, presented by David Wallis from OSHA's Directorate of Standards and Guidance. There was also a recap of OSHA's public hearing on its proposed Occupational Exposure to Respirable Crystalline Silica Rule, and a discussion of the National Institute for Occupational Safety and Health's recent safety culture/safety climate workshop.

Infectious Diseases Panel. On July 25, 2014, Advocacy hosted a roundtable that included a discussion of OSHA's planned SBREFA panel on infectious diseases by Andrew Levinson, deputy director of OSHA's Directorate of Standards and Guidance. Lisa Long, director of OSHA's Office of Engineering Safety in the Directorate of Standards and Guidance, gave an update on small business issues associated with E.O. 13650, Improving Chemical Facility Safety and Security. There was also a presentation on safety culture/safety climate that focused specifically on small business issues in the construction industry, and a look at OSHA and MSHA's spring 2014 Regulatory Agendas.

Chemical Facility Safety and Security. The September 19, 2014, roundtable included a discussion of OSHA's planned SBREFA panel on infectious diseases, as well as a cross-agency look at how various federal agencies are implementing E.O. 13650, Chemical Facility Safety and Security, and how future agency actions could affect small business. Other topics included small business concerns with OSHA's recordkeeping and reporting program.

Department of Labor, Wage and Hour Division

Raising the Minimum Wage for Federal Contractors. On July 9, 2014, Advocacy hosted a roundtable on a proposed rule implementing E.O. 13658. The rule raised the minimum wage to $10.10 for all federal contractors, subcontractors and their workers starting January 1, 2015. Officials from the Department of Labor's Wage and Hour Division provided a briefing of the rule, and received feedback from small contractors such as construction representatives and concessionaires in military bases and on federal lands. Advocacy and DOL also held an earlier listening session on this topic in April 2014.

Overtime Regulations under the Fair Labor Standards Act (FLSA). On July 11, 2014, and July 18, 2014, Advocacy hosted roundtables on the potential impact of a presidential memorandum directing the DOL to update and modernize existing overtime regulations under the FLSA. The roundtables were designed as listening sessions, and included two officials from DOL's Wage and Hour Division: David Weil, administrator, and Laura Fortman, deputy administrator.

Department of Transportation, Federal Motor Carrier Safety Administration

Compliance, Safety, Accountability and Targeted Inspections Programs. On May 12, 2014, Advocacy hosted a roundtable to assist the Department of Transportation (DOT) in assessing the Federal Motor Carrier Safety Administration's (FMCSA) compliance review processes and their impact on small trucking and motor coach companies. The roundtable included an overview of FMCSA's processes, including its

Compliance, Safety, Accountability and targeted inspections programs, and a facilitated discussion by an independent review team appointed by the Secretary of Transportation to review FMCSA's program effectiveness. DOT asked Advocacy to host the roundtable to assist the review team in obtaining input from small business stakeholders.

Department of the Treasury

Automatic IRA Proposals. On April 30, 2014, Advocacy hosted a roundtable on recent developments related to the Automatic IRA contribution proposal and the myRA proposal. At the roundtable, the senior advisor to the treasury secretary made a presentation on the proposals. Small business owners and employers had the opportunity to ask the senior advisor questions and provide feedback on the proposals.

Environmental Protection Agency

Multi-Sector General Permit and New Electric Utility Generating Units. On October 25, 2013, Advocacy hosted a roundtable on two EPA actions: the Clean Water Act Industrial Multi-Sector General Permit and the proposed Standards of Performance for Greenhouse Gas Emissions from New Electric Utility Generating Units. EPA presented a discussion of the proposed new requirements for industrial facilities that discharge stormwater under a federal general permit. The discussion on the greenhouse gas standards included a detailed presentation by EPA staff on the proposed rule.

Hydrochlorofluorocarbon Phaseout, Standards for Wood-Burning Heaters. On January 31, 2014, Advocacy hosted a roundtable on two EPA proposed rules. EPA presented its proposed rule on the allocation of HCFC allowances for 2015-2019, the final years before a complete phase-out of major HCFCs. Advocacy heard from small businesses seeking more allowances and fewer allowances. EPA also presented on its proposed air emission standards for wood-burning furnaces and stoves, hydronic heaters, and masonry heaters. This rule was the subject of a SBREFA panel.

Non-Hazardous Secondary Materials Used As Fuels. At Advocacy's May 16, 2014, roundtable, EPA and small business representatives discussed upcoming rules to expand the list of non-hazardous secondary materials that could be used as fuels in industrial commercial and institutional boilers. EPA also presented on its proposed rule to enhance protections for agricultural workers working near where pesticides are applied.

Clean Power Plan. At the June 20, 2014, environmental roundtable, EPA gave a presentation on its proposed greenhouse gas emission standards for power plants (known as the Clean Power Plan), with a significant emphasis on the discretion states would have to meet the standards. The roundtable also included presentations on the work being done in preparation for a SBREFA panel on lead paint remediation in public and commercial buildings.

Waters of the United States. On July 21, 2014, Advocacy hosted a roundtable regarding the EPA and U.S. Army Corps of Engineers' proposed rule, Defining Waters of the United States. The proposed rules redefine the scope of waters protected under the Clean Water Act, and would set forth several categories of waters to be included in the definition as well as establish waters that are subject to the act.

Presentation by EPA's Small Business Ombudsman. On August 1, 2014, Advocacy welcomed Joan Rodgers, EPA's Small Business Ombudsman, to present on EPA's Office of Small Business Programs and the assistance available to small businesses

through her office. The roundtable also included a discussion with EPA and small business representatives on the proposed revisions to the Significant New Alternatives Program, which is designed to promote and eventually require alternatives to hydrochlorofluorocarbons in commerce.

Securities and Exchange Commission

Crowdfunding. On December 16, 2013, Advocacy hosted a roundtable in New York City to hear small business feedback about the Securities and Exchange Commission's proposed rule to implement the crowdfunding provisions of the JOBS Act. On January 15, 2014, Advocacy hosted a small business roundtable in Washington, D.C., to receive additional small business input regarding the SEC crowdfunding proposal.

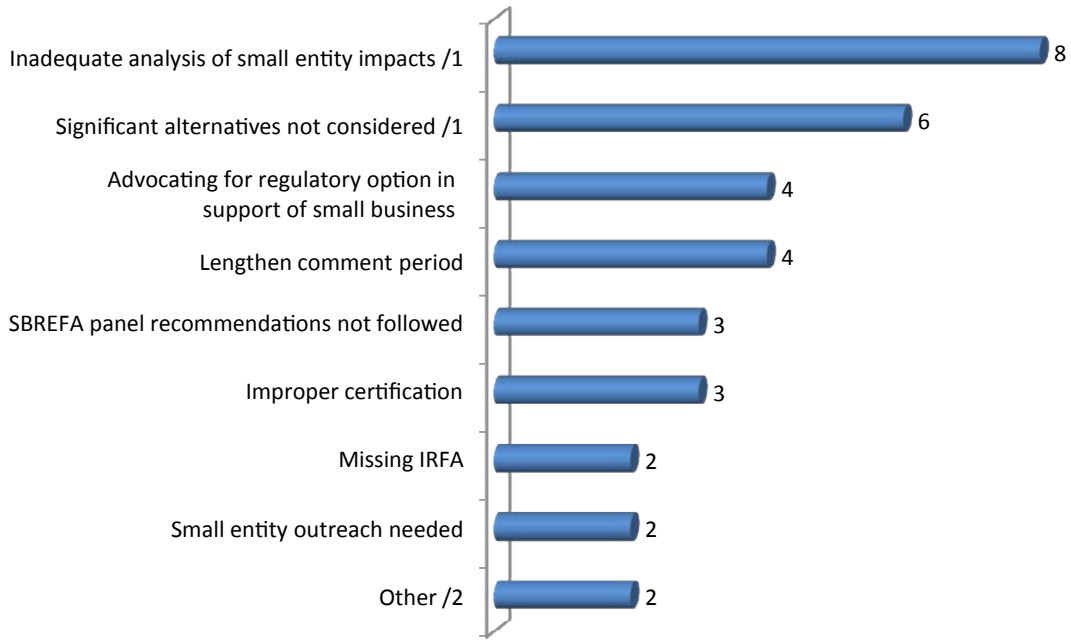
4 Summary of Advocacy's Public Comments to Federal Agencies in FY 2014

This chapter summarizes Advocacy's formal input into agency rulemaking. Advocacy filed 22 formal comment letters in FY 2014. Chart 4.1 shows the primary issues raised in these letters. The two issues that occurred with greatest frequency were

- Inadequate analysis of small entity impacts and
- Significant alternatives not considered.

These issues were the primary reasons that agencies' initial regulatory flexibility analyses (IRFAs) were judged inadequate. Advocacy's formal comment letters are listed in Table 4.1, and they are described in detail in Chapter 5.

Chart 4.1 Number of Specific Issues in Advocacy Comment Letters, FY 2014



[1] Major reason for IRFA's being determined inadequate.
[2] Small business concerns need to be further investigated

Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2014

Date	Agency*	Title	Citation to Rule
10/21/13	DOL OSHA	Occupational Exposure to Respirable Crystalline Silica	78 *Fed. Reg.* 56274, 9/12/13
11/22/13	FCC	Letter to Federal Communications Commission Chairman Thomas E. Wheeler	–
12/2/13	DOI FWS	Designation of Critical Habitat for Gunnison Sage-Grouse	78 *Fed. Reg.* 57604, 9/19/13
12/5/13	FCC	*Ex Parte* Letter; Special Access Rates for Price Cap Local Exchange Carriers; Technology Transitions Policy Task Force; Petitions to Launch a Proceeding Concerning TDM-to-IP Transition; Connect America Fund	WC Docket No. 05-25, RM-10593; GN Docket No. 13-5; GN Docket No. 12-353; WC Docket No. 10-90
12/12/13	DOI FWS	Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx	78 *Fed. Reg.* 59430, 9/26/13
12/16/13	DOC NIST	Preliminary Cybersecurity Framework	*Fed. Reg.* 10/29/13
1/15/14	DOE	Energy Conservation Standards for Walk-In Coolers and Freezers	78 *Fed. Reg.* 55782, 9/11/13
01/16/14	SEC	Crowdfunding	78 *Fed. Reg.* 66428, 11/5/13
02/11/14	DOL OSHA	Occupational Exposure to Respirable Crystalline Silica	78 *Fed. Reg.* 56274, 9/12/13
04/02/14	FCC	*Ex Parte* Letter; Revision of the Commission's Program Access Rules	MB Docket No. 12-68.
04/09/14	HHS FDA	Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventative Controls for Food for Animals	78 *Fed. Reg.* 64736, 10/29/13
05/20/14	EPA	Formaldehyde Emission Standards for Composite Wood Products	79 *Fed. Reg.* 19305, 4/8/14
*See Appendix F for abbreviations			

Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2014, continued

Date	Agency*	Title	Citation to Rule
06/05/14	EPA/ Army Corps of Engineers	Definition of Waters of the United States Under the Clean Water Act	79 *Fed. Reg.* 22188, 4/21/14
06/05/14	DOC NOAA/ DOI FWS	Definition of Destruction or Adverse Modification of Critical Habitat	79 *Fed. Reg.* 27060, 5/12/14
06/11/14	FDA	Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act.	79 *Fed. Reg.* 23142, 4/25/14
06/24/14	DOL	Establishing a Minimum Wage for Contractors	79 *Fed. Reg.* 34568, 6/17/14
07/10/14	DOI FWS	Listing the Reticulated Python, Three Anaconda Species, and the Boa Constrictor as Injurious Reptiles	79 *Fed. Reg.* 35719, 6/24/14
7/25/14	DOL	Establishing a Minimum Wage for Federal Contractors	79 *Fed. Reg.* 34568, 6/17/14
07/31/14	HHS FDA	Sanitary Transportation of Human and Animal Food	79 *Fed. Reg.* 7005, 2/5/14
08/18/14	EPA	Agricultural Worker Protection Standards	79 *Fed. Reg.* 15444, 3/19/14
09/11/14	EPA	Emission Standards for Municipal Solid Waste Landfills.	79 *Fed. Reg.* 41795, 7/17/24; 79 *Fed. Reg.* 41771, 7/17/14
9/25/14	FCC	*Ex Parte* Letter; Protecting and Promoting the Open Internet	GN Docket No. 14-28
.			

*See Appendix F for abbreviations

5 Discussion of Advocacy's Public Comments to Federal Agencies in FY 2014

Advocacy filed 22 formal comment letters on behalf of small entities in FY 2014. This chapter discusses the issues raised in them. The letters are listed in table 4.1, and they are published online on Advocacy's website, **www.sba.gov/advocacy**. They are listed here alphabetically by agency.

Department of Commerce, National Institute of Standards and Technology

Issue: Preliminary Cybersecurity Framework

On February 12, 2013, President Obama signed E.O. 13636, Improving Critical Infrastructure Cybersecurity. The executive order placed primary responsibility on the National Institute of Standards and Technology (NIST) to develop a cybersecurity framework. On October 29, 2013, NIST published a proposed preliminary cybersecurity framework for public comment. On December 16, 2013, the Office of Advocacy submitted a formal comment letter. The letter set forth four areas of importance to small businesses: cost, compliance, enforcement, and education. These four areas had been identified for the Office of Advocacy by small businesses across the country who had been engaged with NIST since the establishment of E.O. 13636.

Advocacy staff visited small municipal solid waste landfills in November 2013 to view the measures used to control emissions. This was the subject of a SBREFA panel and an Advocacy letter.

The cybersecurity framework was designed to be a voluntary compliance document but small businesses were concerned that many of the provisions in the framework would become requirements in the federal acquisition process.

Department of Energy

Issue: Energy Conservation Standards for Walk-in Coolers and Freezers

On January 13, 2014, Advocacy filed public comments with the Department of Energy (DOE) regarding its proposed energy efficiency standards for walk-in coolers and freezers. DOE proposed a component-based standard for walk-in coolers and freezers, which set different energy efficiency levels for refrigeration systems, panels and doors. Unlike the businesses engaged in the manufacturing of refrigeration components, most of the manufacturers of walk-in doors and panels are small businesses. The agency estimated that its proposal would impose capital conversion costs at 565 percent of annual capital expenditures for small panel manufacturers, compared to a 22 percent increase in annual capital expenditures for large panel manufacturers. Because of this, Advocacy commented that DOE should adopt an alternative standard that would mitigate the highly disproportionate costs to these manufacturers. The agency issued a final rule on June 3, 2014, and the cost savings resulting from the agency's RFA compliance are detailed in Chapter 6.

Department of Health and Human Services, Food and Drug Administration

Issue: Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act

On April 24, 2014, the Food and Drug Administration (FDA) Center for Tobacco Products issued a proposed rule potentially subjecting premium cigars, e-cigarettes, and hookah tobacco to FDA regulatory requirements currently only applicable to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. These requirements include general controls, health warnings, sales and marketing restrictions, and premarket authorization.

Small business owners that manufacture or market previously uncovered products have been in contact with Advocacy to provide feedback about the proposed rule. Advocacy has heard from small businesses that market and sell tobacco products and previously uncovered products, as well as small businesses in the little cigar, premium cigar, e-cigarette, and hookah industry.

On June 11, 2014, Advocacy submitted a public comment letter to the FDA. Based on input from small business owners and their representatives, Advocacy's comment letter noted that the IRFA contained in the proposed rule lacked essential information required under the RFA. The comment letter stated that the IRFA did not discuss the quantitative or qualitative costs of the proposed rule on many potentially affected small entities. Additionally, the IRFA did not adequately consider or explain significant alternatives which accomplish the stated FDA objectives while minimizing the significant economic impact of the proposal on small entities. Advocacy recommended that the FDA publish for public comment a supplemental IRFA before proceeding with the rulemaking. Advocacy encouraged the FDA to revise the IRFA to provide a more

accurate description of the costs of the proposed rule by including a quantitative analysis of all product categories that are manufactured or marketed by small businesses.

Issue: Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventative Controls for Food for Animals

On October 29, 2013, the FDA proposed a rule to regulate the manufacturing, processing, packing, or holding of pet food and livestock feed by implementing new current good manufacturing practice (CGMP) regulations, and new preventative control provisions (written food safety plan and completion of hazard analysis) on animal food facilities that are required to register with the FDA under the FDA's current food facility registration regulations. On April 9, 2014, Advocacy submitted a comment letter to the FDA, concerned by the FDA's own admission that it lacked sufficient data to be able to quantify some of the costs and benefits of the regulation.

The preamble of the rule and the IRFA contained requirements that would govern foods that are not intended for human consumption, referred to by industry as diverted food production materials. Examples of diverted food products include items such as citrus peels, corn husks, peanut shells, and used fryer oil. In light of this uncertainty, Advocacy asked the FDA to provide industry with more transparency about whether the rule would cover these types of food products and to analyze the business and environmental impacts of their inclusion in the requirements of the rule.

The proposed rule also appeared to be intended to cover breweries and distilleries that sell spent grains intended as food for animals. Owners of small breweries and farmers voiced their concern that the proposed rule could have a significant economic impact on more than 2,700 small and independent craft brewing businesses that typically donate or sell spent grain to local farms to feed livestock. They suggested that small farms rely on the spent grains as a low-cost supplemental source for animal protein and hydration. The rule would require breweries to either comply with the CGMP and hazard analysis provisions of the rule or incur the cost of disposing of the spent grains.

Advocacy's comment letter noted that the FDA did not include any discussion of the economic and environmental impact of these provisions on small breweries in the RFA section of the rule. Advocacy encouraged the FDA to perform additional analyses of the impacts of the spent grain issue and to entertain alternatives designed to lessen the impact of the provisions on affected small entities.

Issue: Sanitary Transportation of Human and Animal Food

On July 31, 2014, Advocacy submitted a comment letter to the FDA on its proposed rule to establish sanitary transportation practices for shippers, motor vehicle and rail carriers, and receivers engaged in the transportation of food for humans and animals. The rule was designed to ensure the safety of transported food pursuant to the Food Safety Modernization Act (FSMA). 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 the agency published an IRFA with the rule.

Due to data limitations, the FDA made certain assumptions about some aspects of affected industries' size, business practices, and revenues estimating the rule's costs. In an effort to reduce the rule's economic burden on small businesses, the FDA provided three alternatives—an exemption for any firm that has less than $500,000 in annual revenues; a waiver from the rule if a small business can show that said waiver will not

result in the transportation of unsafe food; and a longer compliance period for small businesses based on their level of revenue and if they have fewer than 500 employees.

Advocacy commended the FDA for its inclusion of alternatives and exemptions designed to lessen the rule's impact on small entities. However, Advocacy voiced concerns about FDA's assumptions and conclusions relative to the rule's costs and benefits. The FDA did not appear to perform its usual cost/benefit quantitative analysis, and the agency admitted that due to a lack of data it could not quantify the benefits of the regulation. Despite the lack of data, FDA chose to establish an exemption for affected entities that have annual revenues of less than $500,000. Advocacy noted that the exemption was inconsistent with the SBA size standards and the current data on small entities. The estimated average revenue for many of these firms under 500 employees (the SBA size standard) is over $6 million. As such, the exceptions described would not cover many small industry members.

Department of Interior, Fish and Wildlife Service, and Department of Commerce, National Oceanic and Atmospheric Administration

Issue: Definition of Destruction or Adverse Modification of Critical Habitat

On May 12, 2014, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (FWS) proposed to define the term "adverse modification" under the Endangered Species Act. On June 5, 2014, Advocacy published a comment letter requesting the agencies extend the public comment period for its proposed rule, Definition of Destruction or Adverse Modification of Critical Habitat. The comment period was subsequently extended for 60 days.

Department of Interior, Fish and Wildlife Service

Issue: Designation of Critical Habitat for Gunnison Sage-Grouse

On September 19, 2013, FWS proposed the rule, Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Gunnison Sage-Grouse and Proposed Critical Habitat for Gunnison Sage-Grouse. On December 2, 2013, Advocacy submitted comments to this proposed rule. Advocacy's letter expressed concern that FWS had improperly certified the proposed rule. FWS found that all effects of the proposed designation of critical habitat would be indirect and certified the rule based upon this determination. Advocacy commented that the critical habitat designations would directly affect small entities, and noted that the economic analysis omitted costs to private landowners, recreation-based small entities, and small municipalities. Advocacy called upon FWS to publish an initial regulatory flexibility analysis (IRFA). The agency did not accept Advocacy's suggestion that an IRFA and FRFA were required.

Issue: Listing the Reticulated Python, Three Anaconda Species, and the Boa Constrictor as Injurious Reptiles

On March 12, 2010, the FWS published a proposed rule that would list nine species of constrictor snakes as injurious species under the Lacey Act. The agency also published an IRFA. On May 10, 2010, Advocacy submitted a comment letter expressing

concerns about the IRFA and the effect the proposed rule would have on small businesses in the industry. On January 23, 2012, FWS finalized the listing of four of the nine snakes from the March 12, 2010 proposal. On June 24, 2014, FWS announced its intention to list the remaining five snakes by reopening the comment period. The proposed rule relied primarily upon the IRFA that had been submitted with the original rule. On July 10, 2014, Advocacy submitted comments reiterating the concerns it expressed in the May 10, 2010, letter concerning the original IRFA. FWS has not yet published the final rule.

Issue: Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx

On September 26, 2013, FWS published the proposed critical habitat designation for the Canada Lynx. FWS certified that the rule would not have a significant impact on a substantial number of small businesses based on its belief that critical habitat designations only affect federal agencies. On December 12, 2013, Advocacy submitted comments to FWS on the rule. Advocacy expressed concern that FWS did not consider the impact this designation will have on the forestry industry and thus improperly certified the proposed rule. Small businesses in this industry indicated that the rule would have a direct significant economic effect on the industry. Advocacy recommended FWS publish an IRFA. The rule was finalized on September 12, 2014. The agency did not accept Advocacy's suggestion that an IRFA and FRFA were required.

Department of Labor

Issue: Establishing a Minimum Wage for Federal Contractors

Advocacy submitted two comment letters on the Department of Labor's proposed rule that implements E.O. 13658. The rule raised the minimum wage to $10.10 for all federal contractors, subcontractors, and their workers starting January 1, 2015. The rule affects four major categories of contractual arrangements: procurement contracts covered by the Davis-Bacon Act, service contracts covered by the Service Contract Act, concessions contracts, and contracts in connection with federal property or lands. In a June 24, 2014, letter, Advocacy asked for an extension of the 30-day comment period, and DOL extended the comment period by 11 days.

Advocacy's July 25, 2014, comment letter discussed small business concerns that the rule was confusing and financially burdensome for small contractors. These concerns had been raised at an Advocacy conference call in April and at a small business roundtable in July. Advocacy commented that DOL's IRFA did not consider key small businesses covered by the rule, that it underestimated the small business compliance costs, and that it did not consider regulatory alternatives. Small restaurant franchisees and concessionaires on military bases and federal lands feared they would have to cease operations if they are unable to pass on these higher labor costs to the government and their customers; they would also have to compete with nearby businesses that do not have to pay higher labor costs. Small businesses also stated that the rule's analysis does not consider management and paperwork costs. Advocacy recommended that DOL republish for public comment a supplemental IRFA reanalyzing the numbers of small businesses, compliance costs and regulatory alternatives before proceeding with this rulemaking. The rule was finalized on October 7, 2014.

Department of Labor, Occupational Safety and Health Administration

Issue: Proposed Rule on Occupational Exposure to Respirable Crystalline Silica

Advocacy submitted two comment letters on OSHA's Proposed Occupational Exposure to Respirable Crystalline Silica Rule. In an October 21, 2013, letter, Advocacy asked for an extension of the public comment period and other deadlines by an additional 90 days to allow small businesses and their representatives adequate time to evaluate and assess the impact of this important rulemaking. OSHA granted two extensions and extended the other deadlines.

In a February 11, 2014 letter, Advocacy submitted public comments on the rule. OSHA's proposed rule would change the regulatory requirements that employers must meet when their employees are exposed to respirable crystalline silica above a certain level. Silica is basically sand (most commonly quartz) that comes in a variety of forms and conditions and is used in a wide range of applications across a host of industries. Exposure to respirable crystalline silica (which consists of very small particles that are able to penetrate into the lungs) has been linked to silicosis, lung cancer, and other diseases. OSHA's proposed rule would establish a new permissible exposure limit (PEL) of 50 micrograms per cubic meter ($\mu g/m^3$) with an action level of 25 $\mu g/m^3$ (both calculated as an eight-hour time-weighted average). Exceeding the action level would require periodic exposure assessments, while exceeding the PEL would trigger a host of administrative and regulatory controls. Advocacy has been involved in this rulemaking for over a decade. First, Advocacy was a member of the SBREFA panel that reviewed the draft proposed rule in 2003 and issued a report with its advice and recommendations to the head of OSHA. In addition, Advocacy discussed the proposed rule at several of its regular small business regulatory roundtables to obtain input from small business representatives. Finally, Advocacy filed formal public comments and testified at OSHA's public hearing on the proposed rule in March 2014.

Advocacy's comments reflect the issues raised during the small business panel process and in other outreach to small business representatives. First, Advocacy commended OSHA for making several changes to the proposed rule that would reduce the impact on small entities. However, the letter noted that small business representatives have raised significant concerns about OSHA's risk assessment as well as the technological and economic feasibility of complying with the proposed rule. Advocacy recommended that OSHA carefully consider the comments it receives from small businesses and their representatives, and that the agency continue to evaluate whether older exposure data is reliable and whether the form and condition of silica can significantly affect risk. Advocacy also recommended that OSHA work with the construction industry to refine its proposed Table 1 into a means of achieving compliance with the PEL (i.e., a safe harbor). Advocacy also recommended that OSHA consider providing additional opportunities for small businesses and their representatives to effectively participate in this rulemaking process.

Environmental Protection Agency

Issue: Definition of Waters of the United States under the Clean Water Act

On April 21, 2014, the Environmental Protection Agency and U.S. Army Corps of Engineers proposed the rule, Definition of Waters of the United States. The rule would define the scope of waters that would be subject to regulation under the Clean Water Act. Many small businesses indicated that the changes were extensive, complex, and difficult to understand, and they expressed a desire for more time to evaluate the effects of the proposed rule. On June 5, 2014, Advocacy submitted comments requesting that the agencies extend the comment period for the proposed rule. The comment period was subsequently extended for 90 days and later extended for an additional 30 days.

Issue: Emission Standards for Municipal Solid Waste Landfills

On September 11, 2014, Advocacy submitted a comment letter to EPA on two notices of rulemaking under section 111 of the Clean Air Act on air emission standards for municipal solid waste (MSW) landfills. The rulemaking included (1) a proposed rule to revise the new source performance standards (NSPS) for MSW landfills under section 111(b), and (2) an advance notice of proposed rulemaking (ANPRM) on emission guidelines for existing MSW landfills under section 111(d). Both topics were discussed at a SBREFA panel that convened in FY 2014 but did not conclude in that year.

Advocacy disagreed with EPA's certification of the proposed NSPS rule because EPA excluded some small entities from its analysis and did not account for the additional costs imposed at the end of a landfill's useful life. Advocacy recommended that EPA adopt the recommendations suggested by small entities during the uncompleted SBREFA panel. EPA is currently considering public comments in advance of issuing a final NSPS rule and the possibility of proposing emissions guidelines.

Issue: Formaldehyde Emission Standards for Composite Wood Products

On May 20, 2014, Advocacy submitted comments in response to EPA's April 8, 2014, notice reopening the comment period on its rulemakings on formaldehyde emissions standards for composite wood products. These comments were in addition to Advocacy's August 21, 2013, comments on the proposed rule. In this follow-up letter, Advocacy reiterated its support for the recommendations of the 2011 SBREFA panel on this topic. Advocacy also encouraged EPA to adopt regulatory requirements consistent with the California standards on composite wood products and exempt laminated products consistent with the California statute. EPA continues to work toward a final rule.

Issue: Revisions to Agricultural Worker Protection Standards

On August 18, 2014, Advocacy submitted a comment letter to EPA on its proposed rulemaking entitled, "Pesticides; Agricultural Worker Protection Standard Revisions." Advocacy was concerned that the rule would impose unnecessary burdens and substantial costs for small businesses without increasing worker protection. Advocacy urged EPA to consider the recommendations made by the SBREFA panel, to reconsider some of the alternatives from the preamble, and to provide regulatory flexibility for small businesses. EPA is currently reviewing comments in advance of its final regulations.

Federal Communications Commission

Letter to Federal Communications Commission Chairman Thomas E. Wheeler

On November 22, 2013, Advocacy sent a letter to the newly appointed chairman of the Federal Communications Commission (FCC), Thomas E. Wheeler. The letter introduced the office and highlighted several areas of concern for small businesses in telecommunications policy. The letter stressed Advocacy's commitment to supporting policies that promote competition in the provision of telecommunications and broadband services to ensure greater affordability and choice for small businesses. The letter also expressed support for FCC's ongoing work to ensure competition in the special access market—chiefly, the suspension of automatic pricing flexibility grants and mandatory special access data collection. Advocacy also asked that FCC examine whether demand lock-up terms in special access were causing competitive harms to consumers. FCC has issued its special access data request and Advocacy expects FCC to address its special access regulations within the next year. Advocacy's letter also asked FCC to clarify the obligations of telecommunications carriers to interconnect with competitors as technology evolves to IP-based networks. The commission continues to evaluate this request as it examines various issues related to the ongoing TDM-to-IP transition. Advocacy also forwarded the concerns of small rural local exchange carriers regarding the use of quantile regression analysis (QRA) in determining high-cost Universal Service Fund support caps. FCC ultimately decided to discontinue the use of QRA due to these concerns.

Advocacy's letter also discussed the concerns of small and competitive wireless carriers with regard to the upcoming broadcaster incentive auction and asked that FCC examine policies to ensure small businesses have meaningful opportunities to participate. FCC recently released proposed competitive bidding rules that address these concerns and propose long-awaited updates to FCC's designated entity rules that are expected to increase small business participation in spectrum auctions. Advocacy also asked that FCC continue to examine the value of setting aside broadcaster spectrum for use by innovative technology firms, as FCC has indicated that this will be a priority.

Ex Parte Letter: Special Access Rates for Price Cap Local Exchange Carriers; Technology Transitions Policy Task Force; Petitions to Launch a Proceeding Concerning TDM-to-IP Transition; Connect America Fund

On December 5, 2013, Advocacy submitted an *ex parte* letter to FCC expressing concern that certain proposed special access tariff revisions by AT&T would force purchasers of special access to pay higher rates for TDM services, resulting in reduced competition and higher prices for small business consumers. Advocacy asked FCC to suspend and investigate AT&T's proposed changes and to continue to examine the question of whether special access prices are already artificially high because of anti-competitive conditions in the special access market. If that were indeed the case, Advocacy asked what, if any, policies should be adopted to address it. Ultimately AT&T withdrew its petition. FCC is expected to complete review of its special access data collection and review its special access rules within the next year.

Ex Parte Letter: Revision of the Commission's Program Access Rules

On April 2, 2014, Advocacy submitted an *ex parte* letter to FCC urging it to strengthen protections for small multichannel video programming distributors (MVPDs) under the Cable Television Consumer Protection Act. The letter conveyed small distributors'

concerns about increasing vertical integration between cable programmers and distributors, including the anticipated acquisition of Time Warner Cable by Comcast/NBCUniversal. Advocacy requested that FCC adopt revisions to its program access rules that would better protect small MVPDs from discriminatory pricing in cable programming. Specifically, Advocacy requested that FCC re-examine whether the requirement that MVPD buying groups assume liability for their members' contracts is necessary, and whether it is supported under the Cable Act. FCC has yet to adopt any revisions to its program access rules.

Ex Parte Letter: Protecting and Promoting the Open Internet

On September 25, 2014, Advocacy submitted an *ex parte* letter regarding FCC's ongoing proceeding to develop new net neutrality regulations in light of the D.C. Circuit decision remanding the Commission's existing net neutrality regulations. Advocacy stressed the importance of an open internet to small businesses, but also cautioned FCC to tailor its final rules to avoid unnecessary burdens on small internet service providers. Advocacy also asked FCC to conduct a small business roundtable to inform its final regulatory flexibility analysis. FCC is expected to finalize new net neutrality regulations in the next year.

Securities and Exchange Commission

Issue: Crowdfunding

On October 23, 2013, the Securities and Exchange Commission (SEC) issued a proposed rule to prescribe requirements governing the offer and sale of securities through crowdfunding. The proposed rule would also provide a framework to regulate the funding portals and brokers that issuers engaged in crowdfunding are required to use.

On January 16, 2014, Advocacy submitted a public comment letter to the SEC. Based upon feedback from small business stakeholders, Advocacy's comment letter expressed concern that the IRFA contained in the proposed rule lacked essential information required under the RFA. Specifically, the IRFA did not adequately describe the costs of the proposed rule on small entities, nor did it set forth significant alternatives which accomplish the stated SEC objectives and minimize the proposal's significant economic impact on small entities. For these reasons, Advocacy's comment letter recommended that the SEC republish for public comment a supplemental IRFA before proceeding with the rulemaking. Advocacy's letter also observed that the SEC should take into consideration small business representatives' suggested alternatives to minimize the proposed rule's potential impact.

6 RFA Results: Cost Savings and Success Stories

In FY 2014, 13 of the 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 $4.8 billion on behalf of small businesses.

The 13 rules are divided into two groups. For the first group, under the heading of "Cost Savings," monetary savings were estimated. Table 6.1 summarizes the flexibilities incorporated into these rules. Table 6.2 summarizes the monetary costs savings.

For the second group, "Success Stories," Advocacy's recommendations were adopted in whole or part, but the monetary effects of these changes are indeterminate. Table 6.3 lists the rules and the changes to them resulting from Advocacy's RFA efforts.

Better rules result in greater compliance. In FY 2014, EPA recognized Advocacy's Assistant Chief Counsel Kevin Bromberg for his participation in revising underground storage tanks over a four-year period.

Cost Savings

Table 6.1 Description of Regulatory Cost Savings, FY 2014

Agency	Rule	Cost Savings/ Impact Measures
Department of Energy	Energy Conservation Standards for Walk-in Coolers and Freezers	On June 13, 2014, DOE adopted an energy efficiency standard for panels and doors for walk-in coolers and freezers, saving the small businesses a total of $41 million for panel manufacturers and $24 million for non-display door manufacturers, a total of $65.14 million in costs savings.
Department of Health and Human Services, Centers for Medicare and Medicaid Services	Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses	In the final rule issued on December 2, 2013, the agency acted on Advocacy's suggestion to reduce the annual home health agency payment thereby reducing the rule's net impact on industry from $340 million to $200 million, resulting in a savings of $140 million.
Department of Homeland Security, Transportation Security Administration	Aircraft Repair Station Security	On January 13, 2014, TSA issued its final Aircraft Repair Station Security rule, which includes significant changes recommended by Advocacy in a public comment letter. Cost savings as a result of Advocacy's comments included nearly $5.7 million in regulatory costs avoided annually.
Environmental Protection Agency	Effluent Limitation Guidelines, Construction and Development	EPA promulgated the deletion of the numeric standard, as suggested by Advocacy, in the final C&D rule published on March 6, 2014. Given the percentage of small businesses in the industry, 47 percent, total small business cost savings amount to $4.6 billion in first-year cost savings and annually.

Table 6.2 Summary of Regulatory Cost Savings, FY 2014

Rule / Intervention (Agency)	First-year Costs[1]	Annual Costs[1]	Source
Energy Conservation Standards for Walk-in Coolers and Freezers (Department of Energy)	$65.14 million		*Compare,* Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Walk-in Coolers and Walk-in Freezers, U.S. Department of Energy (March 2014) *with* final rule preamble, 79 *Fed. Reg.* 32050 (June 3, 2014)[2]
Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses (Department of Health and Human Services, Centers for Medicare and Medicaid Services)	$140 million		Final rule preamble, 78 *Fed. Reg.* 72256, 72319 (December 2, 2013)
Aircraft Repair Station Security (Department of Homeland Security, Transportation Security Administration)	$5.7 million	$5.7 million	Final rule preamble, 79 *Fed. Reg.* 2119 (January 13, 2014)
Effluent Limitation Guidelines, Construction and Development (Environmental Protection Agency)	$4.6 billion	$4.6 billion	Industry estimate from the National Association of Home Builders
Total Regulatory Cost Savings, FY 2014	**$4,810,840,000**		

1 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.

2 Costs savings were computed by comparing cost figures contained in the proposed rule's technical support documents and the final rule preamble, which excluded the majority of small panel and door manufacturers from the standard.

Department of Energy

Issue: Energy Conservation Standards for Walk-in Coolers and Freezers

On January 13, 2014, Advocacy filed public comments with the Department of Energy (DOE) regarding its proposed energy efficiency standards for walk-in coolers and freezers. The agency estimated that its proposal would impose capital conversion costs at 565 percent of annual capital expenditures for small panel manufacturers, compared to a 22 percent increase in annual capital expenditures for large panel manufacturers. Advocacy commented that DOE should adopt an alternative standard that would mitigate the highly disproportionate costs for small manufacturers. In its final rule, published on June 5, 2014, DOE adopted an energy efficiency standard for panels and doors, saving these small businesses a total of $41 million for panel manufacturers and $24 million for non-display door manufacturers. These amount to a total of $65.14 million in costs savings for DOE's energy efficiency standards for walk-in coolers and freezers.

Department of Health and Human Services, Centers for Medicare and Medicaid Services

Issue: Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses

On July 8, 2013, the Centers for Medicare & Medicaid Services (CMS) published a proposed rule to update and revise the end-stage renal disease (ESRD) prospective payment system for calendar year 2014. The Affordable Care Act of 2010 required that starting in 2012, and each subsequent year, CMS must reduce the market basket increase factor by a productivity adjustment factor described in the Social Security Act. The American Taxpayer Relief Act of 2012 required CMS to compare 2007 patient utilization data of certain ESRD drugs with data from 2012, and to reduce the single payment amount to reflect CMS's estimate of the change in utilization of ESRD-related drugs. To comply, CMS analyzed the impacts associated with the adjustment of the market basket calculation and the change in ESRD drug utilization in its proposal. CMS concluded that the proposed rule would have a significant impact on a substantial number of small ESRD dialysis providers, and the agency published an initial regulatory flexibility analysis (IRFA). CMS estimated that in 2014 the proposed rule would result in a 9.4 percent reduction in payments to the small providers, a total decrease of $970 million in payments to ESRD facilities. On August 30, 2013, Advocacy submitted a comment letter asking the CMS to reassess its cost estimates in its IRFA based upon the cost data provided by the affected industry, the Government Accounting Office, and the Medical Advisory Commission, an independent congressional agency established to advise the Congress on issues affecting the Medicare program. Advocacy also suggested regulatory alternatives to the rule's provisions and other suggestions including a possible reduction in annual payments.

The final rule was published on December 2, 2013, with an effective date of January 1, 2014. Advocacy's regulatory cost savings are attributable to CMS's decision to reduce the annual home health agency payment percentage from 3.5 percent to 2.73 percent, thereby reducing the rule's net impact on industry from $340 million to $200 million, saving $140 million.

Department of Homeland Security, Transportation Security Administration

Issue: Aircraft Repair Station Security

On January 13, 2014 the Department of Homeland Security's Transportation Security Administration (TSA) issued its final Aircraft Repair Station Security rule, which includes significant changes recommended by Advocacy in a public comment letter. Advocacy's comments reflected the views of regulated small businesses who attended a roundtable meeting that Advocacy hosted shortly after publication of the proposed rule. Most importantly, TSA followed Advocacy's recommendation to adopt a risk-based, tiered approach to the regulation and exclude repair stations not located on or adjacent to an airport. In addition, TSA limited the scope of the final rule by eliminating the proposed requirement for many repair stations to adopt and implement a security program. Advocacy also included recommendations concerning the handling of Security Sensitive Information (SSI), TSA's proposed appeals process, and the treatment of non-typical and ''hybrid'' repair station facilities, each of which were addressed in TSA's final rule. Cost savings as a result of Advocacy's comments included nearly $5.7 million in regulatory costs avoided annually.

Environmental Protection Agency

Issue: Effluent Limitation Guidelines, Construction and Development

In December 2009, to comply with a court ordered deadline, the Environmental Protection Agency finalized Effluent Limitation Guidelines (ELGs) for the construction and development industry to establish the minimum technology required to control the impact of storm water runoff. EPA established both numeric limits and best management practices, such as silt fences, for certain active construction sites.

In April 2010, Advocacy petitioned EPA to reconsider the numeric standard. Advocacy asserted that the numeric standard was costly, difficult to implement, and based on numerous factual errors. Advocacy further argued that a single national numeric standard would be unlikely to work across all geographic areas and local soil and weather conditions. As a result of Advocacy's petition plus a lawsuit by the National Association of Home Builders, the Utility Water Act Group, and the Wisconsin Builders Association, EPA decided to vacate its standard. In the April 2010 petition, Advocacy estimated the cost savings conservatively at $9.7 billion per year. This estimate was based on an April 14, 2010, cost analysis by URS Corporation that was developed as part of the comments submitted by the National Association of Home Builders. EPA proposed removal of the numeric standard in an April 1, 2013, proposal, and promulgated the deletion of the numeric standard in the final C&D rule published on March 6, 2014. Given the percentage of small businesses in the industry, 47 percent, total small business cost savings amount to $4.6 billion in first-year and annual cost savings.

Success Stories

Table 6.3 RFA Success Stories, FY 2014

Agency	Subject Description and Citation	Flexibility
Consumer Financial Protection Bureau	Issue: Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and the Truth in Lending Act (TILA or Regulation Z), 78 *Fed. Reg.* 79730 (December 31, 2013)	In its final rule, CFPB did not finalize the electronic, machine-readable recordkeeping requirements or the all-in finance charge. CFPB also decided not to treat Saturday as a business day for the purposes of the three-business-day rule.
Department of Interior, Fish and Wildlife Service	Issue: Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx, 78 *Fed. Reg.* 59430 (September 12, 2014)	FWS reduced the final critical habitat area designation by approximately 2,600 square miles from the amount originally proposed.
Department of Labor, Occupational Safety and Health Administration	Issue: Cranes and Derricks in Construction 79 *Fed. Reg.* 57785 (September 26, 2014)	In the final rule, OSHA formally extended by three years (until November 10, 2017) the deadline for employers to certify the qualifications of their crane operators under the final Cranes and Derricks in Construction rule. This means that numerous small businesses will not have to comply with OSHA's rules until the problems with the certification and "type and capacity" issue are resolved.
Environmental Protection Agency	Issue: EPA Tier 3 Motor Vehicle Emission and Fuel Standards, 79 *Fed. Reg.* 23414 (April 28, 2014)	In the final rule, EPA decided against lowering the maximum sulfur level per gallon of gasoline. EPA also decided that tightening the sulfur standard was unnecessary with the lowering of the average sulfur levels and that a similar but less costly result would be accomplished without imposing the additional requirement.

Table 6.3 RFA Success Stories, FY 2014, continued

Agency	Subject Description and Citation	Flexibility
Environmental Protection Agency	Issue: Sufficiently Sensitive Test Method – Clean Water Act Regulations, 79 *Fed. Reg.* 49001 (August 19, 2014)	In the final rule, permittees are no longer required to develop or implement unapproved test methods. In addition, state permit authorities are allowed more flexibility to choose among test methods to account for other factors, which would often lead to lower test costs.
Federal Communications Commission	Issue: Interoperability in 700 MHz Band, 78 *Fed. Reg.* 66298 (November 5, 2013)	FCC adopted the Report and Order and Order of Proposed Modification to implement a voluntary industry solution that is designed to establish interoperable long term evolution service in the lower 700 MHz band.
Federal Communications Commission	Issue: Communications and Video Accessibility Act Rules for User Interfaces, 78 *Fed. Reg.* 77210 (December 20, 2013)	FCC adopted Advocacy's suggestions, delaying compliance for small multi-channel video programming distributors by two years.
Federal Communications Commission	Issue: AT&T Special Access Petition, *Suspension and Investigation of AT&T Special Access Tariffs*, Order, DA 13-2349 (Pricing Pol. Div. December 9, 2013)	Advocacy relayed the concerns of small purchasers of special access regarding the impact of the proposed tariff revisions, noting that rate increases would affect both small competitive carriers as well as small business consumers. FCC opted to suspend the tariff revision and investigate it further.
Federal Communications Commission	Issue: Elimination of Quantile Regression Analysis in USF Determinations, In re Connect America Fund, seventh order & further notice of proposed rulemaking, WC Docket No. 10-90 (April 23, 2014)	FCC eliminated the quantile regression analysis benchmarking system, leaving the previous system in place; it also sought comment on alternative methods of achieving the goal of rewarding efficient carriers.

Consumer Financial Protection Bureau

Issue: Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and the Truth in Lending Act (TILA or Regulation Z)

On November 6, 2012, Advocacy submitted a comment letter to the Consumer Financial Protection Bureau (CFPB) on the proposed rule on Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and the Truth in Lending Act (TILA or Regulation Z). The Dodd-Frank Act required CFPB to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer credit transactions secured by real property. Prior to the proposed rule, CFPB convened a SBREFA panel on the topic.

The proposed rule's recordkeeping provision required creditors to maintain electronic, machine-readable records of the loan estimates for three years and the closing disclosures for five years. According to the small entity representatives participating in the SBREFA panel, the recordkeeping provisions would be expensive for small entities. Advocacy encouraged CFPB to exempt small entities from this requirement.

The proposal required that loan estimates be provided to consumers within three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA good faith estimate. The proposal also required that the closing disclosure be provided at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. Advocacy encouraged CFPB to provide clear guidance to small entities as well as a minimum of 18 months to comply with the requirements for the integrated disclosure forms.

In the provisions of the proposal that required a certain number of days for notice, CFPB considered Saturday a business day. Advocacy advised against defining Saturday as a business day, asserting that it would cause confusion for consumers and small businesses.

On November 20, 2013, CFPB issued the final rule, which eliminated the electronic machine-readable recordkeeping requirements and the all-in finance charge. CFPB also decided against treating Saturday as a business day for the purposes of the three-business-day rule.

Department of Interior, Fish and Wildlife Service

Issue: Revised Designation of Critical Habitat for the Contiguous U.S. Distinct Population Segment of the Canada Lynx

On September 26, 2013, the U.S. Fish and Wildlife Service (FWS) published the Canada Lynx proposed critical habitat designation. FWS certified that the rule would not have a significant impact on a substantial number of small businesses based on its belief that critical habitat designations only affect federal agencies. On December 12, 2013, Advocacy submitted public comments on the rule. Advocacy expressed concern that FWS was not considering the impact of this designation on the forestry industry and thus had improperly certified the proposed rule. Small businesses in this industry indicated that the rule would have a direct significant economic effect on the industry. Advocacy recommended FWS publish an IRFA. The final rule, issued on September 12, 2014, reduced the critical habitat area by approximately 2,600 square miles.

Department of Labor, Occupational Safety and Health Administration

Issue: Cranes and Derricks in Construction

On September 26, 2014, OSHA issued a final rule formally extending by three years (until November 10, 2017) the deadline for employers to certify the qualifications of their crane operators under the final Cranes and Derricks in Construction rule. Advocacy has been actively involved in this issue for several years. First, Advocacy was a member of the SBREFA panel that reviewed the draft proposed rule in 2006 and issued a report with its advice and recommendations about the draft rule to the head of OSHA. In addition, Advocacy filed formal public comments on the proposed rule in 2009 recommending several items to reduce the regulatory impact on small entities. Third, Advocacy hosted a small business roundtable on OSHA's proposed rule in 2012 when problems concerning the third-party certification and the "type and capacity" issues became evident. The roundtable was attended by senior OSHA officials and representatives of small businesses that were affected by the rule. The extension of the compliance deadline means that numerous small businesses will not have to comply with OSHA's rules until the problems with the certification and certain definitional issues are resolved.

Environmental Protection Agency

Issue: EPA Tier 3 Motor Vehicle Emission and Fuel Standards

In August 2011, EPA convened a SBREFA panel on Tier 3 Motor Vehicle Emission and Fuel Standards. The primary small entities covered by this action would be small petroleum refiners who would be required to reduce the levels of sulfur in gasoline. The SBREFA panel recommended a series of flexibilities to reduce the impact on affected small entities. Although EPA did not adopt all of the panel recommendations in the proposed rule, it did adopt several significant recommendations in the final rule, which was published on April 28, 2014.

In particular, EPA decided against lowering the maximum sulfur level per gallon of gasoline. Although EPA had proposed a significant tightening from the Tier 2 standards, it decided that tightening was unnecessary with the lowering of the average sulfur levels and that a similar but less costly result would be accomplished without imposing the additional requirement. However, EPA did not develop an estimate of the cost savings, so the quantitative savings are not known.

Issue: Sufficiently Sensitive Test Method— Clean Water Act Regulations

On June 23, 2010, EPA proposed changes to its Clean Water Act (CWA) regulations to codify testing requirements under the National Pollutant Discharge Elimination System (NPDES) program. The changes required permit applicants to use ''sufficiently sensitive'' analytical test methods when completing an NPDES permit application and specified that only ''sufficiently sensitive'' methods could be used for analyses of pollutants or pollutant parameters under an NPDES permit. Tens of thousands of small businesses have NPDES permits, so the proposed change would have a broad impact. Commenters expressed the concern that the proposal would require permittees to develop and implement unapproved EPA test methods, and would raise costs of testing unnecessarily for approved test methods. Advocacy agreed with these small business concerns and worked with EPA to revise the regulation. In the final rule, permittees are no longer required to develop or implement unapproved test methods. Furthermore, in

the final rule, state permit authorities are allowed more flexibility to choose among test methods to account for other factors, which would often lead to lower test costs. EPA promulgated this rule on August 19, 2014.

Federal Communications Commission

Issue: Interoperability in 700 MHz Band

In 2009, an alliance comprised of four Lower 700 MHz A Block licensees filed a petition for rulemaking requesting that FCC require all mobile devices for the 700 MHz band to be capable of operating over all frequencies in the band. In April 2012, FCC issued a notice of proposed rulemaking seeking to resolve whether a single, unified band class for devices in the Lower 700 MHz band would result in harmful interference with the operations of Lower 700 MHz B and C Block licensees, and whether such interference could be mitigated.

Advocacy met with representatives of small and competitive wireless service providers and discussed the negative impact the lack of 700 MHz interoperability had on small business consumers and providers of mobile broadband, as well as the technological feasibility of Lower 700 MHz interoperability. Advocacy filed comments with FCC in May 2012 echoing concerns that the lack of 700 MHz interoperability was preventing full and productive use of valuable spectrum to deploy mobile broadband, particularly in rural areas. Advocacy urged FCC to move forward with a final rule, should an industry solution not be reached, that would provide for interoperability in the lower 700 MHz spectrum by requiring all lower 700 MHz licensees to provide only devices that are capable of operating in Band Class 12.

On November 5, 2013, FCC adopted the 700 MHz Interoperability Report and Order and Order of Proposed Modification to implement a voluntary industry solution that is designed to establish interoperable long term evolution (LTE) service in the lower 700 MHz band.

Issue: Communications and Video Accessibility Act Rules for User Interfaces

In 2013, FCC issued a notice of proposed rulemaking exploring various proposals for implementing Sections 204 and 205 of the Twenty First Century Communications and Video Accessibility Act of 2010 (CVAA). These sections of the Act require that digital apparatus and navigation device user interfaces with video displays be accessible to and usable by individuals who are blind or visually impaired.

Advocacy engaged with small multi-channel video programming distributors (MVPDs) and learned that small MVPDs would face significant disadvantages in complying with the proposed regulations, compared to large MVPDs. Chiefly because of their reduced buying power, small MVPDs would face higher prices than their larger counterparts when buying technology to comply with the rule. Advocacy met with FCC bureau staff and recommended that FCC adopt regulatory alternatives, including a delayed compliance schedule for small MVPDs, that would mitigate any disproportionate impact on them. Ultimately, in December 2013, FCC adopted Advocacy's suggestions, delaying compliance for small MVPDs by two years.

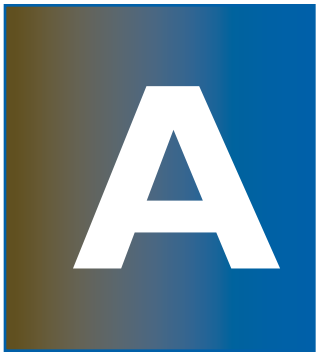
Issue: AT&T Special Access Petition

In November 2013, AT&T filed a special access tariff petition with FCC proposing to end discounts for long-term special access contracts. Small purchasers of special access voiced concerns to Advocacy regarding the impact of the proposed tariff revisions,

noting that rate increases would affect both small competitive carriers as well as small business consumers. Advocacy forwarded these concerns in a letter to FCC, and urged FCC not to grant the tariff revision automatically, but to investigate further. FCC opted to suspend and investigate the tariff revision, before AT&T ultimately withdrew its petition altogether.

Issue: Elimination of Quantile Regression Analysis in Universal Service Fund Determinations

On April 23, 2014, FCC announced that it would eliminate the use of quantile regression analysis in determining the rate of support due small rural rate of return carriers. The quantile regression analysis benchmarking system was developed with the goal of rewarding small rate-of-return carriers that were most efficient in building out their networks; the system reduced the amount of Universal Service Fund payments made given to the least efficient carriers and made them available to the most efficient carriers. Small carriers argued that the system hindered network investment since a carrier could not know in advance where its investment level would place the company on the efficiency continuum. Advocacy wrote a letter to FCC Chairman Wheeler forwarding these small carrier concerns. Ultimately, FCC eliminated the quantile regression analysis benchmarking system, leaving the previous system in place; the agency also sought comment on alternative methods of achieving the goal of rewarding efficient carriers.



Significant RFA-Related Activities Through FY 2014

Federal Agencies Trained in RFA Compliance, 2003–2014

Executive Order 13272 directed the Office of Advocacy to provide training to federal agencies in RFA compliance. RFA training began in 2003, and since that time 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

RFA-Related Case Law, FY 2014

The RFA was cited in the following cases in FY 2014.

Permapost Products, Inc. v. McHugh

The U.S. Army Corps of Engineers proposed to re-issue 48 existing nationwide permits and two new nationwide permits for a five-year period from 2012 to 2017 pursuant to section 404 of the Clean Water Act.[1] Two of the Corps' district offices then announced proposed regional conditions for the permits. The Portland district office proposed a regional condition prohibiting nationwide permit holders from using "'wood products treated with biologically harmful leachable chemical components . . . to come in contact with waters or wetlands'" in Oregon. The Alaska district office proposed a regional condition that prohibited nationwide permit holders from using "creosote and pentachlorophenol in certain waters in Alaska." Additionally, the Corps consulted with National Marine Fisheries Service (NMFS) on a new set of procedures named SLOPES IV that would address construction or maintenance of certain in-water and over-water structures in Oregon. One of the design criteria in SLOPES IV prohibited the use of treated wood on in-water or over-water structures in Oregon. The plaintiffs alleged that the regional conditions violated the Administrative Procedure Act, Corps regulations, the Endangered Species Act, and the RFA. The plaintiffs also alleged that the SLOPES IV procedures violated mandatory procedural requirements in the APA, ESA, and RFA. Regarding the RFA claim, the plaintiffs specifically argued that the Corps failed to prepare a final regulatory flexibility analysis, and did not certify that the analysis was unnecessary, as required by section 605 of the RFA. The court ruled that, because the plaintiffs were not directly regulated by the regional conditions nor the SLOPES IV procedures, they did not fall within the zone of interests that the RFA protects, so the plaintiffs lacked prudential standing to bring the RFA claim.

Cape Hatteras Access Preservation Alliance v. Jewell

The plaintiff, Cape Hatteras Access Preservation Alliance, brought suit against the Department of the Interior, the National Park Service, and the Superintendent of Cape Hatteras National Seashore regarding regulations for off-road vehicle management at the Cape Hatteras National Seashore.[2] The regulation established a final off-road vehicle management plan at the seashore and permitted off-road vehicles, as long as the manner in which they were used protected natural and cultural resources, provided a safe visitor experience, and minimized conflicts with other users. The plaintiff alleged that the regulation violated the Enabling Act and the National Environmental Policy Act (NEPA). The plaintiff argued that the agency failed to adequately consider social and economic impacts on beach access and use in its environmental impact statement. The plaintiff also argued that the agency should have prepared an analysis of the indirect impacts under the RFA. The court ruled that the agency's conclusion that the regulation would not have a direct impact on small businesses was not unreasonable and that it was not required to conduct an analysis of the indirect impacts under the RFA. The

1 *Permapost Products, Inc. v. McHugh*, 2014 U.S. Dist. LEXIS 91611, at 3* (D.D.C. July 7, 2014).

2 *Cape Hatteras Access Pres. Alliance v. Jewell*, No. 2:13-CV-1-BO, 2014 U.S. Dist. LEXIS 84596, at *2 (E.D.N.C. Jun. 20, 2014).

court ruled that the agency had not violated the Enabling Act and had complied with the requirements of NEPA, so its final decision was neither arbitrary nor capricious.

Associated Builders and Contractors, Inc. v. Shiu

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) adopted a final rule that implemented Section 503 of the Rehabilitation Act.[3] The rule required government contractors to "take affirmative action to employ and advance in employment qualified individuals with disabilities." The three major changes to OFCCP's Section 503 regulations included: (1) requiring contractors to gather information on job applicants regarding their disability status; (2) requiring documentation of the number of applicants and newly hired employees with self-identified disabilities, along with total number of job openings, applicants, and jobs filled; and (3) creating a utilization goal as a benchmark for contractors to measure the effectiveness of their affirmative-action practices. OFCCP estimated the financial burden for small entities to comply with the rule and certified that the rule would not have a significant impact on small entities. The plaintiffs, a national trade association, alleged that the rule did not comply with the RFA because OFCCP's analysis of the economic impact was erroneous, particularly because it wrongly assumed that contractors already had the systems in place to perform the new requirements. The court ruled that it was reasonable for OFCCP to assume that complying with the new requirements will not require costly new systems for contractors and the certification that the rule will not impose a significant economic burden was reasonable. Thus, the court found that the rule did not violate the RFA.

Romero v. U.S. Department of Justice

The Executive Office for Immigration Review (EOIR) proposed rules changes governing appearances before immigration judges and the Board of Immigration Appeals (BIA), which governs law students and graduates not yet admitted to the bar.[4] Romero, a graduate of a Venezuelan law school and not licensed to practice in any U.S. jurisdiction, received a complaint from DHS about her appearance before an immigration judge regarding her unauthorized practice of law. The matter was reported to EOIR and the investigation revealed Romero appeared to be participating in the unauthorized practice of law, from which she was ordered to cease and desist. In the lower court, Romero challenged the rule on several grounds, including an argument that the rule revision was issued without a proper regulatory flexibility analysis. Romero did not raise the RFA claim on appeal and therefore it was waived.

Louisiana Forestry Association et al., v. U.S. Secretary of Labor

On January 19, 2011, the Department of Labor (DOL) promulgated a regulation that governed the calculation of minimum wage requirements regarding the recruitment of workers as part of the H-2B visa program.[5] The H-2B program permits U.S. employers to fill unskilled, non-agricultural positions with temporary immigrant workers. Several employer associations contended that the rule was invalid because DOL violated the procedural requirements of the APA and RFA in promulgating the rule. However,

3 *Assd. Builders & Contrs., Inc. v. Shiu*, No. 13-1806 (EGS), 2014 U.S. Dist. LEXIS 37106, at *2 (D.D.C. Cir. Mar. 21, 2014).

4 *Romero v. United States DOJ*, No. 13-20363, 2014 U.S. App. LEXIS 3430 at *1, 2 (5th Cir. Feb. 24, 2014).

5 *La. Forestry Ass'n v. Sec'y United States DOL*, 745 F.3d 653, 658 (3d Cir. Feb. 5, 2014).

the court upheld the lower court's decision that DOL conducted a proper regulatory flexibility analysis that addressed minimizing the impact on small entities and gave appropriate consideration to reasonable alternatives. The employer associations argued DOL's reasoning did not consider employer hardship. But, the lower court stated RFA requirements are not a basis for substantive challenges and "should not be construed in a way that weakens 'legislatively mandated goals in the name of cost reduction.'" The lower court further stated that DOL properly considered many proposed alternatives and rejected them generally because "at worst [they would] reduce and at best not improve the efficiency and consistency of the prevailing wage determination process." The lower court went on to hold the employer associations offered no arguments that DOL was not reasonable in its rejection of the proposed alternatives.

Florida Bankers Association v. U.S. Department of Treasury

The Internal Revenue Service (IRS) finalized a rule that required banks to report interest payments to non-resident aliens where the United States has an exchange agreement with their home country.[6] In accordance with the RFA, the IRS certified that the rule would not "have a significant economic impact on a substantial number of small entities." The IRS reasoned that banks have reporting systems in place for U.S. and Canadian citizens, and such systems could be used for the additional countries required by the rule. The bankers' association argued that the IRS did not comply with the RFA and posed three central objections. First, the IRS presented no evidence that banks had the proper systems already in place to comply with the rule. However, the court concluded that banks did have systems in place to comply with current U.S. and Canadian requirements that could be used to comply with the new standards. Second, the IRS did not account for capital flight. Although, it is not clear if the IRS is required to account for capital flight, the court found that the IRS did account for it and found the risk minimal. Finally, "the IRS overstated the number of banks affected" but, the court stated, if fewer banks were affected it would strengthen the IRS's certification. As a result, the court concluded that the rule complied with the RFA.

6 *Fla. Bankers Ass'n v. United States Dep't of Treasury*, No. 13-529, 2014 U.S. Dist. LEXIS 3521 at 9 (D.D.C. Jan. 13, 2014).

SBREFA Panels Convened through FY 2014

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, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau. The panels 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, 2014. In FY 2014, EPA initiated two new panels and continued one from FY 2013. CFPB convened one panel, and OSHA convened no panels.

Table A.1 SBREFA Panels Convened through FY 2014

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 Guideline1	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 A.1 SBREFA Panels Convened through FY 2014 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
See Appendix F for abbreviations. NPRM = notice of proposed rulemaking				

Table A.1 SBREFA Panels Convened through FY 2014 continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	3/19/2014	
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/09	11/03/08		
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	01/03/14	
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 (NESHAP) Risk and Technology Review (RTR) for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	9/19/12
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	

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

Table A.1 SBREFA Panels Convened through FY 2014 continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
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		
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	Proposed rule published without completion of the SBREFA panel report	07/17/14	
PCB Use Authorizations Update Rule	02/07/14	04/07/14		
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

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

Table A.1 SBREFA Panels Convened through FY 2014 continued

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
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		
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	02/27/14	04/24/14	08/29/14	

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

B History of the Regulatory Flexibility Act

A 1964 guide for small business described how government affects the economic environment for businesses, noting that the actions of the federal government, whether through legislation or "an administrative ruling of an Executive Department or regulatory agency, can mean literally life or death to a business enterprise."[1]

As part of the effort to promote better policies for small businesses, Congress in 1974 established the position of chief counsel for advocacy within the Small Business Administration."[2] In 1976, this provision was expanded in Public Law 94-305 to create the independent Office of Advocacy headed by a presidential appointee, thus strengthening the chief counsel's ability to be an effective small business advocate.[3]

President Jimmy Carter in 1979 ordered the heads of executive departments and agencies to adopt measures that would ensure that "federal regulations will not place unnecessary burdens on small businesses and organizations," and to report their plans for implementation to the Office of Advocacy. Advocacy was to "work closely with … the Office of Management and Budget "to ensure that the effort would be consistent with government-wide regulatory reform. In transmitting a similar request to the heads of independent agencies, President Carter wrote, "I believe it is essential that we minimize the regulatory burden on small businesses and organizations where it is possible to do so without undermining the goals of our social and economic programs."[4]

In 1980, the White House Conference on Small Business made recommendations that led directly to the passage of the Regulatory Flexibility Act (RFA). The RFA established in statute the principle that government agencies must consider the effects of

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

2 PL 93-386, the Small Business Act of 1974, directed the SBA administrator to "designate an individual within the Administration to be known as the Chief Counsel for Advocacy to… represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small businesses."

3 P.L. 94-305.

4 Memorandum to the Heads of Executive Departments and Agencies, November 16, 1979.

their regulatory actions on small entities, and where possible mitigate them. Where the imposition of one-size-fits-all regulations had resulted in disproportionate effects on small entities, it was hoped that this new approach would result in less burden for these small entities while still achieving the agencies' regulatory goals.

Under the RFA, agencies provide a small business impact analysis, known as an initial regulatory flexibility analysis (IRFA), with every proposed rule published for notice and comment, and a final regulatory flexibility analysis (FRFA) with every final rule. When an agency has a factual basis to determine that the rule would not have a "significant economic impact on a substantial number of small entities," the head of the agency may certify to that effect and forego the IRFA and FRFA requirements. The RFA requires the chief counsel to report on an annual basis on agency compliance with the RFA. In 1994 the Government Accounting Office reported that, based on Advocacy's annual reports, it had concluded that agency compliance with the RFA varied widely across the agencies.[5]

While the 1980 statute authorized the chief counsel to appear as *amicus curiae* in any action to review a rule, compliance with the RFA was not reviewable by the courts. In 1995, the White House Conference on Small Business recommended strengthening the RFA, and in 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act (SBREFA). This new law provided for judicial review of agency compliance with key sections of the RFA. It also established a requirement that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) convene panels consisting of the head of the agency, the administrator of OMB's Office of Information and Regulatory Affairs (OIRA), and the chief counsel for advocacy, whenever the agencies were developing a rule for which an IRFA would be required. These panels were to meet with representatives of the affected small business community to review the agencies' plans, including any draft proposals and alternative approaches to those proposals, and to provide insight on the anticipated impact of the rule on small entities. The panels would then issue a report, including any recommendations for providing flexibility for small entities.

In August 2002, President Bush signed Executive Order 13272, which required Advocacy to notify the leaders of the federal agencies from time to time of their responsibilities under the RFA. The executive order also requires Advocacy to provide training to the agencies on how to comply with the law, and to report annually on agency compliance with it.

The executive order also required that the agencies provide notice to Advocacy of any draft proposed rule that would impose a significant economic impact on a substantial number of small entities, and "in any explanation or discussion accompanying publication in the *Federal Register,"* a response to any written comment it has received on the rule from Advocacy. These requirements of early notification and written responses were codified by the Small Business Jobs Act of 2010. In 2010, as part of the Dodd-Frank Act, Congress created the Consumer Financial Protection Bureau and required the new agency to convene panels under SBREFA.

5 U.S. General Accounting Office, *Regulatory Flexibility Act: Status of Agencies' Compliance.* Report to the Chairman, Committee on Small Business, House of Representatives, and the Chairman, Committee on Governmental Affairs, U.S. Senate. Report number GAO/GGD-94-105, April 1994.

When President Obama issued E.O. 13563, Improving Regulation and Regulatory Review, he imposed new requirements of heightened public participation, consideration of overlapping regulatory requirements and flexible approaches, and ongoing regulatory review. E.O. 13563 was accompanied by a presidential memorandum, Regulatory Flexibility, Small Business and Job Creation. This memo reminded the agencies of their responsibilities under the RFA, and directed them "to give serious consideration" to reducing the regulatory impact on small business through regulatory flexibility, and to explain in writing any decision not to adopt flexible approaches.

On May 11, 2012, President Obama issued E.O. 13610, Identifying and Reducing Regulatory Burdens, which established regulatory review as a rulemaking policy, and also established public participation as a key element in the retrospective review of regulations. E.O. 13610 also established as a priority "initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small business," and ordered the agencies to "give consideration to the cumulative effects" of their own regulations.

With this emphasis on the principles of regulatory review and sensitivity to the special concerns of small businesses in the rulemaking process, federal agencies increased their efforts to comply with the RFA.

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

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)[1] 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.

§ 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

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

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).

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.

ess. 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.

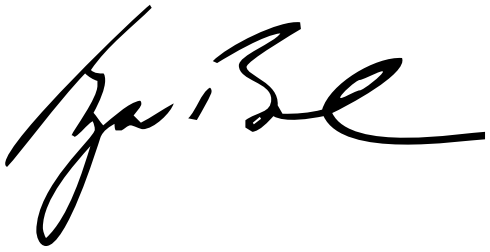
Sec. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term ''agency,'' shall have the same meaning in this order.

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.

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 and Memorandum, Improving Regulation and Regulatory Review;
- E.O. 13579, Regulation and Independent Regulatory Agencies; and
- 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
Vol. 77, No. 93
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

Abbreviations and Acronymns

ADA	Americans with Disabilities Act
ANPRM	advance notice of proposed rulemaking
APA	Administrative Procedure Act
APHIS	Animal and Plant Health Inspection Service
BLM	Bureau of Land Management
CFPB	Consumer Financial Protection Bureau
CGMP	current good manufacturing practice
CISWI	Commercial and Industrial Solid Waste Incineration
CMS	Centers for Medicare and Medicaid Services
CORPS	Army Corps of Engineers
CWA	Clean Water Act
DHS	Department of Homeland Security
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
DSW	definition of solid waste
E.O.	Executive Order
EBSA	Employee Benefits Security Administration
ELGs	Effluent Limitation Guidelines
EPA	Environmental Protection Agency
ESRD	end-stage renal disease
FAR	Federal Acquisition Regulatory Council
FCC	Federal Communications Commission
FDIC	Federal Deposit Insurance Corporation
FLSA	Fair Labor Standards Act
FMCSA	Federal Motor Carrier Safety Administration
FRFA	final regulatory flexibility analysis
FSA	flexible spending account
FSMA	Food Safety Modernization Act
FWS	Fish and Wildlife Service
FY	fiscal year

GAO	Government Accountability Office
HHS	Department of Health and Human Services
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
JOBS Act	Jumpstart Our Business Startups Act
MDPV	3,4-methylenedioxypyrovalerone
MSHA	Mine Safety and Health Administration
MSW	municipal solid waste
MVPDs	multichannel video programming distributors
$\mu g/m^3$	micrograms per cubic meter
NAHB	National Association of Home Builders
NAICS	North American Industry Classification System
NESHAP	National Environmental Standards for Hazardous Air Pollutants
NHSM	nonhazardous secondary materials
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NPRM	notice of proposed rulemaking
NSPS	New Source Performance Standards
OFCCP	Office of Federal Contract Compliance Programs
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
P.L.	Public Law
QRA	quantile regression analysis
RESPA	Real Estate Settlement Procedures Act
RFA	Regulatory Flexibility Act
RIA	regulatory impact analysis
SBA	Small Business Administration
SBAR	Small Business Advocacy Review (panel)
SBJA	Small Business Jobs Act
SBREFA	Small Business Regulatory Enforcement Fairness Act
SER	small entity representative
State	Department of State
TDM-to-IP	time-division-multiplexing to internet protocol
TILA	Truth in Lending Act
Treasury	Department of the Treasury
USCIS	U.S. Citizenship and Immigration Service
USDA	U.S. Department of Agriculture
USF	Universal Service Fund