U.S. Small Business Administration
Office of Advocacy

Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act, Calendar Year 1995

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Contents

Abbreviations

ACF	Administration for Children and Families
AMS	Agricultural Marketing Service
APA	Administrative Procedure Act
BLM	Bureau of Land Management
CRA	Community Reinvestment Act
DOD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOI	U.S. Department of the Interior
DOL	U.S. Department of Labor
DOT	U.S. Department of Transportation
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act of 1994
FCC	Federal Communications Commission
FCS	Food and Consumer Service
FDA	Food and Drug Administration
FERC	Federal Energy Regulatory Commission
FRFA	final regulatory flexibility analysis
FS	Forest Service
FSIS	Food Safety and Inspection Service
FTC	Federal Trade Commission
FWS	Fish and Wildlife Service
GSA	General Services Administration
HACCP	hazard analysis and critical control point systems
HCFA	Health Care Financing Administration
HHS	U.S. Department of Health and Human Services
HUD	U.S. Department of Housing and Urban Development
IAQ	indoor air quality
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
NASA	National Aeronautics and Space Administration
NMFS	National Marine Fisheries Service
OFPP	Office of Federal Procurement Policy
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PCS	personal communications systems
PRA	Paperwork Reduction Act
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RHCDS	Rural Housing and Community Development Service
RUS	Rural Utilities Services
SARA	Superfund Amendments and Reauthorization Act
SBA	U.S. Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act
SEC	Securities and Exchange Commission

SMR	specialized mobile radio
TRI	toxic release inventory
USC	United States Code
USDA	U.S. Department of Agriculture
WHCSB	White House Conference on Small Business

To the President and Congress of the United States:

The Regulatory Flexibility Act of 1980 (RFA) requires federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any undue disproportionate burden. As SBA's chief counsel for advocacy charged with monitoring federal agency compliance with the act, I am pleased to submit to you this report covering activities undertaken in calendar year 1995.

In 1995, the Office of Advocacy reviewed some 2700 proposed and final rules for their small business impacts. The review reflected a wide spectrum of agency compliance, ranging from complete adherence to the letter and spirit of the RFA to complete disregard for the law's requirements.

The delegates to the June 1995 White House Conference on Small Business, recognizing the importance of the RFA, recommended, among other things, that the law provide for better enforcement, including judicial review of agency RFA decisions. The White House Conference delegates also asked that IRS rules in particular be made subject to the law.

I am pleased to report a small business RFA victory in 1996. The Small Business Regulatory Enforcement Fairness Act, enacted in March 1996, will allow small businesses to sue a federal agency for failure to comply with the dictates of the RFA and will subject more IRS rules to the requirements of the act.

With this new tool at the disposal of the small business community, we can expect more victories ahead. I look forward to its implementation, and I encourage small businesses and small business advocates to maximize its effectiveness by making use of the new law wherever it is appropriate.

Jere W. Glover
Chief Counsel for Advocacy
U.S. Small Business Administration

Executive Summary

The Chief Counsel for Advocacy is charged with monitoring agency compliance with the Regulatory Flexibility Act (RFA) and reporting to Congress and the President on its implementation. This report addresses regulatory flexibility activity in calendar year 1995.

In the past year, agency compliance with the RFA has mirrored performance of previous years: some agencies are in full compliance, others comply only partially, and still others do not comply at all. In 1995, The Office of Advocacy participated in numerous rulemakings and filed 57 formal comment letters covering 59 of the rulemakings. Advocacy's formal comments ranged from in-depth discussions of regulatory alternatives to comments that simply point out an agency's failure to follow proper RFA procedures.

The first major section of this report provides an overview of the Regulatory Flexibility Act. Because comment letters reflect only a small fraction of Advocacy's work to enforce the RFA, the second section summarizes Advocacy's role in rulemaking, describing the office's efforts to foster compliance with the act. The third section discusses the Advocacy regulatory comments and final agency actions taken in 1995.

The fourth section discusses new 1996 amendments to the RFA. In March 1996, the Regulatory Flexibility Act was amended for the first time since its enactment in 1980. Finally, the small business groups accomplished their longstanding goal of obtaining judicial review of agency actions under the RFA. Under the original act, agency small business analyses were not subject to independent court review. Under the new Small Business Regulatory Enforcement Act of 1996 (SBREFA), small businesses will finally be able to sue a federal agency for failure to comply with the dictates of the RFA. Agencies are now looking much more seriously at their obligations under the act, since they can now be held accountable for their small business regulatory actions.

Appendix A lists the comments filed by the Office of Advocacy during 1995, and Appendix B includes provisions of the Small Business Regulatory Enforcement Fairness Act of 1996.

The RFA seeks to address situations in which small businesses bear a disproportionate share of the regulatory burden imposed on America's businesses. While initiatives such as the RFA are steps in the right direction, small businesses still have a long way to go before they are on a level playing field with their larger counterparts.

The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires each federal agency to review its regulations to ensure that the ability of small entities to invent, to produce or to compete is not inhibited unnecessarily by regulation.[1] The major goals of the act are to increase federal agency awareness and understanding of the impact of regulations on small business, to require that agencies communicate and explain their findings to the public, and to provide regulatory relief to small entities.

For a long time, experts have assumed that the cost of compliance with federal regulations is more burdensome for small firms than for large. A recent Office of Advocacy study bore witness to this assumption's veracity:

> . . . the average annual cost of regulation, paperwork, and tax compliance for firms with fewer than 500 employees is about $5,000 per employee, compared with about $3,400 per employee for firms with more than 500 employees. While the total burden on a firm increases with firm size, the burden per employee or per dollar of sales decreases with firm size.[2]

The disproportionate impact of the costs of regulatory compliance gives large firms a competitive advantage. The Office of Advocacy study found that small businesses employ 53 percent of the work force, but are responsible for 63 percent of the total cost of business regulation.[3] Therefore, if the economy is to maintain a viable and competitive small business sector, the artificial competitive disadvantage created by the impact of federal regulation on small firms needs to be eliminated.

1 In the RFA, "small entities" include small businesses, small organizations, and small governments; therefore most of the references to small businesses in this report apply equally to small organizations and small governments.

2 U.S. Small Business Administration, Office of Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress* (Springfield, Va.: National Technical Information Service, October 1995), 46.

3 Ibid.

The RFA is intended to address this problem by requiring agencies to eliminate any unnecessary and disproportionate burden their regulations may place on small business. To achieve this goal, agencies must balance the burdens imposed by regulations against their benefits and propose alternatives to those regulations that create economic disparities between different-sized entities. These alternatives may take the form of separate compliance or reporting requirements, timetables or exemptions that take into account the limited resources available to small entities. The result may be regulation based on "tiering," with different requirements for businesses of different sizes, or a decision not to regulate smaller entities at all.

The RFA seeks to change fundamentally the federal bureaucracy's method of regulating small entities. The RFA applies to every federal rule for which notice and comment is required under Section 553(b) of the Administrative Procedure Act (APA) or any other law. The APA contains some exemptions to its notice and comment requirements, most notably for interpretative rules. Interpretative rules are those intended only to interpret a statute—not to add new legislative-type requirements. Other exemptions include regulations that concern agency management and personnel; regulations involving grants, benefits, and public property; and regulations issued when an agency "for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because these regulations are not subject to notice and comment rulemaking, the RFA does not apply.[4]

The RFA was enacted to ensure federal agency recognition of the impact of regulation on small firms and to require that steps be taken to examine means to alleviate disproportionate impacts. The theory behind this process is that if agencies have the choice of selecting two different methods of meeting their statutory obligations, they will opt for the procedure that is less burdensome on small business.

In order to meet RFA obligations, a two-step process must be undertaken. First, the agency must make a threshold determination of whether the proposed or final rule will have a significant economic impact on a substantial number of small entities. This determination requires the agency to examine data on the number of small entities in the regulated community, the number that will be affected by the regulation and the economic impact that the regulation will

4 The agency may voluntarily seek comments on rules that do not require public notice and comment by law. The RFA does not apply to such rules.

have on small entities.

Second, if an agency concludes that the rule will not have a significant economic impact on a substantial number of small entities, it may certify to that effect. Announcement of the certification is required in the *Federal Register* and the certification must be accompanied by "a succinct statement explaining the reasons for such certification. . . ."[5] The statement must provide sufficient analysis to apprise the regulated community of the reasons for the agency's conclusion.

An alternative second step is necessary if the agency determines that the proposal will have a significant economic impact on a substantial number of small entities. Under this circumstance, the agency must prepare an initial regulatory flexibility analysis. The analysis must 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 when feasible, an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; and (4) an identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

The most significant requirement specified in the RFA mandates that an agency describe and examine significant alternatives to the proposed regulation that accomplish the objectives of the agency but minimize the economic impact on small entities. Significant alternatives may include, but are not limited to: (1) establishment of diverse compliance or reporting requirements that take into account the resources available to small entities; (2) performance rather than design standards; or (3) exemptions of small entities from all or part of the rule.

When an agency issues a final rule, it must either prepare a final regulatory flexibility analysis or again certify that the rule will not have a significant economic impact on a substantial number of small entities. The final regulatory flexibility analysis must discuss comments received and alternatives considered during the rulemaking process.

The issues raised in the initial regulatory flexibility analysis are often integrated into the final analysis. However, the RFA specifically requires agencies to: (1) summarize the issues raised by public comments; (2) summarize the agency's assessment of those com-

5 United States Code, Section 605(b).

ments; (3) state any changes made in the proposed rule as a result of the comments; (4) describe each of the significant alternatives to the rule, consistent with the regulatory objectives; and (5) state why each of the alternatives not chosen was rejected. Unlike the initial analysis, a final analysis or summary need not be published in the *Federal Register*; rather, an agency need only make it available to the public and indicate how it may be obtained.[6]

6 Under the new Small Business Regulatory Enforcement Fairness Act, effective in June 1996, the final regulatory flexibility analysis now must include a description of the steps taken to minimize the significant economic impact on small entities. The new law also requires the final analysis or summary to be published in the *Federal Register*.

The Role of the Office of Advocacy in Rulemaking

The Office of Advocacy's statutory responsibility is to represent the interests of small business before the federal government and to monitor federal agency compliance with the Regulatory Flexibility Act. The Office of Advocacy encourages compliance with the RFA through a variety of methods, only one of which is a formal comment letter. Often, Advocacy is involved in the rulemaking process at the very outset, raising the potential impact of a rule and recommending modifications before it is formally proposed. In some instances, Advocacy has persuaded federal agencies to abandon rulemakings that would have a substantially negative impact on a significant number of small businesses without commensurate benefits.

One of the most important functions of the Office of Advocacy is outreach to the regulated small business community. Through meetings with small business trade associations, Advocacy is made keenly aware of the impact that potential and proposed rulemakings will have on small entities, enabling the office to represent these findings before Congress and federal agencies. A major part of Advocacy's outreach efforts is implemented through regular outreach meetings such as the Procurement Roundtable, a group of 25 individuals representing small business trade associations, small businesses and the Congress.

The Office of Advocacy also leads the Environmental Roundtable, a similar group of 130 stakeholders from both the private and public sectors who meet to bridge the differences between government and business. The Environmental Roundtable was a major force in the successful effort to seek regulatory relief in two major rules: the toxic release inventory (TRI) right-to-know rule and the storm water rules.

The Office of Advocacy is also a member of the Executive Committee of the Securities and Exchange Commission's Annual Government-Business Forum on Small Business Capital Formation. This forum brings together a cross section of small business owners, policymakers, experts and academia to make recommendations to Congress and federal agencies on small business securities, tax and credit issues.

Regularly scheduled meetings like those of the Procurement Roundtable have enabled Advocacy to give small businesses a seat at the legislative table. Advocacy used input from the Procurement Roundtable to leverage its influence on drafting of the Federal Acquisition Streamlining Act of 1994 and the Federal Acquisition Reform Act of 1996. In fact, more than half of the recommendations advanced by Advocacy, including procurement goals for women, the preservation of subcontracting plans and the extension of the Department of Defense minority enterprise development (Section 1207) program were incorporated into the Federal Acquisition Streamlining Act of 1994.

While regularly scheduled meetings with stakeholders increase Advocacy's leverage in the issues affecting small business, they do not replace the hard work and personal relationships that the office has developed with both the regulators and the regulated.

Advocacy's work with the Securities and Exchange Commission (SEC) is an excellent example of how hard work and personal relationships develop regulations that are "small-business-friendly." In this example, the Office of Advocacy played a critical role in helping the SEC develop simplified registration requirements for small companies. The SEC changed the requirements for small companies—those with less than $25 million in annual revenues—from its complex S-K system to its less costly and less burdensome SB system.[7] The Office of Advocacy estimates that between 3,000 and 3,500 companies are eligible to register under this new system each year.

The information Advocacy gains from these and other meetings with the regulated community is used in Advocacy's efforts to encourage agency compliance with the spirit of the RFA. But Advocacy's information gathering does not stop with meetings. Correspondence from individual small business owners and operators is often cause enough for Advocacy to take action.

In 1994, a gas station owner wrote the chief counsel suggesting that the Office of Advocacy examine the excessive paperwork requirements imposed on gasoline stations. The gas station owner contended that filing 66 reports annually with 15 different reporting locations identifying the fact that 22 gasoline outlets do, in fact, store gasoline does not appear to add significantly to the community's right to know about hazardous chemicals in the neigh-

7 Under the Exchange Act of 1934, publicly held companies must file quarterly and annual reports using the SEC's S-K system. To reduce regulatory burden and reporting costs, small corporations may utilize the simpler 10-QSB and 10-KSB systems for their quarterly and annual reports.

borhood. As a direct result of this letter, the Office of Advocacy began working with the Environmental Protection Agency (EPA) to find alternatives to this unnecessary and burdensome reporting requirement. Approximately 600,000 forms annually would be eliminated by this initiative.

Unfortunately, a number of agencies are not always as receptive to Advocacy's efforts as the EPA and the SEC have been. Where the agency involved is recalcitrant, the chief counsel for advocacy must use stronger methods to encourage compliance. Section 612 of the RFA authorizes the chief counsel to file *amicus* or "friend of the court" briefs when another party challenges an agency regulation. In appropriate circumstances, simply the threat of filing an *amicus* brief can radically alter an agency's desire to fully comply with the RFA.

For example, when the National Marine Fisheries Service (NMFS) proposed stringent measures to reduce overfishing on the Georges Bank, the Office of Advocacy was forced to threaten litigation to force the NMFS to use less burdensome alternatives to the proposed regulations.[8] Legal counsels in both the NMFS and the Department of Commerce quickly contacted the chief counsel for advocacy, offering to meet to resolve their differences. After detailed discussions, the NMFS modified how it would comply with the RFA. In fact, the NMFS even asked Advocacy to comment—and adopted those comments—on their internal RFA compliance guide.

Unfortunately, the threat of intervention in litigation, while often producing excellent results, is not a magic bullet forcing agency compliance with the RFA. The Office of Advocacy does not have the resources to intervene in every circumstance in which an agency did not comply with the RFA, nor is the office informed of every instance of noncompliance.

Meetings, personal relationships and even *amicus* briefs are not, however, the only means available to the Office of Advocacy to promote agency compliance. The chief counsel frequently testifies before Congress on agency compliance, bringing to congressional attention agencies' willingness or refusal to comply with the RFA.

Early in 1995, the chief counsel testified before the House and Senate Small Business Committees on improving agency compliance with the RFA.[9] In his testimony, Chief Counsel for Advocacy

8 The litigation was withdrawn because it became moot as a result of subsequent and further rapid deterioration of the North Atlantic fishery.

9 Testimony before the U.S. House of Representatives, Committee on Small Business, March 8, 1995; Testimony before the U.S. Senate, Committee on Small Business, February 10, 1995.

Jere W. Glover highlighted agencies that are complying with the RFA, as well as several recalcitrant agencies, in an effort to turn up the compliance heat. In June, the chief counsel raised the concern that the agencies implementing the Federal Acquisition Streamlining Act rule were not in compliance with the RFA.[10] Bringing noncomplying agencies to the attention of the congressional oversight committees is yet another means by which the chief counsel is changing the federal agency culture of one-size-fits-all regulation.

In all of these examples, effective advocacy has been backed by solid data—much of which is the product of original research commissioned by the Office of Advocacy specifically for this purpose. The Advocacy study, *Small Business Lending in the United States*, is an example of just how much good research can affect policy. In 1994 and again in 1995, the Office of Advocacy released a study that listed by state and in rank order the "small business friendliness" of the lending practices of all commercial banks.[11] From this report, based on the call reports filed with bank regulatory authorities, small business owners can determine which banks are lending to small businesses in their areas. In part because of the usefulness of this study, the Senate Banking Committee decided not to drop the call reporting requirement from the Community Reinvestment Act.

In a seminal study completed in fall 1995, the Office of Advocacy examined the very heart of the RFA—the cost of regulation to a small firm.[12] While many economists, legislators, policy analysts and small business owners have decried the adverse and disproportionate impact of regulation on small business, no comprehensive study existed that confirmed that premise. This report proved—beyond a shadow of a doubt—that small business, which employs 53 percent of the work force, is responsible for 63 percent of the total cost of business regulation. It also suggested that the RFA, as currently implemented, does not provide sufficient regulatory relief to the small business sector.

Leveling the fiscal burden of regulation between large and small businesses has a real-world impact. While not all of the revisions, modifications, or deletions of rules at Advocacy's initiative have

10 Testimony before the U.S. House of Representatives, Committee on Small Business, June 29, 1995.

11 For the latest edition, see U.S. Small Business Administration, Office of Advocacy, *Small Business Lending in the United States*, 1995 ed., report no. PB96-139001 (Springfield, Va.: National Technical information Service, 1996).

12 *The Changing Burden* (see note 2).

been measured for their dollar value, some have. For instance, a major EPA rulemaking that affected small businesses by regulating underground storage tanks imposed new requirements on more than 400,000 facilities. In a cooperative effort between the EPA and the Office of Advocacy, a proposal and final rule were developed to lessen the effect on small firms. EPA adopted Advocacy's position that less expensive tanks were acceptable to meet tank technical standards. A more reasonable leak detection scheme was also promulgated. Savings are estimated at $1 billion annually.

In the field of telecommunications, Advocacy's proposed change—adopted by the Federal Communications Commission (FCC) in 1994—to the method for calculating fees to be paid by cable operators will save small cable operators approximately $3.5 million per year.

After the breakup of AT&T, subscriber line charges imposed by the FCC were originally scheduled to cost small businesses $6 per line per month. That fee was reduced to $2 per line per month after intervention by the Office of Advocacy, resulting in savings of hundreds of millions of dollars since the inception of the subscriber line charges in 1984.

The Office of Advocacy worked closely with the FCC in 1993 and 1994 to structure bidding rules favorable to small businesses for the auction of immensely valuable 30-megahertz (MHz) personal communications services (PCS) licenses. The FCC's rules resulted in a 25-percent bidding credit for small businesses, ultimately valued at more than $1 billion for all markets nationwide. The rules also allowed for reduced up-front deposits and favorable payment terms for small businesses that won licenses, helping to open this important new market for hundreds of small businesses.

In agriculture, Advocacy's efforts to deregulate markets for navel oranges led to the termination of the navel orange program in late 1992, resulting in sales increases to small businesses of more than $50 million. This increase in revenue resulted from allowing growers and handlers to ship as much fruit as they desired in an unregulated market.

Similarly, consistent with Advocacy's comments, the U.S. Department of Agriculture (USDA) withdrew its interim rule mandating safe handling statements on the labels of raw meat and poultry products. The rule would have forced the industry to comply with new labeling rules within 60 days. The rule affected approximately 20 billion packages of meat and poultry products, at a $600 million cost to the industry. Advocacy comments were relied upon in an ensuing court case that led to an injunction delaying the implementa-

tion of the interim rule. The interim rule would have become effective before requirements for label changes under the Nutrition Labeling Act, thereby requiring processors and packers to implement label changes twice within a short period. The final rule in November 1995 extended the time for compliance, allowing firms to print only one set of labels instead of two—with an estimated savings of at least $600 million.

The Labor Department also adopted changes suggested by Advocacy in 1989 to the substantive content of regulations under the Davis-Bacon Act. Savings to small businesses and taxpayers as a result of these actions are estimated at approximately $400 million annually.

Another example of the real-world cost of regulation is EPA's proposed 1992 regulation that would have required a warning label on any product that was manufactured with an ozone-depleting chemical. In the final rule, EPA adopted Advocacy's narrower definition for the term "manufactured with," saving $77 million to $385 million (1992 dollars) based on EPA's estimates, and up to several billion dollars based upon Advocacy's estimate.

The list of cost savings goes on, but the point is the same—the Regulatory Flexibility Act has a direct bearing on the small business bottom line. To the extent that agencies comply with the RFA, cost-saving regulatory alternatives will be found to level the playing field between large and small companies. When agencies ignore the RFA—as some continue to do—small businesses will continue to be placed at a competitive disadvantage.

Agency Experiences with the RFA in 1995

The Office of Advocacy provided formal comments in 59 rulemaking proceedings in 1995.[13] In some instances, Advocacy's participation included substantive comments about agency proposals. In other cases, the comments simply pointed out the agency's failure to follow proper procedure in complying with the RFA. The following discussion will focus on some of Advocacy's substantive comments.

Internal Revenue Service

According to the Internal Revenue Service (IRS), the rules they have issued are interpretative rules and therefore not subject to the RFA. Unlike substantive rulemaking, interpretative rules can be challenged in court and the court may substitute its own interpretation for that of the agency. Interpretative rules can and often do have a substantial impact on the entities subject to the rules, especially interpretative rules issued by the IRS, which can affect every small business in the country. Unfortunately, most small entities have neither the financial nor the legal wherewithal to challenge the interpretation in court.

However, the new Small Business Regulatory Enforcement Fairness Act of 1996 will, beginning in 1996, specifically subject some IRS interpretative rules to the Regulatory Flexibility Act requirements. The law says that all interpretative rules proposed on June 28, 1996, or later that are codified into the *Code of Federal Regula-*

13 The Office of Advocacy has limited resources and cannot take part in every rulemaking that may potentially affect small entities. Therefore, Advocacy must carefully select those rulemakings in which it participates. In some instances, the Office of Advocacy takes action because of longstanding RFA compliance problems at a particular agency. In other cases, the Office of Advocacy recognizes the significance of the rulemaking to small businesses and realizes its involvement in the regulatory process is necessary to carry out the office's primary mission — representing the views of small businesses before federal agencies.

tions and include reporting or recordkeeping requirements are subject to the RFA.

Although the rules issued by the IRS have not, until now, been identified in the law as subject to the RFA, the Office of Advocacy has had some success in convincing the IRS to modify some of its rules to lessen the impact on small firms. This was especially true after the June 1995 White House Conference on Small Business (WHCSB). The Office of Advocacy has specifically targeted tax issues, and particularly two issues of great importance to the delegates, detailed below.

Independent Contractors

A legislative clarification of the independent contractor status was the top recommendation of the White House Conference. The Office of Advocacy presented the WHCSB findings to the IRS commissioner and other Treasury officials and found a receptive ear. The Department of the Treasury embarked on several administrative changes to ease the burden of this requirement on affected businesses. First, the IRS announced new rules in the fall that will standardize enforcement of the law nationwide. Second, the national office will be informed of any enforcement actions taken by the IRS districts. Third, revenue agents will receive a standardized manual and training to ensure uniform application of the laws. Fourth, decisions on worker classifications will be expedited by use of employees trained specifically for this work. Fifth, the IRS commissioner is expected to make additional recommendations to ease the enforcement burden on small businesses in 1996, including procedures to permit reduced penalties for good faith efforts by small businesses.

Meals and Entertainment Recordkeeping

The recommendation that business meals and entertainment expenses be restored to 100 percent deductibility received the second highest number of votes at the White House Conference. This recommendation would require a change in existing law. The Office of Advocacy requested that the IRS consider some administrative action to ease the burden on small businesses. The IRS recognized that the extensive recordkeeping to claim the deduction was the most burdensome part of the regulation. Expense records must be kept for expenditures of $25 or more. In October 1995, the IRS raised this threshold (which dates back to 1962) to $75, which should eliminate millions of paper records and receipts currently kept by small businesses.

Environmental Protection Agency

Hazardous Waste Identification Rule

Published in 1992, the EPA's proposal was intended to establish a less burdensome system for regulating low-risk wastes that are currently subject to full hazardous waste regulation under the Resource Conservation and Recovery Act (RCRA). The Office of Advocacy commented to the EPA that their proposal was, in fact, more costly to small businesses than current regulations. The EPA redid the regulations and promulgated a new proposal in December 1995.

Toxic Release Inventory Rules

In 1991, Advocacy filed a rulemaking petition asking EPA to exempt from reporting under the Superfund Amendments and Reauthorization Act (SARA), Section 313 (toxic chemical release reporting), those facilities—most of which are small businesses—having minimal or *de minimis* releases of toxic chemicals. In response, the EPA promulgated a streamlined reporting option for such facilities in November 1994. Savings are estimated at tens of millions of dollars annually in reporting and other regulatory costs. The EPA estimates a reduction of 434,000 paperwork hours as a result of the shorter form's adoption.

Industrial Storm Water

The Office of Advocacy played a leading role in identifying unnecessary and expensive provisions in proposed regulations regarding industrial storm water permits. The Office of Advocacy's intervention led to significant improvements in the general storm water regulations promulgated in 1992, and the multi-sector regulations that were promulgated in 1995. Total savings should exceed tens of millions of dollars annually. The EPA deleted expensive and unnecessary monitoring requirements from the SARA Section 313 facilities. In fact, the Office of Advocacy demonstrated that the Section 313 facilities had cleaner storm water than the non–Section 313 facilities.

Federal Communications Commission

The Federal Communications Commission (FCC) oversees virtually all aspects of the telecommunications marketplace, including local and long distance telephone operators, cable television operators, television and radio broadcasters, satellite communication providers, wireless telecommunications providers and others. Through an auction process, it also oversees the awarding of electromagnetic spectrum for new communications uses.

Telephone Number Portability

The dawn of true competition in local telephone service arrived with the signing into law of the Telecommunications Act of 1996 in February 1996. In anticipation of these new competitive realities, the FCC had already begun to explore so-called "number portability" or the freeing up of telephone numbers to follow customers as they switched telephone providers rather than remain captive to incumbent telephone companies.

In an era of increasing competition, small businesses must be able to switch freely between both local and long distance telephone companies without having to change telephone numbers if they are to realize the promise of competition. If changing telephone companies required changing telephone numbers, few small businesses would avail themselves of the lower rates or improved services that competition would offer.

As important as number portability is to small business users and others, however, the FCC's proposed rules applicable to number portability could have created significant regulatory hurdles for small telephone companies. In September 1995, the Office of Advocacy raised three specific issues whose impact on small business the FCC had failed adequately to take into account.

First, Advocacy pointed out, given the complexity of the issues involved, it was particularly important that the FCC delegate its authority to oversee the implementation of number portability issues to an independent numbering commission. This procedural safeguard would help ensure that small businesses' concerns with inappropriate regulatory burdens would receive a fair hearing. The mandate for this independent body was added by Congress to the Telecommunications Act of 1996 and the independent commission was established by the FCC early in 1996.

There was also an urgent need to establish a data base and computer network for number portability. Without such a network, smaller telephone providers could be put at a serious operational disadvantage. The FCC released a further rulemaking concerning number portability in April 1996. The Office of Advocacy will continue to work with the FCC to ensure that this and other regulatory safeguards are in place to protect small businesses and other user groups.

Finally, the Office of Advocacy raised the issue of a fair and equitable financing mechanism to operate both the independent commission and the data base. As initially proposed, there was a risk that smaller telephone providers might bear a disproportionate burden for financing these safeguards. A provision was added to the Telecommunications Act, however, mandating that the financial burden be borne in a competitively neutral fashion.

Broadcast Network and Affiliate Relationships

The disproportionate power national television and radio networks possess in their dealings with local broadcasting affiliates long ago gave rise to a series of regulations limiting their ability to unfairly disadvantage the smaller station owners. These regulations are generically called the "network rules."

Citing the diminished dominance of the networks in a video marketplace with dozens—and soon hundreds—of channels available, the FCC issued a rule proposing to reduce or eliminate five of these protections: the "right to reject" rule, the "option time" rule, the "exclusive affiliation" rule, the "territorial exclusivity" rule and the "dual network" rule.

The FCC made little effort to assess the impact such a change would have on local broadcasting affiliates. Moreover, in October 1995, the Office of Advocacy urged the FCC to maintain its existing affiliate protections, citing the networks' continued dominance of ratings shares and therefore advertising dollars. Modification or elimination of the rules would clearly have a significant economic impact on a substantial number of small entities and trigger the applicability of the Regulatory Flexibility Act. The Office of Advocacy argued that the rules pose a minimal burden on television networks, while providing an essential safety net that preserves local television stations' independence.

With the passage of the Telecommunications Act, this and related proceedings will almost certainly be delayed well into 1996. The Office of Advocacy will continue to work with the FCC to minimize the impact of this proceeding on thousands of local broadcasters.

Competitive Bidding for Wireless Services

Pursuant to the Regulatory Flexibility Act, the Office of Advocacy intervened in the FCC's proceeding to reorganize specialized mobile radio (SMR) providers within the 800-MHz band. While this reorganization was intended to allow larger SMR providers to aggregate spectrum and compete with the new personal communications systems providers, it also proposed relocating hundreds of small mobile radio providers and their customers. The FCC's proposal stated that it would have a significant economic impact on a substantial number of small entities, and the agency therefore prepared the required initial regulatory flexibility analysis.

The Office of Advocacy recommended that the commission implement a number of modifications to its proposed order to minimize its negative impact on small entities, particularly small incumbent SMR licensees and their customers. Principal among these recommendations were proposals to expand small business eligibility for special auction status, to allow extended implementation and construction requirements for small SMR operators, and to avoid mo-

nopolization of the newly vacated service areas for incumbent licensees.

The commission incorporated and further modified a number of the suggestions made by the Office of Advocacy in a report and order issued in December 1995. While the FCC took some steps to discourage monopolization of the new SMR services (subdividing groups of channels to be auctioned separately), it failed to institute any outright prohibitions against monopolizing local markets. The FCC embraced expanded service areas for incumbent SMR providers from their current local service areas to the wider so-called "economic areas" that new PCS providers will be employing, an issue of vital concern to SMR providers. The commission, however, rejected continuation of its extended implementation and construction requirements.

Finally, an industry coalition (including many smaller SMR providers) submitted a consensus proposal to the FCC in early 1996 dealing with a number of outstanding issues in a manner responsive to small entities' needs.

Office of Management and Budget

Paperwork Reduction Act

The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs published a proposal implementing the revisions to the Paperwork Reduction Act enacted in 1995. Advocacy commented that one proposed provision appeared to create a loophole that would allow agencies to avoid soliciting public comment and submitting materials for OMB review by declaring that their actions are prescribed by statute. In the final rule, OMB explicitly declared that paperwork review was required in this situation. Advocacy also commented that language was needed to clarify that agency information collections undertaken by inspectors general are also covered by the PRA. OMB reaffirmed its authority to review inspector general paperwork requirements in the final rule.

Occupational Safety and Health Administration

Respiratory Protection

The Occupational Safety and Health Administration (OSHA) proposed modifying its existing standard on respiratory protection. The proposal included requirements for a written respiratory protection program; procedures for selecting respirators; requirements for medical evaluations; fit testing procedures; maintenance and use requirements; training; and criteria for evaluating program effectiveness.

Advocacy commented in April 1995 that OSHA erred in its calculation of the impact of the proposal on small firms, ignoring the differential effect on small businesses. For illustrative purposes, the office examined the impact on the construction industry, which is dominated by small firms, and found a significant impact. Advocacy also requested alternative language for proposed provisions relating to definitions, the selection of respirators, medical evaluations, fit testing and other aspects of the proposal. In response, the Department of Labor is considering comments and has taken no further action to date.

Indoor Air Pollution

In 1994, OSHA issued a very controversial proposed rule to regulate the air quality in indoor work environments. In the rule preamble, OSHA stated that it ". . . believes that the standard will not have a significant adverse effect on a substantial number of small entities." OSHA further asserted that "[t]he nature of compliance action limits the potential for exceptionally large compliance burdens on small businesses because most costs will be incurred on a per employee or per square foot basis" and that ". . . small firms will incur low costs because they have small floorspace and few employees."

The Office of Advocacy submitted formal comments in January 1995 disputing OSHA's RFA determination, calling into question the impact of numerous provisions of the proposal and requesting that OSHA recall the proposal. The office pointed out that, based on calculations from Bureau of Census data in the Small Business Data Base maintained by the office, 6.201 million establishments could be affected by the proposal; 88.0 percent of these were small with fewer than 500 employees and 74.2 percent had fewer than 20 employees. The office also noted that a review of OSHA's own data showed that the hardest hit industries are dominated by small businesses. Advocacy stated that OSHA established no correlation and offered no evidence of a relationship between a business' cost of compliance and number of employees or number of square feet.

Finally, the Office of Advocacy noted that the compliance costs associated with the development of indoor air quality (IAQ) compliance programs, including training IAQ operation and maintenance workers and informing employees about the standard, and compliance with related standards, would place a disproportionate burden on small firms. Many of the requirements, in fact, called for a level of technical expertise outside the scope of knowledge or ability of most small business people. Because of Advocacy's efforts and the widespread outcry against this proposed rule, it is being held in abeyance.

In a related matter, in February 1995, the Office of Advocacy questioned the appropriateness of the Environmental Protection

Agency's collection of potentially duplicative information from small business building tenants and landlords regarding indoor air pollution management, noting the existence of the OSHA proposal addressing the same issue. As a result of this inquiry, the EPA withdrew its information collection request from OMB in July 1995.

Workplace Hazard Abatement

OSHA's proposed rule detailed a regulatory scheme for employers to certify or document that workplace hazards had been abated following citation by an OSHA inspector. The Office of Advocacy commented to OSHA that the proposal would have a significant impact on small businesses, and suggested that other possibilities be considered with respect to "other-than-serious" hazards and alternatives be developed to the numerous paperwork requirements in the proposal. Advocacy was also concerned about the subjectivity of the proposal's requirement to provide "the most appropriate documentation" of abatement.

For the first time, OSHA policy and standards staff collaborated with the Office of Advocacy on a review of the proposed rule, and changes to the regulatory language were examined. In 1995, OSHA adopted Advocacy's suggested changes to the proposal, expected to save millions of dollars and burden hours for small businesses.

Federal Energy Regulatory Commission

The Office of Advocacy also participated in a landmark rulemaking at the Federal Energy Regulatory Commission involving the opening of markets in the generation and transmission of electrical power to competition (so-called open access transmission). Such open access raises the possibility of price discrimination against small business commercial customers. While the office endorsed mandating open access, the office suggested methods for ensuring that the savings derived from competition would be passed on to commercial customers, thereby reducing the rates that they pay for electrical power.

U.S. Department of Agriculture

Enhanced Poultry Inspection

The U.S. Department of Agriculture (USDA) withdrew this proposed rule, consistent with comments filed by Advocacy in 1994. According to industry estimates, this withdrawal saved the poultry processing industry at least $60 million in up-front costs, and at least $185 million in annual recurring costs.

Hazard Analysis and Critical Control Point Systems

As a result of Advocacy intervention, the USDA negotiated a compromise with the meat and poultry industries affected by hazard analysis and critical control point systems (HACCP) in July 1995. The compromise is process-oriented, with emphasis on industry input. USDA agreed to review, revise or repeal its existing regulations as needed to avoid unnecessary layering and duplication prior to publication of a final HACCP rule. According to conservative USDA estimates, the HACCP regulation would have cost the meat and poultry industries an average of $100 million per year as originally written.

In addition, Advocacy had commented on a Food and Drug Administration (FDA) proposed HACCP for the seafood industry in January 1994. The office had supported the HACCP, but expressed some concerns regarding specific impacts on small entities. Subsequently, FDA and Advocacy met to discuss potential problem areas. Before publication of the final rule, Advocacy was contacted by the OMB Office of Information and Regulatory Affairs about its comments on the proposal. Several of Advocacy's concerns were addressed in the final rule. Specifically, the implementation period was extended from one year to two years, and ship (non-land-based) processing sites were exempted from the recordkeeping requirements.

Use of the Term "Fresh"

The Food Safety and Inspection Service (FSIS) of the USDA published a notice of proposed rulemaking outlining amendments to the federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26 degrees Fahrenheit.

The Office of Advocacy argued that the USDA had made an incorrect determination that there would be no significant economic impact on small businesses without conducting an initial regulatory flexibility analysis on all affected industries. In the proposed rulemaking, the USDA had examined the impact only on the poultry processing industry, ignoring the effect the proposed regulations would have on the retail/wholesale industry.

The USDA—instead of reconsidering its original certification as requested by Advocacy—issued a final rule that introduced an entirely new proposal requiring that previously frozen poultry be labeled "hard chilled." During the debate over the USDA appropriations, Congress reversed the labeling rule, calling it "a bad way to use federal law and the federal regulatory process."

California Almonds

As readers of previous annual reports know, the Agricultural Marketing Service (AMS) has a longstanding practice of ignoring its obligations under the RFA. Advocacy's comments on the March 1995 proposal to hold in abeyance the assessments from almond growers is illustrative. AMS proposed to terminate temporarily the advertising program for almond growers for the years 1994-1995, thus eliminating grower payments. At the same time, AMS certified the rule as having no significant effect on small growers.

Advocacy pointed out the inconsistency between this certification and past AMS statements indicating that the advertising program, which it now proposes to end, bore significant benefits for small almond producers. If the program had real benefits, then ending such a program should have had a significant negative effect on growers. AMS provided no explanation of this apparent dichotomy.

Forest Management Plans

The Forest Service's April 1995 proposal for developing forest management plans was also certified as having no significant small business effect. Advocacy, however, pointed out the inconsistency between the certification and the designation that this was a major rule under Executive Order 12866. The certification was particularly odd since the rule would have a significant effect on a sector of the economy that is dominated by small businesses and communities (those that use the national forests and the communities affected by that use). The office advised the Forest Service to prepare an initial regulatory flexibility analysis that would examine alternative forest planning procedures likely to lessen the burdens on small entities.

U.S. Department of the Interior

In March 1995, the Department of the Interior proposed to designate critical habitat for the Pacific Coast population of the western snowy plover. The proposal was certified as having no significant impact on a substantial number of small entities, despite the department's failure to perform any analysis. Although the department indicated that it lacked sufficient data, it further stated that small businesses would not suffer from differential impacts.

The Office of Advocacy requested that the initial regulatory flexibility analysis be performed and made available for comment by affected small businesses. Indeed, the legislative history of the Endangered Species Act specifically cites regulatory flexibility analyses as being appropriate for the designation of critical habitats.[14]

The Banking Regulators

The Community Reinvestment Act (CRA) was enacted by Congress to ensure that financial institutions have a continuing and affirmative obligation to meet the credit needs of their local communities.

At the end of 1993, in response to a presidential directive, the federal banking regulators—the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision—published in the *Federal Register* proposed regulations to revise implementation of the CRA. Based on more than 6,000 comments received, the banking regulators issued revised proposed regulations in 1994.

Previously, the CRA was implemented through 12 assessment factors. The banking regulators proposed to change the factors to three tests that would emphasize performance over paperwork. The tests addressed lending, investment, and service. Banks would have the option of being assessed utilizing an approved CRA strategic place for their institution. The proposed regulations would have also required the collection of small business data and data on small minority- and women-owned businesses.

The banking regulators certified that all of the proposed regulations would not have a significant economic impact on a substantial number of small entities. They rationalized that because the proposed regulations provided a "small institution assessment option"—a streamlined examination process for financial institutions with less than $250 million in assets—there would be no significant impact on small financial institutions.

While the Office of Advocacy fully supported the small financial institution alternatives provided by the federal banking regulators, the office disagreed with the regulatory flexibility certification. Advocacy concluded that if a small institution option were necessary, a regulatory flexibility analysis would have documented why it was necessary in order to reduce the burden on small institutions. Further, it would have provided a basis for determining whether the assessment option is the most practicable and valuable means of implementing the CRA without overly burdening small institutions. Merely providing an option—without an explanation as to why it was needed—did not give the public adequate information to evaluate either the option or the alternatives.

14 H.R. Rep. No. 567, 97th Cong., 2d Sess. 19–20 (1982).

In response to the Office of Advocacy's comment letter, the banking regulators did a regulatory flexibility analysis and changed their rule—adopting Advocacy's comments.

The Federal Acquisition Regulation and the Major Procuring Agencies

The Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) jointly promulgated multiple procurement regulations during 1995. The three agencies, operating under the guidance of the Federal Acquisition Regulation (FAR) Council, developed more than 20 rules implementing the Federal Acquisition Streamlining Act of 1994 (FASA).

FASA repealed or substantially modified more than 225 provisions of law to reduce paperwork burdens, facilitate the acquisition of commercial products, enhance the use of simplified procedures for small purchases, transform the acquisition process to electronic commerce, and improve the efficiency of the laws governing the procurement of goods and services.

Many aspects of the new law will benefit small firms. However, there are other provisions that were not embraced by the small business community. The Office of Advocacy, because of the significance of the acquisition reforms and the magnitude of regulations involved, took a very pro-active stance in informing the Office of Federal Procurement Policy (OFPP) and the FAR Council about small businesses' concerns. Advocacy also asked the OFPP Administrator and the FAR Council to exercise the full intent and due process required by the RFA in developing the procurement reform regulations.

Advocacy reviewed and commented on numerous draft proposed procurement reform implementing rules. The office also commented on 11 proposed rules, pointing out RFA deficiencies, small business concerns and regulatory alternatives. In addition, Advocacy testified four times before the FAR Council, highlighting its written comments on certain FASA rules.

Advocacy's involvement in reviewing and commenting on the FASA rules, especially its outspoken comments regarding RFA deficiencies, prompted the House Small Business Committee to invite Advocacy to testify before the committee on the implementation of the 1994 procurement reform law.

Although some small business concessions were won and the FAR Council—through the DOD, GSA and NASA—appears more diligent in RFA compliance, Advocacy remains concerned, but guardedly optimistic, about future RFA compliance.

U.S. Department of Defense

The Department of Defense has skirted the intent of the RFA in a significant proposal establishing rights of government contractors in technical data. In the early 1980s, criticism about abuses in spare parts procurement and the need to comply with statutory competition requirements prompted the DOD to seek greater rights in technical data. The result was the proliferation of new DOD policies which, as a condition of contract, favored the government acquiring unlimited technical data rights.

In June 1994, the DOD published a proposed rule in the *Federal Register* adopting recommendations from a government-industry committee designed to resolve government and industry disputes regarding rights in technical data. The Office of Advocacy, in several letters to the DOD, advised that the proposed rulemaking was not in compliance with the RFA. Further, Advocacy warned that the regulation restricted the public availability of technical data rights, ultimately reducing competition and increasing government costs.

Although the department conducted an initial regulatory flexibility analysis (IRFA), the IRFA was not prepared in compliance with the RFA. The DOD did not properly analyze the impact of technical data rights on small firms, especially those that use technical data. The rule places substantial reliance on recommendations made by an advisory committee, without independent analysis by the department. An independent review by the DOD would have alerted the department to the significant burdens imposed on small business users of technical data and alternatives that might have alleviated these burdens.

The rule was published as a final rule with minimal modifications and without a proper analysis or consideration of alternatives.

The Small Business Regulatory Enforcement Fairness Act of 1996

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act of 1996. This legislation was the culmination of many years of effort by small business trade associations and a bipartisan group of senators and representatives to improve the effectiveness of the Regulatory Flexibility Act. Senators Christopher Bond (R-Mo.), Dale Bumpers (D-Ark.), and Pete Domenici (R-N.M.), and Representatives Jan Meyers (R-Kans.), John LaFalce (D-N.Y.), and Thomas Ewing (R-Ill.) were the chief congressional sponsors of this bipartisan legislation.

Several major provisions are noteworthy. Most important, the new law permits judicial review of agencies' compliance with the Regulatory Flexibility Act. Since the RFA's passage in 1980, as noted in the Office of Advocacy's previous annual reports on RFA compliance, many agencies have neglected to comply with the law. Advocacy's view—and that of many small business advocates—is that this noncompliance was caused, in large part, by the inability to enforce the act's provisions.

Now, however, if an agency fails to comply with the RFA in its rulemaking, a small business that is adversely affected or aggrieved may seek review of the rule in court. The court can invalidate rules with inappropriate regulatory flexibility analyses or rules that have been improperly certified as having no significant effect on small businesses. This revision in the law is expected to have a very salutory effect on the rules themselves, because agencies will be more likely to choose small-business-friendly alternatives to avoid adverse court decisions.

In addition, coverage of the rules subject to the RFA has been increased. Small business advocates have sought to ensure that Internal Revenue Service rulemakings, long criticized for their noncompliance with the letter or spirit of the RFA, are specifically included within the scope of the law. The RFA now also applies to interpretative rulemakings promulgated by the IRS that have information collection requirements.

The new law updates the requirements of a final regulatory flexibility analysis, mandating that agencies include a description of the steps taken to minimize the significant economic impact on small businesses. It is hoped that this provision will help focus agency efforts to issue rules that reflect small business needs.

Last, SBREFA adds a new procedure for obtaining small business input on proposed rules issued by the Environmental Protection Agency and the Occupational Safety and Health Administration. For all significant small business rules, before issuing a proposal, both EPA and OSHA must seek advice from small business representatives chosen by the chief counsel for advocacy. The agency must then reconsider its draft proposal based on the advice received from the small business representatives. This procedure could dramatically improve small business outcomes in EPA and OSHA regulations.

SBREFA opens a new chapter in regulatory flexibility compliance. The Office of Advocacy looks forward to implementing the new law, and the small business community should get involved in using SBREFA to maximize its effectiveness.

Conclusion

As is evident in this and earlier reports, the Regulatory Flexibility Act as written in 1980 was not sufficient to ensure agency compliance. Agencies such as the Internal Revenue Service, the U.S. Department of Agriculture (with the Forest Service and Agricultural Marketing Service being especially egregious violators), and the Department of the Interior, could ignore the RFA.

On March 29, 1996, however, the Small Business Regulatory Enforcement Fairness Act of 1996 was enacted as Public Law 104-121. For the first time, regulatory flexibility analyses and agency certifications will be subject to judicial review, and paperwork requirements issued by the Internal Revenue Service will be subject to regulatory flexibility analyses. Federal agencies, whose regulatory flexibility decisions will now be subject to review in the courts, should have substantial additional incentive to comply fully with the requirements of the Regulatory Flexibility Act.

Appendix A: Regulatory Comments Filed by the Office of Advocacy in 1995

Date	*Agency*	*Comment Subject*
01/05/95	FCC	Implementation of Section 309(j) of the Communications Act: Competitive Bidding 800 MHz SMR (PP Docket no. 93-253).
01/20/95	EPA	Proposed rule published in the *Federal Register* on March 9, 1994, to ban the manufacture, processing, and distribution of fishing sinkers containing any lead or zinc "that are less than or equal to 1 inch in any dimension" (59 FR 11122).
01/26/95	DOL/OSHA	Two regulatory proposals under consideration by OSHA: the Indoor Air Quality Standard and Ergonomic Standards.
01/30/95	USDA/AMS	Failure to comply with RFA.
01/30/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on December 1, 1994, entitled "Federal Acquisition Regulation; Officials Not To Benefit (Ethics)" (59 FR 61738).
01/30/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on December 1, 1994, entitled "Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (Ethics)" (59 FR 61738).
01/30/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on December 1, 1994, entitled "Federal Acquisition Regulation; Procurement Integrity (Ethics)" (59 FR 61740).
02/12/95	USDA/FSIS	Proposed rule published in the *Federal Register* on December 6, 1994, regarding poultry products produced by mechanical separation and products in which such poultry products are used (Docket no. 93-008P, 59 FR 62629).

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Date	*Agency*	*Comment Subject*
02/13/95	DOD/GSA/NASA	Interim rule published in the *Federal Register* on December 15, 1994, entitled "Federal Acquisition Regulation; Micro-Purchase Procedures" (59 FR 64786).
02/14/95	FCC	Rulemaking to amend Part 1 and Part 21 of the Commission's rules to redesignate the 27.7–29.5 GHz band and to establish rules and policies for local multi-point distribution service (CC Docket no. 92-297).
02/21/95	FAA	Proposed rule published in the *Federal Register* on October 21, 1994, concerning proposed revisions of medical standards and medical certification procedures for airmen (59 FR 53226).
02/22/95	FCC	Amendment of Part 73, Subpart G, of the Commission's rules regarding the emergency broadcast system (FO Docket 91-301 and FO Docket 91-171).
02/27/95	USDA/AMS	Meeting with Mr. Hatamiya on February 13, 1995, to discuss the Agricultural Marketing Service's compliance with the RFA.
03/01/95	FCC	Amendment of Part 90 of the Commission's rules to facilitate future development of SMR systems in the 800 MHz frequency band (PR Docket no. 93-144; RM-8117, RM-8030, RM-8029).
03/06/95	FCC	Review of the "Prime Time Access Rule" (Section 73.658(k) of the Commission's rules; MM Docket no. 94-123).
03/10/95	USDA/AMS	Agricultural Marketing Service working with the Office of Advocacy to ensure that small business input is reflected in the rulemaking record.

03/13/95	USDA/FCS	Proposed rule published in the *Federal Register* on January 27, 1995, for "National School Lunch Program and School Breakfast Program: Compliance with the Dietary Guidelines for Americans and Food-Based Menu Systems" (60 FR 5514).
03/14/95	DOT/FAA	Proposed rule published in the *Federal Register* on December 13, 1994: revisions to training and qualification requirements for air carriers and commercial operations (59 FR 64272).
03/14/95	USDA/RUS	Proposed rule published in the *Federal Register* on February 16, 1995, clarifying restrictions on borrower investments, loans, and guarantees (60 FR 8981).
03/15/95	DOI/FWS	Proposed rule published in the *Federal Register* on March 2, 1995, designating critical habitat for the Pacific Coast population of the western snowy plover (60 FR 11768).
03/16/95	DOL	Interim final rule published in the *Federal Register* on January 19, 1995, to institute amendments to the existing regulations governing the filing and enforcement of attestations by employers using alien crew members for longshore activities in U.S. ports (60 FR 3950).
03/20/95	FCC	Allocation of spectrum below 5 GHz transferred from federal government use (ET Docket no. 94-32).
03/29/95	USDA/AMS	Interim final rule published in the *Federal Register* on March 21, 1995, on nectarines and peaches grown in California (60 FR 14891).
04/06/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on March 6, 1995, entitled "Federal Acquisition Regulation; Simplified Acquisition Procedures and FACNET" (FAR Case 94-770).
04/11/95	FCC	Telephone company cable television cross-ownership rules, Sections 63.53-63.58 (CC Docket no. 87-266).

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Date	*Agency*	*Comment Subject*
04/12/95	USDA/AMS	Proposed rule published in the *Federal Register* on April 5, 1995, concerning sweet onions grown in the Walla Walla Valley of Washington and Oregon (60 FR 17274).
04/12/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on March 1, 1995, entitled "Federal Acquisition Regulation; Acquisition of Commercial Items" (FAR Case 94-790; 59 FR 11198).
04/13/95	DOL/OSHA	Modification of existing standard on respiratory protection (59 FR 58884; 29 CFR parts 1910, 1915, and 1926; Docket H-049).
04/13/95	DOI/BLM	Proposed rules published in the *Federal Register* on March 10, 1995 and April 10, 1995, regarding royalty payments on heavy oil extracted from federal and Indian lands (60 FR 18081, April 10, 1995; 60 FR 16424, March 20, 1995).
04/24/95	USDA/AMS	Proposed rule published in the *Federal Register* on March 24, 1995, reducing the expenses and assessment rates for almonds grown in California (60 FR 16552).
04/28/95	DOL	Proposed rule published in the *Federal Register* on March 29, 1995, concerning the permanent replacement of lawfully striking employees by federal contractors (60 FR 16354).
05/15/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on March 16, 1995, entitled "Federal Acquisition Regulation: Special Contracting Methods" (FAR Case 94-710; 60 FR 14340).

05/15/95	DOD/GSA/NASA	Proposed rule published in the *Federal Register* on March 16, 1995, entitled "Federal Acquisition Regulation; Task and Delivery Order Contracts" (FAR Case 94-711; 60 FR 14346).
05/18/95	USDA/FSIS	Proposed rule published in the *Federal Register* on January 17, 1995, concerning amendments to the federal poultry products inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26° Fahrenheit (60 FR 3454).
05/24/95	FCC	Amendment of Parts 2 and 90 of the Commission's rules to provide for the use of 200 channels outside the designated filing areas in the 896–901 MHz and 935–940 MHz bands allotted to the specialized mobile radio pool (PR Docket nos. 89-553; 93-253; 93-252).
06/08/95	FCC	Spectrum allocation for various services in preparation for the World Radio Conference–International Telecommunications Union.
06/16/95	EPA	Regulatory relief for small businesses under the right-to-know requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986, also known as the Emergency Planning and Community Right-to-Know Act of 1986.
06/29/95	DOT/FAA	Proposed rule published in the *Federal Register* on March 29, 1995, entitled "Commuter Operations and General Certification and Operations Requirements" (60 FR 61231).
07/05/95	USDA/FSIS	Proposed rule published in the *Federal Register* on February 3, 1995, concerning the development and implementation of new food safety regulations (60 FR 6774).
07/12/95	USDA/FS	Proposed rule published in the *Federal Register* on April 13, 1995, to revise the procedures for developing forest management plans as required by the National Forest Management Act, 16 U.S.C. 472, 1600–87 (60 FR 18886).

Appendix A: Regulatory Comments Filed by the Office of Advocacy in 1995

Date	*Agency*	*Comment Subject*
08/01/95	HHS/HCFA	Proposed rule published in the *Federal Register* on June 2, 1995, concerning "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates" (BPD-825-P; 60 FR 29202).
08/07/95	DOE/FERC	Proposed rule published in the *Federal Register* on April 7, 1995, "Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities" (Docket nos. RM95-8-000 and RM94-7-001; 60 FR 17622).
08/07/95	HUD	Proposed rule published in the *Federal Register* on June 8, 1995, on "Minimum Capital" (60 FR 30201).
08/07/95	OMB	Proposed rule published in the *Federal Register* on June 8, 1995, entitled "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act" (60 FR 30438).
08/11/95	FTC	Proposed rule published in the *Federal Register* on April 7, 1995, requesting comments on the FTC's trade regulation rule governing the disclosure requirements associated with the sale of franchises (franchise disclosure rule) (60 FR 17662).
08/14/95	HHS/ACF	Proposed rule published in the *Federal Register* on June 15, 1995, to impose safety requirements for vehicles used to transport children in Head Start programs (60 FR 31612).

08/15/95	DOD/GSA/NASA	Interim rules: Federal Acquisition Regulations; simplified acquisition procedures/FACNET (FAR Case 94-770) and electronic contracting (FAR Case 94-104).
08/17/95	USDA/RHCDS	Proposed rule published in the *Federal Register* on May 12, 1995. USDA incorrectly certified that the proposed rule to revise an existing program would not have a significant economic impact upon a substantial number of small entities (60 FR 25629).
09/12/95	FCC	Telephone number portability (CC Docket no. 95-116; RM 8535).
09/27/95	HHS/FDA	Proposed rule published in the *Federal Register* on July 27, 1995, concerning the over-the-counter availability of ephedrine drugs in bronchodilator drug products (60 FR 38643).
09/27/95	FCC	Implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992: rate regulation (MM Docket no. 92-266 and MM Docket no. 93-215).
10/02/95	USDA/FWS	Proposed rule published in the *Federal Register* on August 10, 1995, designating critical habitat for the marbled murrelet (*brachyramphus marmoratus*) in Washington, Oregon, and California (60 FR 40892).
10/10/95	FCC	Amendment of Part 36 of the Commission's rules and establishment of a joint board to review telephone universal service issues (CC Docket no. 80-286).
10/30/95	FCC	Review of the Commission's regulations governing programming practices of broadcast television networks and affiliates (MM Docket no. 95-92).

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Date	*Agency*	*Comment Subject*
11/01/95	FCC	The Small Cable Business Association filed a petition to deny the prospective transfer of broadcast licenses involved in the merger of Capital Cities/ABC, Inc., and Disney. The companies filed timely objections to the petition to deny.
11/13/95	USDA/FSIS	Proposed rule published in the *Federal Register* on October 24, 1995, concerning "Pathogen Reduction in Red Meat and Poultry; Hazard Analysis and Critical Control Point Systems" (60 FR 6774, FSIS Docket no. 93-016P).
12/15/95	USDA/FAS	Proposed rule regarding dairy tariff-rate import quota licensing (7 CFR Part 6).

Appendix B: The Small Business Regulatory Enforcement Fairness Act of 1996

The text of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104-121, is not available in this version of the report.