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Advocacy: the voice of small business in government

Report on the Regulatory Flexibility Act FY 2006

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

February 2007

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 policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional Advocates and an office in Washington, DC, support the Chief Counsel's efforts.

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To the President and the Congress of the United States

I am pleased to present the fiscal year (FY) 2006 edition of the annual *Report on the Regulatory Flexibility Act*. Charged with overseeing implementation of the Regulatory Flexibility Act of 1980 (RFA) and Executive Order 13272, the Office of Advocacy reports annually on federal agency compliance. The RFA requires federal agencies, during the regulatory development process, to review the potential impact of proposed regulations on small businesses and other small entities and to examine significant alternatives that minimize small entity impacts while still meeting the purpose of the regulation. E.O. 13272, signed by President Bush in 2002, strengthened the implementation process by requiring agencies to post their RFA implementation procedures and policies publicly, ensuring Advocacy has an opportunity to review rules earlier in the process, and requiring Advocacy to train federal agencies in how to comply with the law.

Advocacy Attorney Keith Holman looked at the RFA's record of success in an article, "The Regulatory Flexibility Act at 25: Is the Law Achieving its Goal?" published in the *Fordham Urban Law Journal* in May 2006. Holman noted that the task has been not only to enforce the law's provisions, but to change the rule writing culture so that the agencies appreciate the importance of small businesses and the effects of their rules on them. Accordingly, we have taken the mandate to train federal agencies very seriously. We continue to receive requests to conduct more training sessions in agencies such as the Internal Revenue Service, the Fish and Wildlife Service, and the Department of State. In FY 2006, we also unveiled a training module that can be accessed online for new agency rule writers or those who may need a refresher.

Our efforts are showing results. Over the past several years, we have seen real progress in agency understanding of and compliance with the RFA and E.O. 13272. Nearly all Cabinet departments have posted their RFA policies on their websites and more agencies are routinely notifying us electronically of regulatory proposals. An increasing number of agencies are coming to us earlier in the regulatory development process to ensure that they have done the work needed to address small business concerns. And consultation with small businesses and their representatives about the effects of a proposed rule is more likely to occur early enough to make a difference. As a result of the law's implementation in FY 2006, small businesses saved $7.25 billion in the first year and $117 million in annually recurring costs.

Cost savings are just one concrete measure that has been used by Advocacy for a number of years to show how enforcement of the law makes a difference to small entities. As agencies begin to see for themselves the importance of implementing the RFA early in the rulemaking process, the cost savings will be more difficult to calculate, and other measures of the law's effectiveness may be needed. As a result, this fiscal year, we are continuing to analyze various methods of quantifying Advocacy's effectiveness.

One measure of the federal RFA's success that is apparent in FY 2006 is the number of state governments implementing laws modeled on it. The Office of Advocacy offered model legislation for the states in December 2002. With 19 state regulatory flexibility laws or executive orders already in effect as of FY 2005, 11 more states introduced RFA legislation in FY 2006, two states enacted it, and two more governors issued executive orders. A record of successful RFA implementation is now being built at the state level.

For the rest of the story, I will let the report speak for itself. The Office of Advocacy is committed to a regulatory culture that supports the continued growth of America's vibrant small business community. We continue to be gratified by the support we receive for this effort from the Administration and the Congress, as well as the small business community.

Thomas M. Sullivan
Chief Counsel for Advocacy

Contents

1 An Overview of the Regulatory Flexibility Act and Related Policy

History

When Congress passed the Regulatory Flexibility Act (RFA) in 1980, it found, among other things, that

> …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; 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; [and] unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.[1]

The 1980 passage of the RFA was intended to address this longstanding problem of the disproportionate economic impact of federal regulations on small businesses. The RFA changed the process by which regulations were promulgated under the Administrative Procedures Act (APA). By requiring agencies to consider the impact of their regulations on small entities, the RFA simultaneously addressed the disproportionate effect of those regulations and promoted the participation of small businesses in the rulemaking process.

Analysis under the RFA

The RFA does not require special treatment or regulatory exemptions for small businesses, but mandates an analytical process for determining how best to achieve public policy objectives without unduly burdening small entities. During the preparation of a proposed rule, an agency must prepare an initial regulatory flexibility analysis (IRFA) if it determines that a proposal may impose a "significant economic impact on a substantial number of small entities." The RFA requires agencies to publish the IRFA, or a summary thereof, in the *Federal Register* at the same time it publishes the proposed rulemaking.[2] An agency can waive the requirement for an IRFA if it can certify that the proposed rule will not have such an impact; such certifications must have a factual basis.[3]

Under section 603(b) of the RFA, an IRFA must describe the impact of the proposed rule on small entities and contain the following information:[4]

1. A description of the reasons why the 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—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 that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

Each IRFA must also contain a description of any significant alternatives to the proposed rule that minimize the burden on small entities while

1 Regulatory Flexibility Act, Pub. L. No. 96-354 § 2, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601). The full law as amended appears as Appendix B of this report.
2 5 U.S.C. § 603.
3 5 U.S.C. § 605(b). This certification must be published with the proposed rule or at the time of the publication of the final rule in the *Federal Register* and is subject to public comment in order to ensure that the certification is warranted.
4 5 U.S.C. § 603(b).

still accomplishing the objective of the rule.[5] After the agency has collected the comments submitted in response to the proposed rule, it must publish a final regulatory flexibility analysis, or FRFA.[6] The FRFA must address, in light of the comments it has received, the same elements of the IRFA. The FRFA must also describe the steps followed by the agency to minimize the economic impact on small entities; give the factual, policy, and legal reasons for selecting the alternatives adopted in the final rule; and explain why other alternatives were rejected.[7]

By specifically analyzing the impact of proposed rules on small businesses and seeking their input, agencies can seek alternative measures to reduce or eliminate the disproportionate small business burden without compromising public policy objectives.

SBREFA, Judicial Review, Amicus Authority

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA), which did several things to aid small businesses.[8] It increased the specificity of the already-required economic analysis, and it required the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to convene panels to consult with small entity representatives before proposing any rules expected to have a significant economic impact on those businesses.[9] These panels consist of representatives of the agency, the Office of Advocacy (Advocacy), the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and small entity representatives.[10] In addition to considering the agency's policies, data, and economic analysis, the panels also present this information to several small entity representatives, who provide written and verbal feedback to the agency. SBREFA also provided for small entities to seek judicial review of an agency's rulemaking if the agency failed to comply with the rulemaking provisions of the RFA, and gave the Small Business Administration's (SBA) chief counsel for advocacy enhanced authority to enter briefs in such cases as a friend of the court.[11]

Executive Order 13272

On August 13, 2002, President George W. Bush signed Executive Order 13272, which further spelled out the obligations of the RFA for the Office of Advocacy and federal agencies.[12] It required Advocacy to remind the heads of the agencies of their responsibilities under the RFA and to provide training to those agencies on how to comply. It further emphasized Advocacy's authority to comment on draft rules to the agency or to OIRA.

E.O. 13272 directed the agencies to issue written procedures and policies on how they comply with the RFA. Most federal agencies have posted their RFA procedures on their websites.[13] It also directed the agencies to notify Advocacy when a proposed rule would have a significant economic impact on a substantial number of small entities.[14] Under the executive order, each agency is required to give "every appropriate consideration" to comments it receives from Advocacy on proposed rules, and publish its response to Advocacy's comments with the final rule.[15]

5 5 U.S.C. § 603(c).
6 5 U.S.C. § 604.
7 *Id.* at § 604(a).
8 5 U.S.C. §§ 601-612 (2000).
9 5 U.S.C. §§ 609 (b), (d).
10 *Id.*
11 5 U.S.C. §§ 611(a), 612(b).
12 Exec. Order No. 13272, 67 Fed. Reg. 53,461 (Aug. 16, 2002), available on the Office of Advocacy website at **http://www.sba.gov/advo/laws/eo13272.pdf.** The full order is reprinted in this report as Appendix C.
13 *Id.* § 3(a). A list of Cabinet Department agencies that have made their RFA procedures available online pursuant to Section 3(a) of E.O. 13272 is listed in Table A.1 of this report.
14 *Id.* § 3(b).
15 *Id.* §3(c).

2 Federal Agency Compliance and the Role of the Office of Advocacy

For more than 30 years, the Office of Advocacy has represented the concerns of small business before Congress and regulatory agencies. One of Advocacy's primary functions is to "examine the role of small business in the American economy…"[16] Congress tasked Advocacy with being an independent voice for small business[17] in 1976, and mandated that Advocacy measure the "direct costs and other effects of government regulations on small business…"[18] Four years later, the Regulatory Flexibility Act was enacted, requiring federal agencies to consider the impact of their regulations on small businesses and other small entities.[19] The law gave the chief counsel for advocacy the responsibility of reporting to the president and Congress on agency compliance with the law.[20] Executive Order 13272 further requires regulatory agencies to share drafts of proposed rules that may have a significant impact on a substantial number of small entities and to consider Advocacy's comments on those rules.[21]

The level of federal agency compliance with these two requirements continues to vary across agencies and departments. As this report indicates, fiscal year 2006 has led to numerous interventions by the Office of Advocacy on behalf of small businesses, saving them $7.25 billion in first year and $117 million in annual recurring savings.[22] Clearly some agencies have not yet incorporated the RFA analytical process into their regulatory development. However, the Office of Advocacy sees improvement across the board in many other agencies. Those agencies have approached Advocacy earlier in the decision making process in an effort to consider the regulatory impacts of their proposed regulations before a draft proposed rule is published in the *Federal Register*.

The RFA has been in existence for 26 years. SBREFA, the major amendment to the RFA, is now 10 years old. E.O. 13272 has been in effect for four years. Despite the age of these congressional and executive directives, agencies remain in need of assistance when it comes to considering small business concerns and analyzing potential economic impacts of their draft regulations on the small businesses they regulate. Consideration of these impacts is becoming less an afterthought for some federal agencies, yet a full and consistent understanding of the requirements of these important mandates remains elusive to others.[23]

Agency Compliance with Executive Order 13272

E.O. 13272 contains three requirements for federal regulatory agencies. The first was completed, for the most part, in FY 2003, when Cabinet-level departments issued written policies and procedures describing how they will ensure that their regulations consider the potential impact on small entities. These documents were made publicly available on most department websites.[24]

The second requirement directs agencies to notify Advocacy of any draft rules that may have a significant economic impact on a substantial number

16 15 U.S.C. § 634(b).
17 15 U.S.C. § 631(a) (DECLARATION OF POLICY)
18 15 U.S.C. § 634(b)(3).
19 See *supra*, note 1.
20 5 U.S.C. § 612(a).
21 See *supra*, note 3.
22 See Table 2.2 for a detailed summary of cost savings for FY 2006.
23 See Chapter 3 for a detailed discussion of federal agency compliance and interventions by the Office of Advocacy in fiscal year 2006.
24 Exec. Order No. 13272 § 3(a). See Table A.1 in Appendix A for a summary of compliance with section 3(a) of E.O. 13272.

of small entities under the RFA.[25] Such notifications are to be made either when the agency submits a draft rule to OIRA under Executive Order 12866 or, if no such submission is required, at a reasonable time before publication of the rule by the agency.[26] Advocacy established an email address, **notify.advocacy@sba.gov**, to make it easier for agencies to comply electronically with the notice requirements of E.O. 13272 and the RFA. More agencies utilized the system in FY 2006. Instant communication enables agencies to work with Advocacy sooner rather than later, and Advocacy is committed to encouraging more agencies to abandon the paper notification system still used at a few remaining agencies.

The third requirement under E.O. 13272 is to give appropriate consideration to Advocacy's comments on a proposed rule.[27] In the final rule published in the *Federal Register*, an agency must respond to written comments submitted by Advocacy. Most agencies have either complied with this requirement or did not have an opportunity to comply in fiscal year 2006 because they did not issue a final rule on which Advocacy publicly commented.

RFA Training under E.O. 13272

One of the important requirements of the executive order is that Advocacy train every federal regulatory agency in how to comply with the RFA.[28] In FY 2006, the third year of training, economists, attorneys, and regulatory and policy staff at numerous agencies received detailed instruction on how to consider the impact of their regulations on small entities before they put pen to paper. This is an important step in helping them comply with the RFA and E.O. 13272.

Having identified 66 departments, agencies, and independent commissions that promulgate regulations affecting small businesses, the Office of Advocacy hopes to complete training of all 66 by FY 2008. Since the executive order was signed, Advocacy has trained more than 48 federal agencies, many on more than one occasion.[29] Some federal agencies are considering making this training mandatory for all of their regulatory staff, which can include as many as 1,500 employees in some large agencies. With classroom sessions ideally consisting of 25-30 students, it frequently takes many sessions at an agency to accomplish this task, but Advocacy has found that these smaller, more intensive sessions are the most productive for attendees.

Agency feedback following each training session continues to be excellent. A better test of the effectiveness of RFA training, however, is how agencies comply with the RFA once the training is complete. After training, most agencies are more willing to share draft documents with Advocacy in an effort to improve their RFA compliance. The difference is becoming apparent in regulatory certifications.[30] For the most part, agencies have learned that they must provide a factual basis for their assertion that a rule will not have a significant impact on a substantial number of small entities. It is now infrequent that these agencies issue boilerplate statements to that effect without an explanation in the proposed rule. This progress can be directly attributed to the RFA training sessions' focus on providing more information to small entities in the proposed rule and analyzing small entity impacts as early as possible in the rulemaking process.

25 *Id.* at § 3(b).

26 Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993) subjects any "significant regulatory action,"which generally means a rule that will have an annual effect on the economy of $100 million or more, to review by the OIRA. E.O. 12866 requires the agency to select the regulatory alternative that imposes the least burden on society consistent with maintaining an agency's regulatory objectives.

27 *Id.* at §3(c).

28 Exec. Order No. 13272 § 2(b).

29 A list of the RFA training sessions conducted since FY 2003 can be found in Appendix A, Table A.2 of this report.

30 A regulatory certification is a promise by the head of an agency under 605(b) of the RFA that the rule when promulgated will not have a significant economic impact on a substantial number of small entities.

Online RFA Training Completed

In fiscal year 2006, efforts were concentrated on the development and rollout of an online component to the RFA classroom training. Federal agency rule writers can now access an online training site to take the RFA course. New employees and those that need a refresher have valuable information on the RFA at their fingertips. Advocacy is hopeful that this enhanced training tool will help more agency staff fully understand the RFA compliance requirements and consider the small entity impacts of their rules. The online RFA training can be accessed at **www.sba.gov/advo/rfaonlinetraining.html**.[31]

Measuring Effectiveness

Historically, Advocacy has measured its achievements under the RFA through a calculation of regulatory cost savings. However, the cost savings figure does not begin to capture the totality of Advocacy's involvement in the rulemaking process. Under E.O. 13272, Advocacy has proven very successful in its efforts to have agencies analyze a rule's impact on small businesses before the regulation is made public in the *Federal Register*. Many of Advocacy's greatest successes cannot be recounted or quantified publicly because of the importance of maintaining the confidentiality of interagency communication. Preproposal oral and written communications between Advocacy and agencies are kept confidential, and that helps the prepublication exchange of information between Advocacy and agencies. Often preproposal communications are where the greatest benefits are achieved in agency compliance with the RFA and in the choice of alternatives that lessen the rule's impact on small businesses.

The success of Advocacy's early intervention in the rulemaking process and its agency training under E.O. 13272 presented Advocacy with an interesting conundrum. How can Advocacy modernize the measurement of its effectiveness to encompass its ongoing regulatory interventions, determine the benefits of earlier intervention in the rulemaking process, and evaluate the success of agency training under E.O. 13272? Theoretically, as Advocacy achieves more success utilizing these tools and agencies become more proficient in complying with the RFA, cost savings between the first public proposal and the final rule should diminish.

Advocacy has recently undertaken an exploration of ways to increase its ability to gauge its effectiveness post-E.O. 13272. In future annual reports, Advocacy anticipates using new measurement tools to refine and increase information about its effectiveness in persuading federal agencies to comply with the RFA.

Overview of RFA Implementation

Advocacy promotes agency compliance with the RFA and E.O. 13272 in several ways throughout the rulemaking process. Advocacy attorneys and economists regularly review proposed regulations and work closely with small entities, trade associations, and federal regulators to identify areas of concern and to work to ensure that the RFA's requirements are fulfilled (Chart 2.1).

Advocacy provides a voice for the small business community early in the rulemaking process, by putting the real-world concerns of small businesses directly in front of agency officials. Advocacy staff regularly meet with small businesses and their trade associations regarding federal agency responsibilities under the RFA, factors to be addressed in agency economic analyses, and the judicial review provision enacted in the SBREFA amendments. Roundtable meetings with small businesses and trade associations focus on specific regulations and issues, such as environmental, transportation, and

31 Advocacy's online training is designed for federal government employees, but has also been made available to the general public. Online visitors to the URL will be prompted to obtain a password from the Office of Advocacy prior to further accessing the training site.

industrial safety regulations. Advocacy also plays a key role as a participant in SBREFA panels convened to review EPA and OSHA rules (see Table A.3 in Appendix A).

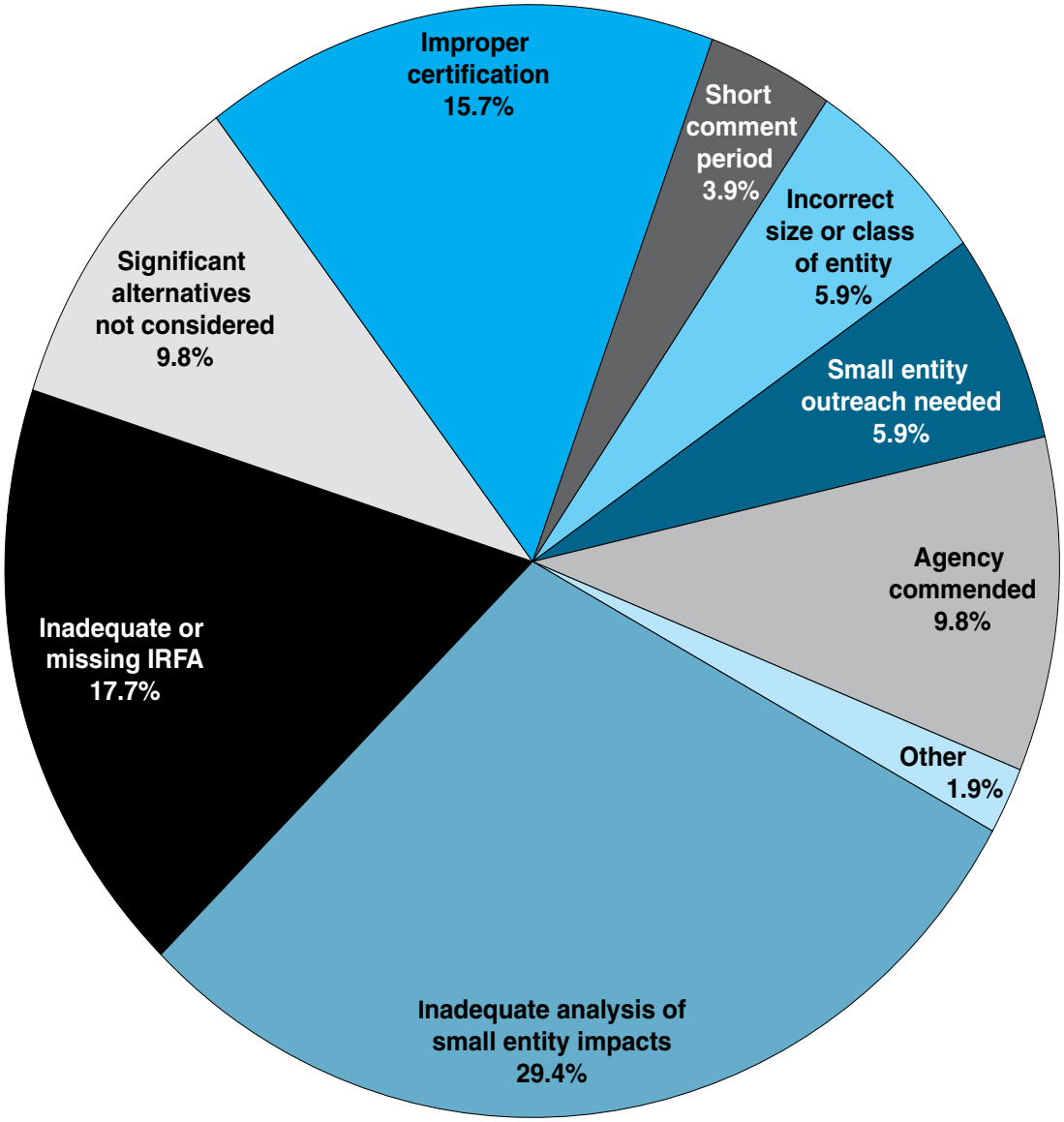
Advocacy's Office of Economic Research continues to provide economic data to help agencies identify industrial sectors dominated by small firms. Advocacy makes statistics available on its website and maintains a database of information on trade associations that can be helpful to federal agencies seeking input from small businesses.

As regulatory proposals and final rules are developed, Advocacy provides preproposal consultation, interagency review under E.O. 12866, informal comments to the agency, congressional testimony, and "friend of the court" amicus briefs. Advocacy also continues to review proposed regulations and send formal comment letters where appropriate. In FY 2006, Advocacy sent over 40 formal comment letters to federal agencies (Table 2.1).[32]

As a result of Advocacy interventions, quantifiable cost savings were achieved for small businesses in 16 regulations in FY 2006 (Table 2.2). Efforts to reduce the regulatory burden of these 16 rules resulted in FY 2006 regulatory cost savings of $7.25 billion in the first year and $117 million in annually recurring savings (Table 2.3).

32 Advocacy sent formal letters to agencies in response to a variety of agency actions including proposed rules, public notices, agency meetings, guidance documents, and requests for comments. Advocacy also sent letters to introduce reports and information from Small Business Advocacy Review Panels and to highlight congressional testimony by Advocacy staff.

Chart 2.1 Advocacy Comments by Key RFA Compliance Issue, FY 2006 (percent)



In fiscal year 2006, the Office of Advocacy provided comments to several agencies on how to comply with the RFA. Chart 2.1 illustrates key concerns raised by Advocacy's comment letters and prepublication review of draft rules. The chart highlights areas for improved compliance based on Advocacy's analysis of its FY 2006 comment letters and other regulatory interventions summarized in this report.

Table 2.1 Regulatory Comment Letters Filed by the Office of Advocacy, Fiscal Year 2006*

Date	Agency	Comment Subject
10/03/05	SEC	Comment letter regarding the Notice of Proposed Rulemaking extending small public company compliance deadlines for internal control reporting under the Sarbanes-Oxley Act of 2002, Section 404; 70 Fed. Reg. 56,825 (Aug. 30, 2005).
10/14/05	DOL	Comment letter regarding the Notice of Proposed Rulemaking on Form 5500 E-Filing Regulation; 70 Fed. Reg. 51,542 (Aug. 30, 2005).
10/28/05	FCC	Response letter to Public Notice Seeking Comment Regarding Possible Revision or Elimination of Rules under the Regulatory Flexibility Act, 5 U.S.C. Section 610; DA-05-154.
10/28/05	OSHA	Response letter to Public Notice of Regulatory Flexibility Act Section 610 Review of Lead in Construction Standard; 70 Fed. Reg. 32,739 (June 6, 2005).
10/31/05	DHS	Comment letter regarding the Advance Notice of Proposed Rulemaking on Documents Required for Travel within the Western Hemisphere; 70 Fed. Reg. 52,037 (Sept. 1, 2005).
11/14/05	EPA	Report of the Small Business Advocacy Review Panel convened for the Notice of Proposed Rulemaking on the Control of Hazardous Air Pollutants from Mobile Sources or Mobile Source Air Toxics (MSAT).
12/16/05	FWS	Comment letter regarding the Notice of Proposed Rulemaking for the Injurious Wildlife Species, the Black Carp; 70 Fed. Reg. 61,933 (Oct. 27, 2005).
01/03/06	IRS	Comment letter regarding the Notice of Proposed Rulemaking on Income Attributable to Domestic Production Activities; 70 Fed. Reg. 67,220 (Nov. 4, 2005).
01/06/06	OMB	Response letter to the Notice and Request for Comments on OMB's Proposed Bulletin for Good Guidance Practices; 70 Fed. Reg. 71,866 (Nov. 30, 2005).
01/09/06	OSHA	Comment letter regarding the Notice of Proposed Rulemaking on Electric Power Generation, Transmission, and Distribution, Electrical Protective Equipment Rule; 70 Fed. Reg. 34,822 (June 15, 2005).
01/13/06	EPA	Comment letter regarding the Notice of Proposed Rulemaking on the Toxics Release Inventory (TRI) Burden Reduction Rulemaking- Phase II; 70 Fed. Reg. 57,822 (Oct. 4, 2005).

* See Appendix D for definitions of agency abbreviations. The complete text of Advocacy's regulatory comments is available on Advocacy's website, **http://www.sba.gov/advo/laws/comments/**.

Date	Agency	Comment Subject
01/18/06	FCC	Comment letter regarding the Notice of Proposed Rulemaking on the Junk Fax Prevention Act of 2005; CG Dkt. No. 05-338.
01/26/06	SEC	Response letter to the SEC's Advisory Committee on Smaller Public Companies' Draft Recommendations to Reform Section 404 of the Sarbanes-Oxley Act of 2002.
02/01/06	FWS	Comment letter regarding the Notice of Proposed Rulemaking on the Designation of Critical Habitat of California Red-Legged Frog; 70 Fed. Reg. 66,906 (Aug. 4, 2005).
02/06/06	FAA	Comment letter regarding the Notice of Proposed Rulemaking on the Washington D.C. Metropolitan Area Special Flight Rules Area Rule; 70 Fed. Reg. 45,250 (Aug. 4, 2005).
02/10/06	EPA	Comment letter regarding the Notice of Proposed Rulemaking on Amendments to the Spill Prevention, Control and Countermeasure (SPCC) Rule; 70 Fed. Reg. 75,324 (Dec. 12, 2005).
03/14/06	EPA	Comment letter regarding the Proposed 2006 Multi-Sector General Permit (MSGP) for Industrial Facilities; 70 Fed. Reg. 72,116 (Dec. 1, 2005).
03/14/06	FCC	Notice of ex parte presentation of recommendations to the FCC regarding the Junk Fax Prevention Act of 2005; CG Dkt. No. 05-338.
04/27/06	PTO	Comment letter regarding the Notice of Proposed Rulemaking on Changes to Practice for the Examination of Claims in Patent Applications; 71 Fed. Reg. 61 (Jan. 3, 2006); and Changes to Practice for Continuing Applications, Requests for Continued Examination Practice, and Applications Containing Patentably Indistinct Claims; 71 Fed. Reg. 48 (Jan. 3, 2006).
04/27/06	SEC	Response letter to Notice of Roundtable on Internal Control Reporting and Request for Comments on compliance experience with Section 404 of the Sarbanes-Oxley Act of 2002, File No. 4-511.
05/03/06	SEC	Statement to the House Committee on Government Reform regarding compliance experience with Section 404 of the Sarbanes-Oxley Act of 2002.
05/04/06	FSIS	Comment letter regarding the Notice of Proposed Rulemaking on the Availability of Lists of Retail Consignees during Meat or Poultry Recalls; 71 Fed. Reg. 11,326 (Mar. 7, 2006).
05/08/06	DOT/IRS	Comment letter regarding the Notice of Proposed Rulemaking on Escrow Accounts, Trusts and Other Funds Used During Exchanges of Like-Kind Property; 71 Fed. Reg. 6,231 (Feb. 7, 2006).

Date	Agency	Comment Subject
05/25/06	EPA	Comment letter regarding the Notice of Proposed Rulemaking on Lead; Renovation, Repair, and Painting Program; 71 Fed. Reg. 1,587 (Jan. 10, 2006).
05/30/06	State	Comment letter regarding the Notice of Proposed Rulemaking on the Exchange Visitor Program, Training and Internship Programs; 71 Fed. Reg. 17,768 (Apr. 7, 2006).
06/08/06	EPA	Response letter to EPA notification of May 26, 2006, regarding the Small Business Advocacy Review Panel for Non-Road Spark-Ignition Engines/ Equipment; List of Additional Small Entity Representatives (SERS).
06/08/06	OMB	Response letter regarding the OMB's Proposed Risk Assessment Bulletin; 71 Fed. Reg. 2,600 (Jan. 17, 2006).
06/09/06	IRS	Comment letter regarding the Final Rule on Income Attributable to Domestic Production; 71 Fed. Reg. 31,268 (June 1, 2006).
06/15/06	FCC	Response letter to proceeding on the Federal-State Joint Board on Universal Service, before the adoption of the final rule imposing Universal Service obligations on Voice over Internet Protocol providers; CC Dkt. No. 96-45;WC Dkt. No. 04-36.
07/05/06	TSA/ Coast Guard	Comment letter regarding the Notice of Proposed Rulemaking on Joint Proposed Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector Rule; 71 Fed. Reg. 29,396 (May 22, 2006).
07/06/06	FWS	Comment letter regarding the Notice of Availability of Draft Economic Analysis for the Proposed Designation of Critical Habitat for the Spikedace and Loach Minnow; 71 Fed. Reg. 32,496 (June 6, 2006).
07/17/06	SBA	Comment letter regarding the Notice of Proposed Rulemaking on the Women-Owned Small Business Federal Contract Assistance Program; 71 Fed. Reg. 34,550 (June 15, 2006).
08/02/06	FWS	Comment letter regarding the Notice of Proposed Rulemaking on the Designation of Critical Habitat for the Five Endangered and Two Threatened Mussels in Four Northeast Gulf Mexico Drainages; 71 Fed. Reg. 32,745 (June 6, 2006).
08/03/06	PTO	Response letter to PTO's Request for Comments on Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations; 71 Fed. Reg. 38,388 (July 6, 2006).
08/08/06	FCC	Comment letter regarding the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis on the Universal Service Contribution Methodology; WC Dkt. No. 06-122.

Date	Agency	Comment Subject
08/10/06	FWS	Comment letter regarding the Notice of Proposed Rulemaking on the Amended Designation of Critical Habitat for the Wintering Population of the Piping Plover; 71 Fed. Reg. 33,703 (June 12, 2006).
08/21/06	FCC	Notice of ex parte presentation of recommendations to the FCC regarding the Children's Television Obligations of Digital Television Broadcasters; CG Dkt. No. 00-167.
08/25/06	OSHA	Response letter to the notification (Aug. 16, 2006) on the Small Business Advocacy Review Panel on the Occupational Safety and Health Administration's draft proposal for Cranes and Derricks in Construction.
09/05/06	EPA	Comment letter regarding the Control Techniques Guidelines in Lieu of Regulations for Lithographic Printing Materials, Letterpress Printing Materials, Flexible Packaging Printing Materials, Flat Wood Paneling Coatings, and Industrial Cleaning Solvents; 71 Fed. Reg. 44,521 (Aug. 4, 2006).
09/07/06	FWS	Comment letter regarding the Notice of Revised Proposed Rulemaking and Notice of Availability of Draft Economic Analysis for the Designation of Critical Habitat for the Alabama Beach Mouse; 71 Fed. Reg. 44,976 (Aug. 8, 2006).
09/14/06	SEC	Comment letter regarding the Notice of Proposed Rulemaking on Extensions of Compliance Deadlines for Non-Accelerated Filers (Smaller Public Companies) for Section 404 of the Sarbanes-Oxley Act of 2002 (Internal Controls Financial Reporting); 71 Fed. Reg. 47,060 (Aug. 15, 2006).
09/15/06	SEC	Response letter to SEC's Concept Release on Forthcoming Management Guidance on Section 404 of the Sarbanes-Oxley Act of 2002 (Internal Controls Financial Reporting); 71 Fed. Reg. 40,865 (July 18, 2006).
09/15/06	EPA	Comment letter regarding the Notice of Proposed Rulemaking on the National Primary Drinking Water Regulations for Lead and Copper; 71 Fed. Reg. 40,827 (July 18, 2006).
09/18/06	FTC	Comment letter regarding the Notice of Proposed Rulemaking on the Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; 71 Fed. Reg. 40,785 (July 18, 2006).
09/20/06	FCC	Comment letter on the Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis on the Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures; WT Dkt. No. 05-211.

Table 2.2 Regulatory Cost Savings, Fiscal Year 2006

Agency	Subject Description	Cost Savings
CMS	Outcome and Assessment Information Set: The Centers for Medicare and Medicaid Services (CMS) published a final rule in 1999 requiring home health agencies (HHAs) that participate in the Medicare program to provide CMS with patient data called the Outcome and Assessment Information Set (OASIS). Advocacy commented in 1999 and 2000 voicing concern that implementation of the rule would increase the administrative and cost burden for a significant number of HHAs, the majority of which were small health care providers. On December 23, 2005, CMS published another final rule (70 Fed. Reg. 76,199) revising the requirements of the rule so that HHAs were no longer required to input patient-care data on non-Medicare/non-Medicaid patients.	CMS's delay of the effective date saved small HHAs $334 million. The December 2005 decision further netted an additional annual savings of $47.7 million. Source: National Association for Home Care & Hospice
DOE	Energy Conservation Standards for Distribution Transformers. On August 4, 2006, the Department of Energy (DOE) published a proposed rule on energy conservation standards for distribution transformers. More than half of the manufacturers of liquid and medium-voltage dry distribution transformers are small businesses. In response to Advocacy's informal interagency comments, DOE considered the impacts on small business manufacturers when it proposed the least costly required efficiency standard from among five alternatives. DOE met with small businesses in designing the new efficiency standard and specifically chose a standard that would allow regulated manufacturers to make use of readily available techniques and materials.	This proposed standard results in one-time cost savings of at least $5 million. Source: DOE

Agency	Subject Description	Cost Savings
EPA	Clean Water Act Section 316(b), Phase III Cooling Water Intake Structures. On June 1, 2006, the U.S. Environmental Protection Agency (EPA) signed a final Clean Water Act rule designed to protect fish and other aquatic species from being killed when they are pulled into cooling water intakes. As originally planned by EPA, the rule would have required over 700 facilities to install devices to prevent aquatic losses, including an estimated 82 facilities owned by small entities. As a result of conducting a SBREFA review panel in early 2004, EPA concluded that facilities with relatively low intake flows typically do not cause aquatic losses, and EPA proposed an exemption for facilities that have a cooling water intake flow of 50 million gallons per day or less. This exemption, which is contained in the final rule, removes virtually all small businesses from the rule's coverage.	The recommendations of the SBREFA panel resulted in cost savings of $74 million for small entities such as municipal utilities, pulp and paper companies, and chemical plants. Source: EPA and American Public Power Association estimates.
EPA	Spill Prevention Control and Countermeasures (SPCC). EPA proposed a rule in December 2005 that would streamline requirements for oil spill prevention and planning for some facilities that store and use oil. EPA adopted Advocacy's recommendations for revisions in two areas: small facilities (under 10,000 gallons aggregate capacity for oil) and oil-filled equipment. EPA proposed that the requirements for small facilities be streamlined, which allows the facilities to self-certify compliance with the SPCC requirements, instead of using a professional engineer. It also permits additional flexibility for tank integrity testing and security requirements. Facilities with oil-filled equipment are provided the option of preparing an oil spill contingency plan and a written commitment of manpower, equipment, and materials in lieu of providing expensive secondary containment around the equipment.	These changes produced small business cost savings amounting to $46 million annually. Source: EPA

Agency	Subject Description	Cost Savings
EPA	Toxics Release Inventory - Phase II Burden Reduction. EPA proposed a rule in October 2005 that would allow short-form annual reporting of over 650 chemicals and classes of chemicals by industrial facilities. EPA adopted Advocacy's recommendation to reduce small business reporting burden by expanding the availability of the short form (Form A) to a larger universe of reporters of non-PBT (persistent bioaccumulative and toxic) chemicals, raising the threshold of the "annual reportable amount" from 500 pounds to 5,000 pounds. EPA also made Form A available to PBT reporters with zero total releases, and less than 500 pounds PRA (PBT reportable amount). These changes reduce small business reporting burden while maintaining the integrity of the Toxic Release Inventory database.	These changes created small business cost savings amounting to $7.4 million in the first year and annually. Source: EPA
EPA	Clean Air Act Requirements to Control Mobile Source Air Toxics (MSAT). On March 29, 2006, EPA published a proposed Clean Air Act rule that would require petroleum refineries to reduce concentrations of benzene, an air toxic, in gasoline. The rule would also require portable gasoline container manufacturers and light-duty highway vehicles to reduce the amount of benzene that is lost through evaporation. As a result of the recommendations from a SBREFA panel in September 2005, EPA proposed several flexibilities for small refiners, small gasoline container manufacturers, and light-duty vehicle manufacturers. These flexibilities include additional lead time for compliance; allowing a benzene averaging, banking, and trading program for refiners; and allowing a refiner or manufacturer that can demonstrate economic hardship additional time to comply with the standard.	The delayed implementation is estimated to result in $12 million in first year cost savings and $12 million in annual cost savings for the following four years. Source: Advocacy estimate based on EPA regulatory impact analysis
EPA	Resource Conservation and Recovery Act; RCRA Burden Reduction Rule. On April 4, 2006, EPA published a final rule that reduces many of the paperwork burdens currently imposed by the Resource Conservation and Recovery Act (RCRA). EPA promulgated the burden reduction rule in response to recommendations from Advocacy and small business representatives to streamline burdensome requirements that have little corresponding environmental benefit.	The final rule is estimated to result in annual cost savings of $3 million per year. Source: EPA

Agency	Subject Description	Cost Savings
FAA	Thermal/Acoustic Insulation Installed on Transport Category Airplanes. The Federal Aviation Administration (FAA) proposed (in 2000) and then finalized (in 2003) a rule that established new flammability and fire protection standards for thermal/acoustic insulation in transport category airplanes. FAA issued guidance on the new rule in 2005 that would have rendered whole inventories of spare parts unusable, and also required testing and certification of all new, conforming parts before they could be installed on an aircraft. FAA agreed that the language in the rule was broader than intended and they issued this new final rule to narrow its scope. The new rule specifically limits the scope to (1) newly manufactured aircraft and (2) only the thermal blankets and insulation around the ventilation ducts in existing aircraft. All other existing spare parts were excluded.	$74 million was saved in certification and testing costs, and $75 million in inventoried spare parts. Source: Industry estimates.
FDA	Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures. In December 1999, the Food and Drug Administration (FDA) published a final rule that set forth requirements for the re-importation and wholesale distribution of prescription drugs in the United States. The rule was to become effective on December 4, 2000. Advocacy filed comments suggesting that the rule would negatively affect small distributors and wholesalers of prescription drugs who were required to provide and maintain information on the pedigree of the drugs. FDA chose to delay the effective date of the rule several times. On June 14, 2006, the FDA published a notice that the effective date will be December 1, 2006. Advocacy has generated cost savings to stakeholders from December 4, 2000 to February 2004, the last date on which the FDA delayed the effective date of the rule, but no data are available on the cost savings generated.	No data are available on cost savings.

Agency	Subject Description	Cost Savings
FWS	Critical Habitat, Canada Lynx. On November 9, 2005, the Fish and Wildlife Service (FWS) proposed to designate 26,935 square miles of land as critical habitat for the Canada lynx. Advocacy met with FWS to discuss this rule. On February 16, 2006, the agency revised this proposed designation by decreasing the critical habitat designation (CHD) to 18,031 square miles. The proposed CHD excludes land in the state of Washington (1,693 square miles) and in Idaho and Montana (7,211 square miles).	FWS's proposed decision to exclude these high-cost areas from its CHD will result in $6 million in cost savings. Source: FWS
FWS	Critical Habitat, Red Legged Frog. On April 13, 2006, the FWS published a final rule as part of its final designation of critical habitat for the California red-legged frog. Following the issuance of a proposed rule in November 2005 revising the designation of the critical habitat for the California red-legged frog, Advocacy recommended in a comment letter on February 1, 2006, that FWS give meaningful consideration to excluding high-cost areas from its final designation. In its final rule, FWS addressed Advocacy's concerns and excluded approximately 250,329 acres from this final designation on the basis of potential disproportionately high economic cost.	FWS' decision to exclude these high-cost areas from its final designation resulted in $396 million in cost savings over 20 years. Source: FWS
NHTSA	Federal Motor Vehicle Safety Standard (FMVSS) No. 139. In June 2003, the National Highway Traffic Safety Administration (NHTSA) published Federal Motor Vehicle Safety Standard (FMVSS) No. 139, which contained new requirements for passenger car tires and other vehicles with a gross weight of 10,000 pounds or less. NHTSA received several petitions for reconsideration of the final rule; among those petitions was a request by Denman Tires (the only manufacturer of specialty radial tires and the only small manufacturer) that such tires be subject to a less expensive testing requirement. Denman's petition was supported by comments submitted by the Specialty Equipment Market Association and by Advocacy. Upon reconsideration, the agency found that the more rigorous testing procedures under FMVSS 139 would have been prohibitively expensive, and that Denman's products could remain subject to the testing procedures of other motor vehicle safety standards.	This decision saved the only small business affected by the new safety standard an estimated $1.6 million in the first year alone. Source: Specialty Equipment Market Association

Agency	Subject Description	Cost Savings
NPS	Personal Watercraft Rule. On September 8 and 21, 2006, the National Park Service (NPS) reopened the Cape Lookout National Seashore and the Curecanti National Recreation Area to personal watercraft use. On March 21, 2000, the NPS created regulations that banned personal watercraft use in all national parks, which took effect in 2002. Advocacy has worked with NPS and representatives of the personal watercraft industry to reopen the national parks to personal watercraft use since 2002, and has been successful in reopening 11 other national parks since 2003.	Park openings will create $1 million in cost savings in the first year of the re-opening. Source: NPS
OSHA	Occupational Exposure to Hexavalent Chromium. OSHA proposed (in 2004) and then finalized (in 2006) a rule that lowers the permissible exposure limit (PEL) for airborne exposure to hexavalent chromium. Advocacy was highly involved throughout the rulemaking process. Advocacy participated in a SBREFA panel that reviewed the draft rule before it was published and recommended several changes to reduce the cost to small businesses. Because of these recommendations, OSHA established a PEL (or concentration not to be exceeded) of 5 µg/m3 and excluded Portland cement, chromium copper arsenate, and industries with very low exposures. OSHA also provided exceptions for intermittent users and large aircraft painting.	Quantifiable cost savings to small business totaled $520 million. OSHA allowed a four-year phase-in of engineering controls, which provide other significant, but unquantified, cost savings. Source: OSHA
PHMSA	Wetlines. The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a proposed rule in December 2004 regulating external product piping (wetlines) on cargo tank motor vehicles. The rule limited to one liter the amount of flammable liquid that could remain in each wetline after drainage. Advocacy worked with small businesses and trade associations to analyze the potential impacts of the proposed regulation. In June 2006, having determined that "further regulation would not produce the level of benefits we originally expected and that the quantifiable benefits of proposed regulatory approaches would not justify the corresponding cost," the agency withdrew its notice of proposed rulemaking.	PHMSA's decision to withdraw the rule resulted in $39.4 million in first-year cost savings and $1.15 million in recurring annual savings. Source: PHMSA

Agency	Subject Description	Cost Savings
SEC	Section 404 of the Sarbanes-Oxley Act of 2002. Extension of Small Public Company Compliance Deadline for New Internal Control Reporting Requirement. In response to one recommendation by the Securities and Exchange Commission's (SEC) advisory committee on smaller public companies, on August 9, 2006, the SEC proposed to provide small businesses an extension of time to implement Section 404 of the Sarbanes-Oxley Act of 2002. Advocacy has worked with the SEC on the act since 2002. This rule was discussed in the *OMB 2004 Report to Congress on the Costs and Benefits of Federal Regulations* as a candidate for regulatory reform because of its impact on small business.	SEC's proposed action is estimated to save smaller public companies $5.53 billion in compliance costs. Source: Industry estimates
TSA/ USCG	Transportation Worker Identification Credential (TWIC). On August 21, 2006, the Transportation Security Administration (TSA) and the U.S. Coast Guard issued a notice in the *Federal Register* indicating that facility and vessel owners will not be required to purchase or install card readers during the initial implementation of the TWIC in the maritime sector. While the notice references letters from Congress, the issues of the cost and technological feasibility of the reader requirements were raised during Advocacy's small business roundtable on the subject and in its comment letter to the agencies on the proposed rule.	The removal of the card "reader" requirements generates $129.2 million in small business cost savings. Source: TSA

Table 2.3 Summary of Cost Savings FY 2006 (Dollars)[1]

Rule/Intervention	First-Year Costs	Annual Cost
CMS OASIS[2]	333,995,252	47,713,607
DOE Energy Conservation Standards for Distribution Transformers[3]	5,000,000	
EPA Cooling Water[4]	74,000,000	
EPA SPCC Rule-Proposal[5]	46,000,000	46,000,000
EPA Toxics Release Inventory—Phase II Burden Reduction—Proposal[5]	7,400,000	7,400,000
EPA Clean Air Act Requirements to Control Mobile Source Air Toxics (MSAT)[6]	12,000,000	12,000,000
EPA Resource Conservation and Recovery Act—RCRA Burden Reduction Rule[5]	3,000,000	3,000,000
FAA Thermal/Acoustic Insulation Installed on Transport Category Airplanes Final[7]	149,000,000	
FWS Critical Habitat—Canada Lynx[8]	6,000,000	
FWS Critical Habitat—Red Legged Frog[8]	396,000,000	
NHTSA Federal Motor Vehicle Safety Standard (FMVSS) No. 139[9]	1,600,000	
NPS Personal Watercraft Rule[10]	1,000,000	
OSHA Occupational Exposure to Hexavalent Chromium[11]	519,915,259	
PHMSA Wet Lines [12]	39,358,025	1,149,785
SEC Section 404 Sarbanes-Oxley Act of 2002—17-month extension[13]	5,528,973,325	
TSA Transportation Worker Identification Credential[14]	129,214,189	
TOTAL	7,252,506,050	117,263,392

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, the savings are limited 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 Source: Advocacy calculations based on industry data from the National Association for Home Care & Hospice

3 Source: DOE

4 Source: EPA and APPA

5 Source: EPA

6 Source: Office of Advocacy estimate based on EPA regulatory impact analysis

7 Source: Industry estimates

8 Source: FWS

9 Source: Specialty Equipment Market Association

10 Source: NPS

11 Source: OSHA

12 Source: PHMSA

13 Source: SEC data (updated in 2005) and Advocacy's 2002 calculation

14 Source: TSA

3 Advocacy Review of Agency RFA Compliance in Fiscal Year 2006

The Regulatory Flexibility Act celebrated a milestone 25th anniversary in 2005. Over the years, the Office of Advocacy has been an independent voice for small business in policy deliberations, working with agencies to examine the impact of their regulatory proposals on small entities. Advocacy has helped agencies comply with the RFA and Executive Order 13272 by providing written interagency communications, public comments, and RFA training, and by hosting RFA panels and roundtables. In monitoring agency compliance, Advocacy has noticed an increase in the number of agencies that make a good-faith effort to comply with the RFA.

Department of Agriculture

E.O. 13272 Compliance

The U.S. Department of Agriculture (USDA) has made its policies for considering small business impacts when promulgating regulations publicly available online, in compliance with section 3(a) of E.O. 13272. Three agencies within USDA consistently notify the Office of Advocacy of rules that may have a significant economic impact on small entities, as required by section 3(b) of E.O. 13272: the Animal and Plant Health Inspection Service (APHIS), Agricultural Marketing Service (AMS), and the Grain Inspection, Packers, and Stockyard Administration (GIPSA). The Food Safety and Inspection Service (FSIS) does not, although it did publish a rule in 2006 that is expected to have significant economic impacts on small entities.

APHIS has successfully worked with Advocacy on its regulations, often engaging the office early in the process by including Advocacy staff in interagency briefings on rulemakings. Although not always proficient in its certifications and RFA analyses, APHIS accepted Advocacy's suggestions to improve their RFA compliance.

Neither APHIS, AMS, nor GIPSA published final rules in FY 2006 that were the subject of any Advocacy comment; therefore, compliance with section 3(c) of E.O. 13272 cannot be assessed. APHIS has consistently responded to interagency comments submitted by Advocacy in the rulemaking process.

Food Safety and Inspection Service

Issue: Availability of Lists of Retail Consignees During Meat and Poultry Product Recalls. On March 7, 2006, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) published a proposed rule seeking to make available to the public lists of the retail consignees of meat and poultry products that have been voluntarily recalled by an establishment if the product has been distributed to the retail level. While aware of the public policy behind such a rule, Advocacy disagreed with FSIS's certification that the rule would not have a significant impact on a substantial number of small entities and filed comments suggesting that FSIS analyze the economic impact of the rule in compliance with the requirements of the Regulatory Flexibility Act. FSIS consequently agreed to reopen and extend the comment period to obtain additional public information on the rule's impact on the industry.

Department of Commerce

E.O. 13272 Compliance

The Department of Commerce (DOC) has made its RFA policies publicly available online, in compliance with section 3(a) of E.O. 13272. Two DOC agencies, the National Marine Fisheries Service (NMFS) and the U.S. Patent and Trademark Office (PTO), routinely submit draft and final rules to Advocacy pursuant to section 3(b) of E.O. 13272.

NMFS published a final rule on fisheries in the exclusive economic zone off Alaska and acknowledged Advocacy's comments regarding an inadequate size standard, in compliance with section 3(c) of E.O. 13272.

The PTO aggressively pursued patent reform initiatives to address the rising number of patent claim applications pending in FY 2006. Advocacy worked with the agency and small entity stakeholders on several rules arising out of the agency's reform efforts. In March 2006, Advocacy conducted its first patent law roundtable, and subsequently developed important small entity contacts in the patent law arena. In advance of the roundtable, PTO personnel met with Advocacy staff to provide an overview of the patent application process.

National Marine Fisheries Service

Issue: Fisheries of the Exclusive Economic Zone Off Alaska; Implementing an Annual Groundfish Retention Standard. On June 16, 2005, NMFS published a proposed rule to carry out Amendment 79 to the Fisheries Management Plan for Groundfish of the Bering Sea and Aleutian Islands. This rule implements an annual groundfish retention standard (GRS), as well as monitoring and enforcement measures for trawl catcher/processors longer than 125 feet. The purpose of the action was to improve utilization of groundfish harvested by catcher/processor trawl vessels and reduce bycatch (the portion of a commercial fishing catch that consists of marine animals caught unintentionally).

The catcher/processors in the groundfish industry contacted Advocacy regarding the size standard used for determining a small catcher/processor. Instead of using the Small Business Administration's 500-employee size standard for floating factory ships in its initial regulatory flexibility analysis, NMFS used the $3.5 million annual volume size standard for fish harvesting operations. Advocacy submitted comment in August 2005 arguing that to the extent that NMFS used an inappropriate size standard, it was impossible to know whether the agency was correct in determining that none of the industry participants were small. The industry was also concerned about aspects of the proposal that were not recommended, such as new monitoring and enforcement measures, a new observer schedule, and the installation of a new NMFS-approved scale. Advocacy asked NMFS to perform an economic analysis on the new aspects of the rule and publish the analysis for public comment.

NMFS finalized the rule in April 2006. In the final rule, NMFS acknowledged that the $3.5 million size standard was inappropriate. NMFS stated that it is reviewing the catcher/processor size standard, but would continue to use the $3.5 million size standard until new guidance is adopted. The industry filed a lawsuit challenging the rulemaking in May 2006. The case was pending at the end of the fiscal year.

United States Patent and Trademark Office

Issue: Changes to Practice for Examination of Claims in Patent Applications; Changes to Practice for Continuing Applications, Requests for Continued Examination Practice, and Applications Containing Patentably Indistinct Claims. On January 3, 2006, the United States Patent and Trademark Office (PTO) published two proposed rules that would significantly change the patent application and prosecution process. The proposed regulations would limit to 10 the number of representative claims contained in an initial examination of a patent application, as well as restrict an applicant to one continuation application. Current rules of practice limit neither the number of claims reviewed on initial examination nor the number of permissible continuation applications. The PTO certified that the two proposed rules would not have a significant economic impact on a substantial number of small entities in accordance with section 605(b) of the RFA.

On March 8, 2006, Advocacy hosted a roundtable to discuss the two proposals and obtain data on the economic impact of the proposals. Present at the roundtable were independent inventors, pat-

ent attorneys, trade association representatives, the PTO, and Advocacy staff. PTO staff gave a presentation on the two proposed regulations, listened, and participated in the discussion. During the roundtable and through subsequent discussions, Advocacy was informed by small entity stakeholders that the proposed rules would have a significant impact on small entities seeking patents. Taken together, the two proposals would increase the cost of patent application preparation and hinder the patent prosecution process. Small entities raised concerns that the regulations would have significant impacts on the most valuable and commercially viable patents, which typically involve a higher number of continuations. Small entities asserted that compliance with the proposals would be much more costly than PTO estimates, would inhibit their ability to enhance their applications, would force them to seek review through the very expensive appeals process, and could weaken their ability to protect their patents.

Advocacy submitted a public comment letter to the PTO on April 27, 2006. In its comments, Advocacy relayed concerns expressed by small entity stakeholders. Advocacy also encouraged the agency to perform an initial regulatory flexibility analysis with a more complete discussion of the potential economic impact of the proposed rules and an evaluation of viable regulatory alternatives. The PTO has not yet finalized the proposed rules. Advocacy will continue to monitor this issue and work with the agency to address small entity concerns.

Issue: Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations. In July 2006, the PTO published a notice and request for comments outlining a proposed size standard for use in the agency's Regulatory Flexibility Act (RFA) analyses. The notice proposed taking the existing SBA size standard currently used for paying reduced patent fees[33] and broadening its application for use in all of the agency's RFA analyses. In a public comment letter submitted on August 3, 2006, Advocacy commended the PTO for seeking to identify an appropriate size standard to ensure agency compliance with the RFA. However, Advocacy questioned whether the proposed size standard was appropriate for use in all of the agency's RFA analyses.

Advocacy convened a regulatory roundtable on July 19, 2006, to discuss the PTO's proposed size standard. Participants at the roundtable included personnel representing the interests of small businesses and independent inventors, the PTO, the SBA's Office of Size Standards, and Advocacy. Because the proposed size standard tabulates only the number of applicants claiming small entity status, and not actual small entities, Advocacy expressed concern that it would be an inadequate measure. Small entity representatives expressed concern that the proposed RFA size standard would exclude a significant number of small entities. Further, they were concerned that the standard would not provide an accurate estimate of the number of small entities affected by the PTO's regulations because the agency does not count or collect data on the specific entities submitting a patent application.

In its comment letter, Advocacy supported PTO's decision to seek public comment on the proposed size standard and encouraged the agency to continue working with Advocacy and small entity stakeholders to identify a more appropriate size standard for use in its RFA analyses. The PTO has not published a final notice.

Department of Defense

E.O. 13272 Compliance

The Federal Acquisition Regulation Council (FAR Council) promulgates procurement regulations that are government-wide and affect small businesses. The FAR Council statutorily includes representation from the Department of Defense (DOD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA). The DOD regulations, called the Defense Federal Acquisition Regulation Supplement (DFARS), are specific to DOD and can only supplement the FAR Council regulations. However, because the FAR Council and DOD regulatory processes are inter-

33 13 CFR §121.802. See also 37 CFR §1.27.

related, DOD's procedures comply with section 3(a) of E.O. 13272. DOD submits prepublication rulemakings for Advocacy consideration in compliance with section 3(b) of E.O. 13272. DOD did not publish any final rules in FY 2006 that were the subject of any written Advocacy comments; therefore, DOD compliance with section 3(c) cannot be assessed. DOD's staff received RFA training in FY 2005.

Advocacy worked closely with OIRA's Defense regulatory team, providing significant interagency input on several regulations in fiscal year 2006.

Issue: Radio Frequency Identification. On April 21, 2005, DOD issued a proposed regulation to amend DFARS by adding a requirement that packages be marked with passive radio frequency identification (RFID) tags, replacing existing military shipping labels. By increasing the accuracy of shipments and receipts, and reducing the number of logistic "touch points," these tags decrease the time required to deliver materiel to the troops. DOD has developed a three-year rollout plan for supplier implementation of RFID requirements. Advocacy worked closely with DOD to provide a detailed cost/benefit analysis of the impact of this regulation on small entities. DOD has conducted outreach and training to the small business community on this regulation. The rule was implemented in September 2005.

On May 19, 2006, DOD issued an interim rule for the second year of the rollout, which would expand the numbers of applicable DOD depots and of commodities required to have RFID tags. The rule requires contractors to affix passive RFID tags when shipping packaged petroleum, lubricants, oils, preservatives, chemicals, additives, construction and barrier materials, and medical materials to specified DOD locations. As a result of Advocacy's involvement in the regulatory process, DOD continues to provide training assistance to aid small businesses in converting to the RFID technology for shipments to DOD installations. The final rule was implemented in July 2006.

Issue: Transition of Prototype Projects to Follow-on Contracts. Another predecisional deliberative rulemaking this fiscal year was the DFARS rule on the Transition of Prototype Projects to Follow-On Contracts. Other transaction agreements (OTA) is an acquisition tool that has been authorized by Congress, and is not within the regulatory acquisition framework of the FAR. In FY 2005, DOD awarded 78 OTAs totaling $150 million. Small businesses were awarded 22 of these for a value of nearly $40 million. As a result of Advocacy's work with the DFARS and OIRA teams in FY 2006, the final regulatory flexibility analysis for this case complies with the RFA.

Department of Education

E.O. 13272 Compliance

The Department of Education (Education) made its RFA policies and procedures available online and notified Advocacy of draft rules that may have a significant impact on a substantial number of small entities, in compliance with section 3(a) and 3(b) of E.O. 13272. Education did not finalize any rules in FY 2006 on which Advocacy has filed comments; therefore, Education's compliance with section 3(c) cannot be assessed.

Department of Energy

E.O. 13272 Compliance

The Department of Energy (DOE) continues to comply with section 3(a) of E.O. 13272 by maintaining its policies and procedures concerning the Regulatory Flexibility Act on its website. In FY 2006, all of DOE's draft rules that were sent to the Office of Management and Budget (OMB) for review were also sent to Advocacy, in compliance with section 3(b) of E.O. 13272. DOE proposed one rule in FY 2006 that was the subject of informal Advocacy comments, on distribution transformer energy conservation standards, and DOE fully responded to Advocacy's comments in accordance with section 3(c) of Executive Order 13272.

Issue: Distribution Transformer Energy Efficiency Standards. On August 4, 2006, DOE published a notice of proposed rulemaking on energy conservation standards for distribution transformers. Advocacy submitted informal interagency comments to DOE requesting clarification of the costs and benefits of the regulatory alternatives under consideration. More than half of the manufacturers of liquid and medium-voltage dry distribution transformers are small businesses. Advocacy met with DOE to discuss various regulatory options, and DOE considered the impacts on small business manufacturers when it proposed the least costly required efficiency standard from among five alternatives. DOE met with small businesses in designing the new efficiency standard and specifically chose a standard that would allow regulated manufacturers to make use of readily available techniques and materials. This proposed standard, relative to the next more expensive standard, is anticipated to result in one-time cost savings of at least $5 million.

Department of Health and Human Services

E.O. 13272 Compliance

The Department of Health and Human Services (HHS) made its policies and procedures publicly available online, in compliance with section 3(a) of E.O. 13272. Draft rules were not consistently submitted to Advocacy pursuant to section 3(b) of E.O. 13272 in FY 2006 by the Centers for Medicare and Medicaid Services (CMS) or the Food and Drug Administration (FDA), two agencies that often promulgate rules that affect small businesses. Neither CMS nor FDA published final rules in FY 2006 that were the subject of any public Advocacy comment; therefore, compliance with section 3(c) of E.O. 13272 cannot be assessed.

Centers for Medicare and Medicaid Services

Issue: Medicare and Medicaid Programs: Reporting Patient Outcome and Assessment Information Data as Part of the Conditions of Participation for Home Health Agencies. In January 1999, the Health Care Financing Administration (HCFA), now known as the Centers for Medicare and Medicaid Services (CMS), published a final rule requiring home health agencies (HHAs) to submit all patient data through the Outcome and Assessment Information Set (OASIS). CMS certified that the rule would not have a significant impact on a substantial number of small entities. Advocacy worked closely with OIRA and CMS to identify several concerns with the rule's requirements that were expected to have a negative effect on small home health care agencies, most of which are considered small under SBA size standards. Advocacy was particularly concerned that HHAs would have to submit data on all patients, not just Medicare and Medicaid patients, adding to the time and cost required to comply with the rule. As a result of Advocacy's involvement and the comments filed by stakeholders, CMS published a final rule in January 2006 that did not require HHAs to transmit data for non-Medicare and non-Medicaid patients.

Food and Drug Administration

Issue: Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures. On December 3, 1999, the Food and Drug Administration (FDA) published a final rule in the *Federal Register* that set forth requirements for the re-importation and wholesale distribution of prescription drugs in the United States. The rule was to become effective on December 4, 2000. Advocacy filed comments suggesting that the rule would negatively affect small distributors and wholesalers of prescription drugs who were required to provide and maintain information on the drugs' pedigrees. Pursuant to Advocacy's involvement and industry

assurances that it would voluntarily implement electronic trace technology, FDA chose to delay the effective date of the rule several times, saving small businesses considerable revenue. On June 14, 2006, the FDA published a notice that the effective date will be December 1, 2006.

Department of Homeland Security

E.O. 13272 Compliance

The Department of Homeland Security (DHS) continues to make progress in complying with E.O. 13272. DHS has posted its procedures for considering the small business impacts of its regulations on its website, in compliance with section 3(a) of E.O. 13272. However, DHS still does not submit draft rules to Advocacy as required by section 3(b). DHS published one final rule in FY 2006 that was the subject of Advocacy comments and revised it to reflect Advocacy's concerns; therefore, it complied with section 3(c) of E.O. 13272.

Issue: Homeland Security Acquisition Regulation. DHS published an interim rule in December 2003 that codified its acquisition system, and Advocacy submitted a public comment letter in January 2004. Among several comments, Advocacy urged DHS to revisit its mentor-protégé program and the incentives to large businesses that participated as mentors.

On May 2, 2006, DHS published its final rule and acknowledged Advocacy's comments, but disagreed with the assessment of the mentor-protégé program. Notwithstanding, DHS revised its final regulation to reflect the concerns of Advocacy. DHS clarified the Homeland Security Acquisition Regulations regarding the limitations of the individual mentor-protégé agreements. Based on Advocacy's comment letter, this change in the final regulation will benefit small businesses by not allowing large businesses to satisfy their subcontracting goals through the mentor-protégé program. To meet small business subcontracting goals, large businesses will be required to use other small businesses in addition to those in the mentor-protégé program.

Transportation Security Administration and U.S. Coast Guard

Issue: Transportation Worker Identification Credential. On May 22, 2006, the Transportation Security Administration (TSA) and the U.S. Coast Guard jointly issued the proposed rule for the Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector. The proposed rule would implement Section 102 of the Maritime Transportation Security Act (MTSA) and other statutory provisions that require the Secretary of Homeland Security to issue a biometric transportation security card to individuals with unescorted access to secure areas of ports, vessels, and other facilities. The agency proposed an identification card that would include a computer chip with a digital photograph and fingerprints of the holder capable of being scanned on a card reader. The MTSA already requires owners and operators of these maritime facilities to submit to the Coast Guard detailed security assessments of their respective vessels and facilities to identify security vulnerabilities. The agencies stated that they could not determine whether the proposed rule would have a significant economic impact on a substantial number of small entities, and prepared an initial regulatory flexibility analysis.

On June 21, 2006, Advocacy hosted a small business roundtable on the proposed TWIC rule that included representatives of the maritime towing and passenger vessel, recreational boating, commercial trucking, charter bus, and aviation sectors. Advocacy subsequently submitted a public comment letter to the agencies expressing small business concerns. These concerns included the need to include missing information in the economic analysis, such as costs to small businesses utilizing seasonal or temporary workers. Small businesses were also concerned that the proposal was too complex, required technology for readers that does not exist, and required an

additional card without preempting other already required credentials. TSA agreed in a *Federal Register* notice that it will bifurcate the proposed rule to eliminate the requirement for biometric card readers at this time, thereby reducing the burden on small entities. The agency has stated that any subsequent rulemaking concerning card readers will be done through a full notice and comment rulemaking process. The estimated savings from the elimination of the reader requirement total nearly $130 million.

Department of Housing and Urban Development

E.O. 13272 Compliance

The RFA policies and procedures of the Department of Housing and Urban Development (HUD) were made available to the public online, in compliance with section 3(a) of E.O. 13272. This fiscal year, HUD continued to notify Advocacy of rules that may have a significant impact on a substantial number of small entities as required by section 3(b) of E.O. 13272. HUD consistently contacts Advocacy to review draft rulemakings to ensure RFA compliance. HUD did not publish any final rules in FY 2006 that were the subject of any Advocacy comment; therefore, HUD's compliance with section 3(c) cannot be assessed.

Department of the Interior

E.O. 13272 Compliance

The Department of the Interior (DOI) has a departmental manual listing the requirements and guidance to promote RFA compliance and has made it publicly available in compliance with section 3(a) of E.O. 13272. DOI continues to notify Advocacy of rules that could have a significant economic impact on a substantial number of small entities as required by section 3(b). DOI also utilized Advocacy's email notification system to inform Advocacy of draft rules that may affect small businesses. The National Park Service (NPS) also complies with section 3(b) by sending Advocacy its draft rules.

The Fish and Wildlife Service (FWS) is not in compliance with section 3(b), because it does not send Advocacy its draft rules that could have a significant impact. FWS also repeatedly has not determined whether its proposed rules will have a significant economic impact on a substantial number of small entities. Advocacy filed five comment letters to FWS in FY 2006 citing the agency's failure to prepare an IRFA or certify the rule during the proposed rule stage as required by the RFA. Advoacy believes that these delays in completing the necessary RFA analysis thwart the ability of affected small entities to provide meaningful comment on the proposal's impact.

Both NPS and FWS had final rules and responded to comments by Advocacy, complying with section 3(c) of E.O. 13272. However, FWS continued to have problems complying with the RFA requirements. In its final rule for the critical habitat designation of the California red-legged frog, FWS certified that the rule would not have a significant economic impact on a substantial number of small entities, despite small business views to the contrary voiced during the process. FWS did not complete an IRFA or FRFA for this rule. Advocacy is working with FWS to improve its E.O. 13272 and RFA compliance, and has planned additional RFA training in FY 2007. Advocacy's internal recommendations prompted FWS to submit an IRFA at the end of FY 2006 for the critical habitat designation of the Canada lynx.

U.S. Fish and Wildlife Service

Issue: Designation of Critical Habitat for the California Red-Legged Frog. On November 3, 2005, FWS proposed to designate more than 737,912 acres of critical habitat for the California red-legged frog in 23 California counties. Under section 605 of the RFA, FWS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Advocacy conducted outreach to small entities potentially affected by the proposed rule. As a result

of these conversations, Advocacy recognized that the proposed rule should not have been certified because it would likely have a significant economic impact on a substantial number of small entities in the home building industry in a number of the affected counties. On February 1, 2006, Advocacy submitted a public comment letter to FWS, recommending that they revisit the economic impacts of the proposed designations and consider less burdensome alternatives. In particular, Advocacy recommended that FWS not designate areas it had identified as most likely to affect small businesses because of their high commercial value for home building. FWS took Advocacy's comments under advisement as it prepared its final rule. On April 13, 2006, FWS issued a final rule that excluded high-cost areas and eliminated 250,000 acres of proposed critical habitat. Based on FWS's economic analysis, Advocacy believes that the decision to eliminate these high-cost areas from its final designation resulted in $396 million in cost savings over 20 years.

Issue: Designation of Critical Habitat for the Alabama Beach Mouse. On February 1, 2006, FWS proposed to designate approximately 1,298 acres in coastal lands of Alabama for the critical habitat of the Alabama beach mouse. On August 8, 2006, FWS published its draft economic analysis and reopened the period for comments. FWS did not provide an IRFA or certify the rule in either of these notices.

Advocacy believed that the draft economic analysis provided by FWS overlooked sectors of small entities that may be significantly affected, such as developers and builders. On September 7, 2006, Advocacy cited these concerns in a public comment letter, and recommended that FWS complete an IRFA for the proposed rule and subject the analysis to public comment prior to moving forward with the final rule. Advocacy will continue to monitor this issue and work with FWS to address small entity concerns.

Issue: Designation of Critical Habitat for the Canada Lynx. On November 9, 2005, FWS proposed to designate 26,935 square miles of land in Idaho, Maine, Minnesota, Montana, and Washington as the Canada lynx's critical habitat. Advocacy spoke with stakeholder groups concerned that this critical habitat would have significant impacts on small businesses. Advocacy worked closely and had meetings with FWS and outside economists to discuss these concerns and ways to analyze the economic impacts. On February 16, 2006, FWS revised the proposed designation by decreasing the critical habitat designation (CHD) to 18,031 square miles. FWS's proposed decision to exclude these high-cost areas from its CHD will result in more than $6 million in cost savings. FWS did not provide an IRFA or certify that this rule would have a significant impact on a substantial number of small entities. After working with Advocacy, FWS published an IRFA and an economic analysis. A court order required FWS to complete a final critical habitat designation by November 1, 2006.

National Park Service

Issue: Personal Watercraft Rules. On March 21, 2000, the NPS created regulations that banned personal watercraft use in all national parks, which took effect in 2002. Advocacy met and worked with NPS and representatives of the personal watercraft industry to reopen the national parks to personal watercraft use, and has been successful in reopening 11 other national parks since 2003. On September 8 and 21, 2006, the National Park Service (NPS) reopened the Cape Lookout National Seashore and the Curecanti National Recreation Area to personal watercraft use. NPS's decision to reopen these two national parks will result in more than $1 million in cost savings in the first year of the reopening.

Department of Justice

E.O. 13272 Compliance

The Department of Justice (DOJ) has made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. DOJ continues to use the email notification system to notify Advocacy of

draft rules that may have a significant impact on a substantial number of small entities, as required by section 3(b) of E.O. 13272. DOJ did not publish any final rules in FY 2006 that were the subject of any Advocacy comment; therefore, DOJ's compliance with section 3(c) cannot be assessed.

Department of Labor

E.O. 13272 Compliance

The Department of Labor (DOL) posts its RFA policies and procedures online, complying with section 3(a) of E.O. 13272. The Employee Benefits Security Administration (EBSA) notified Advocacy by mail and email of rules that may have a significant impact on a substantial number of small entities as required by section 3(b) of E.O. 13272. The Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) sent Advocacy drafts via mail, in compliance with 3(b).

All three agencies published final rules in FY 2006 that were the subject of Advocacy comment and discussed Advocacy's comments with specificity, in compliance with Section 3(c) of E.O. 13272. Advocacy submitted comments to OSHA on its Notice of a Regulatory Flexibility Act Review of Lead in Construction standard and its Proposed Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment Rule; however, no further action has been taken on these initiatives. OSHA and MSHA frequently participate in Advocacy small business regulatory roundtables on occupational safety and health, and mine safety and health issues. OSHA's Office of Small Business Assistance has been proactive in discussing small business issues with Advocacy. As part of the SBREFA process, OSHA has contacted Advocacy to discuss rules that may have a significant economic impact on a substantial number of small entities and where a SBREFA panel is expected. In FY 2006, EBSA submitted a final rule on electronic filing of Form 5500. EBSA delayed the annual filing requirement in this final rule, directly addressing and implementing Advocacy's recommended regulatory alternative.

Occupational Safety and Health Administration

Issue: Section 610 Review of Lead in Construction Standard. On June 6, 2005, the Occupational Safety and Health Administration (OSHA) announced a review of its lead in construction standard in accordance with Section 610 of the RFA, which requires federal agencies to review their regulations periodically to determine whether they should be continued without change, amended, or rescinded in order to minimize any significant economic impacts of the rule on a substantial number of small entities. Many small businesses in the residential and commercial renovation businesses are affected by the OSHA requirements, and face potentially duplicative and overlapping requirements with other federal regulations.

Advocacy hosted a small business regulatory roundtable on September 22, 2005, to discuss the impact of OSHA's current regulation on small businesses. The roundtable featured presentations from OSHA, HUD, and EPA, each of which has regulations governing lead hazards. Many small business representatives in attendance believed that OSHA should open a formal notice and comment rulemaking process to revise its lead in construction standard to make it less costly and burdensome. Following the roundtable, Advocacy filed a public comment letter on October 28, 2005, with OSHA, recommending that it begin a formal notice and comment rulemaking process to develop a final lead in construction standard, since its existing interim final standard was issued in 1993 without such a process. OSHA is currently reviewing the comments it received and has yet to announce its intentions for further action.

Issue: Electric Power Generation, Transmission and Distribution Rule. On June 15, 2005, OSHA proposed to update the existing standard for the construction of electric power transmission and generation installations to make them more consistent with the more recently promulgated general industry standard. The proposal would also make miscel-

laneous changes to both standards, including adding provisions related to host employers and contractors, flame-resistant clothing, training, and electrical protective equipment.

Advocacy participated in the SBREFA panel process in 2003 and hosted a conference call of the small entity representatives following publication of the proposed rule to obtain their input. Further, Advocacy filed a public comment letter on January 9, 2006, and attended an OSHA public hearing on the proposed rule. Advocacy recommended that OSHA consider changes to the proposal, consistent with the finding of the SBREFA panel, concerning the host-contractor provisions, training, and protective clothing. OSHA is currently reviewing the comments it received and has yet to announce it intentions for further action.

Issue: Proposed Occupational Exposure to Hexavalent Chromium Rule. OSHA issued its final rule for occupational exposure to hexavalent chromium on February 28, 2006. The final rule lowered the permissible exposure level (PEL) from 52 micrograms per cubic meter of air (for an 8-hour time-weighted average) to 5, with an action level of 2.5. The new rule will require many small businesses to implement engineering and other controls to reduce employee exposures.

Advocacy was involved in the rulemaking process from the initiation of a SBREFA panel in 2003 through promulgation of the final rule. Advocacy participated on the SBREFA panel, conferred with representatives of small businesses likely to be affected in several industries (including chemical, alloy, and pigment manufacturing, electroplating, welding, and aerospace), and filed a public comment letter. Advocacy also discussed this issue at several of its small business labor safety roundtables, which included presentations by small business representatives likely to be affected by the standard. The Office of Advocacy also communicated directly with OMB and OSHA on an interagency basis.

OSHA's final rule, issued on February 28, 2006, established a PEL of 5 µg/m3. However, based on recommendations from the SBREFA panel, the agency excluded uses of Portland cement, chromium copper arsenate, and certain industries with very low exposures, and provided exceptions for intermittent users and large aircraft painting. OSHA estimates that the cost savings to small businesses from changing the PEL and excluding Portland cement is $520 million. In addition, OSHA allowed a four-year phase-in of engineering controls, which provides other significant but unquantified cost savings.

Issue: Cranes and Derricks in Construction Rule. OSHA initiated a SBREFA panel on August 18, 2006, on the cranes and derricks in construction rule, a draft proposed rule that had been produced through a negotiated rulemaking process. Most of the contentious issues concerning the proposal had already been debated at length and resolved to the extent possible. The panel report due by October 2006 was expected to recommend that OSHA review and submit for public comment a number of recommendations made by small entity representatives, including whether the certification of crane operators should be required and whether some small boom cranes and building material vendors could be exempted from the standard altogether.

Advocacy participated in the SBREFA panel, conferring with representatives from affected small businesses. Advocacy also discussed this issue at several of its small business labor safety roundtables, including presentations by small business representatives likely to be affected by the standard. OSHA expects to issue a proposed rule for formal comment in 2007.

Issue: Electronic Filing of Annual Reports. On August 30, 2005, EBSA published a proposed rule to implement the agency's announced intention to require a wholly electronic filing system for submission of Form 5500 filings for plan years beginning January 1, 2007, with the first due in 2008. EBSA provided Advocacy a prepublication copy for review and comment on the rule's IRFA.

On September 29, 2005, Advocacy hosted a roundtable to obtain the input of small businesses

and stakeholders on the proposed rule's potential economic impact. Personnel from EBSA attended the roundtable. The roundtable participants voiced concern that requiring electronic filing may inhibit some firms from providing benefits to their employees and that the cost of implementing electronic filing would be cost prohibitive.

As a result of the comments received from small businesses, Advocacy submitted a public comment letter to EBSA on October 14, 2005. Advocacy's comment letter encouraged EBSA to consider additional significant alternatives to the implementation of the rule. Specifically, Advocacy encouraged EBSA to consider a delayed compliance date for small entities, as well as penalty abatement for inadvertent noncompliance during the initial year of implementation.

EBSA published the final rule on July 21, 2006. The final rule requires the electronic filing of Form 5500, beginning with plans years starting on January 1, 2008, with the first filings being submitted in 2009. EBSA has estimated that the delayed implementation will result in $3 million in cost savings. EBSA addressed Advocacy's comments and plans to evaluate whether to abate penalties incurred because of inadvertent noncompliance during the initial year of implementation.

Department of State

E.O. 13272 Compliance

The Department of State (State) has not made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. State did not submit any draft rules to Advocacy in FY 2006, because the agency did not believe that any rule would have a significant impact on a substantial number of small entities. However, Advocacy submitted a comment letter on the proposed exchange visitor program, noting that the State Department's certification was improper because it lacked a factual basis. State has not published final rules in FY 2006 that were the subject of Advocacy comments; therefore, it compliance with section 3(c) of E.O. 13272 cannot be assessed. Advocacy anticipates training staff from State in FY 2007.

Issue: Proposed Exchange Visitor Program; Training and Internship Programs Rule. The Department of State issued proposed new regulations on April 7, 2006, for designating U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended (also known as the Fulbright-Hays Act). Under this statute, designated program sponsors under the J-1 visa program across a variety of industries facilitate the entry into the United States of more than 275,000 exchange participants each year. The proposed rule would impose a variety of new requirements on designated program sponsors before they could accept a participant into their exchange program. For example, designated program sponsors would have to verify the participant's prior academic/work experience, English proficiency, and finances; conduct in-person interviews with potential trainees in their home country; develop a detailed individualized training plan (Form DS-7002); and provide oversight, counseling, and evaluations during the course of the exchange program. In addition, the proposed rule includes special provisions related to aviation flight training schools that limit the ratio of on-the-job training to classroom study (to a ratio of one month to four) and reduce the maximum duration of the training program from 24 to 18 months. Small business aviation flight schools operating as designated J-1 sponsors claim the proposed rule would be economically detrimental to them.

The issue of the State Department's proposed rule was raised during Advocacy's regular aviation safety roundtable on April 20, 2006. Representatives of small aviation flight schools operating under the J-1 visa program claimed that the rule would have a significant economic impact on these businesses. The Department of State had certified the rule under the RFA. On May 30, 2006, Advocacy filed a public comment letter stating that the certification was improper because it lacked a factual ba-

sis and may be incorrect. Advocacy recommended that the State Department either provide a factual basis for its RFA certification or prepare and publish an initial regulatory flexibility analysis (IRFA) for public comment before proceeding with this rule. Advocacy noted that it understood that that there are important security implications associated with this proposed rule (particularly with respect to aviation flight training schools and foreign nationals training to be pilots here) and deferred to the Department of State and others to assess the security implications of this and other programs.

Department of Transportation

E.O. 13272 Compliance

The Department of Transportation (DOT) has made progress in complying with E.O. 13272. DOT has posted its RFA policy on its website, in compliance with section 3(a) of E.O. 13272. DOT submitted draft rules electronically to Advocacy in 2006, as required by 3(b) of E.O. 13272. Advocacy has established strong working relationships with a few key personnel who seek Advocacy's participation or input on agency rulemakings. In fact, some DOT offices routinely request Advocacy's attendance at briefings on rulemaking they believe may have an impact on small entities. No agencies in the DOT published final rules in FY 2006 that were the subject of Advocacy comments; therefore, DOT's section 3(c) compliance with E.O. 13272 cannot be assessed.

Federal Aviation Administration

Issue: Washington, DC, Metropolitan Area Special Flight Rules Area. The Federal Aviation Administration (FAA) issued the proposed rule on the Washington, DC, metropolitan area special flight rules area on August 4, 2005. This proposed rule would essentially codify current flight restrictions for certain aircraft operating in the Washington, DC, metropolitan area that were adopted in the wake of the terrorist attacks of September 11, 2001. The proposed rule would create a special flight rules area (SFRA) around Washington, DC, and impose flight operation requirements on aircraft operations within that area. These provisions would generally require aircraft operators to: 1) file and activate a flight plan before entering (or re-entering) the restricted area; 2) maintain radio communication with air traffic control; and 3) obtain and display a discrete transponder code while operating within the area. The FAA has concluded that while these restrictions are likely to cause considerable burdens to both air traffic control and the aviation industry within the affected area, they are needed for security reasons. Small businesses expressed serious concerns about the impact of the proposed rule on small aviation businesses operating within the area.

This proposed rule was discussed during Advocacy's regular aviation safety roundtable on October 20, 2005. In response to comments raised by small businesses, Advocacy filed a public comment letter with the agency on February 6, 2006, recommending that the FAA carefully consider small business comments and alternatives to its proposed rule, and publish a revised IRFA for additional comment before finalizing the rule.

Issue: Thermal/Acoustic Insulation Installed on Transport Category Airplanes Rule. The FAA issued its final Thermal/Acoustic Insulation rule in 2003, with a compliance date of September 2, 2005. The rule was intended to apply to the replacement of thermal insulation blankets used on the fuselage of airplanes. However, before the final compliance date, industry representatives became aware that some of the language in the rule was ambiguous and that the rule, as written, would have had a much broader impact than originally envisioned. This would have meant that far more airplanes and components would have been subject to the rule, and that entire inventories of spare parts would have been rendered unusable.

Small business representatives raised the issue of FAA's final Thermal/Acoustic Insulation rule during Advocacy's regular aviation safety roundtable

on July 14, 2005. In response, Advocacy helped organize a meeting with FAA personnel to discuss the rule and the ambiguities in the language. Based on these discussions, the agency agreed that the rule required clarification and agreed to issue a revised regulation.

On December 30, 2006, FAA issued a revised final rule that narrowed the original rule's scope and exempted certain airplanes and components. Because the final rule narrowed the scope (and therefore the cost) of the original rule, the agency did not perform an economic analysis. However, industry representatives estimated cost savings of $149 million ($74 million in certification costs and $75 million in inventoried spare parts) from the revisions.

National Highway Traffic Safety Administration

Issue: Proposed Reporting of Early Warning Information Rule. In accordance with the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, the National Highway Traffic Safety Administration (NHTSA) promulgated regulations in 2003 that required manufacturers of more than 500 vehicles per year to report tire and other equipment warranty claims to the agency in order to identify potential defects. Manufacturers of trailers and other vehicles filed a petition for reconsideration requesting that more small businesses be exempt from the reporting requirements. While the petition for reconsideration was denied by the agency, NHTSA did agree to reconsider the rule within two years of its implementation date.

On March 16, 2006, Advocacy hosted a small business regulatory roundtable to discuss the early warning rule with manufacturers of small trailers and recreational and marine vehicles, as well as agency personnel, to discuss how the reporting requirements could be made less costly and burdensome. As a result, NHTSA proposed a rule that would eliminate the reporting of product evaluation field reports, revise the definition of fire to eliminate two precursors to fire (sparks and smoldering) and add one term (melt), modify the reporting of fuel systems for medium-heavy vehicles and buses, and limit certain time periods for data elements.

The cost savings from this rule are unknown at this time. The revisions could change the annual reporting costs for some manufacturers. In addition, NHTSA has agreed that it will issue a second proposed rulemaking that will look at the more complicated issues of whether reporting thresholds can be adjusted or eliminated. The second, forthcoming rulemaking has the potential to result in more significant cost savings.

Pipeline and Hazardous Materials Safety Administration

Issue: Hazardous Materials Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids. The Pipeline and Hazardous Materials Safety Administration (PHMSA), formerly the Research and Special Programs Administration (RSPA), issued a proposed rule on December 20, 2004, regulating external product piping (wetlines) on cargo tank motor vehicles. The rule limited to one liter the amount of flammable liquid that could remain in each wetline after drainage. Advocacy worked with small businesses and trade associations to analyze the potential impacts of the proposed regulation. As part of this process, Advocacy held a roundtable to discuss the proposal and obtain data from industry personnel on March 24, 2005. In April 2005, Advocacy sent interagency comments to PHMSA on this proposed regulation. On June 7, 2006, having determined that "further regulation would not produce the level of benefits we originally expected and that the quantifiable benefits of proposed regulatory approaches would not justify the corresponding costs,"[34] the agency withdrew its notice of proposed rulemaking. PHMSA's decision to withdraw the rule resulted in $39.4 million in first-year cost savings and $1.15 million in recurring annual savings for small entities.

34 71 *Fed.Reg.* 32,909 (June 7, 2006).

Department of the Treasury

E.O. 13272 Compliance

The Department of the Treasury (Treasury) made its policies and procedures available to the public online in compliance with section 3(a) of E.O. 13272. Three agencies within Treasury create regulations of most concern to small businesses: the Internal Revenue Service (IRS), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS).

While Treasury and the IRS have not notified Advocacy of any draft proposed rules under section 3(b), Advocacy has been invited to, and has participated in, several prepublication and some predrafting meetings on IRS regulatory proposals regarding potential effects on small businesses. Both OCC and OTS notify Advocacy in accordance with the requirements of section 3(b).

During FY 2006, Advocacy has had a vigorous ongoing conversation with IRS about the RFA. Specifically, Advocacy has met with the IRS chief counsel and plans regular meetings to ensure improved RFA compliance by the IRS. As a result of ongoing discussions, the IRS has planned several RFA trainings for its staff in early FY 2007. Treasury and the IRS published one final rule in FY 2006 on which Advocacy commented. Treasury and the IRS addressed Advocacy's comments (without specific reference to Advocacy) thereby complying with section 3(c). Advocacy did not file any comments with OCC or OTS in FY 2006.

Issue: Income Attributable to Domestic Production Activity. On November 4, 2005, Treasury and the IRS published a proposed rule under section 199 of the Internal Revenue Code to inform taxpayers that engage in domestic production, as defined in section 199, how to calculate allowable deductions for such activities. Advocacy did not receive this rule from Treasury and the IRS before the rule's publication.

On November 30, 2005, Advocacy held a roundtable to discuss the impact of the proposed rule on small entities. The consensus was that the simplified calculation method should be made more widely available. The stakeholder participants also expressed great concern about the complexity of the rule.

On January 3, 2006, Advocacy submitted a public comment letter to Treasury and the IRS. The proposed rule provided that employer taxpayers with $25 million or less in annual revenue could use a simplified process for calculating the deduction. As a result of recommendations from Advocacy, Treasury and the IRS increased the accessibility of the simplified deduction method calculation by expanding it to include employers that generate annual gross receipts of $100 million or less, generating cost savings for small businesses. The amount of savings was not possible to calculate. The issue of complexity was not addressed.

Issue: Escrow Accounts, Trusts, and Other Funds Used During Deferred Exchanges of Like-Kind Property. On February 7, 2006, Treasury and the IRS published a proposed rule that affects qualified intermediaries that facilitate exchanges of like-kind property. An initial regulatory flexibility analysis was part of the proposed rule. On March 23, 2006, Advocacy hosted a roundtable attended by small business stakeholders and personnel from Treasury and the IRS. Business owners described the potential financial consequences of the proposed rule on their current operations, explaining that they could lose, on average, 50 percent of their gross revenue if the proposed rule were finalized.

On May 8, 2006, Advocacy submitted a public comment to Treasury and the IRS, noting that the IRFA did not provide significant alternatives to the proposed rule, nor did it describe the economic impact on the regulated entities. Advocacy's comment encouraged Treasury and the IRS to publish an amended IRFA in the *Federal Register*. Currently Treasury and the IRS are working with Advocacy to explore options for improving and publishing an amended IRFA subject to comments. As of September 30, 2006, Treasury and the IRS had not published an amended IRFA or final rule.

Department of Veterans Affairs

E.O. 13272 Compliance

The Department of Veterans Affairs (VA) provides its RFA policies to the public online to comply with section 3(a) of E.O. 13272, while continuing to take a position that most of its regulations do not affect small entities. The VA fully complies with section 3(b) of E.O. 13272, by notifying Advocacy of proposed regulatory actions that may have a significant impact on a substantial number of small entities. Advocacy has reviewed these notifications for FY 2006, and verifies that most of this year's regulations did not affect small entities. The VA did not publish any final rules in FY 2006 that were the subject of Advocacy comment; therefore, VA's compliance with section 3(c) cannot be assessed.

Environmental Protection Agency

E.O. 13272 Compliance

The Environmental Protection Agency (EPA) has complied with section 3(a) of E.O. 13272 by making its policies and procedures with respect to the Regulatory Flexibility Act publicly available on its website. In FY 2006, EPA provided Advocacy with all of its draft rules before or at the time they were sent to OMB for review, in compliance with section 3(b) of E.O. 13272. Advocacy provided seven public comment letters to EPA in FY 2006, and EPA adequately responded to Advocacy's comments in accordance with section 3(c) of E.O. 13272.

Issue: Resource Conservation and Recovery Act, Burden Reduction Rule. On April 4, 2006, EPA published a final rule designed to reduce some recordkeeping, reporting, and inspection burdens imposed on hazardous waste generators, transporters, and disposal facilities by the Resource Conservation and Recovery Act (RCRA). EPA promulgated the burden reduction rule in response to recommendations from Advocacy and small business representatives on ways to streamline burdensome requirements that have little corresponding environmental benefit. The final rule reduces the amount of time some records must be retained, allows additional types of professionals to certify compliance with waste handling rules, decreases the frequency of some self-inspections, and eases reporting requirements. The final rule is estimated to result in annual cost savings of $3 million per year.

Issue: Clean Air Act Requirements to Control Mobile Source Air Toxics (MSAT). On March 29, 2006, EPA published a proposed Clean Air Act rule that would require petroleum refineries to reduce concentrations of benzene, an air toxic, in gasoline. The rule would also require portable gasoline container manufacturers and light-duty highway vehicles to reduce the amount of benzene that is lost through evaporation. EPA convened a SBREFA review panel on September 7, 2005, with 11 small entity representatives. As a result of the recommendations of the panel, EPA proposed several flexibilities for small refiners, small gasoline container manufacturers, and light-duty vehicle manufacturers. These flexibilities include giving small refiners more lead time to achieve compliance, establishing a program for benzene averaging, banking, and trading among refiners, and allowing a refiner or manufacturer that can demonstrate economic hardship to have additional time to comply with the standard. The delayed implementation of the MSAT standard for small businesses is estimated to result in $12 million in first-year cost savings, with an additional $12 million in recurring annual cost savings for the following four years.

Issue: Clean Water Act Section 316(b), Phase III Cooling Water Intake Structures. On June 1, 2006, the U.S. Environmental Protection Agency signed a final Clean Water Act rule designed to protect fish and other aquatic species from being killed when they are pulled into cooling water intakes. As originally planned by EPA, the rule would have required more than 700 facilities to install devices to

prevent aquatic losses, including an estimated 82 facilities owned by small entities. Following the completion of a SBREFA review panel in early 2004, EPA concluded that facilities with relatively low intake flows typically do not cause aquatic losses and proposed an exemption for facilities that have a cooling water intake flow of 50 million gallons per day or less. The exemption contained in the final rule removes virtually all small businesses from the rule's coverage. According to estimates prepared by the American Public Power Association, the recommendations of the SBREFA panel have resulted in cost savings of $74 million for small entities such as municipal utilities, pulp and paper companies, and chemical plants.

Issue: Toxics Release Inventory Rule. On October 4, 2005, EPA published a proposed rule providing the first significant small business relief from toxics release inventory (TRI) reporting since 1994, when EPA introduced the first short form, called the "Form A," replacing the longer (five-page) "Form R." Section 313 of the Emergency Planning and Community Right to Know Act established the TRI reporting requirement that facilities which process, use, or manufacture a listed chemical file an annual Form R, describing the amounts of chemicals handled by the facility. Small businesses have long been concerned that the annual reporting requirement imposes a large paperwork burden with little environmental benefit, particularly for thousands of filers with zero discharges or emissions. The TRI reporting requirement has been a small business priority environmental issue over the last decade and more. The October 2005 EPA proposal allows more small firms to use the shorter Form A, saving them time and money.

EPA first issued the Form A in November 1994. At that time, EPA reserved the form for reports with a 500-pound "reportable amount" threshold, or the total production-related wastes. In October 2005, EPA found that it could cover more than 99 percent of toxic releases and other waste management activities by raising the 500-pound threshold to 5,000 pounds, allowing an additional 12,200 forms of a total of nearly 82,000 forms to use Form A. Furthermore, the Form A was made available for the first time to reporters of a special category of chemicals accounting for an additional 2,703 reports.

This proposal, representing the culmination of Advocacy TRI activity over the past 10 years, is expected to save 165,000 hours per year in filing and processing of reports, by EPA's estimate. Advocacy recommended that EPA expand the eligibility of reports for Form A to provide relief to small firms, and EPA's proposal does exactly that. EPA estimates cost savings of about $7.4 million per year. A final rule was expected by December 2006.

Issue: Spill Prevention Control and Countermeasure Rule. On December 12, 2005, EPA proposed streamlining requirements for small facilities that handle below a certain threshold of oil as well as facilities with oil-filled equipment under the Spill Prevention, Control, and Countermeasure (SPCC) rule. The SPCC rule requires facilities that manage above 1,320 gallons of oil to implement measures to prevent and contain oil discharges. The 2002 amendments promulgated by the agency created widespread problems for the regulated industry, and EPA took steps to review the SPCC requirements, in collaboration with Advocacy. EPA's notice of data availability regarding small facilities in November 2004 was based in large part on the Office of Advocacy's June 2004 letter to EPA. EPA was expected to issue a final rule by December 2006.

EPA utilized Advocacy's recommendations for revisions in two distinct areas: small facilities (under 10,000 gallons aggregate capacity for oil) and oil-filled equipment. EPA proposed that the requirements for small facilities be streamlined to allow the facilities to self-certify compliance, instead of using a professional engineer and to permit additional flexibility for tank integrity testing and security requirements. With respect to small facilities, EPA's proposal is estimated to save $22.5 million per year for all businesses annualized at a 3 percent discount rate. Since it is estimated that 80 percent of the facilities would be owned by small businesses, these revisions would result in

$17.6 million in small business savings. Facilities with oil-filled equipment would have the option of preparing an oil spill contingency plan and a written commitment of manpower, equipment, and materials in lieu of providing expensive secondary containment around the equipment. For oil-filled equipment, EPA estimates savings of $56.7 million per year for all businesses. Advocacy estimates that these revisions would result in $28.4 million per year in small business savings.

Federal Acquisition Regulation Council

E.O. 13272 Compliance

The policies and procedures required by section 3(a) that were provided by DOD apply also to the Federal Acquisition Regulation Council (FAR Council). This regulatory entity has not provided Advocacy with notification as required by section 3(b) of E.O. 13272. However, Advocacy has an open invitation to attend the regulatory council's deliberations and has access to the predecisional deliberative rulemaking process. Advocacy has made significant input on several other predecisional regulations this past fiscal year. The Office of Advocacy worked very closely with OIRA and the FAR Council to improve the regulatory analysis process. The FAR Council has had several RFA training sessions to increase its awareness and understanding of the RFA requirements. The FAR Council did not publish final rules in FY 2006 that were the subject of Advocacy comments; therefore, the FAR Council's compliance with section 3(c) cannot be assessed.

Federal Communications Commission

E.O. 13272 Compliance

In FY 2005, the Federal Communications Commission sent Advocacy a letter stating its commitment to uphold the spirit of E.O. 13272 and review its rules for impacts on small entities while maintaining that as an independent agency, it is not covered by the executive order. The FCC maintained this position through FY 2006. The FCC consistently mails Advocacy proposed and final rules that have a significant impact on a substantial number of small entities after the rule has been adopted and released to the general public, but before it is sent to the *Federal Register*. This provides Advocacy with additional time to review proposed rules before the comment deadline, but does not necessarily meet the requirements of E.O. 13272 section 3(b).[35] In FY 2006, the agency addressed Advocacy's comments in its final rules as required by section 3(c) of E.O. 13272.

The FCC's compliance with the RFA improved this past year but is still inconsistent, varying between bureaus and across subject matter. The two major telecommunications issues that Advocacy engaged on this year are examples of this dichotomy. In its implementation of the Junk Fax Prevention Act, the FCC did an admirable job of considering small business impacts and taking steps to minimize them. However, the FCC's compliance with the RFA in the Universal Service proceeding was less than desirable. Advocacy continues to attempt to engage the FCC early in the rulemaking process, but the FCC has not taken advantage of the offer. Advocacy has made repeated offers to train the FCC's media bureau on how to comply with the RFA. The FCC has not responded and no training is currently scheduled.

As stated in previous reports, Advocacy believes one of the reasons the FCC has not had consistent compliance with the RFA is its tendency to issue vague proposed rulemakings or even a series of hypothetical questions to the public, which would be more appropriate for a notice of inquiry. Without specific rules, the agency cannot accurately estimate the impacts and assess alternatives to the rule, nor can small businesses comment meaningfully. The FCC has continually rejected Advocacy's recommendations to propose more concrete rules.

35 The FCC's position is that their ex parte rule does not permit them to provide Advocacy drafts in a manner consistent with section 3(b).

Issue: Junk Fax Prevention Act. On January 18, 2006, Advocacy filed a public comment letter on the FCC's proposed rule implementing the Junk Fax Prevention Act of 2005 (JFPA), which codified an exemption to the FCC's do-not-fax rules for unsolicited commercial faxes sent to recipients with whom a business has an established business relationship (EBR). Advocacy recommended that the FCC not limit the EBR duration to 18 months following a purchase or transaction and three months after an inquiry, as the necessary recordkeeping would be burdensome to small businesses. While small businesses track their transactions, many small businesses do not have systems in place to track inquiries by customers. Advocacy recommended that the FCC exempt small businesses from the requirement to provide a cost-free mechanism for recipients of unsolicited fax advertisements to send do-not-fax requests because it is economically burdensome. Advocacy recommended that if the FCC were to decide that small businesses should not be exempt, it should allow small businesses to use alternatives to toll-free numbers such as email, Web-based systems, or the designation of a third party to receive do-not-fax requests.

On March 13, 2006, Advocacy met with the FCC to present a list of recommendations that the FCC (1) grant an exemption for small businesses from the requirement to provide a cost-free mechanism for recipients of unsolicited fax advertisements to send do-not-fax requests, (2) not establish a time limit on an established business relationship at this time, and (3) allow 30 days to respond to a do-not-fax request.

In addition, Advocacy made the following recommendations. While the burden of proof for an EBR should be on the sender, the FCC should allow senders to rely on general records to prove an EBR and not require any particular form of recordkeeping. The FCC should create a safe harbor for communications of fax numbers that would be presumed to be voluntary, such as business cards, letterhead, email footers, advertisements, brochures, and websites. The JFPA requires a "clear and conspicuous notice" that the fax recipient can opt out of receiving any more faxes from the sender. The FCC should adopt the same definition for "clear and conspicuous notice" that the FCC uses in its rules on mobile services commercial messages.

On April 6, 2006, the FCC issued final rules that adopted almost all of the recommendations proposed by Advocacy. Advocacy believes that the rule achieves the FCC's regulatory goal of preventing transmission of unsolicited commercial faxes while minimizing the regulatory burdens on small businesses.

Issue: Universal Service Rule. On June 15, 2006, Advocacy filed a public comment letter with the FCC to urge the agency to conduct an IRFA before it adopts a rule changing the safe harbor percentage for small wireless carriers and imposing Universal Service obligations on Voice over Internet Protocol (VoIP) providers. Universal Service is a program that defrays the cost of providing basic telecommunications service in high-cost areas. VoIP providers are telecommunications companies that provide service over the Internet instead of using the conventional telephone network.

The FCC had announced that it intended to require VoIP providers to contribute for the first time to Universal Service, and the rate chosen for VoIP contributions was higher than for other types of telecommunications. The FCC based this final rule on a proposed rule issued in 2004 that asked broad questions about whether IP-enabled services (such as VoIP) should be regulated and whether they should contribute to Universal Service. The proposed rule did not propose any specific regulations, and the IRFA released with the proposal reflected this lack of specificity. Advocacy was not notified by the FCC before the rule was published.

Advocacy's letter cautioned the FCC that it had not analyzed the economic impacts on small businesses of increasing the safe harbor percentage or imposing Universal Service obligations on VoIP providers. Advocacy recommended that the FCC postpone adopting a final rule on this issue until it has had an opportunity to complete an IRFA. The FCC declined to postpone the rule and adopted a fi-

nal rule on June 27, 2006, requiring VoIP providers to contribute to Universal Service. Concurrent with that order, the FCC released a proposed rule asking for comment on the regulatory requirements it had just adopted. Advocacy was not notified prepublication of this action. After further discussion with small businesses and Advocacy, the FCC revised its reporting requirements on July 27, 2006, allowing small VoIP contributors to file a reduced set of information in conjunction with its Universal Service contributions, thus lowering the regulatory burden.

In response to the proposed rule, Advocacy spoke with representatives of small telecommunications carriers and small interconnected VoIP providers and held a roundtable to discuss the small business implications of the plans. On August 8, 2006, Advocacy filed a public comment letter responding to the proposed rule. Advocacy asked the agency to consider the impact of several issues upon small businesses: the safe harbor rate for both wireless and VoIP providers, the reporting requirements for contributing to the USF, and the timeframe in which they were required to comply. Advocacy also presented significant alternatives including a lower safe harbor rate, removing the requirements for preapproval of traffic studies, waiving penalties for incorrectly estimating future revenue, simplifying reporting forms, raising the de minimis exemption, and choosing a different contribution methodology. As of September 30, 2006, the FCC had not issued a final rule in response to this supplemental rulemaking.

Issue: Section 610 Review. On October 27, 2005, Advocacy filed a letter with the FCC in response to its public notice asking for comment on a review of rules adopted by the agency in 1993 through 1995, and whether they should be continued without change, amended, or rescinded, consistent with Section 610 of the Regulatory Flexibility Act. Section 610 requires each federal agency to plan for, and conduct, the periodic review of its rules that have or will have a significant economic impact on a substantial number of such small entities. Advocacy was not notified prepublication.

Advocacy commended the FCC for the steps it has taken to comply with Section 610 and encouraged the agency to consider the comments presented and respond to the recommendations made by small businesses. Advocacy found several of the comments of particular note because of the potential significant impact on small businesses. The FCC provided no electronic means of filing comments. Advocacy encouraged the FCC to allow small businesses to file comments electronically in response to future Section 610 reviews. As of September 30, 2006, the FCC had not responded to this letter.

Issue: Children's Television Obligations of Digital Television Broadcasters. On August 18, 2006, Advocacy met with officials of the FCC to discuss the agency's initial regulatory flexibility analysis (IRFA) for its proposed Children's Television Obligations of Digital Television Broadcasters rule. The proposal addressed the obligation of television licensees to provide educational programming for children and the requirement that television licensees protect children from excessive and inappropriate commercial messages. Advocacy was not notified prepublication.

Advocacy noted that the FCC neglected to publish the IRFA for the proposed rule and recommended that the agency do so for a reasonable comment period. Advocacy also recommended that the FCC consider the following alternatives: exempting small broadcasters who already provide public affairs content from the educational and informational programming requirements under the proposed rule, allowing broadcasters to rely on certifications from programming providers that website addresses displayed during core programming requirements meet the FCC requirements, and allowing broadcasters to certify that at least 50 percent of the core programming that counts toward meeting the new requirements has not aired within the previous seven days.

On September 29, 2006, the FCC issued a final rule that declined to limit the applicability of the new educational and informational programming requirements to multicast streams that do not already offer educational or public affairs programming. The FCC stated that the revised processing guideline translates the existing three-hour guide-

line to the digital environment in a manner that is both fair to broadcasters and meets the needs of the child audience. Further, the FCC does not expect compliance to be burdensome, but Advocacy will revisit this issue if there is evidence that it imposes an undue burden on broadcasters. The FCC did allow broadcasters to certify compliance with the revised limitation on the repeat of educational and informational digital programming adopted under the multicasting guideline rather than requiring them to identify each program episode. Broadcaster licensees instead must retain records sufficient to document the accuracy of their certification, including records of actual program episodes aired, and must make such documentation available to the public upon request.

Issue: Wireless Spectrum Auctions. On September 20, 2006, Advocacy filed a public comment letter with the FCC in response to a proposal addressing the eligibility of spectrum auction applicants for "designated entity" benefits. The FCC regularly auctions off spectrum licenses, which grant the right to operate a wireless service (such as cellphones or pagers) at a certain frequency. Designated entities are small businesses, businesses owned by minorities and/or women, and rural telephone companies. The principal benefit given to designated entities is bidding credit, which exempts a small business from paying a percentage of the entities' bid. The FCC is seeking to balance two goals given to it by Congress: (1) to provide designated entities with reasonable flexibility to obtain financing from investors, and (2) to prevent ineligible entities from receiving designated entity benefits by circumventing the intent of the rules to obtain those benefits indirectly. Advocacy was not notified prepublication.

Advocacy supported the FCC's effort to promote small business participation in spectrum auctions and urged the FCC to analyze the impact on small businesses and explore regulatory alternatives. The measures discussed by the FCC will have a significant impact on small businesses, as they will add reporting requirements, impose regulatory mandates, or place restrictions on a designated entity's ability to negotiate and contract with third parties. Advocacy recommended that the FCC publish an analysis of these burdens in a supplemental initial regulatory flexibility analysis giving small businesses an opportunity to comment on the impact and alternatives. As of September 30, 2006, the FCC had not issued a final rule or supplemental rulemaking.

Federal Trade Commission

E.O. 13272 Compliance

The Federal Trade Commission (FTC) has made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. The FTC has notified Advocacy through Advocacy's email notification system of draft rules that may have a significant impact on a substantial number of small entities, as required by section 3(b) of E.O. 13272. The FTC did not publish any final rules in FY 2006 that were the subject of any Advocacy comment; therefore, the FTC's compliance with section 3(c) cannot be assessed. FTC staff have not yet received RFA training.

Issue: Identity Theft. On September 18, 2006, Advocacy filed a public comment letter with the Federal Trade Commission to discuss the regulatory impacts and available alternatives in response to the FTC's proposed rule on identity theft red flags. The FTC sought comment on guidelines for creditors on identity theft "red flags," which are patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The proposed rule requires financial institutions and creditors to establish reasonable policies and procedures for implementing the red flag guidelines as well as how to address discrepancies on credit reports.

Advocacy spoke with representatives of small businesses from a variety of different industries to determine the impact of the proposed rule. Small businesses believe that the economic impact of the

rule will be significant. While they are supportive of the overall goals of the rulemaking, they believe that it will take a substantial amount of time for them to review the 31 red flags identified by the FTC and determine which are relevant to their businesses, develop the policy, write the policy, and train employees. Advocacy presented significant alternatives based on its outreach. These alternatives included: delay the implementation, create a shortened red flag list, and provide a certification form. Advocacy also recommended that the FTC issue a compliance guide for small businesses to walk them through each step in the program. As of September 30, 2006, the FTC had not issued a final rule or a supplemental rulemaking.

Securities and Exchange Commission

E.O. 13272 Compliance

The Securities and Exchange Commission (SEC) has not made its RFA compliance procedures available as required by section 3(a) of E.O. 13272. However, the SEC utilizes Advocacy's email notification system to provide its draft and final rules on a regular basis, complying with section 3(b) of E.O 13272. The SEC did not publish any final rules in FY 2006 that were the subject of any Advocacy comment; therefore, the SEC's compliance with section 3(c) cannot be assessed.

The SEC has demonstrated a commitment to working with the public and the Office of Advocacy to balance the impacts of its regulatory actions on small businesses. In particular, Advocacy has worked with the SEC and its Office of Small Business Policy on the small business impacts of the Sarbanes-Oxley Act of 2002 (SOX), which introduced a new requirement of internal controls reporting for companies that submit audited financial reports.

Issue: Advisory Committee on Smaller Public Companies. Based on recommendations by small business representatives and Advocacy, the SEC chartered the Advisory Committee on Smaller Public Companies on March 23, 2005, to assess the recent changes to securities law and changed circumstances required by SOX. On April 23, 2006, the advisory committee published its final report and recommendations, and advised the SEC to defer the implementation of the new section 404 internal control audit requirements until there is an adequate framework in place to account for the size differences between smaller and larger companies. Advocacy wrote a public comment letter supporting the advisory committee's recommendations. On April 27, 2006, Advocacy submitted another comment letter to the SEC in response to an SEC request for comments on compliance experience with section 404 internal control reporting requirements. Advocacy cited evidence solicited by the advisory committee establishing that section 404 reporting requirements would impose a disproportionate cost on smaller public companies and are likely to present major barriers for those companies seeking capital. Advocacy urged the SEC to provide flexibility for small companies to comply with SOX, as recommended by the advisory committee.

Issue: Proposed Extension of Small Public Company Compliance Deadline for New Internal Control Reporting Requirements. In response to one recommendation by the SEC's advisory committee, the SEC proposed to provide small businesses an additional extension of time for implementation of section 404 of the Sarbanes-Oxley Act. This proposed rule would give smaller public companies a five-month extension for a management assessment report and a 17-month extension for an auditor's attestation report. Small public companies would submit a management report with their first annual report the first fiscal year ending on or after December 17, 2007. These entities would not be required to submit an auditor's attestation report until the next year's annual report, or the fiscal year ending on or after December 15, 2008. Advocacy submitted two comment letters to the SEC in September 2006 supporting the proposed extension of time for section 404 compliance and providing input on a section 404

management guidance the SEC is developing. SEC's proposed action is estimated to save nonaccelerated filers (smaller public companies) approximately $5.5 billion in compliance costs.

Small Business Administration

E.O. 13272 Compliance

The Small Business Administration (SBA) has made its RFA policies and procedures available online and provides Advocacy notification of draft rules that may have a significant impact on a substantial number of small entities, as required by sections 3(a) and 3(b) of E.O. 13272. As a result of RFA training and continued discussions on draft rules, SBA personnel have sought Advocacy input earlier in the regulatory development process. SBA did not publish any final rules in FY 2006 that were the subject of Advocacy comment; therefore, SBA's compliance with section 3(c) cannot be assessed.

Issue: The Women-Owned Small Business Federal Contract Assistance Program. On June 15, 2006, SBA issued a proposed rulemaking in the *Federal Register* to implement the Women-Owned Small Business Federal Contract Assistance Program as authorized under the Small Business Reauthorization Act of 2000. The Small Business Reauthorization Act of 2000 authorizes contracting officers to restrict competition to eligible women-owned small businesses (WOSBs) for certain federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in federal procurement. This section further requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in federal procurement.

Based on conversations with affected WOSBs, Advocacy filed a public comment letter on July 17, 2006. While SBA complied with the RFA by providing an IRFA, Advocacy urged SBA to consider revising its IRFA based on the findings of the statutorily mandated study.

Conclusion

The RFA provides federal agencies with specific procedures to address the economic impacts of their regulations on small entities, and consider regulatory alternatives to reduce those impacts. Advocacy has witnessed a change in the culture of federal and state agencies, as more officials have become aware of their regulations' unintended effects on small entities and the economy. This progress can be directly attributed to RFA training, as Advocacy has trained more than 48 agencies in RFA compliance in three years. Advocacy anticipates that the new online RFA training introduced in FY 2006 can increase the number of agencies and federal agency rule writers trained.

In FY 2006, Advocacy staff noticed continued improvement in agency compliance with E.O. 13272 and the RFA. Most agencies notify Advocacy of rules that may have a significant impact on a substantial number of small entities and respond to Advocacy's comments when they publish the final rules in the *Federal Register*.

Advocacy continued to be involved more often at the prepublication stage, enabling agencies to write better rules that reflect the real-world concerns voiced by small businesses. Advocacy's Office of Economic Research provided data on small businesses, such as the number of entities and industry sectors affected by a particular rule. Advocacy held SBREFA panels and roundtables to give small businesses and their trade associations a forum to discuss rulemakings on topics such as industrial safety and environmental regulations. Advocacy staff regularly reviewed proposed regulations and provided preproposal consultation, interagency review under E.O. 12866, interagency and formal comments to the agency, and congressional testimony on regulations.

Advocacy's interventions and assistance helped produce more than $7.25 billion in first-year cost savings and $117 million in annual savings for small businesses in FY 2006. These savings demonstrate that the RFA is succeeding in persuading many agen-

cies to take actions and implement alternatives that reduce the regulatory burden on small entities. Although some agencies do not yet fully comply with the RFA, great progress has been made since the law's enactment in 1980. Educating agencies on RFA compliance will be a continuing priority for Advocacy in FY 2007. Advocacy is hopeful that this training will help agencies fully understand the requirements of the RFA and the importance of including small entitiy impacts in their rulemaking process.

4 Making the States Flexible: Small Business Regulatory Flexibility Model Legislation Initiative

In December 2002, Advocacy presented model regulatory flexibility legislation for the states based on the federal Regulatory Flexibility Act. The intent of the model legislation is to foster a climate for entrepreneurial success in the states so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

"This legislation is a win-win for small business and for effective government. It's good practice to make sure regulations don't pinch our efforts to grow economically."

–Peter C. Groff, Colorado Senate President Pro Tem

The American Legislative Exchange Council (ALEC) adopted the legislation as a model bill, and numerous state legislators, stakeholders, and small business advocacy organizations have pursued its passage in various states.[36] According to Advocacy's state model legislation, successful state-level regulatory flexibility laws address the following areas: 1) a small business definition that is consistent with state practices and permitting authorities; 2) a requirement that state agencies perform an economic impact analysis on the effect of a rule on small business before they regulate; 3) a requirement that state agencies consider less burdensome alternatives for small businesses that still meet the agency's regulatory goals; 4) a provision that requires state governments to review all of their regulations periodically; and 5) judicial review to give the law "teeth."

"Governor Bredesen's executive order establishing regulatory flexibility for small business owners will ensure entrepreneurs spend less time cutting red tape and more time creating jobs in Tennessee."

–Todd Stottlemyer, President and CEO, National Federation of Independent Business

In 2006, 11 states introduced regulatory flexibility legislation (Alabama, Colorado, Illinois, Kansas, Michigan, Mississippi, Nebraska, New Jersey, Pennsylvania, South Dakota, Washington), and two states enacted it (Colorado and South Dakota) to enhance their current rulemaking system (Table 4.1). Georgia Governor Sonny Perdue and Tennessee Governor Phil Bredesen implemented regulatory flexibility through executive orders in 2006.

Since 2002, 34 state legislatures have considered regulatory flexibility legislation,[37] and 19 states have implemented regulatory flexibility through executive orders or legislation.[38] (See Table 4.2 and Chart 4.1 for current status.)

In states that have passed regulatory flexibility laws, the Office of Advocacy works with the small business community, state legislators, and state government agencies to assist with implementation and to ensure the law's effectiveness. The implementation

36 Organizations include the National Federation of Independent Business (NFIB), state chambers of commerce, the U.S. Chamber of Commerce, the Small Business & Entrepreneurship Council (SBEC), and the National Association for the Self-Employed (NASE).

37 These states are Alabama, Alaska, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

38 These states are Alaska, Arkansas, Colorado, Connecticut, Georgia, Indiana, Kentucky, Massachusetts, Missouri, North Dakota, New Mexico, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin.

stage brings new challenges and opportunity to the model legislation initiative.

The Office of Advocacy is strengthened by regional advocates located in the Small Business Administration's 10 regions across the country. These are the chief counsel for advocacy's direct link to small business owners, state and local government bodies, and organizations that support the interests of small entities. The regional advocates help identify regulatory concerns of small businesses by monitoring the impact of federal and state policies at the grassroots level. Their work goes far to develop programs and policies that encourage fair regulatory treatment of small businesses and help ensure their future growth and prosperity.

The text of Advocacy's model legislation, updated versions of the state regulatory flexibility legislative activity map, and regional advocate contact information can be found on the Advocacy website at **http://www.sba.gov/advo/laws/law_modeleg.html.**

Success Stories

Arkansas: The Importance of Regulatory Flexibility for Arkansas' Small Businesses

In February 2005, Arkansas Governor Mike Huckabee signed Executive Order (EO) 05-04, requiring agencies to evaluate the economic impact of proposed regulations on small businesses and to consider less burdensome alternatives. Also under the executive order, agencies must submit this analysis to the Arkansas Department of Economic Development (ADED) Small and Minority Business Unit, which is responsible for the oversight of the state's regulatory flexibility program.

During the 2005 General Assembly, a law passed requiring the Arkansas Department of Labor (DOL) to license elevator contractors, elevator mechanics and elevator inspectors. Additionally, the Elevator Safety Board, within the DOL, was in the process of updating its regulations for the first time in 10 years. Outdated regulations often resulted in contractors having to obtain variances through a cumbersome process simply to utilize newer technologies recognized in the latest American Society of Mechanical Engineers' (ASME) safety codes for elevators and escalators.

"Small businesses employ almost half the workforce and provide valuable ownership opportunities for women and minorities. This executive order establishing regulatory flexibility for small business owners is a way for state government to ensure that the concerns of the small business community are addressed and that small business are protected."

–Arkansas Governor Mike Huckabee

As the Elevator Safety Board and the agency proceeded through the regulatory flexibility process, two expensive small business compliance issues became apparent. First, elevators installed from 1963 to 1973, which previously had not been required to install fire service, were going to be required to do so under the revised rules. The Safety Division found that approximately 337 elevators in Arkansas could be affected, and of those, 200 were located in small businesses. The cost to install the fire service was estimated at approximately $10,000 per elevator.

The second compliance issue dealt with a retrofit requirement for hydraulic elevators that have a flat-bottom hydraulic jack, or a single-bottom cylinder. The most recent ASME code required the replacement of the cylinder with a double cylinder or one with a safety bulkhead to prevent the elevator from falling if an in-ground cylinder ruptured. The agency intially estimated that approximately 350 elevators installed prior to 1980 might be affected, and of those, 208 were located in small businesses. The least expensive retrofit would cost approximately $10,000 per elevator.

As the agency received input from the ADED Small and Minority Business Unit, a third issue was identified. Small speciality installation contractors felt that it was overly burdensome to license and test their employees in the same manner

as a mechanic working for a larger company. They argued that elevator mechanics who only install wheelchair accessibility lifts should not be subject to the same stringent testing required of those who install commercial elevators in high-rise buildings.

As a result of the Arkansas regulatory flexibility law, the Elevator Safety Board and DOL received comments and input from the ADED Small and Minority Business Unit and a number of other small businesses. Each party recognized the public safety issues involved and approached the process cooperatively. The final regulations, effective September 1, 2006, reflected this collaborative process and flexible regulatory methods.

Owners of elevators without fire service or with a flat-bottom hydraulic jack were given five years to come into compliance. The regulations allow for an exception from these requirements in cases of demonstrated undue hardship where reasonable safety is assured. Also, a restricted class of license with a less stringent testing requirement was created for elevator mechanics that exclusively install wheelchair accessibility lifts.

This example demonstrates a how a strong regulatory flexibility law facilitates a working relationship between small business stakeholders and regulating agencies. The result is a set of rules that will be less harmful to small businesses while accomplishing the agency goal of elevator safety.

Table 4.1 State Regulatory Flexibility Legislation, 2006 Legislative Activity

Four states enacted regulatory flexibility legislation or an executive order in 2006

Colorado (HB 1041)	South Dakota (SB 74, SB 75)
Georgia (EO)	Tennessee (EO)

Eleven states introduced regulatory flexibility legislation in 2006

Alabama (HB 320)	Michigan (HB 5849 /HB 5850/ HB 5812)	Pennsylvania (HB 236/SB 842)
Connecticut (HB 1041)	Mississippi (HB 1113/ SB 2881)	South Dakota (SB 74/SB 75)
Illinois (HB 5388)	Nebraska (LB 1170)	Washington (HB 1445)
Kansas (HB 2821)	New Jersey (A 2327/SB 1335)	

Table 4.2 State Regulatory Flexibility Legislation, Status as of October 2006

13 states and one territory have active regulatory flexibility statutes

Arizona	Missouri	Oklahoma	Virginia
Connecticut	Nevada	Oregon	Wisconsin
Hawaii	New York	Puerto Rico	
Indiana	North Dakota	South Carolina	

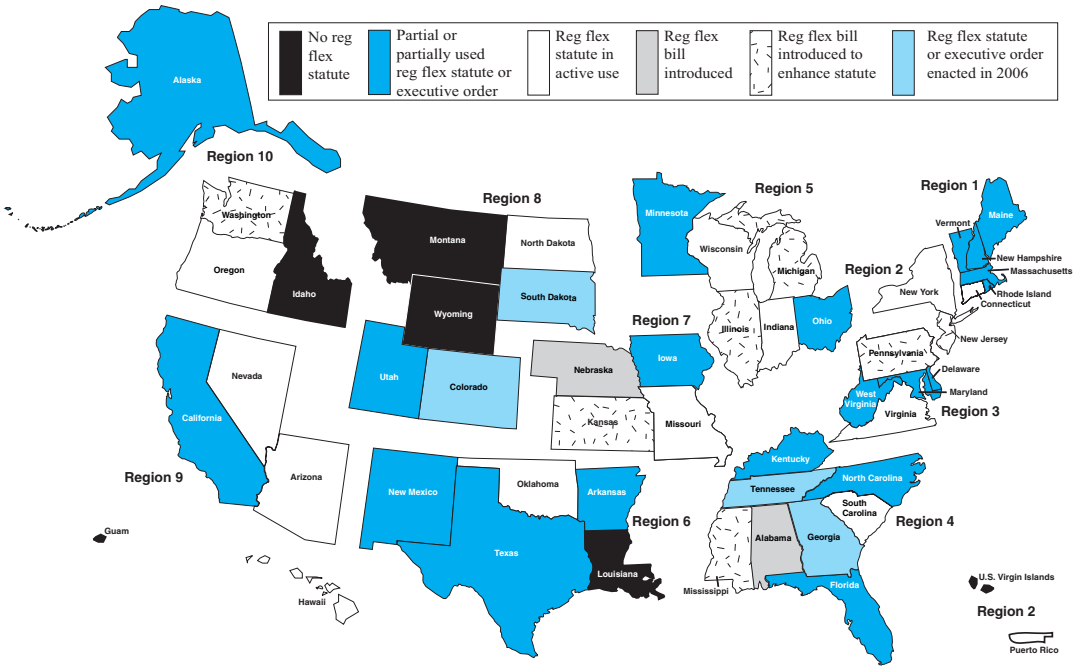
29 states have partial or partially used regulatory flexibility statutes

Alaska	Iowa	New Hampshire	Texas
Arkansas (EO)	Kentucky	New Jersey	Utah
California	Maine	New Mexico	Vermont
Colorado	Maryland	North Carolina	Washington
Delaware	Massachusetts	Ohio	West Virginia
Florida	Michigan	Pennsylvania	
Georgia	Minnesota	Rhode Island	
Illinois	Mississippi	South Dakota	

7 states, 2 territories, and the District of Columbia have no regulatory flexibility statutes

Alabama	Idaho	Montana	Wyoming
District of Columbia	Kansas	Nebraska	
Guam	Louisiana	Virgin Islands	

Chart 4.1 Mapping State Regulatory Flexibility Provisions, FY 2006



September 2006

Appendix A Supplementary Tables

Table A.1 Cabinet Department RFA Procedures in Compliance with Section 3(a) of E.O. 13272

Department	Document made available at:
Agriculture	**http://www.ocio.usda.gov/directives/doc/DR1512-001.pdf**
Commerce	**www.ogc.doc.gov/ogc/legreg/testimon/108f/guidelines.htm**
Defense	DOD has not submitted procedures separate from the FAR Council/ GSA's submission.
Education	**www.ed.gov/legislation/FedRegister/finrule/2003-2/051203d.html**
Energy	**www.gc.doe.gov/rulemaking/eo13272.pdf**
Health and Human Services	**www.hhs.gov/execsec/smallbus.html**
Homeland Security	**www.tsa.gov/assets/pdf/Regulatory-Flexibility-Act%20-EO-13272_signed.pdf**
Coast Guard	**www.uscg.mil/hq/g-m/regs/reghome.html**
Housing and Urban Development	**www.hud.gov/offices/osdbu/policy/impact.cfm**
Interior	**http://elips.doi.gov/elips/release/3207.htm**
Justice	**www.usdoj.gov/olp/execorder13272.pdf**
Labor	**www.dol.gov/dol/regs/guidelines.htm**
State	The Department of State has not submitted written procedures.
Transportation	**http://regs.dot.gov/docs/eo-13272.pdf**
Treasury	**www.treas.gov/regs/2002-rfa-compliance.pdf?IMAGE.X=24\&IMAGE.Y=8**
Veterans Affairs	**www.va.gov/osdbu/resources/index.htm**

Note: The following independent agencies that regulate small entities have not submitted written procedures under Section 3(a) of E.O. 13272: the Export-Import Bank of the United States, the Farm Credit Administration, the Federal Communications Commission (submitted a letter saying not covered by executive orders), the Federal Emergency Management Agency, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Reserve System, and the Securities and Exchange Commission.

Table A.2 RFA Training in Federal Agencies, FY 2003-2006

In fulfillment of E.O. 13272, Advocacy trained regulatory staff from the following federal departments and agencies on how to comply with the Regulatory Flexibility Act from July 2003 through September 2006.

Department of Agriculture
- Animal and Plant Health Inspection Service

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

Department of Education

Department of Energy

Department of Health and Human Services
- Centers for Medicare and Medicaid Services
- Food and Drug Administration

Department of Homeland Security
- Bureau of Citizenship and Immigration Services
- Bureau of Customs and Border Protection
- Transportation Security Administration
- United States Coast Guard

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

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

Department of Justice
- Bureau of Alcohol, Tobacco, and Firearms

Department of Labor
- Employee Benefits Security Administration
- Employment and Training Administration
- Employment Standards Administration
- Mine Safety and Health Administration
- Occupational Safety and Health Administration

- Department of Transportation
  - Federal Aviation Administration
  - Federal Highway Administration
  - Federal Motor Carrier Safety Administration
  - Federal Railroad Administration
  - National Highway Traffic Safety Administration
  - Research and Special Programs Administration
- Department of the Treasury
  - Financial Crimes Enforcement Network
  - Financial Management Service
  - Internal Revenue Service
  - Office of the Comptroller of the Currency
  - Tax and Trade Bureau
- Department of Veterans Affairs
- Independent Federal Agencies
  - Access Board
  - Environmental Protection Agency
  - Federal Communications Commission
  - Federal Deposit Insurance Corporation
  - Federal Election Commission
  - General Services Administration/FAR Council
  - Securities and Exchange Commission
  - Small Business Administration

Table A.3 SBREFA Panels through Fiscal Year 2006

Rule Subject	Date Convened	Report Completed	NPRM[1]	Final Rule Published
Environmental Protection Agency				
Non-Road Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
Industrial Laundries Effluent Guideline	06/06/97	08/08/97	12/12/97	Withdrawn[2]
Stormwater Phase 2	06/19/97	08/07/97	01/09/98	12/08/99
Transport Equipment Cleaning Effluent Guideline	07/16/97	09/23/97	06/25/98	08/14/00
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	01/13/99	12/22/00
Underground Injection Control 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
Federal Implementation Plan for Regional Nitrogen Oxides 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
Light Duty Vehicles/Light Duty Trucks Emissions And Sulfur in Gasoline	08/27/98	10/26/98	05/13/99	02/10/00
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01 08/14/02	11/08/02

Rule Subject	Date Convened	Report Completed	NPRM[1]	Final Rule Published
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	
Metal Products and Machinery Effluent Guideline	12/09/99	03/03/00	01/03/01	05/13/03
Concentrated Animal Feedlots Effluent Guideline	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 Disinfection Byproducts	04/25/00	06/23/00		
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
Emissions from Non-Road and Recreational Engines and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
Construction and Development Effluent Guideline	07/16/01	10/12/01	06/24/02	Withdrawn[3]
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
Non-Road Diesel Emissions—Tier 4 Rules	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 Implementation Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Federal Implementation Plan for Regional Nitrogen Oxides (2005 Clean Air Implementation Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Mobile Source Air Toxics – Control of Hazardous Air Pollutants From Mobile Sources	09/07/05	11/08/06	03/29/06	

Rule Subject	Date Convened	Report Completed	NPRM[1]	Final Rule Published
Occupational Safety and Health Administration				
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn[4]
Safety and Health Program Rule	10/20/98	12/19/98	Withdrawn	
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00[5]
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	
Confined Spaces in Construction	09/26/03	11/24/03		
Occupational Exposure to Respirable Crystalline Silica Dust	10/21/03	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	06/18/06			

1 Notice of proposed rulemaking (NPRM).
2 Proposed rule was withdrawn August 18, 1999. EPA does not plan to issue a final rule.
3 Proposed rule was withdrawn on April 26, 2004. EPA does not plan to issue a final rule.
4 Proposed rule was withdrawn on December 31, 2003. OSHA does not plan to issue a final rule.
5 President Bush signed Senate J. Res. 6 on March 20, 2001, which eliminated this final rule under the Congressional Review Act.

Appendix B
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).

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.

§ 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 succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary 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) 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;

(4) 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; and

(5) 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.

(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 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 advanced 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 the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

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

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

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

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

§ 610. Periodic review of rules

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

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

(1) the continued need for the rule;

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

(3) the complexity of the rule;

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

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

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

§ 611. Judicial review

(a) (1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of

sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

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

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

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

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

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

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

(A) remanding the rule to the agency, and

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

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

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

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

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

§ 612. Reports and intervention rights

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

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

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

Appendix C
Executive Order 13272

Presidential Documents

Executive Order 13272 of August 13, 2002

The President

Proper Consideration of Small Entities in Agency Rulemaking

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

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

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

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

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

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

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

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

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

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the **Federal Register** of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the

final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

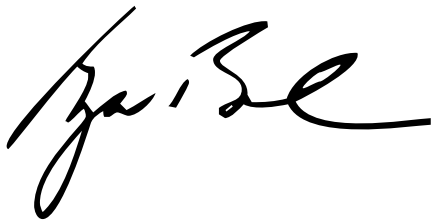
Sec. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term ''agency,'' shall have the same meaning in this order.

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

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

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

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



THE WHITE HOUSE,
August 13, 2002.

Appendix D
Abbreviations

ADED	Arkansas Department of Economic Development
ALEC	American Legislative Exchange Council
AMS	Agricultural Marketing Service
APA	Administrative Procedure Act
APPA	American Public Power Association
APHIS	Animal and Plant Health Inspection Service
ASME	American Society of Mechanical Engineering
CMS	Centers for Medicare and Medicaid Services
CHD	critical habitat designation
DFARS	Defense Federal Acquisition Supplement
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
EBR	established business relationship
EBSA	Employee Benefits Security Administration
Education	Department of Education
E.O.	Executive Order
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FCA	Farm Credit Administration
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FHFB	Federal Housing Finance Board
FMC	Federal Maritime Commission
FMVSS	Federal Motor Vehicle Safety Standard
FRFA	final regulatory flexibility analysis
FRS	Federal Reserve System
FSIS	Food Safety and Inspection Service
FTC	Federal Trade Commission
FWS	Fish and Wildlife Service
FY	fiscal year
GRS	groundfish retention standard
GSA	General Services Administration

GIPSA	Grain Inspection, Packers and Stockyard Administration
HCFA	Health Care Financing Agency, now renamed, see CMS
HHA	home health agency
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IP	Internet Protocol
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
JFPA	Junk Fax Protection Act
MSAT	mobile source air toxics
MSHA	Mine Safety and Health Administration
MTSA	Maritime Transportation Security Act
NASA	National Aeronautics and Space Administration
NASE	National Association for the Self-Employed
NFIB	National Federation of Independent Business
NHTSA	National Highway Traffic Safety Administration
NMFS	National Marine Fisheries Service
NPRM	notice of proposed rulemaking
NPS	National Park Service
OASIS	Outcome and Assessment Information Set
OCC	Office of the Comptroller of the Currency
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OTA	other transaction agreements
OSHA	Occupational Safety and Health Administration
OTS	Office of Thrift Supervision
PBT	persistent, bioaccumulative, and toxic
PEL	permissible exposure limit
PHMSA	Pipeline and Hazardous Materials Safety Administration
P.L.	Public Law
PTO	Patent and Trademark Office
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RFID	radio frequency identification
RSPA	Research and Special Programs Administration, now renamed, see PHMSA
SBA	Small Business Administration
SBEC	Small Business & Entrepreneurship Council
SBREFA	Small Business Regulatory Enforcement Fairness Act
SEC	Securities and Exchange Commission
SER	small entity representative
SFRA	special flight rules area
SOX	Sarbanes-Oxley Act
SPCC	Spill Prevention Control and Countermeasures
State	Department of State
TREAD	Transportation Recall Enhancement, Accountability, and Documentation Act

Treasury	Department of the Treasury
TRI	toxics release inventory
TSA	Transportation Security Administration
TWIC	transportation worker identification credential
USDA	United States Department of Agriculture
U.S.C.	United States Code
VA	Department of Veterans Affairs
VoIP	Voice over Internet Protocol
WOSB	women-owned small business