

Report on the Regulatory Flexibility Act FY 2007



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

February 2008

To the President and the Congress of the United States

I am pleased to present to Congress and the President the fiscal year (FY) 2007 *Report on the Regulatory Flexibility Act*. Included in this year's edition is a report on agency compliance with Executive Order 13272 and the Regulatory Flexibility Act of 1980 (RFA), as well as Advocacy's new Regulatory Review and Reform (r3) initiative. The RFA requires agencies to review the prospective impact of proposed rules on small entities and to consider significant alternatives that minimize small entity impacts. E.O. 13272 furthers Advocacy's mission by directing agencies to post their implementation procedures publicly and by requiring the Office of Advocacy to train federal agencies in how to comply with the law.

The Office of Advocacy's success in enhancing agency understanding of the RFA has steadily increased because of our strong commitment to RFA compliance training. In fulfillment of our five-year goal under E.O. 13272, we completed training for virtually all federal agencies that regulate small businesses in FY 2007. On September 12, 2007, Advocacy Attorneys Claudia Rodgers and Keith Holman and Regulatory Economist Joe Johnson conducted a multi-agency training session on the RFA in accordance with the requirements of E.O. 13272. This session concluded the first round of training efforts begun in 2003, and to date Advocacy has provided training to 58 federal rulemaking entities. In addition to training agencies, the office intervened in various small business issues by submitting comments about key agency rules, testifying before Congress, participating in Small Business Regulatory Enforcement Fairness Act (SBREFA) panels, advocating for legislative change on a number of small business concerns, and responding to specific small business requests for assistance with vital issues.

FY 2007 marked the culmination of Advocacy's 15-year effort on behalf of small businesses seeking relief from the Environmental Protection Agency's (EPA's) toxics release inventory (TRI) reporting. Our involvement in this rulemaking began with the filing of a petition in 1991 and culminated on December 18, 2006, when the EPA expanded the number of TRI filings that qualify for the shorter Form A. EPA's TRI reform creates an incentive for businesses to reduce toxic emissions and provides burden reduction relief to small firms, while preserving the integrity of the public's right to know.

While most of our work does not warrant front-page news coverage, there is usually at least one issue that captures national attention. In 2007, that was small businesses' concern with the Department of Homeland Security's (DHS's) new rule, "Final Safe Harbor Procedures for Employers Who Receive a No-Match Letter." The rule requires employers to take certain steps upon receipt of a letter from the Social Security Administration (SSA) indicating that an employee's name and social security number in the SSA database do not match. On September 18, 2007, Advocacy wrote to DHS to assist the agency in fulfilling its RFA requirements with respect to this rule. Because the "no-match" rule would impose several costs and legal obligations on employers, working with DHS to address these small business concerns was critical.

Our progress in guiding agencies in how to consider the impact of rules on small entities and how to comply with the RFA has increased with each agency communication. Some agencies have made the Office of Advocacy their first point of contact when addressing small business concerns. Moreover, these agencies are strengthening their interaction with small businesses and the trade associations that represent them. These outreach efforts have been furthered through meetings and roundtables hosted by Advocacy. The coordination between small businesses and agencies has not only enhanced RFA compliance, but it also produced solid results in cost savings for small businesses in FY 2007.

The office's success is also measurable through our efforts to connect the small business community

with state regulatory bodies to assess the impacts of rules. Advocacy drafted model legislation based on the RFA to offer guidance to states in how to reduce the regulatory burden imposed by state agencies. Since 2002, 37 states have considered regulatory flexibility legislation and 22 states have implemented regulatory flexibility via executive order or legislation. This state-level awareness of the various regulatory impacts on small business bolsters the RFA's long-term effectiveness. Our March 2007 conference in Kansas City, Missouri, "Building a Better Small Business Climate: State Regulatory Flexibility Best Practices," was a way to begin creating a community of small business advocates whose day-to-day responsibilities involve making their states' regulatory flexibility laws a success.

Measuring the RFA's effectiveness is not limited to efforts involving new or proposed regulations. To fully address the regulatory burden, agencies should also review existing rules that may have developed adverse economic impacts on small businesses over time. Section 610 of the RFA recognizes this important need for regulatory review

and directs agencies to consider whether their current regulations are necessary. On August 16, 2007, Advocacy launched the Small Business Regulatory Review and Reform (r3) initiative, designed to further the important goals of section 610. The r3 initiative is intended to help agencies pinpoint existing federal rules that warrant review, and reform them if they are found to be ineffective, duplicative, or out of date. Advocacy believes that the r3 initiative will be a useful tool for small businesses and agencies alike in improving the quality of reviews of existing regulations.

Small businesses are the nation's economic backbone, representing 99.9 percent of all employer firms and generating 60 to 80 percent of net new jobs annually over the past 10 years. Our office is dedicated to fostering a regulatory environment that enables these small entities to further innovate in the dynamic U.S. marketplace. With new long-term objectives like our r3 initiative, and cooperation from the federal agencies, we can work together to streamline the regulatory process and ensure that small businesses remain a competitive force.



Thomas M. Sullivan
Chief Counsel for Advocacy

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1 An Overview of the Regulatory Flexibility Act and Related Policy in Fiscal Year 2007

With the passage of the Regulatory Flexibility Act in 1980, Congress directed federal agencies specifically to consider the impact of their regulations on small businesses and the economy.

Over time, agencies began to certify that rules would not have an impact on small businesses, even as those businesses complained about the crippling burden of increasing federal regulation. The RFA needed teeth, and in 1996, the passage of the Small Business Regulatory Enforcement Fairness Act added the possibility of judicial review of agency actions to the mix. Some predicted a flood of anti-regulation litigation under the new act, but those floodgates never opened. A small, steady stream of cases did emerge, with some affirming agencies' well-considered decisions and with others upholding challenges under the RFA where the agencies clearly had not followed the law.

Overall agency RFA performance improved with the additional requirements under SBREFA and the threat of judicial review. At the same time, some agencies resisted the idea that consideration of small business interests should be part of their rule-making culture. In response, on March 19, 2002, President George W. Bush announced his Small Business Agenda, which included the goal of "tearing down the regulatory barriers to job creation for small businesses and giving small business owners a voice in the complex and confusing federal regulatory process."

On August 13, 2002, the President signed Executive Order (E.O.) 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking." E.O. 13272 enhanced Advocacy's RFA mandate by directing federal agencies to implement written

procedures and policies for measuring the economic impact of their regulatory proposals on small entities. It also required agencies to notify Advocacy of draft rules expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments provided by Advocacy, including publishing a response to Advocacy's comments in the *Federal Register*. Under the executive order, the Office of Advocacy must provide periodic notification of the requirements of the RFA, as well as training all federal agencies in how to comply with its provisions.

After developing the curriculum for a hands-on training program, Advocacy's staff began classroom training for agencies in 2003. In May 2006, Advocacy made computer-based RFA training modules available to agencies so that agency employees could obtain initial or refresher RFA expertise on demand. By late 2007, Advocacy had trained nearly all federal agencies, departments, and independent commissions that write rules affecting small businesses.

The SBREFA amendments to the RFA have been reasonably successful. In general, agencies are paying closer attention to their RFA obligations. Some agencies submit their draft regulations to Advocacy early in the process to obtain feedback on their RFA compliance and small business impact. Early interventions by Advocacy and improved agency compliance with the RFA have led to less burdensome regulations.

The RFA is achieving cost savings for small entities, yet more remains to be done to reduce the regulatory burden. In 2005, an Office of Advocacy study prepared by Mark Crain on *The Impact of Regulatory Costs on Small Firms* determined that the overall cost of federal regulation totals \$1.1 trillion. The annual cost per employee for firms with fewer than 20 employees is \$7,647—45 percent higher than for their larger counterparts with 500 or more employees. In addition to Advocacy's work, legislative action is necessary to continue to lower regulatory costs and level the playing field for small entities.

Small entities are limited in what they can do about burdensome regulations currently in existence.

Legal avenues that can be pursued to have these rules reviewed are costly and time consuming. The Office of Advocacy believes it is time for the next stage of RFA development. That stage involves greater emphasis on the review of the impact of existing rules under Section 610 of the RFA, and the appropriate consideration of existing rules nominated by small businesses for regulatory review and reform.

The regulatory burden likely to be imposed by a single proposed rule may be bearable; that rule, when added to numerous existing rules, may contribute to a crippling cumulative burden. Section 610 of the RFA requires agencies to periodically review their existing rules that may have a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the stated objectives of applicable statutes. Agency compliance with section 610 has historically been poor.

The automatic review of regulations afforded through section 610 was designed to ensure the removal of burdensome regulations and save small entities and federal agencies the hassle of costly litigation to obtain relief. Limiting the review to the regulations the agency deemed to have a significant economic impact at the time of promulgation is problematic. Since new regulations are promulgated each year, the cumulative impact of regulations on small entities can be staggering, even if individually the regulations may not have had a significant economic impact at the time they were promulgated.

The Office of Advocacy recently unveiled its Regulatory Review and Reform Initiative (r3) to address the cumulative impact of the federal regulatory burden. The r3 initiative is designed to identify and address existing federal regulations that should be revised because they may be ineffective, duplicative, or out of date. This is a tool for small business stakeholders to suggest needed reforms and includes the agency review process under Section 610. The r3 effort will monitor the progress that agencies make toward achieving reforms. Federal agencies will do a better job of identifying and revising rules that need to be reformed because of r3.

2 Improvements Needed in Agency Section 610 Compliance

Section 610 of the Regulatory Flexibility Act requires agencies to review existing regulations to determine if they are outdated, duplicative, or overly complex. Agency compliance has been spotty and lacks transparency. In an effort to increase compliance with section 610 and to ensure that agencies conduct transparent reviews in general, the Office of Advocacy developed the Regulatory Review and Reform (r3) initiative.

r3: Advocacy's Regulatory Review and Reform Initiative

The r3 initiative is designed to identify and address existing federal rules that should be reviewed and may need reforming. r3 is a tool for small business stakeholders to suggest needed reforms to regulations that are outdated, ineffective, duplicative, or otherwise in need of review. r3 includes the process under section 610 of the Regulatory Flexibility Act (RFA) by which an agency considers whether a current regulation is still needed, and the degree to which technology, economic conditions, or other factors have changed since the regulation was first written. r3 also includes a process by which interested small business stakeholders can nominate existing rules for review and potential reform, and monitor the progress that agencies make toward achieving those reforms.

Background

The cost of complying with federal regulatory requirements has grown dramatically since the early 1970s, and small businesses have borne a disproportionate share of this regulatory burden. In 1979, the cost of federal regulations reached an estimated \$100 billion, representing a fivefold increase from the 1970 total. Recent estimates indicate that this cost has further expanded to \$1.1 trillion, or more than \$10,000 per household in 2004—more than the amount the average household spent on health insurance. The Office of Advocacy has played a key role in voicing small business concerns about these rising costs. Advocacy has made significant progress in working with federal agencies to improve their proposed rules by reducing their impacts on small entities while still accomplishing their regulatory objectives.

Beyond efforts to reduce the small entity impacts of proposed rules, Advocacy is undertaking new efforts to persuade federal agencies to comply with the RFA by considering the impacts of their existing regulations. Section 610 of the RFA, enacted in 1980, requires agencies to look at their existing regulations within 10 years to see if they are outdated, ineffective, or duplicative. Agency compliance with section 610's periodic review requirement has varied substantially from agency to agency; some agencies review few, if any, of their current rules. A Government Accountability Office (GAO) report released in August 2007 highlighted the need for clearer standards and enhanced public participation in the section 610 review process.¹

Designing the r3 Initiative

In response to the GAO's findings and concerns of small businesses, the r3 initiative was officially launched on August 16, 2007. The Office of Advocacy designed the r3 initiative to (1) assist agencies and small business stakeholders to better understand

1 The report is available at: www.gao.gov/new.items/d07791.pdf.

and benefit from section 610 reviews of existing rules, and (2) to give interested small entities the opportunity to nominate existing agency rules for review and potential reform. The initiative is intended to encourage agencies to undertake more meaningful section 610 reviews, and to consider tailoring similar reviews of existing rules conducted for other reasons to fit the section 610 criteria. Small business stakeholders are encouraged to suggest rules that should be reviewed and—if found to be outdated, ineffective, or duplicative—reformed.

In October 2007, Advocacy developed and released a “best practices” document to assist agencies in meeting their section 610 obligations. This best practices document is included in this report in Appendix C.²

Outreach Effort and Nominations for Review/Reform

On October 16, 2007, the Office of Advocacy hosted an r3 roundtable to provide representatives from small business associations, government, and academia an opportunity to learn about r3. The office also met with numerous small business groups to inform them about the initiative and the process for submitting r3 review nominations. By the submission deadline, Advocacy had received a total of 82 nominations for review and potential reform.³

The 2008 Top 10 r3 Rules for Review/Reform

After significant review and analysis of the 82 nominations received, the Chief Counsel for Advocacy selected the following nominations as the 2008 Top 10 rules for review and potential reform, listed here in alphabetical order by agency:⁴

2 The best practices guide is also available at www.sba.gov/advo/r3.

3 A list of all 82 r3 nominations can be found at www.sba.gov/advo/r3.

4 For detailed information about the Top 10 r3 rules, see Appendix B of this report.

- **Environmental Protection Agency (EPA): Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology.** EPA should revise outdated or inaccurate testing requirements so that modern dry cleaners can have a valid method for demonstrating compliance.
- **EPA: Flexibility for Community Drinking Water Systems.** EPA should consider expanding the ways for small communities to qualify to meet alternative drinking water standards, provided that the alternative standards are protective of human health and are approved by state authorities.
- **EPA: Simplify the Rules for Recycling Solid Wastes.** EPA should simplify the rules for recycling useful materials that, because of their current classification, must be handled, transported, and disposed of as hazardous wastes.
- **EPA: EPA Should Clearly Define “Oil” in its Oil Spill Rules.** EPA should clarify the definition of “oil” in its oil spill program, so that small facilities that store nonpetroleum-based products are not unintentionally captured by spill program requirements.
- **Federal Aviation Administration (FAA): Update Flight Rules for the Washington, DC, Regional Area.** FAA and other agencies should review the flight restriction rule for the region surrounding Washington, DC, to determine whether the rule could be revised to avoid harming small airports within the region.
- **Federal Acquisition Regulation (FAR) Council: Eliminate Duplicative Financial Requirements for Architect-engineering Services Firms in Government Contracting.** The duplicative retainage

requirement should be removed or reduced in architect-engineering services contracts, as has been done for other services.

- **Internal Revenue Service (IRS): Simplify the Home Office Business Deduction.** The IRS should revise their rules to permit a standard deduction for home-based businesses, which constitute 53 percent of all small businesses.
- **Mine Safety and Health Administration (MSHA): Update MSHA Rules on the Use of Explosives in Mines to Reflect Modern Industry Standards.** MSHA should update its current rules to be consistent with modern mining industry explosives standards.
- **Occupational Safety and Health Administration (OSHA): Update OSHA's Medical/Laboratory Worker Rule.** The current rule should be reviewed to determine whether it can be made more flexible in situations where workers do not have potential exposure to bloodborne pathogens.
- **Office of Federal Procurement Policy (OFPP): Update Reverse Auction Techniques for Online Procurement.** The current reverse auction techniques should be reviewed to determine whether a government-wide rule is necessary to create a more consistent and predictable online process.

The 2008 Top 10 rules were ultimately chosen on the basis of several factors: (1) whether the rule could reasonably be tailored to accomplish its intended objectives while reducing the impact on small businesses or small communities; (2) whether the rule being nominated has ever been reviewed for its impact on small entities; (3) whether technology, economic conditions, or other factors have changed since the rule was originally written; (4) whether the rule imposes duplicative requirements; and (5) the

overall importance of the rule to small businesses and small communities.

Some rules that were nominated were not selected as Top 10 rules because the Office of Advocacy is already working with agencies to implement the suggested reform or the agency has indicated that the suggested reform is already under way. One such nomination involved the recommendation that the National Highway Traffic Safety Administration (NHTSA) revise its Tire Registration and Recordkeeping rule to allow tire dealers to register tire sales with an online form, rather than asking customers to complete and mail a paper form. After Advocacy received the reform nomination, and was considering the nomination as a possible Top 10 candidate, NHTSA proposed revisions to the Tire Registration rule that would accomplish the suggested reform.⁵

Other nominations that were not chosen as 2008 Top 10 rules have given Advocacy valuable insight into the regulatory issues of concern to small businesses, which will help Advocacy prioritize its regulatory agenda in 2008.

Next Steps

The Office of Advocacy will be working closely in 2008 with the agencies whose rules were selected for review/reform. To track agency progress, the recommended reforms will be posted on Advocacy's website, www.sba.gov/advo/r3, and monitored, and an update on the status of the rules will be made available to the public twice a year. Advocacy encourages small businesses and their representatives to follow the progress of the reviews/reforms and comment to the agencies on that progress. The r3 initiative will be a useful tool for small businesses and agencies alike in reviewing existing regulations, and where appropriate, improving them.⁶

⁵ See 73 *Fed. Reg.* 4157 (January 24, 2008).

⁶ For more information, visit the Office of Advocacy's r3 website at www.sba.gov/advo/r3.

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

In addition to the legal requirements of the Regulatory Flexibility Act itself, Executive Order 13272 sets forth additional compliance requirements to assist federal agencies in promulgating rules that are clear and that minimize undue economic burdens on small entities. Federal agencies must meet three requirements set forth under section 3 of E.O. 13272. First, they must consider the potential economic impact of their regulations on small entities and publicly document their policies containing this critical analysis.⁷ Second, agencies must notify Advocacy of prepublication rules that may impose a significant economic impact on small businesses, either when the rule is sent to the Office of Information and Regulatory Affairs (OIRA) or at a reasonable time prior to its publication.⁸ To best facilitate prompt agency compliance with the electronic notice requirements of E.O. 13272, Advocacy created an email address: notify.advocacy@sba.gov. Finally, E.O. 13272 requires the agencies to consider Advocacy's comments and recommendations on a proposed rule and to respond to Advocacy's written comments in the final rule published in the *Federal Register*.⁹

7 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.

8 Exec. Order No 12866, 58 *Fed. Reg.* 51,735 (Sept. 30, 1993) triggers a review by OIRA of any "significant regulatory action."

9 *Id.* at § 3(c).

RFA Training under E.O. 13272

E.O. 13272 requires that Advocacy train every federal agency in how to comply with the RFA.¹⁰ When this task was given to Advocacy in 2002, the office identified 66 departments, agencies and independent commissions that promulgate regulations affecting small businesses. In FY 2007, Advocacy completed the mission of offering training to all of the important segments of the government that have an impact on small businesses. Advocacy has trained numerous economists, attorneys, and regulatory and policy staff at these agencies in how to consider the impact of their regulations on small entities before, during, and after the drafting of regulations.

Advocacy's success in RFA compliance training of regulatory and policy experts throughout the federal agencies over the past five years has led to a greater willingness by the agencies to share draft documents with Advocacy. Advocacy's training program has improved agency analysis of the federal regulatory burden on small businesses and has enhanced the factual basis for agency certifications of rules. Not all agencies are quick to consider small business impacts from the beginning of rule development, but these training sessions have indeed made a difference to many agencies in their rule development process, and therefore ultimately they have made a difference to small businesses.

Advocacy continues to train agencies as requests continue to be made for additional and more detailed assistance on RFA compliance. In the next phase of RFA training, Advocacy will be able to focus on agencies needing more training in the economic analysis of small business impacts, while offering the training to employees who were unable to attend previous sessions. This continued focus on the basics of the RFA—the importance of detailed economic analysis as an integral part of the public comment period, the foundation of a factual basis

10 Exec. Order No. 13272 § 2(b).

as a requirement for a threshold analysis of a rule's impact, and contemplating a rule's impact prior to a first draft—will continue to be important issues for Advocacy's training team in the next fiscal year.

Measuring Effectiveness

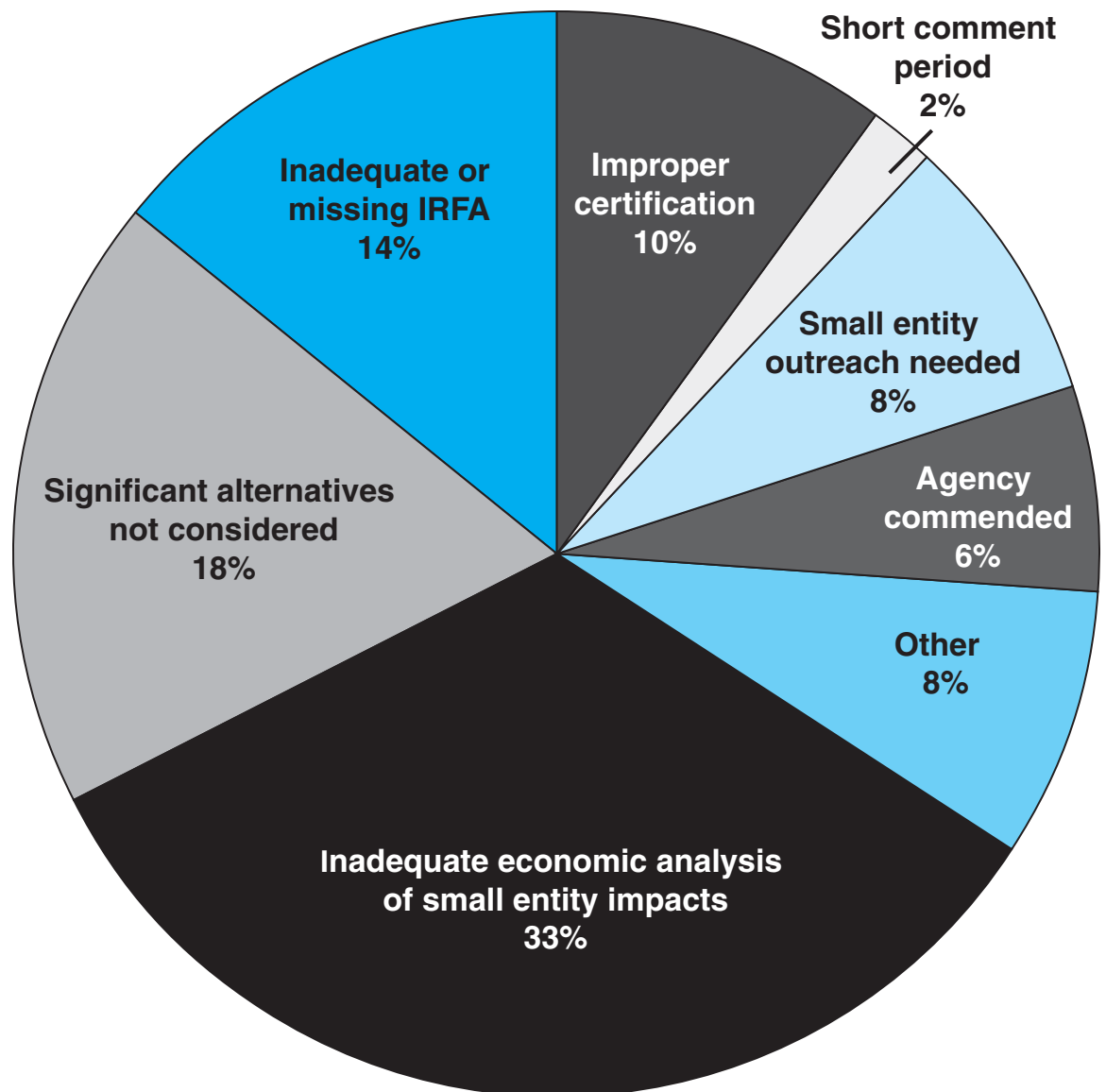
In the FY 2006 annual report, the Office of Advocacy included a section on measuring its effectiveness following President Bush's signing of E.O. 13272.¹¹ Historically Advocacy has measured its achievements under the RFA through a calculation of regulatory cost savings as reflected in final agency actions. The Office of Advocacy recognized that as it achieved more success in training agencies about how to comply with the complexities of the RFA, its ability to demonstrate effectiveness based solely on a measurement of cost savings would decrease. Therefore, the office undertook to modernize the measurement of effectiveness through the use of a new database that better reflected the tools Advocacy uses to intervene in the rulemaking process. This year's report lists a number of rules for which Advocacy assisted the agencies in conducting small business impact analysis, but was unable to calculate cost savings. Advocacy will continue its efforts to better measure and highlight the goal of increasing agency compliance with the RFA and Executive Order 13272.

Overview of RFA Implementation

Advocacy continues to advance agency compliance with the RFA and E.O. 13272 by coordinating with attorneys and economists throughout the rulemaking process and identifying key areas of concern (See Chart 3.1 and Tables 3.1, 3.2, and 3.3).

¹¹ E.O. 13272 made it easier for Advocacy to comment early on in federal agency rulemaking, and it required that Advocacy train agencies on how to comply with the Regulatory Flexibility Act.

Chart 3.1 Advocacy Comments by Key RFA Compliance Issue, FY 2007 (percent)



In FY 2007, the Office of Advocacy provided comments to several agencies on how to comply with the RFA. Chart 3.1 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 2007 comment letters and other regulatory interventions summarized in this report.

Table 3.1 Regulatory Comment Letters Filed by the Office of Advocacy, Fiscal Year 2007*

Date	Agency	Comment Subject
10/03/06	FWS	Comment letter regarding the proposed designation of critical habitat for the contiguous United States Distinct Population Segment of the Canada Lynx, <i>71 Fed. Reg.</i> 5515 (October 3, 2006).
10/25/06	FCC	Comment letter addressing the Missoula Plan for Intercarrier Compensation Reform in response to the FCC's proposed rule on developing a Unified Intercarrier Compensation Regime, FCC Docket No. 01-92 (March 3, 2005).
11/02/06	CPSC	Comment letter addressing the standards for the flammability of mattress sets, <i>71 Fed. Reg.</i> 13472 (March 15, 2007).
11/02/06	OSHA	Comment letter on OSHA's advance notice of proposed rulemaking on Hazard Communication, <i>71 Fed. Reg.</i> 53617 (September 12, 2006).
11/08/06	EPA	Comment letter regarding the proposed multisector general permit (MSGP) for industrial facilities, <i>71 Fed. Reg.</i> 408 (July 18, 2006).
11/09/06	Access Board	Comment letter regarding the Americans with Disabilities Act (ADA) Accessibility Guidelines for Passenger Vehicles, Reopening of Comment Period, <i>71 Fed. Reg.</i> 53630 (September 12, 2006).
12/07/06	FCC	Comment letter regarding the Service and Auction Rules for the 700 MHz Auction, WT Dkt. No. 06-150 (August 10, 2006).
02/05/07	FAA	Comment letter regarding the proposed rule on production and airworthiness approvals, parts marking, and miscellaneous proposals, <i>71 Fed. Reg.</i> 58914 (October 5, 2006).
02/07/07	DHS	Comment letter regarding the proposed chemical facility antiterrorism standards rule, <i>71 Fed. Reg.</i> 58276 (December 28, 2006).
02/08/07	DOL	Comment letter in response to DOL's request for information on the Family and Medical Leave Act of 1993, <i>71 Fed. Reg.</i> 69504 (December 1, 2006).
02/16/07	CMS	Comment letter regarding the Medicaid program, prescription drugs, <i>71 Fed. Reg.</i> 77174 (December 22, 2006).
02/21/07	SEC	Comment letter regarding the proposed rule on the Manager's Report on Internal Control over Financial Reporting, <i>71 Fed. Reg.</i> 77635 (December 27, 2006).

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

Date	Agency	Comment Subject
03/02/07	EPA	Request for an extension of the public comment period regarding NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants, <i>72 Fed. Reg.</i> 293 (January 4, 2007).
03/23/07	IRS	Comment letter regarding the NPRM on tax classifications of cigars and cigarettes, <i>71 Fed. Reg.</i> 62500 (October 25, 2006).
03/26/07	FCC	Comment letter regarding the FCC’s video programming access rules, <i>72 Fed. Reg.</i> 9289 (March 1, 2007).
03/30/07	FAA	Comment letter on the initial regulatory flexibility analysis for the proposed rule regarding aircraft production and airworthiness approvals, parts making and miscellaneous proposals, <i>72 Fed. Reg.</i> 6968 (February 14, 2007).
05/10/07	FCC	Comment letter requesting that the FCC open a rulemaking to examine the relevant market data on copper retirement.
05/14/07	EPA	Comment letter evaluating the EPA’s “NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula” proposal; <i>Fed. Reg.</i> 293 (January 4, 2007).
05/21/07	GSA	Comment letter regarding the NPRM on contractor code of ethics and business conduct, <i>72 Fed. Reg.</i> 7588 (February 16, 2007).
05/21/07	FCC	Letter in response to the FCC’s request for comment on the 700 MHz auction rules (April 27, 2007).
05/25/07	GSA	Comment letter regarding the NPRM on the Representations and Certifications—Tax Delinquency regulation, <i>72 Fed. Reg.</i> 15093 (March 30, 2007).
05/25/07	SEC	Letter regarding the SEC failure to provide small public companies with an extension of the date for compliance with Section 404 of the Sarbanes-Oxley Act (May 23, 2007).
06/27/07	SEC	Comment letter on a proposed rule amending FAST and DRS Limited Requirements for Transfer Agents, <i>72 Fed. Reg.</i> 30648 (June 1, 2007).
08/03/07	FWS	Comment letter regarding the revised critical habitat designation proposed for five endangered and two threatened mussels in four Northeast of Mexico drainages, <i>72 Fed. Reg.</i> 34215 (June 21, 2007).
08/08/07	FCC	Response to the FCC’s request for comment to refresh the record in the Special Access Notice of Proposed Rulemaking, <i>72 Fed. Reg.</i> 40814 (July 25, 2007).

Date	Agency	Comment Subject
08/13/07	FCC	Comment letter regarding the Verizon Telephone Company’s petition for forbearance under 47 USC §160(c) from Title II and Computer Inquiry Rules with respect to their broadband services, WC Docket No. 04-440 (July 30, 2007).
08/23/07	SEC	Comment letter on a proposed revision of the Eligibility Requirements for Primary Security Offerings on Forms S-3 and F-3, 72 <i>Fed. Reg.</i> 35117 (June 26, 2007).
09/11/07	SEC	Comment letter regarding the SEC’s Small Company Regulatory Reporting Relief and Simplification, 72 <i>Fed. Reg.</i> 39669 (July 19, 2007).
09/13/07	CMS	Comment letter regarding the surety bond requirement for suppliers of durable medical equipment, 72 <i>Fed. Reg.</i> 42001 (August 1, 2007).
09/18/07	DHS	Comment letter regarding the final safe harbor procedures for employers who receive a “no match” letter, 72 <i>Fed. Reg.</i> 45611 (August 15, 2007).

Table 3.2 Regulatory Cost Savings, Fiscal Year 2007

Agency	Subject Description	Cost Savings/ Impact Measures
CMS	<p>Durable Medical Equipment Competitive Bidding. Pursuant to provisions in the Medicare Prescription Drug Improvement and Modernization Act of 2003, the Centers for Medicare and Medicaid Services (CMS) promulgated a regulation creating a competitive bidding program covering certain Medicare Part B durable medical equipment (DME). Although this rulemaking is still expected to have a significant impact on small DME suppliers, Advocacy's suggestions to CMS throughout the regulatory process helped to assure small DME supplier participation in the bidding process. Some of these suggestions included helping CMS draft a size standard modification letter to the Small Business Administration pursuant to the Small Business Act which reduced the small business size standard for the rulemaking from \$6.5 million to \$3.5 million. This modification helped to ensure that the smallest suppliers will have a chance to participate in the bidding program. Additionally, CMS reserved 30 percent of the available DME business for small businesses. If the 30 percent target is not met, CMS will offer contracts to small suppliers with submitted bids that are above, but closest to, the pivotal bid until the target number is reached.</p>	<p>Because of the breadth of the industries affected, Advocacy has not been able to calculate cost savings attributable to changes helpful for small entities.</p>
CPSC	<p>Standards for the Flammability (Open Flame) of Mattress Sets. On March 15, 2006, the Consumer Product Safety Commission (CPSC) published the Consumer Standards for the Flammability (Open Flame) of Mattresses final rule in the <i>Federal Register</i> with an effective date of July 1, 2007. The new standards established performance criteria to assure that mattresses exposed to an open flame would generate a smaller fire with a slower growth rate, thereby reducing the chances of a flash fire. Advocacy filed comments on the regulation alerting CPSC to the rule's potential negative impact on small mattress manufacturers. As a result of Advocacy's comments and those filed by small mattress manufacturing firms, the CPSC used alternatives to remove the need for the manufacturers to keep a sample of the mattresses on site after testing.</p>	<p>These changes reduced the economic burden on the industry and resulted in cost savings totaling \$198,445.</p> <p>Source: CPSC economic analysis</p>

Agency	Subject Description	Cost Savings/ Impact Measures
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DHS	<p>Safe Harbor Procedures for Employers Who Receive a No-match Letter. On August 15, 2007, the Department of Homeland Security (DHS) and its Bureau of Immigration and Customs Enforcement (ICE) published a final rule that would have required employers who receive a “no-match” letter from the Social Security Administration indicating a discrepancy between an employee’s name and social security number to take certain actions to resolve those discrepancies. If the employer and employee were unable to correct the discrepancy within a specified time, the employer would have been obligated to terminate the employee or be deemed to have “constructive knowledge” that the employee may be an unauthorized alien. DHS certified that the rule would not have a significant economic impact on a substantial number of small entities. Following promulgation of the final rule, labor, civil liberties, and business groups challenged the rule in federal district court, arguing, among other things, that DHS failed to comply with the RFA because the agency did not have a “factual basis” for its certification and, moreover, that the certification was erroneous because the rule would have a significant impact on a substantial number of small entities. The Office of Advocacy sent a letter to DHS agreeing with this claim and offering to assist DHS in curing the RFA defect in the rule. On October 10, 2007, the Federal District Court for the Northern District of California issued a preliminary injunction prohibiting DHS from including requirements contained in the final rule with the “no-match” letters from the Social Security Administration. The Court's decision acknowledged that the plaintiffs had raised serious legal questions and would suffer irreparable harm if the rule went into effect.</p>	No cost savings estimates are available for this rule
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Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Hydrochlorofluorocarbon (HCFC) 22. On March 28, 2007, EPA published a final rule setting a compliance date of September 1, 2009, instead of the proposed January 1, 2008, for the marine sector to transition from HCFC-22 (an ozone-depleting substance that is a member of the hydrochlorofluorocarbon family) to other substitutes. The rule previously in effect had allowed for a transition extending to January 1, 2010, but EPA proposed to accelerate the timetable based on new information to January 2008. Advocacy supported the extension of time for the marine sector because of their particular hardships. Other sectors are required to meet the January 1, 2008, date except for the extruded polystyrene foam sector, which has a January 1, 2010, date.</p>	<p>This change would result in unquantified savings for up to 3,000 boat builders (nearly all small firms) who were having difficulty meeting the compressed timetable.</p>
EPA	<p>Toxics Release Inventory (TRI). On December 18, 2006, the Environmental Protection Agency (EPA) signed a final rule to expand the number of Toxics Release Inventory filings that may be reported to EPA using the shorter Form A. The final rule provides needed relief to small businesses while maintaining the integrity of the TRI database. This major small business achievement marks the end of a 15-year effort that started with a petition filed by the Office of Advocacy with EPA in August 1991. Advocacy also filed supportive comments on the EPA proposal in February 2006. This rule provides the first significant small business relief from toxics release inventory reporting since 1994. For chemicals that are not persistent, bioaccumulative, and toxic (non-PBT), the rule allows businesses to use the simpler reporting form if their releases are no more than 2,000 pounds of waste as part of an overall waste management limit of 5,000 pounds. By imposing the 2,000-pound cap on releases for non-PBT chemicals, EPA is encouraging businesses to rely on preferred waste management methods, such as recycling and treatment, rather than disposal and other releases. The rule would also extend the use of Form A to businesses that manage less than 500 pounds of PBT chemicals and have zero emissions or discharges to the environment.</p>	<p>This final rule is expected to save 123,000 hours per year by EPA's estimate or about \$5.9 million annually.</p> <p>Source: EPA</p>

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Spill Prevention Control and Countermeasure (SPCC) Rule. On December 12, 2006, the Environmental Protection Agency (EPA) promulgated changes to its Spill Prevention, Control and Countermeasure program. The SPCC program is designed to prevent spills of oil into waterways and to contain spills after they occur. Facilities subject to the program must develop spill prevention plans designed to prevent and minimize such discharges. In July 2002, EPA amended the SPCC program requirements for hundreds of thousands of small businesses, farms, manufacturers, and electrical facilities. EPA subsequently agreed to postpone the effective date of the amended rule while the agency studied several suggested burden reduction approaches for small facilities and other SPCC facilities. Advocacy filed comments in June 2004 and February 2006. In the final rule, 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.</p>	<p>The changes reduce the annual regulatory and paperwork burden on small facilities by \$128 million, while increasing overall compliance with the SPCC program and focusing facilities on measures that prevent oil spills from reaching waterways.</p> <p>Source: EPA</p>
EPA	<p>Guidance in Lieu of Rules to Reduce Volatile Organic Compound (VOC) Emissions from Five Industrial Sectors. On October 5, 2006, the Environmental Protection Agency (EPA) promulgated control techniques guidelines (CTGs) for the control of volatile organic compounds emissions from each of five product categories in consumer and commercial products. These CTGs will provide guidance to the states concerning EPA’s recommendations for reasonably available control technology level controls for these product categories. Advocacy submitted comments on September 5, 2006, supporting EPA’s proposal to issue control techniques guidelines, rather than promulgating formal rules, and agreed that the CTG approach will result in additional VOC emission reductions over the rule approach. These rules will affect thousands of facilities, primarily small businesses. As a result of EPA’s outreach to the small business community, the final CTGs provide a balance between environmental protection and regulatory flexibility.</p>	<p>Although savings are estimated to be in the tens of millions of dollars, the results cannot be verified at this time. The Office of Advocacy is continuing to seek reliable industry estimates.</p>

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Definition of Solid Waste. On March 26, 2007, EPA issued a supplemental proposal to its 2003 proposal, which would exclude certain types of recycling activities involving hazardous secondary materials from the federal hazardous waste regulations. By removing unnecessary regulatory controls over certain recycling practices, EPA expects to make it easier to recycle hazardous secondary material safely. Exclusions are now proposed for the following:</p> <ul style="list-style-type: none"> • Materials that are generated and reclaimed under the control of the generator; • Materials that are generated and transferred to another person or company for reclamation under specific conditions; and • Materials that EPA deems nonwaste through a case-by-case petition process. <p>EPA estimates about 4,600 facilities handling over a half million tons of hazardous secondary materials annually may be affected by this proposed rule. At Advocacy’s request EPA expanded its approach from the 2003 proposal. The industry sectors that could be most affected are chemical manufacturing, coating and engraving, semiconductor and electronics manufacturing, pharmaceutical manufacturing, and the industrial waste management industry.</p>	<p>Annual cost savings of \$107 million are estimated for the affected firms.</p> <p>Source: EPA</p>
EPA	<p>Area Source Standard for Gasoline Distribution. On November 9, 2006, the U.S. Environmental Protection Agency (EPA) published a proposed Clean Air Act rule that would require new emission controls for bulk gasoline terminals, pipeline facilities, bulk gasoline plants, and potentially gasoline stations. The proposal would reduce hazardous air pollutants by requiring these sources to install floating roofs and seals, or by improving work practices such as leak detection and repair programs. Advocacy recommended that EPA consult with several affected small business representatives early in the planning process. Based on comments and data received from these parties, EPA proposed a less costly regulatory approach than the agency’s earlier preferred alternative of vapor balancing of gasoline cargo tanks with bulk storage tanks.</p>	<p>In total, the proposed rule represents a one-time cost savings of \$117.2 million.</p> <p>Source: EPA</p>

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Halogenated Solvent Cleaning Residual Risk Standard. On May 3, 2007, EPA issued a final rule to revise emission limits for facilities that use halogenated solvents such as methylene chloride, trichloroethylene, and perchloroethylene to clean metal parts. The rule places new restrictions on the amounts of solvent that can be used in cleaning operations. Advocacy worked with a subgroup of companies that use these solvents to clean metal tubes that are long and that have extremely narrow diameters. These specialty applications require cleaning with larger quantities of solvent and are not suited to the emission control techniques EPA has required for standard cleaning operations. Based on feedback from Advocacy and small businesses, EPA determined that the required emission controls are not technically feasible for narrow-tube operations.</p>	<p>EPA's decision to exempt these operations from the standard resulted in one-time cost savings of \$50 million.</p> <p>Source: Halogenated Solvents Industry Association</p>
EPA	<p>Control of Emissions from Nonroad Spark-ignition Engines and Equipment. On May 18, 2007, EPA proposed a rule to control air pollution from gasoline-powered engines and equipment below 50 horsepower. These engines and equipment are primarily used in lawn and garden applications and in the marine industry. The proposed rule would affect many small manufacturers and would require catalyst-based emission controls on some engines, as well as evaporative emission controls for boats. Because of concerns about the economic impacts of the rule on small businesses and the technical feasibility of proposed emission controls, EPA convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel on August 17, 2006. Twenty-seven small entity representatives (SERs) participated in the panel and provided technical data to EPA about the potential impacts of the rule, along with OMB's Office of Information and Regulatory Affairs and the Office of Advocacy. Based on recommendations from the panel, EPA proposed granting small businesses extended compliance deadlines, streamlined testing and certification requirements, and hardship exemptions for small businesses unable to comply by the deadline.</p>	<p>\$36.4 million in first-year cost savings and \$5.6 million in recurring annual cost savings.</p> <p>Source: EPA</p>

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Pollution Control Standards for Iron and Steel Foundries. On September 17, 2007, EPA published a proposed rule establishing new air pollution control standards for iron and steel foundries under the Clean Air Act. The proposal would require foundries above a specified melting capacity to install pollution control equipment. Because of information received from small business stakeholders, the Office of Advocacy persuaded EPA to co-propose a higher melting capacity threshold that would allow small foundries to operate without installing new controls.</p>	<p>One-time cost savings from this co-proposal are an estimated \$13.9 million, with an estimated \$2.8 million saved in recurring operating and maintenance costs.</p> <p>Source: EPA</p>
EPA	<p>Clean Air Act, Particulate Matter National Ambient Air Quality Standards. On September 21, 2006, EPA revised the national standards for particulate matter (PM). EPA lowered the daily standard for fine particles smaller than 2.5 microns, but left the standards for coarse particles (2.5 - 10 microns) unchanged. In addition, EPA indicated that farming operations in rural areas could satisfy coarse PM requirements by meeting state-based best management practices (BMPs), rather than more stringent requirements. Advocacy worked with the U.S. Department of Agriculture and agricultural trade associations to support EPA's flexible interpretation of farming requirements.</p>	<p>Cost savings for small farms and other agricultural operations are estimated at \$1 million in the first year and ongoing.</p> <p>Source: Industry estimates.</p>

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	<p>Permit Fee Incentive for Clean Water Act Grant Allotments. On January 4, 2007, EPA proposed revisions to the Clean Water Act, Section 106, grant allocation formula to create a new incentive for states to fund National Pollutant Discharge Elimination System (NPDES) programs through fees paid by dischargers. Many states currently do not require all dischargers, including small entities, to pay the full costs of their permitting programs through permit fees. Numerous state, local, and small business organizations expressed concerns that the proposed revision would result in substantial permit fee increases and/or the loss of grant monies, and that EPA had not adequately considered the potential impact on states and small entities. On March 2, 2007, Advocacy requested that EPA extend the comment period on the proposal for an additional 60 days, so that small entities could gather more detailed information about potential impacts. EPA extended the comment period for 60 days, and on May 14, 2007, Advocacy submitted a technical memorandum evaluating the potential impacts on small entities. The technical memorandum concluded that the rule was likely to have an impact on states and small entities. Based on the comments of Advocacy and small business representatives, EPA has delayed finalizing the rule until the late FY 2008 budget cycle.</p>	<p>The delayed implementation of the rule represents one-time cost savings to small entities in affected states of at least \$5.65 million.</p> <p>Source: American Public Power Association</p>

Agency	Subject Description	Cost Savings/ Impact Measures
FAA	<p>National Air Tour Safety Standards (NATSS). On October 22, 2003, the FAA published a proposed rule that would establish new safety standards for commercial air tour operators. The rule as proposed would eliminate existing exceptions for commercial air tours conducted under Title 14, Part 91 (small sightseeing operators) of the Code of Federal Regulations. Part 91 exempts certain nonstop sightseeing flight operators who use the same airport for takeoff and landing and fly within a 25-mile radius, from required Part 119 certification. The proposed rule would have required all air tour operators to obtain Part 119 certification. Advocacy worked closely with affected small entities and trade associations to identify the economic impacts of the proposed regulation. In April 2004, Advocacy submitted a public comment letter to the agency expressing concern that many small air tour operators would be unduly burdened by the cost of obtaining Part 119 certification and would ultimately be forced out of the market. The FAA published the NATSS final rule on February 13, 2007, and made significant changes to the final rule. The Part 91 exceptions are maintained and operators must obtain a letter of authorization (LOA) from the FAA instead of obtaining a new certification.</p>	<p>FAA's decision to keep the Part 91 exception and eliminate some additional provisions contained in the proposed rule resulted in \$127.3 million in cost savings.</p> <p>Source: FAA</p>
FCC	<p>Customer Proprietary Network Information (CPNI). On March 13, 2007, the FCC adopted its order and released a further notice of proposed rulemaking to strengthen the technology used by carriers to protect confidential customer data. The order requires companies to install specialized equipment to update their networks to protect this information. Because of information received from small business stakeholders, Advocacy filed comments to persuade the FCC to provide the smallest Voice over Internet Protocol (VoIP) providers with a six-month extension to comply with this rule.</p>	<p>The estimated one-time cost savings for this extension are \$6.2 million.</p> <p>Source: Industry estimates</p>

Agency	Subject Description	Cost Savings/ Impact Measures
FCC	<p>Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628 (c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition. Section 628(c)(2)(D) of the Communications Act of 1934, as amended, generally prohibits exclusive contracts for satellite cable programming or satellite broadcasting between vertically integrated programmers and cable operators. Small providers rely on this ban to prevent large cable operators from blocking premium video programming from them and negatively affecting their ability to compete in the market. To express the concerns of small entities, Advocacy sent a public comment letter to the FCC on March 26, 2007. On September 11, 2007, the FCC adopted its Report and Order and Notice of Proposed Rulemaking (FCC 07-169; MB Docket No. 07-29; MB Docket No. 07-198), which extended the ban on exclusive contracts for five more years.</p>	<p>The savings to small providers have not yet been quantified.</p>
FDA	<p>Dietary Supplement Current Good Manufacturing Practices. The Food and Drug Administration (FDA) promulgated a rule requiring current good manufacturing practice (CGMP) for dietary supplements. Advocacy has been involved in the rulemaking since 1997 in an effort to ensure that small dietary supplement manufacturers were not unduly affected by the regulation. In summary, Advocacy’s involvement helped to reduce testing requirements under certain circumstances for small businesses; more important, the rule includes a 36-month delay for establishments with fewer than 20 employees and a 24-month delay for establishments with more than 20 employees and fewer than 500.</p>	<p>These actions resulted in a total of \$364.6 million in cost savings.</p> <p>Source: FDA</p>

Agency	Subject Description	Cost Savings/ Impact Measures
FWS	<p>Canada Lynx Critical Habitat Designation. In November 2006, the U.S. Fish and Wildlife Service (FWS) published a final critical habitat designation of 1,841 square miles on federal lands for the Canada lynx. FWS originally proposed to designate 18,031 square miles in February 2006. Responding to comments by Advocacy and other small business entities, FWS excluded 16,190 square miles (more than 10 million acres) of private land in Idaho, Maine, Minnesota, Montana, and Washington because of biological studies, existing lynx management programs, and economic factors.</p>	<p>FWS's exclusion of these high-cost areas resulted in \$919 million in cost savings.</p> <p>Source: FWS</p>
FWS	<p>Alabama Beach Mouse Critical Habitat Designation. On January 30, 2007, the U.S. Fish and Wildlife Service (FWS) published a final critical habitat designation of 1,211 acres of coastal habitat in Baldwin County, Alabama. Responding to comments by Advocacy and small business entities, FWS excluded two developments from the designation, Beach Club West and Gulf Highlands.</p>	<p>FWS's exclusion of the high-cost areas will save \$31.6 million in costs.</p> <p>Source: FWS</p>
FWS	<p>Spikedace and Loach Minnow Critical Habitat Designation. On March 2007, the U.S. Fish and Wildlife Service (FWS) published a final critical habitat designation of 522.2 river miles in New Mexico and Arizona. Responding to comments by Advocacy and small business entities, FWS excluded private lands in the lower portion of the Verde River from the final critical habitat designation because of economic factors.</p>	<p>FWS's exclusion of the high-cost areas saved \$46.9 million in costs.</p> <p>Source: FWS</p>

Agency	Subject Description	Cost Savings/ Impact Measures
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HHS	<p>Medicare Program; Reporting Hospital Quality Data for FY 2008 Inpatient Prospective Payments System Annual Payment Update Program - HCAHPS Survey). On November 24, 2006, CMS published a rule that would require hospitals to submit a survey to their patients in an effort to assist patients in selecting hospitals that deliver high-quality care. The effective date of the rule is January 1, 2007. Advocacy filed a public comment letter with CMS on January 18, 2005, suggesting that the survey requirement would prove onerous to hospitals (especially rural ones) because it would increase their costs and paperwork burden. Hospital representatives were concerned that they would have to make substantial changes to the survey most hospitals already used to measure patient satisfaction and that patients would be disinclined to return a substantially longer survey after their discharge. As a result of Advocacy’s involvement and that of industry, CMS reduced the number of survey questions from 66 to 27, reduced the number of calls required to complete the survey from 10 to 5, reduced the number of mailings from 3 to 2, and, most important for small hospitals, reduced the number of completed questionnaires requirement from 300 to 100. CMS agreed to offer training to hospitals and provided software on the survey free of cost to hospitals.</p>	<p>These changes led to an estimated \$11.6 million in first-year and recurring cost savings to small hospitals.</p> <p>Source: CMS</p>
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Agency	Subject Description	Cost Savings/ Impact Measures
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HHS	<p>Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights. The rule, which stemmed from CMS patient rights initiatives, required all inpatient psychiatric hospitals to have a physician or other licensed independent practitioner evaluate a patient face-to-face within one hour after the patient had been placed in restraints or seclusion. In July 1999, per a request by Congressman Saxby Chambliss, Advocacy submitted comments to HHS on the interim final rule that dealt with Medicare conditions of participation, including standards for the use of patient restraints in hospitals. Representative Chambliss specifically requested Advocacy's opinion whether the agency had complied with the RFA in issuing the hospital restraint rule. Advocacy concluded that the one-hour restriction on the use of restraints could be burdensome for rural hospitals in particular. HHS had not specifically discussed the one-hour standard in the proposed rule and did not analyze the impact of the one-hour evaluation provision in the interim final rule. On the same date that Advocacy sent its comments to Representative Chambliss, a court decision was rendered (see <i>National Association of Psychiatric Health Systems v. Shalala</i>, No. Civ. A. 99-2025 GK, 2000 WL 1677210, D.D.C. Sept. 14, 2000), that essentially upheld the hospital restraint rule, but remanded the rule to the agency and directed HHS to complete a final regulatory flexibility analysis. The final rule was published in the <i>Federal Register</i> on December 11, 2006, with an effective date of January 8, 2007. Changes included a revision to expand the type of practitioners permitted to conduct the one-hour face-to-face evaluation and changes to the training and staffing requirements. Cost savings were generated from both changes made to the rule and the delay in implementation (the interim final effective date was March 23, 2001, but the rule was stayed).</p>	<p>In the absence of estimates, Advocacy is using the upper range of an estimate of the costs in the comments to the rule as a proxy for cost savings in the amount of \$750,000.</p> <p>Source: HHS</p>
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Agency	Subject Description	Cost Savings/ Impact Measures
PHMSA	<p>Hazardous Materials: Transportation of Lithium Batteries. On April 2, 2002, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a proposed rule regulating the transportation of lithium batteries. The proposal required producers and transporters of lithium batteries to adhere to more stringent packaging and testing requirements. PHMSA certified the proposed rule, and small entities affected by the proposal raised concerns about the potential economic impact of the rule to Advocacy. In August 2003, OMB and Advocacy recommended that the agency either complete an IRFA or provide a statement of factual basis for the certification contained in the rule. In June 2005 PHMSA published an IRFA for the proposed rule in the <i>Federal Register</i> which addressed many of Advocacy’s concerns. On August 9, 2007, PHMSA issued the final rule on transportation of lithium batteries. The FRFA considered eight possible alternatives and adopted four, including exceptions for small lithium batteries and for small production runs of lithium batteries. Additionally, the agency provided for a two-year implementation period.</p>	<p>The revisions adopted in the final rule resulted in a cost savings of \$13.2 million.</p> <p>Source: PHMSA</p>

Agency	Subject Description	Cost Savings/ Impact Measures
PTO	<p>Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications. On January 3, 2006, the U.S. Patent and Trademark Office (PTO) published two proposed rules that would reform the patent application and prosecution process. The rule would restrict the number of allowable representative claims in a patent application and limited the number of continuation applications to one. PTO certified that both rules would not have a significant economic impact on a substantial number of small entities. In April 2006, Advocacy submitted a public comment letter to PTO on the proposed rules, advised the agency of the potential impact of the rules on small entities, and urged the completion of an IRFA. In response to Advocacy's comments, the agency performed an analysis of the impacts of the proposed rules on small entities. On August 21, 2007, the PTO issued a final rule that combined both rules into a single rule package. In the final rule, the agency considered Advocacy's recommendations and made some revisions to reduce the potential impacts on small entities.</p>	<p>A full estimate of the savings to small business has not yet been assessed, as most provisions remain unquantifiable.</p>
SEC	<p>Management Guidance for Periodic Reports. As required by the Sarbanes-Oxley Act of 2002, the Securities and Exchange Commission (SEC) published final rules on June 18, 2003, requiring businesses that raise funds from public investors to report on internal controls and audit procedures. Advocacy urged the SEC to establish management guidance on the process of evaluating internal controls for small public companies that would focus on risks and clarify ambiguous terms. On June 27, 2007, the SEC published a final rule adopting management guidance and amendments to facilitate more effective and efficient evaluations over internal controls reporting. The SEC cited an estimate based on survey data of 10 percent cost savings as a result of the management guidance in the first year of implementation.</p>	<p>These changes represent \$561 million in cost savings in the first year of implementation.</p> <p>Source: SEC</p>

Agency	Subject Description	Cost Savings/ Impact Measures
State	<p>Exchange Visitor Program (J-1 Visa Program). On June 19, 2007, the U.S. Department of State (State) published an interim final rule on its Exchange Visitor Program for Trainees and Interns. The initial proposed rule would have imposed new requirements on designated program sponsors in the J-1 visa program before they could accept a participant into their program. The proposed rule included special provisions related to aviation flight training schools that would limit the ratio of on-the-job training to classroom study and reduce the maximum duration of the training program from 24 to 18 months. The provisions would have had a particularly damaging effect on aviation flight schools, although State certified that the rule would have no significant impact under the RFA. After extensive outreach to the aviation flight schools that operate under the J-1 visa program, Advocacy submitted public comments on the proposed rule stating that the agency's RFA certification was improper because it failed to include a factual basis, and recommended that State re-evaluate the costs and impacts of the proposed rule on aviation flight schools. The nine designated J-1 aviation flight schools said they would lose all or most of their foreign students if the rule were finalized as proposed. The final rule exempted the aviation flight schools and left current rules governing them in place.</p>	<p>First-year cost savings total \$22.2 million, and annual ongoing cost savings are \$22.2 million.</p> <p>Source: Affected flight schools</p>
USAID	<p>Mentor-Protégé Rule. On November 26, 2006, the U.S. Agency for International Development (USAID) issued a proposed regulation to amend its acquisition regulations to encourage prime contractors to assist small disadvantaged firms in enhancing their contract and subcontract performance for federal agencies. The final regulation, published on June 13, 2007, was modified to incorporate the joint concerns expressed by SBA and the Office of Advocacy. As a result, USAID's rule will operate more smoothly in conjunction with SBA's responsibilities in the federal contracting arena.</p>	<p>The savings to small businesses have not yet been quantified.</p>

Table 3.3 Summary of Cost Savings, FY 2007 (Dollars)¹

Rule/Intervention	First-Year Costs	Annual Costs
Durable Medical Equipment Competitive Bidding (CMS) ²		
Mattress Flammability Standards (CPSC) ³	198,445	
Safe Harbor Procedures for Employees with a No-match Letter (DHS) ²		
HCFC 22 Final (EPA) ²		
Toxics Release Inventory Final Rule (EPA) ⁴	5,900,000	5,900,000
SPCC Final (EPA) ⁴	128,000,000	128,000,000
Volatile Organic Compound Emissions (EPA) ²		
Definition of Solid Waste (EPA) ⁴	107,000,000	107,000,000
Area Source Standards for Gasoline Distribution (EPA) ⁴	117,200,000	
Halogenated Solvent Cleaning Residual Risk Standard (EPA) ⁵	50,000,000	
Control of Emissions from Nonroad Spark-ignition Engines and Equipment (EPA) ⁴	36,400,000	5,600,000
Clean Air Act, Pollution Controls, Iron and Steel Foundries (EPA) ⁴	13,900,000	2,800,000
Clean Air Act, Particulate Matter (EPA) ¹²	1,000,000	1,000,000
Permit Fee Incentive for Clean Water Act Grant Allotments (EPA) ¹²	5,650,000	
National Air Tour Safety Standards (FAA) ⁷	127,300,000	
Customer Proprietary Network Information (CPNI) (FCC) ⁸	6,176,000	
Cable Television Consumer Protection and Competition Act (FCC) ²		
Dietary Supplement Rule (FDA) ⁹	364,552,000	
Canada Lynx Critical Habitat (FWS) ¹⁰	919,000,000	
Alabama Beach Mouse Critical Habitat Designation (FWS) ¹⁰	31,600,000	
Spikedace and Loach Minnow Critical Habitat Designation (FWS) ¹⁰	46,900,000	
HCAHPS Survey (HHS) ¹¹	11,600,000	11,600,000
One-Hour Rule (HHS) ¹²	750,000	750,000
Lithium-ion Battery Rule (PHMSA) ¹³	13,200,000	
Patent Applications Containing Patentably Indistinct Claims (PTO) ²		
Management Guidance for Periodic Reports (SEC) ¹⁴	561,000,000	
Exchange Visitor Program (J-1 Visa Program) (State) ¹⁵	22,215,250	22,215,250
USAID Mentor-protégé Program ²		
TOTAL	2,569,541,695	284,865,250

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 Office of Advocacy limits the savings to those attributable to small businesses. 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 No estimates are available.

- 3 Source: Consumer Product Safety Commission (CPSC) economic analysis.
- 4 Source: Environmental Protection Agency (EPA).
- 5 Source: Halogenated Solvents Industry Association.
- 6 Source: American Public Power Association.
- 7 Source: Federal Aviation Administration (FAA).
- 8 Source: Industry comments.
- 9 Source: Food and Drug Administration (FDA).
- 10 Source: Fish and Wildlife Service (FWS).
- 11 Source: U.S. Department of Health and Human Services (HHS).
- 12 Source: Industry estimate.
- 13 Source: Pipeline and Hazardous Materials Safety Administration (PHMSA).
- 14 Source: Securities and Exchange Commission (SEC)
- 15 Source: Affected flight schools.

4 Advocacy Review of Agency RFA Compliance in Fiscal Year 2007

Since the enactment of the Regulatory Flexibility Act in 1980, the Office of Advocacy has been an independent voice for small business in policy deliberations, working with agencies to examine how their regulatory proposals will affect small entities. In fiscal year 2007 (October 2006 through September 2007), the Office of Advocacy:

- Held 14 Regulatory Flexibility Act training sessions with federal agencies, state officials, congressional staff, and small business stakeholder organizations,
- Reviewed 469 regulations to assess RFA compliance,
- Convened 29 roundtables to solicit the opinions, views, priorities, and comments of small entity stakeholders on regulatory proposals,
- Presented testimony or positions on pending legislation before Congress six times, and
- Submitted 30 public comment letters to federal agencies on regulatory proposals.

The sum total of Advocacy's involvement in the regulatory process is not easily calculated. However, this chapter's count of Advocacy's public activities and descriptions of the office's involvement should provide an accurate account of how Advocacy worked to achieve cost savings for small entities in FY 2007 and helped agencies comply with the RFA and E.O. 13272.

Department of Agriculture

E.O. 13272 Compliance

The U.S. Department of Agriculture (USDA) has made its policies for considering small entity impacts when promulgating regulations publicly available; they are sometimes, but not always in full compliance with section 3(b) of the executive order. Two agencies within USDA consistently notify Advocacy of rules that may have a significant economic impact on small entities: the Animal and Plant Health Inspection Service (APHIS) and the Grain Inspection, Packers and Stockyard Administration (GIPSA).

Generally, the agencies submit draft regulations to Advocacy's email notification system as well as to the advocate responsible for reviewing its rules. On a few occasions, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) personnel have notified Advocacy of draft regulations that were not submitted to Advocacy by APHIS.

Advocacy continues to work with APHIS on its RFA compliance. The agency completes initial regulatory flexibility analyses (IRFAs) and certifications for most of its rules; however, the quality of the IRFAs and certifications varies. In addition to submitting draft proposals to Advocacy for review, APHIS regularly invites Advocacy to interagency briefings to discuss draft rules. In FY 2007, the agency sought Advocacy's assistance on regulatory issues prior to developing a proposed rule. APHIS did not publish a final rule that was the subject of an Advocacy comment in FY 2007; thus, the agency's compliance with section 3(c) cannot be determined at this time.

Advocacy maintains an active interagency exchange with GIPSA. Advocacy did not file any formal written comments on GIPSA rules in FY 2007; therefore GIPSA compliance with section 3(c) of the executive order cannot be assessed at this time.

Department of Commerce

E.O. 13272 Compliance

The Department of Commerce (DOC) continues to comply with the requirements of E.O. 13272. Its RFA policies are publicly available in compliance with section 3(a) of E.O. 13272, and DOC's agencies notify Advocacy of draft rules as required by section 3(b) of E.O. 13272. For example, the National Marine Fisheries Service (NMFS) routinely submits draft proposed and final rules to the Office of Advocacy. Similarly, in the last year, the United States Patent and Trademark Office (PTO) submitted draft rules to Advocacy in compliance with the requirements of section 3(b) of E.O. 13272. The agency also complied with section 3(c) of E.O. 13272. In FY 2007, the PTO published one final rule on which Advocacy had comments, and PTO responded to Advocacy's comments in the final rule. As one of the agencies involved in Advocacy's RFA training pilot program, NMFS was one of the first agencies to receive RFA training from the Office of Advocacy.

Patent and Trademark Office

Issue: Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications. On January 3, 2006, the PTO published two proposed rules that would reform the patent application and prosecution process. The proposed rules restricted the number of allowable representative claims for initial review in a patent application to 10, unless accompanied by an examination support document (ESD). Further, the proposals reduced the number of permissible continuation applications to one. Previously, applicants could complete an unlimited number of continuation applications. The PTO certified that neither rule would have a significant economic impact on a substantial number of small entities. In March 2006, Advocacy hosted a roundtable attended by patent attorneys, trade association representatives

and PTO personnel to discuss the two proposed rules. In April 2006, Advocacy submitted a public comment letter to the PTO advising the agency of the potential impact of the rules on small entities. Advocacy also urged the PTO to complete an initial regulatory flexibility analysis. In response to Advocacy's comments, the agency performed an analysis of the impacts of the proposed rules on small entities. After completing the analysis, PTO officials briefed Advocacy on the conclusions and shared the document with the office for review and comment.

On August 21, 2007, the PTO published a final rule in the *Federal Register* that combined the two proposals into a single rule package. In the final rule, the PTO considered Advocacy's comments and revised its initial proposals. The agency increased its threshold for allowable claims to a total of 25, before requiring an ESD. Additionally, the final rule permits applicants to file up to three continuation applications. The agency's decision to modify certain provisions in the proposed rule will result in significant, but unquantifiable, cost savings for affected small entities.

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-related, DOD's procedures comply with section 3(a) of E.O. 13272. DOD submits prepublication rule-makings for Advocacy consideration in compliance

with section 3(b) of E.O. 13272. DOD did not publish any final rules in FY 2007 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 2007.

Department of Education

E.O. 13272 Compliance

The Department of Education (Education) has made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. Education notifies 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. Education has not published any final rules in FY 2007 that were the subject of any of Advocacy's 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 2007, 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 did not publish any final rules in FY 2007 that were the subject of Advocacy's comments. Therefore, DOE's compliance with section 3(c) of E.O. 13272 cannot be assessed.

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 as required by section 3(a) of the executive order. The Centers for Medicare and Medicaid Services (CMS) and the Food and Drug Administration (FDA), two agencies that often promulgate rules that affect small businesses, did not consistently submit drafts of rules pursuant to section 3(b) of E.O. 13272 in FY 2007.

Two CMS rules that Advocacy commented on were made final in FY 2007. CMS was compliant with section 3(c) of the executive order as it addressed Advocacy's comments in the respective final regulatory flexibility analyses (FRFAs). None of the FDA's rules that were the subject of Advocacy's comments were made final in FY 2007, so Advocacy cannot comment on FDA's compliance with section 3(c) of E.O. 13272. Advocacy will continue to work with HHS to improve its compliance with the executive order.

Centers for Medicare and Medicaid Services

Issue: Medicaid Program; Prescription Drugs (Proposed Rule: 71 Fed. Reg. 77174, December 22, 2006; Final Rule: 72 Fed. Reg. 39142, July 17, 2007). In December 2006, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule in the *Federal Register* to codify requirements for drug manufacturers' calculation and reporting of average manufacturer price (AMP) under the Medicaid Drug Rebate Program, and revisions to existing regulations that set upper payment limits for certain covered outpatient drugs. Pursuant to the Regulatory Flexibility Act, CMS correctly prepared an initial regulatory flexibility analysis (IRFA) and readily acknowledged that the rule would have a

significant impact on approximately 18,000 small retail pharmacies. CMS admitted that the rule would result in payments to pharmacies and would likely reduce pharmacy revenues by about \$800 million in 2007, and \$2 billion annually by 2011. Advocacy filed comments outlining several concerns with the rule's requirements believed likely to have a negative impact on small independent pharmacies. As a result of Advocacy's comments and those made by industry, CMS chose to redefine the term of art, "retail class of trade," in the definition of AMP by excluding sales to pharmacy benefit managers and nursing home pharmacies. CMS hopes this redefinition will reduce the economic burden on small independent pharmacies. The final rule was published July 17, 2007.

Issue: Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues (72 Fed. Reg. 17992, August 10, 2007). On August 10, 2007, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule in the *Federal Register* titled Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues. The rule established and implemented competitive bidding programs for certain Medicare-covered durable medical equipment. Advocacy was alerted by concerned small DMEPOS suppliers that the regulation would have a significant negative economic impact on their industry. Advocacy filed comments on the regulation in support of the CMS plan to create an alternative size standard that would allow more small durable medical equipment (DME) suppliers to participate in the competitive bidding program. Advocacy also noted that CMS had not analyzed how the rule would affect the small DME suppliers in the proposed rule. As a result, CMS included a final regulatory impact analysis in the final rule, published August 10, 2007. Alternatives for the rule were 1) a requirement of CMS to ensure that 30 percent of the winning bids would be earmarked for

small DME suppliers, 2) allowing small suppliers to network to make it easier for them to win bids for supplying DME, and 3) permission for CMS to reduce the SBA size standard from \$6.5 million to \$3.5 million in annual revenues to ensure that more small suppliers would be eligible to participate in the competitive bidding program.

Issue: Medicaid Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) (72 Fed. Reg. 42001, August 1, 2007). On August 1, 2007, the Centers for Medicare and Medicaid Services published a proposed rule in the *Federal Register* titled Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies. The rule requires that any durable medical equipment supplier must furnish CMS with a \$65,000 surety bond. CMS noted in the rule that the public policy behind the regulation was to limit the Medicare program's risk from fraudulent DME suppliers. On September 13, 2007, the Office of Advocacy filed a comment letter with CMS after representatives from small DME suppliers approached Advocacy concerned that CMS had not adequately analyzed the regulation's economic impacts on their businesses. In its comment letter, Advocacy suggested that CMS do a better job analyzing the rule's economic impacts on DME suppliers pursuant to the RFA's requirements. Advocacy also provided CMS data and alternatives suggested by many small DME suppliers. Advocacy hoped that the information would serve to reduce the rule's burden on DME suppliers. No information is available on the expected date of publication of the final rule

Department of Homeland Security

E.O. 13272 Compliance

The Department of Homeland Security (DHS) has made progress in complying with E.O. 13272. DHS has posted its RFA policy on its website, as required by section 3(a) of E.O. 13272. The Transportation Security Administration (TSA) and the United States Coast Guard were trained in RFA compliance in FY 2005. DHS did not submit all draft rules to Advocacy in FY 2007, as required by section 3(b). DHS published one final rule in FY 2007 that was the subject of Advocacy comments, and addressed Advocacy's concerns in the final rule; therefore DHS has complied with section 3(c) of E.O. 13272.

Issue: DHS Final Chemical Facility Anti-Terrorism Standards Rule. DHS issued an interim final rule that requires chemical facilities meeting a certain risk profile to complete an initial risk assessment screening through a secure DHS website. DHS will use this information to determine whether the facility presents a high security risk. If it does, the facility must prepare and submit to DHS a vulnerability assessment and site security plan. DHS will evaluate these submissions for compliance with certain risk-based performance standards and conduct an inspection and audit of the facility.

DHS's interim final rule implements section 550 of the Homeland Security Appropriations Act of 2007, which required DHS to issue interim final regulations within six months of its passage. Advocacy submitted a comment letter to DHS recommending that the agency prepare a formal regulatory flexibility analysis after publication of the interim final rule. Advocacy understands that Congress authorized DHS to proceed without traditional notice and comment rulemaking, but believes the agency should prepare an IRFA if it makes any subsequent revisions of the rule.

DHS responded to Advocacy's comment in the final rule, but declined to prepare a post-prom-

ulgation IRFA. The agency cited the congressional instruction to issue an interim final rule as justification to bypass the traditional notice and comment rulemaking process.

Issue: DHS Final Safe Harbor Procedures for Employers Who Receive a No-match Letter Rule. The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to knowingly hire or continue to employ a person not authorized to work in the United States. Under the final rule, employers who receive a "no-match" letter from the Social Security Administration (SSA) indicating a discrepancy between an employee's name and social security number would have to take certain actions to resolve those discrepancies. If the employer and employee are unable to correct the discrepancy within a specified timeframe, the employer would be obligated to terminate the employee or be deemed to have "constructive knowledge" that the employee may be an unauthorized alien, which could lead to civil and criminal penalties.

Advocacy did not submit formal comments to DHS during the comment period. Following issuance of the final rule, several labor and civil rights groups filed a lawsuit against DHS claiming that the SSA database was unreliable as an immigration enforcement tool. Several business groups intervened in the case, charging that DHS also failed to analyze the impact of the rule on small businesses in accordance with the Regulatory Flexibility Act. In response to a request for assistance from these business groups, Advocacy sent a letter to DHS supporting the RFA claim and offering to assist DHS in satisfying their requirements under the RFA.

On October 10, 2007, a federal district court granted a preliminary injunction barring DHS from implementing the rule pending further order. Further action is pending.

Department of Housing and Urban Development

E.O. 13272 Compliance

The Department of Housing and Urban Development (HUD) has made its policies and procedures available to the public in compliance with section 3(a) of E.O. 13272. HUD has notified 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 received RFA training in FY 2005. HUD did not publish any final rules in FY 2007 that were the subject of any Advocacy public comments; therefore, HUD's compliance with section 3(c) of E.O. 13272 cannot be assessed.

Department of the Interior

E.O. 13272 Compliance

The Department of the Interior (DOI) has made the departmental manual listing the requirements and guidance to promote RFA compliance publicly available in compliance with section 3(a) of E.O. 13272. As required by section 3(b), the National Park Service (NPS) has continued to notify Advocacy of rules that it has determined could have a significant economic impact on a substantial number of small entities. NPS did not submit any final rules in FY 2007 that were the subject of any of Advocacy's comments; therefore, NPS's compliance with section 3(c) of E.O. 13272 cannot be assessed.

The U.S. Fish and Wildlife Service (FWS) does not notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities, as required by section 3(b) of E.O. 13272. FWS fails to prepare an IRFA or a certification at the time of proposal, as required by the RFA. Advocacy believes that these delays in completing the necessary RFA analysis hinder the ability of affected small entities to provide meaningful comment on the proposals' impacts. FWS continues to certify its final designations of critical

habitat for endangered species as not having a significant economic impact on a substantial number of small entities despite small business views to the contrary voiced during the rulemaking process. FWS has not been completing IRFAs or FRFAs for its critical habitat designations. FWS submitted two final rules in FY 2007 that were the subject of Advocacy comments, and complied with section 3(c) of E.O. 13272 by responding directly to the comments.

U.S. Fish and Wildlife Service

Issue: Designation of Critical Habitat for the Spikedace and Loach Minnow. On December 20, 2005, FWS proposed to designate 633 stream miles of land in Arizona and New Mexico as critical habitat for the spikedace and loach minnow. FWS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. On July 6, 2006, Advocacy submitted a public comment letter to FWS, recommending revisiting the economic impacts of the proposed designations and considering less burdensome alternatives. Responding to comments by Advocacy and other small business entities, FWS excluded private lands in the lower portion of the Verde River from the final critical habitat designation because of economic factors. Based on the FWS economic analysis, Advocacy believes that the agency's decision to eliminate these high-cost areas from its final designation resulted in \$46.9 million in cost savings over 20 years, discounted at 7 percent.¹²

Issue: Designation of Critical Habitat for the Canada Lynx. On November 9, 2005, FWS proposed to designate 26,935 square miles (more than 17 million acres) of land for the Canada lynx. FWS

¹² Because all of the cost savings do not occur immediately, or within the first year, to obtain a total cost figure it is necessary to discount costs that occur in the future to make them comparable to costs today. OMB's rule is to use 7 percent as the primary, "conservative" figure.

subsequently revised this designation downward to 18,031 square miles of land in Idaho, Maine, Minnesota, Montana, and Washington.

On September 11, 2006, FWS published a draft economic impact analysis and an initial regulatory flexibility analysis. In October, Advocacy consulted with small business stakeholders and submitted a public comment letter recommending that FWS's IRFA and economic analysis consider further impacts on small businesses. In particular, Advocacy was concerned about the economic impacts on small entities in the timber industry in Maine, where 95 percent of the timberlands are privately owned and more than 6 million acres were included in this critical habitat designation (CHD). Advocacy also commented that the FWS's analysis examined the costs to landowners, but did not consider the costs to small builders and developers that would have incurred additional mitigation expenses such as land use restrictions and increased costs of development. Responding to comments by Advocacy and other small business entities, FWS excluded 16,190 square miles (more than 10 million acres) of private land because of biological studies, existing and new lynx management conservation programs, and economic factors. FWS's exclusion of these high-cost areas resulted in \$919 million in cost savings.

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 notifies 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. DOJ did not publish any final rules in FY 2007 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) has made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. The Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Employment and Training Administration (ETA), Employment Standards Administration (ESA), and Employee Benefits Security Administration (EBSA) were trained in RFA compliance in FY 2004. Agencies within the Department of Labor notify Advocacy in a timely manner, through Advocacy's email notification system (OSHA) or by mail (MSHA), of draft rules that may have a significant economic impact on a substantial number of small entities, as required by section 3(b) of E.O. 13272. DOL agencies did not finalize any rules in FY 2007 upon which Advocacy filed comments; therefore, compliance with section 3(c) of E.O. 13272 cannot be assessed. Advocacy submitted comments to OSHA on the advance notice of proposed rulemaking on hazard communication (Globally Harmonized System of Classification and Labeling of Chemicals, or GHS); however, that rule has yet to be formally proposed. Advocacy participated in a small business advocacy review panel on OSHA's draft proposal for cranes and derricks; however, that rule also has yet to be proposed.

Issue: Family and Medical Leave Act. The Department of Labor (DOL) published the final regulations to implement the Family and Medical Leave Act (FMLA) in 1995. Under the FMLA, eligible employees of employers with more than 50 employees may take unpaid job-protected leave for up to 12 work weeks if they need time off for the birth or adoption of a child or for a personal or family member's serious health condition. On December 1, 2006, DOL requested comments from interested parties on their experience with FMLA to provide a basis for ascertaining the effectiveness of the current regulations.

On February 8, 2007, Advocacy submitted a public comment letter based on communication with small businesses, and recommended that DOL complete a section 610 periodic review based on the responses the agency receives. Section 610 of the RFA requires agencies to retrospectively review all regulations that have or will have a significant economic impact on a substantial number of small entities within 10 years of their adoption as final rules. Advocacy believes that the FMLA imposes a significant economic impact on a substantial number of small entities, and is therefore subject to 610 review. According to 2004 data from the Small Business Administration, more than 200,000 small businesses with 50 employees or more are required to comply with the FMLA. These entities employ in excess of 25 million employees, or 30 percent of covered employees.

Based on small business input, Advocacy also recommended specific reforms of the FMLA that could minimize the regulatory burden for small entities. Small businesses stated that they lack guidance on what constitutes a “serious health condition,” and sought clarification about DOL’s conflicting regulations and opinion letters on this definition. Small business representatives also voiced concern with the intermittent leave provisions of FMLA, which allow employees to take separate blocks of time for a particular medical reason. These entities commented that intermittent leave is the most costly and challenging aspect of the FMLA, because of the difficulty in tracking these small increments of time and scheduling staff, and because of the number of unplanned and fraudulent absences for minor or chronic conditions. DOL has published a report of the responses to this request for comments, but has not proposed any amendments to the FMLA. DOL has not yet completed a 610 review.

Occupational Safety and Health Administration

Issue: OSHA’s Notice of Availability of the Regulatory Flexibility Act Review of the Occupational

Safety Standard for Lead in Construction. OSHA reviewed its lead in construction standard under the RFA’s section 610, which requires federal agencies periodically to review their existing rules to determine whether they should be continued without change, amended, or rescinded consistent with the underlying statute. OSHA’s lead standard is designed to prevent occupational exposures to lead on construction sites. The standard applies to many small businesses in the construction, renovation, and remodeling industries that are required to comply with its worker protection requirements. Advocacy was notified of this review prior to publication.

The Office of Advocacy discussed OSHA’s lead in construction standard at several of its small business labor safety roundtables, including presentations by small business representatives from the residential remodeling industry. Advocacy also hosted an issue-specific small business roundtable on this issue, including representatives from regulated industries and from OSHA, HUD, and the EPA (each of which has regulations concerning lead hazards). Advocacy filed a comment letter with OSHA recommending that OSHA commence a public notice and comment rulemaking process to determine whether its lead standard could be made less burdensome to small business.

Following its section 610 review, OSHA declined to revise its rule or open a formal rulemaking process as Advocacy suggested. OSHA did recommend additional training and outreach to improve compliance, and agreed to work with EPA and HUD to develop a single training program that would encompass all three agencies’ requirements.

Department of State

E.O. 13272 Compliance

The Department of State (State) has made some progress in complying with E.O. 13272. While the State Department has not posted its RFA policy on its website as required by section 3(a) of E.O. 13272, it was trained in RFA compliance in FY

2006. State did not promulgate any draft rules that would have a significant economic impact on a substantial number of small entities in FY 2007; therefore, the agency was in compliance with section 3(b). State published one final rule in FY 2007 that was responsive to comments filed by Advocacy in compliance with section 3(c) of E.O. 13272.

Issue: Final Exchange Visitor Program; Trainees and Interns Rule. The Department of State issued a final rule on June 19, 2007, 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 called 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 final rule imposed a variety of new requirements on designated program sponsors before they could accept a participant into their exchange program. For example, designated program sponsors now must 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. During the proposed rule period, several small aviation flight schools contacted Advocacy and stated that several 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 would be economically detrimental to them.

The issue of the State Department's proposed rule was raised during Advocacy's aviation safety roundtable. Advocacy submitted a formal comment letter stating that the State Department had failed to comply with the RFA because its certification that the rule would not have a significant economic

impact on a substantial number of small businesses was improper, lacking a factual basis as required by the RFA. Advocacy recommended that State either provide a factual basis for its RFA certification or prepare and publish an IRFA for public comment before proceeding with the rule. Advocacy also recommended that State consider less burdensome alternatives for aviation flight schools that would still meet the State Department's regulatory objectives.

In response to Advocacy's comments, the Department of State issued a final rule that exempted aviation flight schools from the final rule and left existing regulatory requirements for that industry in place. Initial and annual recurring cost savings totaled \$22.2 million.

Department of Transportation

E.O. 13272 Compliance

The Department of Transportation (DOT) has made its policies and procedures publicly available as required by section 3(a) of E.O. 13272. The Federal Aviation Administration (FAA) was trained in RFA compliance in FY 2003. The Federal Motor Carrier Safety Administration (FMCSA) and the Federal Railroad Administration (FRA) were trained in RFA compliance in FY 2004. The National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) were trained in RFA compliance in FY 2005. Agencies within DOT notify Advocacy in a timely manner, through Advocacy's email notification system, of draft rules that may have a significant economic impact on a substantial number of small entities, as required by section 3(b) of E.O. 13272.

The administrator and senior officials at the Pipeline and Hazardous Materials Safety Administration (PHMSA) are interested in collaborating more closely with Advocacy on the agency's regulations. Such an approach will help the agency improve its compliance with section 3(b) of E.O.

13272. Currently, PHMSA contacts Advocacy only on regulations the agency has finalized. The agency should notify Advocacy more consistently of draft rules that may have a significant economic impact on a substantial number of small entities. Advocacy will continue to urge PHMSA to share draft rules with Advocacy. Because the agency did not finalize any rules on which Advocacy submitted written comments, compliance with section 3(c) of the executive order cannot be assessed.

DOT submitted one electronic notification to Advocacy in FY 2007; however, it did not notify Advocacy of the Federal Aviation Administration's (FAA) proposed Aircraft Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals rule as required by section 3(b) of E.O. 13272.

DOT agencies finalized one rule (the FAA air tours rule) in FY 2007 upon which Advocacy filed comments; the agency responded to Advocacy's comments in compliance with section 3(c) of E.O. 13272.

Advocacy submitted comments to the Federal Aviation Administration on its proposed Aircraft Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals rule, and separately on the initial regulatory flexibility analysis for the rule (published in the *Federal Register* after the proposed rule because the IRFA was not included in the original notice).

Federal Aviation Administration

Issue: FAA's Proposed Aircraft Production and Airworthiness Approvals, Parts Marking, and Miscellaneous Proposals Rule. The proposed rule would change the certification procedures and identification requirements for aeronautical products and parts, including standardizing the requirements for production approval holders, requiring production approval holders to issue airworthiness approvals, requiring manufacturers to mark all parts and components, and revising export airworthiness approval requirements to facilitate global harmonization.

Some of the provisions (such as parts marking, quality systems, and shipping requirements) could be costly for small businesses.

The Office of Advocacy raised this issue at its small business aviation safety roundtable, and held a teleconference with affected small businesses. Advocacy filed a formal comment letter recommending that the FAA reconsider several of the provisions in the proposed rule. Advocacy also filed comments on the initial regulatory flexibility analysis for the rule, which was published after the NPRM because it was not included in the original *Federal Register* notice. The final rule has not been published.

Issue: National Air Tour Safety Standards Final Rule. On October 22, 2003, the FAA published a proposed rule that would establish new safety standards for commercial air tour operators. The rule eliminated existing exceptions for commercial air tours conducted under Title 14, Part 91 of the Code of Federal Regulations. Part 91 exempts from Part 119 certification certain nonstop sightseeing flight operators who use the same airport for takeoff and landing and fly within a 25-mile radius. The proposed rule required all air tour operators to obtain Title 14, Part 119 certification. Advocacy worked closely with affected small entities and trade associations to identify the economic impacts of the proposed regulation. In April 2004, Advocacy submitted a public comment letter to the agency expressing concern that many small air tour operators could not afford the cost of obtaining Part 119 certification and thus would be forced to exit the industry.

The FAA published the National Air Tour Safety Standards final rule on February 13, 2007. The agency made significant changes to the final rule; the Part 91 exceptions are maintained and operators must obtain a letter of authorization from the FAA instead of obtaining a new certification. FAA's decision to keep the Part 91 exception and eliminate additional provisions contained in the proposed rule resulted in \$127.3 million in cost savings for small entities.

Pipeline and Hazardous Materials Safety Administration

Issue: Hazardous Materials: Transportation of Lithium Batteries. On April 2, 2002, PHMSA issued a proposed rule regulating the transportation of lithium batteries. The proposal required producers and transporters of lithium batteries to adhere to more stringent packaging and testing requirements. The agency certified the proposed rule under section 605(b) of the RFA. Small entities affected by the proposal expressed their concerns to Advocacy about the potential economic impact of the proposed rule. Advocacy's review of the proposal uncovered problems with the costs of the rule for small businesses. In August 2003, the Office of Information and Regulatory Affairs issued a return letter to PHMSA recommending that the agency either complete an initial regulatory flexibility analysis or provide a statement of factual basis for the certification contained in the rule.

In June 2005, the agency published an IRFA for the proposed rule in the *Federal Register* in which it addressed many of Advocacy's concerns. On August 9, 2007, PHMSA issued the final rule on transportation of lithium batteries. The final regulatory flexibility analysis considered eight possible alternatives and adopted four. The agency adopted exceptions for small lithium batteries and for small production runs of lithium batteries and provided for a two-year implementation period. The revisions adopted in the final rule will result in a cost savings of \$13.2 million for affected small entities.

Department of the Treasury

E.O. 13272 Compliance

The Department of the Treasury (Treasury) has made its policies and procedures available to the public 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) of E.O. 13272, Advocacy has been invited to and has participated in several prepublication 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) of E.O. 13272.

In FY 2007, Advocacy held 11 RFA training sessions for IRS staff. Treasury and the IRS did not publish any final rules in FY 2007 that were the subject of Advocacy comments; therefore the compliance of Treasury and the IRS with section 3(c) of E.O. 13272 cannot be assessed. Advocacy did not file any comments with OCC or OTS in FY 2007.

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 would affect qualified intermediaries that facilitate exchanges of like-kind property. The initial regulatory flexibility analysis published with the proposed rule concluded that the number of transactions involving small businesses that will be affected and the full extent of the economic impact on small businesses could not be precisely determined. Advocacy's ongoing support encouraged Treasury and the IRS to publish a revised IRFA with a period for comment in the *Federal Register* on March 20, 2007. On May 10, 2007, Advocacy submitted a public comment to Treasury and the IRS commending them for the revised IRFA. The additional analysis in the revised IRFA affords affected taxpayers a clearer understanding of the impact of the proposed regulations. The rule was still under consideration as of the end of FY 2007.

Issue: Tax Classification of Cigars and Cigarettes. On October 25, 2006, the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) published a proposed rule under section 5702 of the Internal Revenue Code that would

revise the definition of “cigarette” to include certain types of “little cigars” that were not previously treated as cigarettes. Treasury and TTB certified the proposed rule under the RFA and supported the certification by noting only that “[t]he proposed regulations primarily codify and clarify existing administrative tax classification principles and practices.”

Small businesses informed Advocacy that the little cigar reclassification as outlined in the proposed rules, if finalized, would end their ability to market little cigars in both domestic and foreign markets. The change in product definition would cause many little cigar producers’ products to be classified as cigarettes; this would trigger significant regulatory barriers at the state level and would inhibit the little cigar producers’ ability to export little cigars.

On March 23, 2007, Advocacy submitted a public comment to Treasury and TTB stating that the proposed rule in its current form should not be certified under the RFA, and that small businesses in the little cigar industry have indicated that the proposed rule may have a significant impact on some small businesses. Advocacy recommended that Treasury and TTB do one of two things to comply with the RFA. First, Treasury and TTB could publish data supporting their certification under the RFA prior to moving forward with a final rule. Alternatively, Treasury and TTB could develop an initial regulatory flexibility analysis and publish it in the *Federal Register* with a period for comment. The comments were still under consideration as of the end of the fiscal year.

Department of Veterans Affairs

E.O. 13272 Compliance

The Department of Veterans Affairs (VA) complies with section 3(a) of E.O. 13272 by making its RFA policies available on line to the public, 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 rules that may have a significant economic impact on a substantial number of small entities. Advocacy has reviewed these notifications for FY 2007, and verifies that most of the regulations did not affect small entities. The VA did not publish any final rules in FY 2007 that were the subject of Advocacy comment; therefore, the VA’s compliance with section 3(c) of E. O. 13272 cannot be assessed.

Architectural and Transportation Barriers Compliance Board

E.O. 13272 Compliance

The Architectural and Transportation Barriers Compliance Board (Access Board) has not published written policies and procedures that ensure that the potential impacts of agencies’ draft rules on small businesses are properly considered during the rule-making process, as required by section 3(a) of E.O. 13272. The Access Board did not issue any rules in fiscal year 2007 that it characterized as having a significant economic impact on a substantial number of small entities. The Access Board did not publish any final rules in FY 2007 that were the subject of any Advocacy comment; therefore, the Access Board’s compliance with section 3(c) of 13272 cannot be assessed.

Issue: Americans with Disabilities Act Accessibility Guidelines for Large Passenger Vessels. In 2004, the Access Board released draft guidelines on the application of the Americans with Disabilities Act (ADA) to large passenger vessels, defined in the guidelines as passenger vessels permitted to carry more than 150 passengers or more than 49 overnight passengers. On July 7, 2006, the Access Board released for public comment a revised draft of these ADA Guidelines for Large Passenger Ves-

sels, and this version included all ferries regardless of size and capacity. According to estimates by the Department of Transportation, the Small Business Administration, and the Passenger Vessel Association, 95 percent of large passenger vessel owners are considered small businesses.

On November 9, 2006, Advocacy submitted a public comment letter to the Access Board based on meetings with small business representatives. These small entities supported the continued separation of large and small passenger vessels into separate ADA guidelines and rulemaking, which follows the Coast Guard's regulatory framework of allowing less burdensome requirements for smaller passenger vessels with a capacity of less than 150 passengers. A concern for small entities was the inclusion of all ferries regardless of size and passenger capacity in the 2006 version of the draft ADA Guidelines for Large Passenger Vessels; this expanded scope frustrates the Coast Guard's regulatory framework. The required level of accessibility in small ferries creates issues relating to safety, cost, and overall structural difficulties. Small entities also sought clarification on issues such as the requirements for new and existing vessels and the agencies that would be involved in future rulemaking.

Advocacy recommended that the Access Board and pertinent government agencies ensure that future rulemaking on the ADA Guidelines on Large Passenger Vessels comply with the Regulatory Flexibility Act.

Consumer Product Safety Commission

E.O. 13272 Compliance

The Consumer Product Safety Commission (CPSC) 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. Draft rules were not consistently submitted by the CPSC to Advocacy pursuant to

section 3(b) of E.O. 13272 in FY 2007. The CPSC did not publish any final rules in FY 2007 that were the subject of Advocacy public comment; therefore compliance with section 3(c) of E.O. 13272 cannot be assessed.

Issue: Standards for the Flammability (Open Flame) of Mattress Sets (71 Fed. Reg. 13472, March 15, 2006). On March 15, 2006, the CPSC published the Consumer Standards for the Flammability (Open Flame) of Mattresses final rule in the *Federal Register*, with an effective date of July 1, 2007. The new standards established the performance requirements for mattresses exposed to an open flame. CPSC's goal was to ensure that mattresses would generate a smaller fire with a slower growth rate, thereby reducing the chances of a flash fire. Advocacy filed comments on the regulation, alerting the CPSC about the rule's potential to have a negative impact on small mattress manufacturing companies. As a result of Advocacy's comments and those filed by small mattress manufacturers, the CPSC made changes to the rule that altered the need for the manufacturers to keep samples of the mattresses on site after testing and allowed small mattress manufacturers to pool their mattresses together for testing purposes. This change lessened the economic burden on the industry. In addition, on November 2, 2006, Advocacy sent a letter to the CPSC asking that the agency comply with section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) by providing small mattress manufacturers with a compliance guide instructing the industry on how it is expected to comply with the final rule. The CPSC did in fact publish the compliance guide in which it outlined the regulatory requirements of the mattress rule and how small entities could take steps to ensure that they were in compliance with the regulation.

Environmental Protection Agency

E.O. 13272 Compliance

The Environmental Protection Agency (EPA) has complied with section 3(a) of E.O. 13272 by making available on its website the agency's policies and procedures concerning the Regulatory Flexibility Act. In FY 2007, EPA provided Advocacy with all of its draft rules before or at the time they were sent to the Office of Management and Budget for review, in compliance with section 3(b) of E.O. 13272. EPA responded adequately to Advocacy's public comment letters in FY 2007, in accordance with section 3(c) of E.O. 13272.

Issue: Definition of Solid Waste (Recycling).

On March 26, 2007, EPA issued a supplemental proposal to its 2003 proposal, which proposed to exclude certain types of recycling activities involving hazardous secondary materials from the federal hazardous waste regulations. By removing unnecessary regulatory controls over certain recycling practices, EPA expects to make it easier to safely recycle hazardous secondary material. EPA estimates about 4,600 facilities handling over a half million tons of hazardous secondary materials annually may be affected by this proposed rule. The industry sectors that could face the largest impact are chemical manufacturing, coating and engraving, semiconductor and electronics manufacturing, pharmaceutical manufacturing, and the industrial waste management industry. EPA estimates the annual cost savings to be \$107 million for the affected firms. At the request of the Office of Advocacy, EPA expanded its approach from the 2003 proposal to encompass additional facilities by not limiting relief to facilities that are recycling at the same facility or within the same standard industrial code.

Issue: Spill Prevention, Control and Countermeasure (SPCC). On December 26, 2006, EPA published a final rule governing the Spill Prevention Control and Countermeasure (SPCC) rule for

facilities that manage or use oil. In particular, EPA adopted streamlined requirements for small facilities that handle a quantity of oil below a certain threshold, and for those facilities with oil-filled equipment. In response to concerns from regulated facilities regarding the 2002 SPCC rule, EPA, in collaboration with the Office of Advocacy, initiated a rulemaking to simplify the SPCC requirements. In June 2004, Advocacy developed a specific proposal to address smaller oil facilities. Advocacy testified before Congress on the rule in December 2005 and submitted additional comments February 10, 2006. The 2006 rule is largely an outgrowth of the 2004 plan developed by Advocacy.

Small facilities with an aggregate oil capacity of under 10,000 gallons qualify for the streamlined small facility relief. Instead of engaging a professional engineer to develop an SPCC plan, small facilities may self-certify their own plan. Additionally, small facilities have increased flexibility for tank integrity testing and facility security requirements. In October 2007, EPA proposed further flexibility for small facilities. With regard to the oil-filled equipment requirements, facilities are permitted to use an oil spill contingency plan, in lieu of the more expensive secondary containment requirement around the equipment. EPA estimates the savings for these and other revisions at \$128 million per year, of which about 80 percent should accrue to small businesses.

Issue: Hydrochlorofluorocarbon (HCFC) 22. On March 28, 2007, EPA published a final rule setting a compliance date of September 1, 2009, instead of the proposed January 1, 2008, for the marine sector to transition from HCFC-22 (an ozone-depleting substance that is a member of the hydrochlorofluorocarbon family) to other substitutes. This change would result in unquantified savings for up to 3,000 boat builders (nearly all small firms) who were having difficulty meeting the compressed timetable. The rule previously in effect had allowed for a transition extending to January 1, 2010, but EPA proposed to accelerate the timetable to January 2008 based on new information. Advocacy supported the extension

of time for the marine sector because of their particular hardships. Other sectors are required to meet the January 21, 2008, date except for the extruded polystyrene foam sector, which has a January 1, 2010, date.

Issue: Toxics Release Inventory (TRI). For more than two decades, Americans and the environment have benefited from the public right-to-know provisions set forth by the Emergency Planning and Community Right to Know Act of 1986 (EPCRA). EPCRA established the toxics release inventory (TRI), which requires companies to make a yearly report using the “Form R” to the Environmental Protection Agency (EPA) of their handling, management, recycling, disposal, and allowable discharges of listed chemicals. Five years after EPCRA was enacted, the Office of Advocacy petitioned the EPA to develop streamlined reporting requirements for small-volume chemical users. Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of small businesses that have zero emissions or discharges of hazardous chemicals to the environment.

On December 22, 2006, EPA issued the TRI burden reduction rule, which would allow more firms to use the short form A, first developed in 1994. Under the new rule, businesses that do not emit or discharge highly hazardous chemicals can use the short form. Only the top environmental performers will benefit by being able to use the short form A, thus providing an incentive to reduce or eliminate pollution. Although it did not go as far as some small businesses would prefer, Advocacy supports the EPA reforms. The final rule strikes an appropriate balance by allowing meaningful burden relief while at the same time continuing to provide valuable information to the public. As a result of the changes, small businesses would save an estimated \$5.9 million in first-year and \$5.9 million in annually recurring costs. As of the end of FY 2007, federal legislation was pending that would eliminate the EPA reform.

Issue: Guidance in Lieu of Rules to Reduce Volatile Organic Compound (VOC) Emissions from Five Industrial Sectors’ Toxics Release Inventory (TRI). On October 5, 2006, the Environmental Protection Agency (EPA) promulgated control techniques guidelines (CTGs) for the control of volatile organic compounds (VOC) emissions from each of five product categories in consumer and commercial products. These CTGs provide guidance to the states concerning EPA’s recommendations for reasonably available control technology (RACT) level controls for these product categories.

Advocacy worked with EPA and the affected small business associations to help EPA formulate the proposal. EPA agreed to raise the proposed exemption level for several expensive add-on requirements from 2.5 tons per year to 25 tons per year, making the controls cost-effective for hundreds of facilities. In addition, the solvent cleaning requirements were made more flexible by the additions of exemptions and exclusions based on two sets of California rules. These revisions will affect thousands of facilities, which are primarily small businesses. EPA issued this guidance, instead of a national rule, because it can achieve greater emission reductions given the statutory restrictions on rules governing consumer and commercial products. Advocacy submitted comments on September 5, 2006, supporting EPA’s proposal, and agreed that the CTG approach would result in additional VOC emission reductions over the rule approach. As a result of EPA’s outreach to the small business community, the final CTGs provide a balance between environmental protection and regulatory flexibility. No cost savings estimates are available.

Issue: Area Source Air Toxics Standard for Iron and Steel Foundries. On September 17, 2007, EPA published a proposed rule establishing new air pollution control standards for iron and steel foundries under the Clean Air Act. The proposal would require foundries above a specified melting capacity to install air pollution control equipment. Because of information received from small business stakeholders, the Office of Advocacy persuaded EPA to

co-propose a higher melting capacity threshold that would allow small foundries to operate without installing new controls. The estimated one-time cost savings from this co-proposal are estimated to be \$13.9 million. The recurring operating and maintenance costs saved are estimated to be \$2.8 million.

Issue: Halogenated Solvent Cleaning Residual Risk Standard. On May 3, 2007, EPA issued a final rule setting revised emission limits for facilities that use halogenated solvents such as methylene chloride, trichloroethylene, and perchloroethylene to clean metal parts. The rule places new restrictions on the amounts of solvent that can be used in cleaning operations. Advocacy worked with a subgroup of companies that use halogenated solvents to clean metal tubes that are long and that have extremely narrow diameters. These specialty applications require cleaning with larger quantities of solvent and are not suited to the emission control techniques EPA has required for standard cleaning operations. Based on feedback from Advocacy and the narrow-tube manufacturers, overwhelmingly small businesses, EPA determined that the required emission controls are not technically feasible for narrow-tube operations. EPA's decision to exempt these operations from the standard resulted in one-time cost savings of \$50 million.

Issue: Area Source Air Toxics Standard for Gasoline Distribution. On November 9, 2006, the EPA published a proposed Clean Air Act rule that would require new emission controls for bulk gasoline terminals, pipeline facilities, bulk gasoline plants, and potentially for gasoline stations. The proposal would reduce hazardous air pollutants by requiring these sources to install new equipment such as floating roofs and seals, or by adopting work practices such as leak detection and repair programs. The Office of Advocacy persuaded EPA to consult with several affected small business representatives early in the planning process. Based on comments and data received from these parties, EPA proposed a less costly regulatory approach than the agency's earlier preferred alternative. In total, the proposed

rule represents a one-time cost savings of \$117.2 million, as compared with the original approach.

Issue: Control of Emissions from Nonroad Spark-Ignition Engines and Equipment. On May 18, 2007, EPA proposed a rule to control air pollution from gasoline-powered engines and equipment below 50 horsepower. These engines and equipment are primarily used in lawn and garden applications and in the marine industry. The proposed rule would require catalyst-based emission controls for some engines, as well as evaporative emission controls for boats. Many of the manufacturers that would be affected by the proposed rule are small businesses. Because of concerns about the impacts of the rule on small businesses and the technical feasibility of proposed emission controls, EPA convened a SBREFA panel on August 17, 2006. Twenty-seven small entity representatives (SERs) participated in the panel and provided technical data to EPA about the impacts of the rule. Based on recommendations from the panel, EPA proposed to allow small businesses extended compliance deadlines, streamlined testing and certification requirements, and hardship exemptions for small businesses unable to comply by the deadline. Small spark ignition engine and equipment makers are anticipated to have first-year cost savings of \$6.4 million and second-year cost savings of \$6.2 million. Stern-drive and inboard engine and boat builders have first- and second-year cost savings of \$9.1 million (per year) for engine, boat, and evaporative (EVAP) systems. High performance marine engine builders, which were exempted from the new requirements because their products cannot be made compliant, have first-year and recurring cost savings of \$5.6 million and will avoid a total loss of sales revenue. Total first-year cost savings are \$20.7 million.

Issue: Clean Air Act, Particulate Matter National Ambient Air Quality Standards. On September 21, 2006, EPA revised the national standards for particulate matter (PM). EPA lowered the daily standard for fine particles smaller than 2.5 microns, but left the standards for coarse particles (2.5 - 10

microns) unchanged. In addition, EPA indicated that farming operations in rural areas could satisfy coarse PM requirements by meeting state-based best management practices (BMPs), rather than more stringent requirements. Advocacy worked with the U.S. Department of Agriculture and agricultural trade associations to support EPA's flexible interpretation of farming requirements. The final standard is estimated to result in cost savings for small farms and other agricultural operations of \$1 million per year on an ongoing basis.

Issue: Permit Fee Incentive for Clean Water

Act Grant Allotments. On January 4, 2007, EPA proposed revisions to the Clean Water Act, section 106 grant allocation formula to create a new incentive for states to fund National Pollutant Discharge Elimination System (NPDES) programs through fees paid by dischargers. Many states currently do not require all dischargers, including small entities, to pay the full costs of their permitting programs through permit fees. Numerous state, local, and small business organizations expressed concerns that the proposed revision would result in substantial permit fee increases and/or the loss of grant monies. These groups also told Advocacy that they believed EPA had not adequately considered the potential impact on states and small entities. On March 2, 2007, Advocacy requested that EPA extend the comment period on the proposal for an additional 60 days, so that small entities could gather more detailed information about potential impacts. EPA extended the comment period for 60 days, and on May 14, 2007, Advocacy submitted a technical memorandum prepared by its consultant evaluating the potential impacts on small entities. The technical memorandum concluded that the rule was likely to have an impact on states and small entities. Based on the comments of Advocacy and small business representatives, EPA delayed finalizing the rule for several months. The delayed implementation of the rule represents one-time cost savings to small entities in affected states of at least \$5.65 million.

Federal Acquisition Regulation Council

E.O. 13272 Compliance

The policies and procedures required by RFA section 3(a) issued by the Department of Defense apply also to the Federal Acquisition Regulation (FAR) Council. The FAR Council has complied with section 3(b) by making its deliberations and predecisional deliberative rulemaking processes available to the Office of Advocacy. Advocacy commented on a number of the preproposed FAR rules that may have a significant economic impact on a substantial number of small entities in FY 2007. The Office of Advocacy coordinated closely with OIRA and the FAR Council to improve the regulatory analysis process. Advocacy also hosted several RFA training sessions to increase the Council's understanding of the RFA requirements. The FAR Council did not publish final rules in FY 2007 that were the subject of Advocacy comments; therefore, the FAR Council's compliance with section 3(c) of E.O. 13272 cannot be assessed.

Issue: Representations and Certifications, Tax Delinquency.

On May 25, 2007, the Office of Advocacy submitted comments on the proposed rule to require contractors to certify their tax delinquency status to the federal government, state and local governments, and any other jurisdictions including foreign governments. The proposed regulation would require the contractor to certify that he or she does or does not have a tax liability for federal, state, local, and/or foreign jurisdictions. This certification requirement will be a part of the contractor's official representations and certification agreement that is a material component of the executed contract between the government and the contractor. This level of mandatory compliance without clear definitions may increase small businesses' costs of doing business with the government. Moreover, small businesses will be required to have knowledge

of local and foreign tax regulations. The comment period has closed on this proposed regulation and Advocacy is working with the FAR Council on the final regulation.

Issue: Contractor Code of Ethics. On May 21, 2007, the Office of Advocacy submitted comments on the proposed rule to require contractors to implement a code of ethics. Advocacy strongly recommended that the FAR Council publish an initial regulatory flexibility analysis as required by section 603 of the Regulatory Flexibility Act. Advocacy further urged the Council to give careful consideration to the need for reasonable alternatives for small business compliance with the proposed regulation and to review the flowdown provision of this proposed regulation as it applies to small business subcontractors. In view of the apparent lack of data on small business subcontractors, Advocacy recommended delaying the flowdown requirement to these contractors. The comment period has closed, but the Office of Advocacy continues to work to ensure that the final regulation is responsive to the concerns of small entities.

Federal Communications Commission

E.O. 13272 Compliance

The Federal Communications Commission (FCC) continues to exhibit inconsistent compliance with E.O. 13272. In FY 2005, the FCC sent Advocacy a letter maintaining that as an independent agency it is not required to comply with E.O. 13272, but is committed to uphold the spirit of the law by examining its rules for small entity impacts.

The FCC has not made its policies and procedures to promote RFA compliance publicly available as required by section 3(a) of E.O. 13272. The FCC partially complies with section 3(b) by notifying Advocacy of proposed rules that may have a significant economic impact on a substantial number of

small entities. This notice is sent by mail following the adoption and release of the rule and prior to the rule's publication in the *Federal Register*. However, the commission still does not provide Advocacy with its draft rules as required by section 3(b). While the FCC does publish IRFAs and FRFAs for its rulemakings, they are inadequate because they consistently lack a proper economic analysis of how the rule will affect small entities. Additionally, the FCC does not provide meaningful alternatives as required by the RFA, and fails to address the alternatives offered by small businesses in their comments.

Advocacy has continued to offer the FCC assistance in complying with the RFA, and FCC staff received RFA training in 2005. In FY 2007 Advocacy filed six comment letters on telecommunications issues that would affect the small business community. The FCC has not addressed Advocacy's comments in their final rules. Accordingly, Advocacy continues to work with the FCC on its compliance with section 3(c), to engage the FCC early in the rulemaking process, and to provide FCC bureaus with additional RFA training.

Issue: Customer Proprietary Network Information (CPNI). The FCC adopted an order and issued a further notice of proposed rulemaking (FNPRM) on March 13, 2007, for customer proprietary network information (CPNI). The final rule requires telecommunications carriers to upgrade their networks to enhance the protection of confidential customer data. Advocacy communicated the concerns of small voice-over Internet protocol (VoIP) providers that the initial compliance timeline would impose an unnecessary economic burden on small carriers. Advocacy recommended that the FCC extend the timeline by six months to allow these small providers to comply with the regulation without exerting a negative economic impact on these nascent companies. In its order, the FCC granted this extended compliance timeline, saving small VoIP providers more than \$6 million in estimated cost savings.

Issue: Video Programming Access. On September 11, 2007, the FCC adopted a Report and Order and Notice of Proposed Rulemaking on the ban on exclusive video programming contracts. Section 628 (c)(2)(D) of the Communications Act of 1934, as amended, generally prohibits exclusive contracts for satellite cable programming or satellite broadcasting between vertically integrated programmers and cable operators. Small providers of this programming explained to Advocacy that the ban on exclusive contracts is critical to their existence, because it prevents large cable operators from unnecessarily withholding premium video programming and impeding their ability to compete in the market. To express the concerns of these small entities, Advocacy sent a public comment letter to the FCC on March 26, 2007, recommending that it extend the ban for at least three years, if not the full five years previously granted. The FCC kept the ban on exclusive contracts in place for an additional five years, which yielded unquantifiable cost savings for these small video programming providers.

Securities and Exchange Commission

E.O. 13272 Compliance

The Securities and Exchange Commission (SEC) has not made public its written policies and procedures for the consideration of small entities in its rulemaking as required by section 3(a) of E.O. 13272. However, the SEC consistently notifies Advocacy through Advocacy's email notification system of draft rules that may have a significant economic impact on a substantial number of small entities, as required by section 3(b). Advocacy commented on two final rules published by the SEC in FY 2007, both related to amendments to the Sarbanes-Oxley Act of 2002. The first final rule was published December 15, 2006, and extended the compliance dates for nonaccelerated filers, or small public companies with a public float of less than \$75

million. The second final rule, published June 20, 2007, adopted management guidance and amendments to the internal controls reporting requirements of the Sarbanes-Oxley Act. The SEC complied with section 3(c) of E.O. 13272, as both of these final rules addressed Advocacy comments.

Issue: The Sarbanes-Oxley Act Section 404 Requirements. In 2003, the SEC adopted rules implementing section 404 of the Sarbanes-Oxley Act, which required public companies to submit a management report and an external auditor report on their internal controls, or company safeguards against fraudulent and mistaken transactions and annual financial reports. Based on concerns raised by Advocacy and other small business stakeholders, the SEC reexamined the costs inherent in complying with section 404 and delayed the implementation date for small businesses with a public float of less than \$75 million. However, accelerated filers, or larger companies with a public float of above \$75 million, had to comply with section 404 and reported problems because of the lack of management guidance. These larger companies also faced difficulties with the rule's onerous one-size-fits-all auditing standard that resulted in excess costs and redundancies.

In 2006, the SEC's Advisory Committee on Smaller Public Companies recommended that the SEC defer the implementation of the new section 404 internal control reporting requirements until an adequate framework is in place to account for the differences in size between smaller and larger companies. Advocacy submitted a public comment letter supporting the advisory committee's recommendations and citing evidence that section 404 reporting requirements would impose a disproportionate cost on smaller public companies and may restrict a new generation of small innovative companies from seeking capital in the U.S. capital markets. Advocacy urged the SEC to provide flexibility for small companies to comply with section 404.

In response to these recommendations, the SEC published a final rule on December 15, 2006, granting smaller public companies a five-month

extension for the management assessment report and a 17-month extension for the auditor's report. Advocacy submitted two comment letters to the SEC, supporting the proposed extensions and providing recommendations on management guidance that the SEC was developing on section 404. In December, the SEC also released management guidance for section 404, and the Public Company Accounting Oversight Board (PCAOB) released for public comment a new auditing standard designed to address concerns with the Sarbanes-Oxley Act. Advocacy held a small business roundtable on these two proposals in January 2007. Advocacy submitted a comment letter in February 2007 supporting these proposals but recommending that the SEC and the PCAOB provide a further extension for smaller public companies to clarify provisions of these proposals and to determine whether these proposals would actually solve the problem of scalability and high costs in internal controls reporting for smaller public companies. In April 2007, Advocacy submitted a statement with these concerns to the U.S. Senate Committee on Small Business and Entrepreneurship at a hearing on the impact of the Sarbanes-Oxley Act on small businesses.

On June 27, 2007, the SEC published a final rule adapting its management guidance and amendments to facilitate more efficient evaluations of internal controls reporting. Based on SEC data, these changes could lead to an estimated \$561 million in cost savings in the first year of implementation. On July 25, 2007, the SEC approved the PCAOB's new audit standard for internal control over financial reporting.

Issue: Smaller Public Company Regulatory Reforms. In summer 2007, Advocacy submitted public comment letters on two SEC proposals that will reform the regulatory process for smaller public companies.

Forms S-3 and F-3. On August 23, 2007, Advocacy submitted a comment letter supporting the SEC's proposal to increase the eligibility requirements for Forms S-3 and F-3 to public companies with a pub-

lic float below \$75 million. Currently these "short forms" are limited to companies with more than \$75 million in public float, and these forms allow companies to incorporate past and future filings by reference and to utilize shelf registrations. Shelf registrations allow companies to register securities before any specific offering, and to release delayed or continuous offerings without waiting for additional SEC action. According to the SEC, almost 5,000 small public companies that filed annual reports in 2006 had a public float below \$75 million.

Several small business representatives were concerned that this proposal would limit these small entities with a public float below \$75 million from selling more than 20 percent of their public float in offerings over a period of 12 calendar months. These small businesses were concerned that this arbitrary restriction limits their ability to raise capital in the public markets. Advocacy recommended that the SEC consider raising the 20 percent limit for smaller public companies utilizing these short forms. Based on small business input, Advocacy also recommended that the SEC take this opportunity to extend the use of Form S-3 and F-3 for transactions involving secondary offerings or securities for the account of any person other than the issuer. On September 24, 2007, Advocacy took part in a smaller public companies roundtable with small business representatives at the SEC's Government Business Forum. This group formally submitted two recommendations on Forms S-3 and F-3 that mirrored Advocacy's comments. The SEC has not finalized this rulemaking.

Regulation S-B. On September 11, 2007, Advocacy submitted a public comment letter supporting an SEC proposal to expand the eligibility for scaled disclosure and reporting requirements under Regulation S-B by small public companies with a public float of \$25 million to \$75 million.

Advocacy recommended that the SEC consult with the Small Business Administration about updating this small business size standard, as required by the Small Business Act. Based on conversations with small business representatives, Advocacy also

recommended that the SEC reconsider the proposal's elimination of Regulation S-B forms. This proposal would require these smaller public companies to utilize a modified and more complicated version of the regular registration forms. Advocacy recommended that the SEC provide a two-year phase-in period to allow users the choice of the Regulation S-B forms or the modified regular registration forms, and that the SEC perform an analysis to measure the costs of the modified regular registration forms. The SEC has not finalized this proposal.

Issue: Proposed Rule on Securities Transfer

Agents. On June 27, 2007, Advocacy submitted a public comment letter to the SEC recommending that it commence proceedings to disapprove a proposed rule change by the Depository Trust Company (DTC), which would amend the Fast Automated Securities Transfer (FAST) and Direct Registration System (DRS) limited requirements for transfer agents.

The FAST program allows for the transfer of securities without the need for physical delivery of securities, reducing the risk of loss or other mishandling of certificates. Major exchanges require that issuers be eligible for processing through the DRS; registration as a FAST agent is needed for DRS participation. The proposed rule would require securities transfer agents to become DRS-eligible, if they are not already, and to participate immediately in FAST. Additionally, the rule would require increases in insurance coverage. It specifies new requirements for vaults within which certificates must be stored, and would prohibit transfer agents from using certain forms of business relationships that are now commonly used. The proposed rule also requires an independent evaluation of internal controls, even though SEC rules already require such a report.

Advocacy believes that the rule will have a disproportionate impact on small businesses and their ability to compete to the extent that these businesses will no longer be able to offer their services as securities transfer agents. The DTC has not provided an economic analysis of this proposed rule, as required by the Regulatory Flexibility Act. Advocacy recom-

mended that the SEC disapprove the rules proposed by the DTC until such time as a reasonable alternative can be developed that would minimize the impact on small transfer agents. The SEC has not yet approved or disapproved this DTC proposed rule.

Small Business Administration

E.O. 13272 Compliance

SBA has made significant efforts to stay in compliance with E.O. 13272. SBA's procedures comply with section 3(a) of E.O. 13272. SBA submits draft rulemakings for Advocacy's consideration in compliance with section 3(b) of E.O. 13272. As a result of RFA training and continued RFA discussions on draft rules, SBA personnel have utilized Advocacy input earlier rather than later in the regulatory development process. Advocacy has not filed written comments on any proposed SBA rules that have been made final in FY 2007. Therefore, SBA's compliance with section 3(c) of 13272 cannot be assessed.

U.S. Agency for International Development

Issue: To Create a Small Business Mentor-Protégé Acquisition Program. On November 26, 2006, the U.S. Agency for International Development (USAID) issued a proposed regulation to amend its acquisition regulations to encourage USAID prime contractors to assist small disadvantaged firms certified by the U.S. Small Business Administration (SBA) under section 8(a) of the Small Business Act, other small disadvantaged businesses, historically Black colleges and universities and other minority institutions of higher learning, and women-owned small businesses in enhancing their capabilities to

perform contracts and subcontracts for USAID and other federal agencies.

Several of the key provisions of the proposed program were in conflict with the statutory authority of SBA and would be confusing and costly to eligible small businesses. The final regulation was published on June 13, 2007, and included modifications to incorporate joint concerns expressed by SBA and the Office of Advocacy. The final regulation recognized the lack of this authority by removing this provision. The final regulation was also revised in recognition of a lack of authority to waive the SBA's affiliation requirements. The savings to small businesses have not yet been quantified.

Conclusion

The regulatory process continues to challenge small industry stakeholders to work together with state and federal agencies to ensure that complex rulemakings do not unduly burden small businesses in the marketplace. The Office of Advocacy has become an important part of the rulemaking process by connecting government agencies with the private sector, and by raising awareness and promoting a better understanding of the federal regulatory impact among small entities.

In FY 2007, targeted efforts such as Advocacy's federal training, state outreach, and r3 initiatives further enhanced agencies' understanding of the RFA and their ability to consider what regulatory alternatives would best reduce the impact of rulemakings on small entities, while meeting or improving their regulatory objectives. Advocacy continued to be involved in the rulemaking process at the prepublication stage, building upon progress made in past years. The office assisted various government offices by providing key economic data on small businesses affected by certain rules, and regularly consulted with these offices to offer guidance on their interagency review under E.O. 12866. Advocacy's involvement over the past year has helped save small entities more than \$2.5 billion in regulatory costs.

The Office of Advocacy's interaction with federal agencies has also resulted in improved agency compliance with E.O. 13272. Many agencies use the recommendations provided by Advocacy to alleviate some of the costs of regulations for small businesses. The agencies also provide Advocacy with advance notice of rules that will have a significant economic impact on a substantial number of small entities.

Moving forward, Advocacy will continue to focus its efforts on training agencies so that they fully understand the RFA's requirements and can better evaluate the regulatory burden on small entities. A commitment to reviewing not only proposed rules, but existing regulations that may have outlived their intended effect will further mitigate regulatory costs for small businesses.

5 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.¹³ The intent of the model legislation is to foster a climate for entrepreneurial success in the states.

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. Those 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).

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 forces state governments to review all of their regulations periodically; and (5) judicial review to give the law "teeth."

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

Since 2002, 37 state legislatures have considered regulatory flexibility legislation¹⁴ and 23 states have implemented regulatory flexibility by executive order or legislation.¹⁵

In 2007, 13 states introduced regulatory flexibility legislation: Alabama (HB 84), Arkansas (SB 55/HB 1147), Connecticut (SB 1179), Hawaii (SB 188), Illinois (HB 302), Maine (LD 905), Massachusetts (HB 189/SB 133), Mississippi (HB 1229), Montana (SB 148), New Jersey (A 2327/SB 1335), Tennessee (SB 55/HB 1276), Texas (HB 3218/HB 3430/SB 700), and Washington (HB 1525). Bills were signed into law in Arkansas, Hawaii, Maine, Tennessee, Texas and Washington (See Tables 5.1 and 5.2 and Chart 5.1).

The following is a real-world example that demonstrates the value to small businesses of regulatory flexibility at the state level.

Puerto Rico's Ice Makers Benefit from Regulatory Flexibility Law

Puerto Rico's Regulatory Flexibility Act (Law Number 454—Ley de Flexibilidad Administrativa y Reglamentaria para el Pequeño Negocio) requires agencies and departments to perform periodic reviews of existing regulations. In 2007, Puerto Rico's Department of Health conducted one such review at the request of small business owners and the Ice

14 These states include Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, 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.

15 These states include Alaska, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Missouri, North Dakota, New Mexico, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin.

Makers Association. The resulting rule change has been an improvement for small business owners and the island's public health.

Ice manufacturing is an important industry in Puerto Rico. Ice is an essential product for an island whose economy is driven in large part by tourism. In addition, Puerto Rico is prone to power outages, leaving businesses and residences to rely on bagged ice.

Puerto Rico's Rule 6090, Reglamento General de Salud Ambiental, is meant to ensure that commercially produced ice is clean and uncontaminated. To ensure this, the rule requires bags that hold ice to be clear, allowing the entire bag to be easily inspected. The Department of Health interpreted the rule to mean that bags must be completely transparent, with no labeling whatsoever. In the course of inspecting ice plants, health inspectors would confiscate any bags printed with a company logo and issue fines for rule violations.

Business owners and the Ice Manufacturing Association met with Puerto Rico's Office of the Small Business Advocate/Ombudsman to discuss the situation and see if there was any hope for improvement. The representatives contended that a transparent bag with printing on one side still allowed a clear view of a bag's entire contents. They also pointed out another issue of concern to the Department of Health: many ice manufacturers on the island were operating on the black market and not complying with any health or safety laws. Tests of ice at the point of sale had sometimes found illegally high levels of bacteria; a rule that prohibited identifying labeling actually made it more difficult for the Department of Health to ascertain the source of contaminated ice and stem public health concerns.

The Small Business Advocate submitted a formal request for review of the regulation and arranged for Department of Health and ice industry representatives to meet. After a thorough review and receipt of comments from business owners, the Department of Health agreed to modify the regulation to permit printing on one side of a transparent plastic bag, and it eliminated the associated fine. The result was a win for both the agency and small ice manufacturers. Businesses could legally place their logo on one side of the ice bag and still allow

enough visible surface to ensure the cleanliness of the bag's contents.

New Challenges and Opportunities

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. This has brought new opportunities for the model legislation initiative.

In March 2007, Advocacy organized a conference in Kansas City, Missouri, "Building a Better Small Business Climate: State Regulatory Flexibility Best Practices." The purpose of this event was to bring together state policymakers, government officials, and small business advocacy groups from across the country to share the tools and methodologies that have been developed to successfully implement state regulatory flexibility laws. The conference served as a means to begin creating a community of practitioners whose day-to-day responsibilities involve making their state's regulatory flexibility law a success. Continuing to build and facilitate communications among this community will be a focus of Advocacy over the next year.

Also at this conference Advocacy released a state best practices publication, *State Guide to Regulatory Flexibility for Small Businesses*. This guide includes information on what regulatory flexibility is and why it matters, the importance of educating regulatory officials and small businesses about regulatory flexibility laws, how to prepare the small business economic impact and regulatory flexibility analysis, the importance of creating transparency in the rulemaking process and documenting the success of state regulatory flexibility, and examples of state regulatory flexibility programs.¹⁶

The Office of Advocacy is strengthened by regional advocates located in the Small Business

16 A copy of the guide is available on Advocacy's website at www.sba.gov/advo/laws/rfa_stateguide07.pdf.

Administration's 10 regions across the country. These accomplished individuals 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.

Table 5.1 State Regulatory Flexibility Legislation, 2007 Legislative Activity

6 states enacted regulatory flexibility legislation in 2007

Arkansas (SB 55/HB 1147)	Maine (LD 905)	Texas (HB 3430)
Hawaii (SB 188)	Tennessee (SB 55/HB 1276)	Washington (HB 1525)

13 states introduced regulatory flexibility legislation in 2007

Alabama (HB 84)	Maine (LD 905)	Tennessee (SB 55/HB 1276)
Arkansas (SB 55/HB 1147)	Massachusetts (HB 189/SB 133)	Texas (HB 3218/HB 3430/SB 700)
Connecticut (SB 1179)	Mississippi (HB 1229)	Washington (HB 1525)
Hawaii (SB 188)	Montana (SB 148)	
Illinois (HB 302)	New Jersey (A 2327/SB 1335)	

Table 5.2 State Regulatory Flexibility Legislation, Status as of October 2007

13 states and one territory have active regulatory flexibility statutes

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

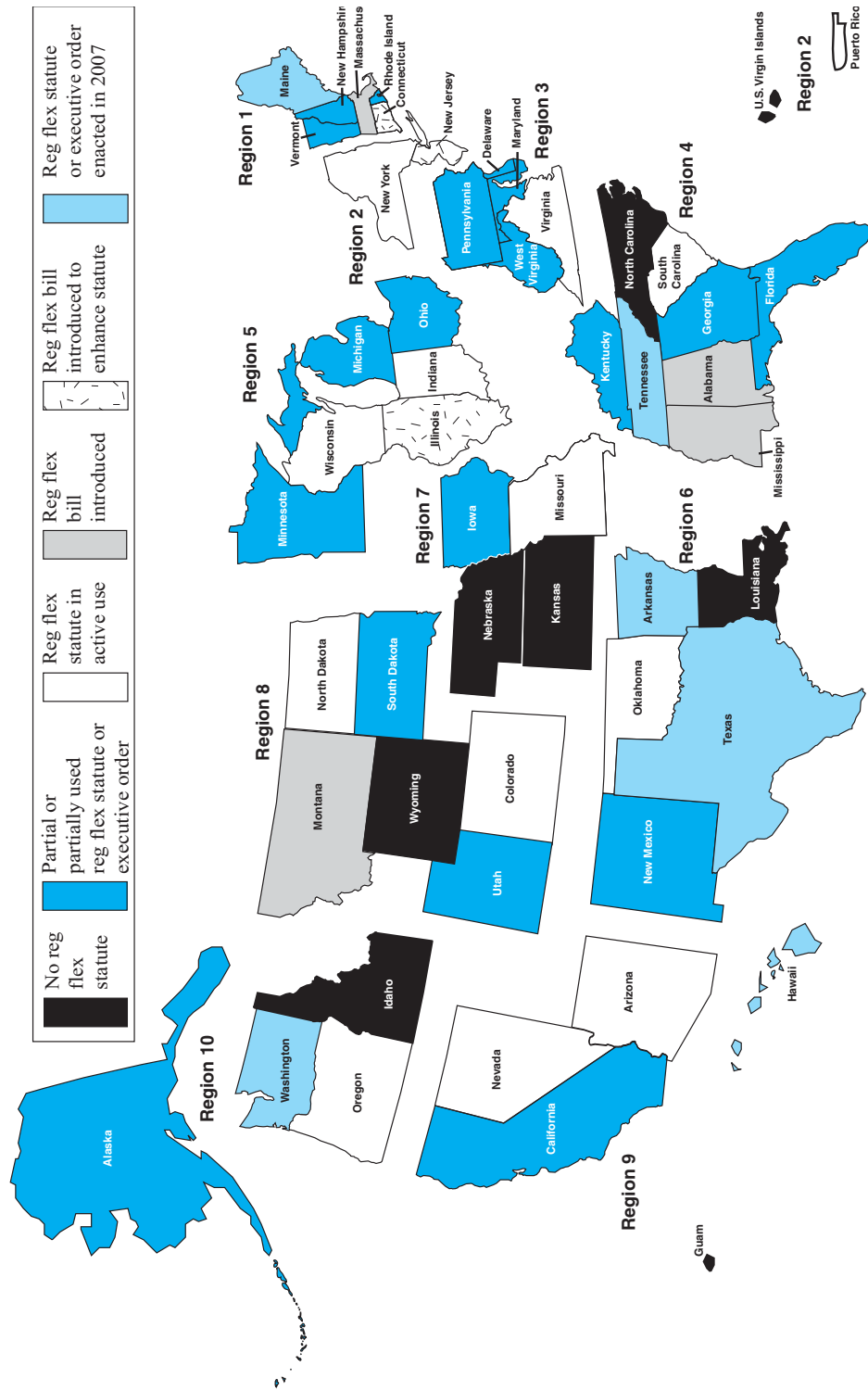
29 states have partial or partially used regulatory flexibility statutes

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

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

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

Chart 5.1 Mapping State Regulatory Flexibility Activity, FY 2007



July 2007

Appendix A

Supplementary Tables

Table A.1 RFA Training in Federal Agencies, FY 2003-2007

In fulfillment of E.O. 13272, Advocacy trained regulatory staff from the following federal departments and agencies in how to comply with the Regulatory Flexibility Act from July 2003 through September 2007.

Department of Agriculture

- Animal and Plant Health Inspection Service
- Agricultural Marketing Service
- Grain Inspection, Packers, and Stockyards Administration
- Forest Service
- Rural Utilities Service

Department of Commerce

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

Department of Education

Department of Energy

Department of Health and Human Services

- Center 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
- Federal Emergency Management Administration
- Transportation Security Administration
- United States Coast Guard

Department of Housing and Urban Development

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

Department of the Interior

- Bureau of Indian Affairs
- Bureau of Land Management
- 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
- Drug Enforcement Administration
- Federal Bureau of Prisons

Department of Labor

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

Department of Transportation

- Federal Aviation Administration
- Federal Highway Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- Federal Transit Administration
- Maritime Administration
- National Highway Traffic Safety Administration
- Research and Special Programs Administration
- Surface Transportation Board

Department of the Treasury

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

Department of Veterans Affairs

Independent Federal Agencies

- Architectural and Transportation Barriers Compliance Board
- Consumer Product Safety Commission
- Commodity Futures Trading Commission
- Environmental Protection Agency
- Farm Credit Administration
- Federal Communications Commission
- Federal Deposit Insurance Commission
- Federal Election Commission
- Federal Housing Finance Board
- Federal Reserve System
- Federal Trade Commission
- General Services Administration / Federal Acquisition Regulation Council
- National Credit Union Administration
- Nuclear Regulatory Commission
- Pension Benefit Guaranty Corporation
- Securities and Exchange Commission
- Small Business Administration
- Trade and Development Agency

Table A.2 SBREFA Panels through Fiscal Year 2007

Rule Subject	Date Convened	Report Completed	NPRM ¹	Final Rule Published
Environmental Protection Agency				
Nonroad 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 09/10/03	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
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01

Rule Subject	Date Convened	Report Completed	NPRM ¹	Final Rule Published
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	08/18/03	01/04/06
Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03	01/05/06
Emissions from Nonroad 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
Nonroad 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—CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Federal Implementation Plan for Regional Nitrogen Oxides (CAIR)	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	02/26/07
Nonroad Spark-ignition Engines / Equipment	08/17/06	10/17/06	05/18/07	

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	In process	
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	10/17/06		

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

Regulatory Review and Reform (r3) Top 10 Rules, 2008*

Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology

Agency	Environmental Protection Agency (EPA)
Submitter	Small Business Environmental Assistance Program / Small Business Ombudsman (SBEAP / SBO) National Steering Committee
Description	The Clean Air Act's New Source Performance Standard (NSPS) for petroleum dry cleaners, 40 CFR §60.624, requires operators to perform an initial test to verify that the dry cleaning machine is operating properly. Additionally, Clean Air Act rules governing perchloroethylene (perc) dry cleaners, 40 CFR §63.321, require operators to use a halogenated hydrocarbon detector capable of detecting concentrations of perc of 25 parts per million (ppm) or greater to perform weekly inspections of their dry cleaning equipment.
Small entities affected	Virtually all of the 28,000 dry cleaners in the United States are small businesses.
Regulatory burden	The required NSPS testing method was developed before the modern closed-loop dry cleaning technology became widespread. The testing method requires an operator to open the machine to sample the emissions. However, most modern machines are closed-loop machines that will automatically shut down if any of the components are disconnected. Dry cleaners cannot conduct the required test in the manner specified by the rule. Similarly, halogenated hydrocarbon detectors typically measure ounces of refrigerant rather than ppm and most are not calibrated to detect perc at concentrations down to 25 ppm. Dry cleaners using these detectors therefore cannot meet the 25 ppm sensitivity requirement.
Proposed burden reduction	EPA should (1) update the outdated NSPS testing methods to reflect current equipment that is in use in the modern dry cleaning industry, (2) clarify in 40 CFR §63.321 that hydrocarbon detectors for perc are not required to have a sensitivity down to 25 ppm.
Small entity benefits	When outdated or inaccurate testing methods are revised, dry cleaners will have a method for demonstrating compliance that fits the modern equipment they use.
Advocacy contact	Keith Holman, advocacy@sba.gov

*Alphabetical by agency

Flexibility for Community Drinking Water Systems

Agency	Environmental Protection Agency (EPA)
Submitter	National Rural Water Association
Description	The 1996 Amendments to the Safe Drinking Water Act established a process to allow small drinking water systems that cannot meet EPA’s national drinking water standards to meet an alternative standard. Under 40 CFR§142.303(a) and (b), the drinking water system must demonstrate that the alternative standard is protective of human health and is necessary to avoid financial hardship for the community where the system is located, and that the state regulatory agency agrees with the alternative standard. EPA considers a community’s ability to pay when it determines how much a small system must spend to meet the national standards.
Small entities affected	Tens of thousands of small, often rural communities with limited resources to install and operate the treatment equipment.
Regulatory burden	No small drinking water system has ever qualified to obtain an affordability variance. Small systems are currently required to spend up to \$500 per household to meet the national standards, a severe strain in many localities. These communities may also be forced to spend large sums of money to address trace contaminants, such as iron, that have very little potential for serious health impacts.
Proposed burden reduction	EPA should consider alternative methods for determining affordability, including using different percentages of median household income in the community. If a system’s cost exceeds a community’s ability to pay, the standard would be deemed “unaffordable,” and the system could qualify for a variance if the state approves and the alternative standard remains protective of human health.
Small entity benefits	Small, rural communities would have greater flexibility to commit resources toward the issues of greatest importance to the community.
Advocacy contact	Kevin Bromberg, advocacy@sba.gov

Simplify the Rules for Recycling Solid Waste

Agency	Environmental Protection Agency (EPA)
Submitter	iSi Environmental Services, Synthetic Organic Chemical Manufacturers Association, National Paint and Coatings Association
Description	Current hazardous waste management regulations, 40 CFR Parts 260 and 265, govern facilities that store, treat, or dispose of hazardous wastes. Currently many useful materials that could otherwise be reused are required to be handled, transported, and disposed of as hazardous wastes.
Small entities affected	Hundreds of thousands of businesses, primarily in manufacturing, are subject to the hazardous waste standards. Many of these facilities are engaged in recycling hazardous wastes, including solvents recovery.
Regulatory burden	The hazardous waste standards are far more stringent, complex, and costly than those required for materials being recovered for reuse.
Proposed burden reduction	EPA is now considering less stringent standards for materials being recycled, including solvents that are recovered onsite. EPA should adopt a definition of solid waste that would eliminate certain forms of recycled materials from being considered “hazardous wastes,” allowing them to be recycled more easily.
Small entity benefits	The approach will affect more than 20,000 facilities and will reduce costs, while still protecting the environment and encouraging recycling rather than the use of virgin materials.
Advocacy contact	Kevin Bromberg, advocacy@sba.gov

EPA Should Clearly Define “Oil” in its Oil Spill Rules

Agency	Environmental Protection Agency (EPA)
Submitter	American Chemistry Council (ACC), National Paint and Coatings Association (NPCA)
Description	The Spill Prevention, Control, and Countermeasure (SPCC) rules, 40 CFR, Part 112, govern the prevention and response requirements applicable to facilities that store oil where there is a potential threat of a release of oil to navigable waters.
Small entities affected	The SPCC rules affect hundreds of thousands of small businesses; a new definition of oil would affect the regulatory status of nonpetroleum oils and chemicals at more than 10,000 small firms.
Regulatory burden	The rule has been in place since 1973, and many facilities are unsure whether a given product is considered “oil” or not, and therefore whether the SPCC rules apply. In June 2007, ACC and NPCA requested that EPA provide some additional guidance as to the definition of oil to eliminate ambiguity in the current broad definition. The current definition relies on the creation of an “oil sheen” or discoloration on surface water—a very broad definition that relies on the judgment of the person making the observation and a variety of other factors. EPA has also moved away from the Coast Guard list of materials that are considered oil
Proposed burden reduction	The ACC urges the EPA to return to the 1975 decision tree procedure developed by the EPA’s Office of Water, as well as the Coast Guard’s list. This decision tree supported a distinction between materials thought to be oil generated at petroleum refineries, and agricultural product processing materials and chemicals created through processing in the chemical production and related industries. The Coast Guard approach relies on this decision tree procedure.
Small entity benefits	According to the nominator, more than 10,000 small facilities with products that are not petroleum-based oil could be relieved from the burdens of meeting the SPCC rules, which were designed to prevent oil spills.
Advocacy contact	Kevin Bromberg, advocacy@sba.gov

Update Flight Rules for the Washington, DC, Metropolitan Area

Agency	Federal Aviation Administration (FAA), U.S. Department of Transportation
Submitter	David Wartofsky, Potomac Airfield
Description	Following the events of September 11, 2001, the FAA issued an emergency rule establishing an air defense identification zone (ADIZ) for the region surrounding Washington, DC. The emergency rule imposed a 15-mile flight restricted zone (FRZ) and a 30-mile ADIZ emanating from Reagan National Airport. In 2005, the FAA proposed to make the emergency rule permanent (70 Fed. Reg. 45,250, August 4, 2005). The rule, if finalized, would impose flight operation requirements on aircraft operations within that area, including requirements that aircraft operators (1) file and activate a flight plan before entering (or re-entering) the restricted area; (2) maintain two-way 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 sector within the affected area, they are needed for security reasons.
Small entities affected	Three small airports in the FRZ and a number of other airports in the ADIZ are significantly affected by these restrictions. Further, the restrictions have caused a significant economic impact on the region as a whole.
Regulatory burden	The FRZ and ADIZ have significantly restricted aviation within the Washington, DC, region, including limiting flights to and from the three small airports in the FRZ. It is likely that all three of these airports (and any aviation companies operating at the airports) will go out of business if the rules are finalized. The rule also affects some 150 other airports and numerous businesses operating in the ADIZ.
Proposed burden reduction	A review of the flight restriction rule could identify provisions that are unnecessary, inefficient, or outdated for affected small entities. The submitter has suggested a variety of alternatives, including an expandable FRZ that could be extended in a time of heightened security. By conducting a coordinated review of the rule, the FAA, the Department of Homeland Security, the Department of Defense, and the Secret Service would be able to determine whether the rule could be improved, while continuing to provide adequate security. A full analysis of both the security benefits and the economic impacts should be completed prior to finalizing any rule.
Small entity benefits	Review and potential revision of the flight restriction rule could help small entities have a more predictable use of aviation space and could enhance economic activity within the Washington, DC region.
Advocacy contact	Bruce Lundegren, advocacy@sba.gov

Eliminate Duplicative Financial Requirements for Architect-Engineering Services Firms in Government Contracting

Agency	Federal Acquisition Regulation Council (FAR Council)
Submitter	Council on Federal Procurement of Architectural and Engineering Services (COFPAES)
Description	The existing regulation, 48 CFR 52.232-10, provides for a 10 percent withholding or retainage of fees on firms providing fixed-price architectural-engineering services.
Small entities affected	Currently more than 230,000 small architectural and engineering (A&E) firms are in the federal procurement system.
Regulatory burden	The current provision is counter to the Brooks Act, which allows A&E firms and the procuring agency to meet to discuss the design and scope of services before bidding on the work. In some government contracts, the retainage is in addition to bonding requirements. Retainage restricts the cash flow of small businesses, with very little benefit to the government.
Proposed burden reduction	The FAR Council should consider removing this provision or reducing the percentage from 10 to 5, as it has done for other services.
Small entity benefits	A change in this regulation will help increase the cash flow of small A&E firms that contract with the federal government. This change should also encourage more firms to enter the federal procurement market, with concomitant improvements in the quality of services.
Advocacy contact	Major Clark, advocacy@sba.gov

Simplify the Home Office Business Deduction

Agency	Internal Revenue Service (IRS), U.S. Department of the Treasury
Submitter	National Association for the Self-Employed (NASE) and Eric Blackledge, Blackledge Furniture
Description	Internal Revenue Code section 280A(c)(1) permits a deduction for a home office if it is the principal place of business of the taxpayer, used exclusively for business, or used to meet with patients, clients, or customers. However, current IRS regulations do not provide a concise definition of the elements of section 280A(c)(1). In the absence of final regulations describing how to qualify for and calculate the deduction, IRS policies and case law have made it more complicated for a home-based business owner to learn how to obtain the exemption.
Small entities affected	Home-based businesses constitute 53 percent of all small businesses.
Regulatory burden	The requirements to qualify for and calculate the deduction are confusing for taxpayers and do not account for changes in technology that affect the way business is conducted. Consequently, many at-home workers do not take advantage of the home office business deduction.
Proposed burden reduction	The IRS should revise the rules to permit a standard deduction for home-based businesses. Similar to the Form 1040 standard deduction, the home office business deduction should be optional. Taxpayers who wish to claim the home office deduction could choose to continue to follow the current home office deduction rules or they could choose the new standard deduction.
Small entity benefits	Home-based business owners would have a simplified, less burdensome way of taking advantage of the home office business deduction.
Advocacy contact	Dillon Taylor, advocacy@sba.gov

Update MSHA Rules on the Use of Explosives in Mines to Reflect Modern Industry Standards

Agency	Mine Safety and Health Administration (MSHA), U.S. Department of Labor
Submitter	Institute of Makers of Explosives and the International Society of Explosives Engineers
Description	MSHA regulations, 30 CFR, Parts 56, 57, and 77, govern the use of explosives in various types of mines, including surface metal and nonmetal mines, underground metal and nonmetal mines, and surface coal mines. The overriding purpose is to promote safety. Key provisions include storage, transportation, use, detonation, maintenance, and other issues. The Part 77 regulations have been in place since 1971, while the Parts 56 and 57 regulations were last updated in 1996. According to the submitter, the rules are outdated and need to be reformed to comport to current industry standards.
Small entities affected	According to the submitter, some 29,000 mines operate in the United States, 95 percent of which are small businesses. Nearly every mine is affected by the rule.
Regulatory burden	The burdens are both technical and safety-related. According to the submitter, current MSHA rules do not address some fundamental aspects of explosive safety, such as electronic detonation. The submitter notes that a small business could receive a citation for operating in conformity with current industry best practices, which are not consistent with MSHA's outdated rules.
Proposed burden reduction	The submitter would like MSHA to update its regulations consistent with current industry standards as well as with OSHA's more up-to-date regulations on explosives.
Small entity benefits	The submitter believes the change would reduce compliance costs and improve safety by providing greater clarity and consistency.
Advocacy contact	Bruce Lundegren, advocacy@sba.gov

Update OSHA’s Medical / Laboratory Worker Rule

Agency	Occupational Safety and Health Administration (OSHA), U.S. Department of Labor
Submitter	Scott George, Mid-America Dental and Hearing Center
Description	OSHA’s Bloodborne Pathogens Standard, 29 CFR §1910.1030, is designed to protect workers from exposure to bloodborne pathogens (viruses and other microorganisms) such as hepatitis B virus (HBV), and hepatitis C virus (HCV). These exposures result primarily from needlestick and other sharps-related injuries as well as from other employee exposures to blood. The rule requires any employer with workers exposed to blood or other potentially infectious materials to implement an exposure control plan for the worksite. The plan must describe how an employer will use a combination of engineering and work practice controls; ensure the use of personal protective clothing and equipment; and provide training, medical surveillance, hepatitis B vaccinations, and signs and labels, among other provisions.
Small entities affected	The rule affects every small business health care office and lab.
Regulatory burden	The rule makes no provision for medical facilities where employees have very limited exposure to blood, such as dental labs. The submitter states that the risk of employee illness in many circumstances is extremely low and that compliance with the rule costs billions of dollars, needlessly driving up the cost of medical care.
Proposed burden reduction	The submitter would like the rule to be reviewed and the requirements “tiered” to be more flexible depending on the amount of blood and bodily fluids present at the facility. The submitter believes the current rule is more appropriate for facilities that deal with larger amounts of blood and bodily fluids, such as trauma centers, but not for some small health care facilities.
Small entity benefits	The submitter believes the review and potential revision would result in cost savings to small health care facilities and would lower health care costs overall.
Advocacy contact	Bruce Lundegren, advocacy@sba.gov

Update Reverse Auction Techniques for Online Procurement of Commercial Items

Agency	Office of Federal Procurement Policy (OFPP), Office of Management and Budget
Submitter	Fairness in Procurement Alliance
Description	In the federal government’s procurement system, the live electronic reverse auction technique was designed as a contracting tool to provide contracting officers with flexibility to make contract awards in a timely manner. Bidders who use the technique submit their bids through an online intermediary and are informed of competitors’ prices but not their identity. Bidders offer successively lower prices until no lower price is offered. The agency must then decide whether it will make the award. Some current techniques used by contracting officers may have the unintended result of circumventing Federal Acquisition Regulation (FAR) Part 19, which requires agencies to set aside certain dollar threshold contracts for small businesses. The problem exists because no specific FAR regulation instructs contracting officers in how to use the reverse auction tool.
Small entities affected	All federal small business prime contractors are affected by this process.
Regulatory burden	Small business prime contractors are being subjected to acquisitions processes that may vary from agency to agency. This variability may impose unnecessary costs to compete on small business prime contractors.
Proposed burden reduction	The OFPP should review the reverse auction technique and consider structuring a federal government-wide rule that continues to provide the contracting officer with the flexibility embedded in reverse auctions while not conflicting with the well established FAR Part 19, which lays out small business competition requirements.
Small entity benefits	A well-defined regulation for reverse auctions will provide the small business federal contractor the business template necessary to measure the “cost to compete burdens and benefits” associated with contract bidding.
Advocacy contact	Major Clark, advocacy@sba.gov

Appendix C

Section 610 of the Regulatory Flexibility Act: Best Practices for Federal Agencies

Introduction

Section 610 of the Regulatory Flexibility Act (RFA)¹ requires federal agencies to review regulations that have a significant economic impact on a substantial number of small entities² within 10 years of their adoption as final rules. These periodic rule reviews are a mechanism for agencies to assess the impact of existing rules on small entities and to determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes. Agency compliance with section 610's periodic review requirement has varied substantially from agency to agency since 1980.³ While some agencies systematically review all of their existing rules, other agencies review few, if any, of their current rules. Agencies also vary considerably in the amount of public involvement they allow, and the amount of informa-

tion they provide to the public about their reviews.

The Office of Advocacy, an independent office within the U.S. Small Business Administration (Advocacy), has previously given relatively little guidance to agencies on section 610. In 2003, pursuant to the requirements of Executive Order 13,272,⁴ Advocacy issued a general guide on how to comply with the RFA, including section 610.⁵ The 2003 guide did not, however, address commonly asked questions about section 610, such as the timing and scope of reviews, how the public can be involved, and how agencies should communicate with the public about their reviews. The 2003 guide also did not provide examples of retrospective reviews that were, in Advocacy's view, conducted properly.

This best practices document is intended to provide Advocacy's interpretation of section 610 of the RFA and answer common questions about conducting retrospective reviews of existing regulations in a transparent manner. Advocacy intends this document to supplement the 2003 RFA guide; like the 2003 guide, it was developed to meet Advocacy's continuing responsibility under Executive Order 13272 to "notify agency heads from time to time of the requirements of the [RFA]."⁶

The statutory text of 5 U.S.C. Section 610

§ 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 will have a significant economic impact upon a substantial number of small
- 4 Exec. Order No. 13272 § 2(a), 67 *Fed. Reg.* 53,461 (Aug. 13, 2002) ("Advocacy . . . shall notify agency heads from time to time of the requirements of the [RFA], including by issuing notifications with respect to the basic requirements of the Act . . .")
 - 5 Office of Advocacy, *How to Comply with the Regulatory Flexibility Act: A Guide for Government Agencies* (May 2003) available at www.sba.gov/advo/laws/rfaguide.pdf
 - 6 Exec. Order No. 13272 § 2(a), 67 *Fed. Reg.* 53,461 (Aug. 13, 2002).

1 5 U.S.C. § 610 (2000).

2 "Small entities" include small businesses that meet the Small Business Administration size standard for small business concerns at 13 CFR § 121.201, small governmental jurisdictions with a population of less than 50,000, and small organizations that are independently owned not-for-profit enterprises and are not dominant in their field. See 5 U.S.C. §§ 601(3)-(5).

3 See, for example, Government Accountability Office, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews* (GAO-07-791), July 2007; General Accounting Office, *Regulatory Flexibility Act: Agencies' Interpretations Vary* (GAO/GGD-99-55) April 1999. See also Michael R. See, "Willful Blindness: Federal Agencies' Failure to Comply with the Regulatory Flexibility Act's Periodic Review Requirement – and Current Proposals to Invigorate the Act," 33 *Fordham Urb. L.J.* 1199-1255 (2006).

entities. Such a 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 re-

viewed 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.

Legislative history of the RFA relating to section 610

Statements made during the 1980 debate on the Regulatory Flexibility Act demonstrate that Congress intended for section 610 to be a mechanism that requires agencies to periodically re-examine the regulatory burden of their rules vis-à-vis small entities, considered in the light of changing circumstances.⁷ This view was also reflected in Advocacy’s initial 1982 guidance explaining the then-new RFA, which stated that

The RFA requires agencies to review all existing regulations to determine whether maximum flexibility is being provided to accom-

⁷ House Debate on the Regulatory Flexibility Act, 142 Cong. Rec. H24,575, H24,583-585 (daily ed. Sept. 8, 1980) “At least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.” (Statement of Rep. McDade) “[A]gencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business.” (Statement of Rep. Ireland). Similarly, the section-by-section analysis of the periodic review provision of S. 299, which became the RFA, notes that the required factors in a section 610 review mirror the evaluative factors in President Carter’s Executive Order 12044, *Improving Government Regulations*. Exec. Order 12044, 43 *Fed. Reg.* 12,661 (March 24, 1978). Pursuant to that Executive Order, President Carter issued a memorandum to the Heads of Executive Departments and Agencies in 1979, further instructing federal agencies: “As you review existing regulatory and reporting requirements, take particular care to determine where, within statutory limits, it is possible to tailor those requirements to fit the size and nature of the businesses and organizations subject to them.” President Jimmy Carter, Memorandum to the Heads of Executive Departments and Agencies, November 16, 1979.

modate the unique needs of small businesses and small entities. Because society is not static, changing environments and technology may necessitate modifications of existing, anachronistic regulations to assure that they do not unnecessarily impede the growth and development of small entities.⁸

Put simply, the objective of a section 610 review is like the goal of many other retrospective rule reviews:⁹ to determine whether an existing rule is actually working as it was originally intended and whether revisions are needed. Has the problem the rule was designed to address been solved? Are regulated entities (particularly small entities) able to comply with the rule as anticipated by the agency? Are the costs of compliance in line with the agency's initial estimates? Are small businesses voicing continuing concerns about the difficulty they have complying with the rule? The section 610 review is an excellent way to address these questions.

When is a section 610 review necessary?

Is a section 610 review necessary even if the current rule did not impose a significant economic impact on a substantial number of small entities at the time the rule was promulgated? In some cases, yes. Even if an agency was originally able to certify properly under section 605 of the RFA that a rule would not have a significant economic impact on a substantial number of small entities,¹⁰ changed conditions may mean that the rule now does have a significant impact and therefore should be reviewed under section 610. For example, there may be many more small

businesses that are subject to the rule now than when the rule was promulgated. The cost of compliance with a current rule may have sharply increased because of a required new technology. If there is evidence (such as new cost or burden data) that a rule is now having a significant economic impact on a substantial number of small entities, including small communities or small nonprofit organizations, Advocacy believes that the agency should conduct a section 610 review.

Advocacy is aware that some agencies interpret section 610 not to require the periodic review of rules that were originally certified when they were promulgated as having no significant economic impact on a substantial number of small entities. This narrow interpretation of the section 610 review requirements discounts several important considerations. First, evidence of significant current impacts to small entities from an existing rule may call into question the accuracy of the original determination that the rule would have no significant impact. Second, as time passes and the agency (along with regulated small entities) are better able to measure and understand the impacts of a regulation, it benefits the agency to use the periodic review process to update their rules and perform regulatory “housekeeping.” Third, limiting section 610 reviews only to rules that were found to have a significant economic impact on a substantial number of small entities at the time of promulgation would severely undercut section 610. EPA and OSHA, for example—which between them determine that at most one or two rules each year will have such an impact—will exclude each of the hundreds of other rules promulgated annually which may now significantly affect small entities from section 610 review. Given the legislative history of section 610, it is very difficult to believe that Congress intended this outcome. Finally, a reading of the plain language of section 610 supports Advocacy's interpretation. If Congress meant to limit periodic reviews, it would have simply required agencies to review rules that had a significant impact, rather than rules which have a significant impact.

An agency may learn about the current impacts

8 Office of Advocacy, *The Regulatory Flexibility Act* (October 1982).

9 Typical agency-initiated retrospective regulatory reviews include post-hoc validation studies, reviews conducted pursuant to petitions for rulemaking or reconsideration, paperwork burden reviews, and reviews undertaken to advance agency policies.

10 See 5 U.S.C. § 605(b).

of an existing rule through complaints from small entities or petitions for a section 610 or other retrospective review of the rule. If these complaints and/or petitions are founded on reliable cost and impact data, the agency will have a clear indication that small entities are now being affected by the rule.

Scope of the review: What should be included?

Once an agency has determined that an existing rule has a significant economic impact on a substantial number of small entities at the present time, the agency's section 610 review should, at a minimum, address each of the five factors listed in section 610(b)(1)-(5):

- Whether or not there is a continuing need for this rule, consistent with the stated objectives of the applicable statutes;
- Whether the public has ever submitted comments or complaints about this rule;
- The degree of complexity of this rule;
- Whether some other federal or state requirement accomplishes the same regulatory objective as this rule; and
- The length of time since the agency has reviewed this rule, and/or the extent to which circumstances have changed which may affect regulated entities.

Particular attention should be paid to changes in technology, economic circumstances, competitive forces, and the cumulative burden faced by regulated entities. Has the impact of the rule on small entities remained the same?

Section 610(b) requires an agency to evaluate and minimize "any significant economic impact of a rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes." To accomplish this, agencies may want to use an economic analysis similar to the initial regulatory flexibility analysis (IRFA) under section 603 of the RFA, taking into account the limitations on data availability and limited agency re-

sources.¹¹ Agencies have the discretion to place significant weight on other relevant factors, in addition to the types of economic data required by an IRFA. These other factors include an agency's experience in implementing the rule, as well as the views expressed over time by the public, regulated entities, and Congress. With the benefit of actual experience with a rule, the agency and other interested parties should be in a good position to evaluate potential improvements to the rule. Several factors deserve attention here such as the benefits achieved by the regulation, unintended market effects and market distortions, unusually high firm mortality rates in specific industry subsectors, and widespread non-compliance with reporting and other paperwork requirements. Thus, a useful review should go beyond obvious measures such as ensuring that regulatory requirements are expressed in plain language and that paperwork can be filed electronically. The analysis should be aimed at understanding and reducing burdens that unnecessarily impact small entities.

As a matter of good practice, the section 610 analysis should be based on relevant data, public comments, and agency experience. The agency should make use of available data and data supplied by the public, and indicate the sources of the data. To the extent that an agency relies on specific data to reach a conclusion about the continuing efficacy of a rule, the agency should be able to provide that data. The agency should explain its assumptions so that stakeholders can understand its analysis.

11 See 5 U.S.C. § 603. Indeed, the legislative history of S.299, which became the RFA, notes that "[i]n reviewing existing rules, agencies should follow the procedures described in sections 602-609 [of the RFA] to the extent appropriate." 142 Cong. Rec. H24,575, H24,583-585 (daily ed. Sept. 8, 1980). In the context of a section 610 review, the elements of an IRFA analysis that should be present include a discussion of the number and types of small entities affected by the rule, a description of the compliance requirements of the rule and an estimate of their costs, identification of any duplicative or overlapping requirements, and a description of possible alternative regulatory approaches. See also Office of Advocacy, *How to Comply with the Regulatory Flexibility Act: A Guide for Government Agencies* (May 2003) at 29-40, available at www.sba.gov/advo/laws/rfaguide.pdf.

Timing of the review: When does the agency have to start and finish?

The language of section 610 specifies that the review should take place within 10 years after the date a rule is promulgated. While agencies need to gain some experience with a rule before undertaking a retrospective review, the review may take place prior to the 10-year mark. If an agency substantially revises a rule after its initial promulgation, it is arguable as to whether the 610 review may be delayed to correspond to the revision date. Advocacy would not likely object to a revision of the date, but agencies should seek input from Advocacy on this point.

Section 610 does not specifically set a limit on the amount of time for a rule review. Some agencies have reported that they spend more than a year on each section 610 review. It is within an agency's discretion to determine how much time it needs to spend on retrospective rule reviews. Advocacy recognizes that section 610 reviews may take more than a year in order to permit adequate time to gather and analyze data, to allow public comment, and to consider those comments in the review. Of course, some reviews could take less time, based on the complexity of the issues and the nature of the regulated industry.

Agencies may wish to take advantage of the opportunity afforded in section 605(c) of the RFA to consider a series of "closely related rules" as one rule for periodic review purposes. An agency can accomplish a comprehensive section 610 review of closely related rules, satisfying the requirements of the RFA while potentially reducing the agency resources required.

How should agencies communicate with interested entities about section 610 reviews they are conducting?

Section 610(c) of the RFA requires agencies to publish in the *Federal Register* a list of the rules they plan to review in the upcoming year. Agencies use the Unified Regulatory Agenda for this purpose.¹² This listing requirement is intended to give small entities early notice of the section 610 reviews so that they will be ready and able to provide the agency with comments about the rule under review. As a practical matter, however, agencies often give stakeholders no other information about the ongoing status of a section 610 review, what factors an agency is considering in conducting the review, how comments can be submitted to the agency, or, ultimately, the factual basis on which the agency made its section 610 review findings.

Agencies should communicate with interested entities about the status of ongoing section 610 reviews, as well as those they have completed, to enhance transparency. This information may be most efficiently communicated via an agency website or other electronic media, and should inform interested parties of their ability to submit comments, as well as the agency's commitment to consider those comments. Several agencies already utilize web-based communications as an outreach tool during section 610 reviews.¹³

Insights about an existing regulation received from regulated entities and other interested parties should be a key component of a retrospective rule review. By making the review process transparent and accessible, agencies are more likely to identify improvements that will benefit all parties at the

12 The Unified Regulatory Agenda can be accessed at www.reginfo.gov.

13 See, e.g., www.osha.gov, www.epa.gov and www.dot.gov and search for "RFA section 610."

conclusion of the review. Advocacy can help agencies who wish to communicate with small entity stakeholders—by hosting roundtables, working through trade groups, and getting a specific message to a targeted audience. Advocacy is ready to assist agencies in their outreach efforts.

Can other agency retrospective rule reviews satisfy the requirements of section 610?

Yes. Agencies that undertake retrospective rule reviews to satisfy other agency objectives may also be able to satisfy the periodic review requirement of section 610, as long as the rule reviews are functionally equivalent. For example, agencies that evaluated a current regulation pursuant to the Office of Management and Budget's 2002 publicly-nominated rule reform process¹⁴ or OMB's manufacturing rule reform process¹⁵ could qualify as section 610 reviews, if they otherwise met the criteria for section 610 review. Similarly, agencies that undertook retrospective reviews of their regulatory programs because of complaints or petitions from regulated entities could qualify as section 610 reviews – as long as the review includes the minimum factors required by section 610. The best way for agencies to get “credit” for a section 610 review in these circumstances is to communicate adequately with stakeholders, and with Advocacy.

14 See Table 9, New Reforms Planned or Underway—Regulations and Table 10, New Reforms Planned or Underway—Guidance Documents in Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities (September 2003) at 26-34; available at www.whitehouse.gov/omb/inforg/2003_cost_ben_final_rept.pdf.

15 See Regulatory Reform of the U.S. Manufacturing Sector (2005).

Examples

In Advocacy's view, what are some recent retrospective rule reviews (conducted pursuant to section 610 or otherwise) that have been successful?

- **Federal Railway Administration's Section 610 Review of Railroad Workplace Safety.** On December 1, 2003, the Department of Transportation's Federal Railroad Administration completed a section 610 review of its railroad workplace safety regulations. After determining that the workplace safety regulations had a significant economic impact on a substantial number of small entities, the FRA examined the rules in light of section 610's review factors. Although the FRA did not recommend any regulatory change as a result of this review, the agency provided a good description of its analysis of the workplace safety regulations under each review factor and its conclusions. See www.fra.dot.gov/downloads/safety/railroad_workplace_safety.pdf.
- **EPA's RCRA Review.** As a result of public nominations for reforms to the Environmental Protection Agency's hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), EPA evaluated the program and identified duplicative requirements, such as forcing filers to submit reports to multiple locations when one location is adequate. By reducing or eliminating these procedures after public notice and comment, EPA enabled regulated entities to collectively save up to \$3 million per year while preserving the protections of the RCRA program. The retrospective review was successful because it involved a detailed review of the program's requirements and costs, based on years of practical experience. The agency considered technical changes such as computerization that have made some of the older paperwork requirements redundant, and found ways to modernize the program to reflect current realities. See 71 *Fed. Reg.* 16,862 (April 4, 2006).

- OSHA Excavations Standard.** In March 2007, the Occupational Safety and Health Administration (OSHA) completed a section 610 review of its rules governing excavations and trenches. These standards had been in place since 1989, and were designed to ensure that trenches do not collapse on workers and that excavated material does not fall back into a trench and bury workers. In the review, OSHA did a good job of seeking public input on how and whether the rule should be changed. While the agency ultimately decided that no regulatory changes to the standard were warranted, it did determine that additional outreach and worker training would help continue the downward trend of fewer deaths and injuries from trench and excavation work. OSHA concluded that its current excavations standard has reduced deaths from approximately 90 per year to about 70 per year. See *72 Fed. Reg.* 14,727 (March 29, 2007).
- FCC Section 610 Review of 1993-1995 Rules.** In May 2005, the Federal Communications Commission undertook a section 610 review of rules the Commission adopted in 1993, 1994, and 1995 which have, or might have, a significant economic impact on a substantial number of small entities. The FCC solicited public comment on the rules under review, explained the criteria it was using to review the rules, and gave instructions on where to file comments. This approach was transparent because the agency allowed adequate time for comments (three months) and gave interested parties sufficient information to prepare useful comments. See *70 Fed. Reg.* 33,416 (June 8, 2005).

How can agencies get section 610 assistance from the Office of Advocacy?

The Office of Advocacy is ready to assist agencies that are planning a retrospective review of their regulations to ensure that the review fully meets the requirements of section 610. Discussions with the Office of Advocacy are confidential interagency communications, and Advocacy staff members are ready to assist. For more information about this guidance, or for other questions about compliance with section 610, please contact Advocacy at (202) 205-6533.

Appendix D

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

- § 611 Judicial review
- § 612 Reports and intervention rights

§ 601 Definitions

For purposes of this chapter —

- (1) the term “agency” means an agency as defined in section 551(1) of this title;
- (2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;
- (3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;
- (4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;
- (5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which

are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the *Federal Register*;

- (6) the term “small entity” shall have the same meaning as the terms “small business,” “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and
- (7) the term “collection of information” —

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

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

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

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

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

§ 602. Regulatory agenda

- (a) During the months of October and April of each year, each agency shall publish in the *Federal Register* a regulatory flexibility agenda which shall contain —

- (1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;
 - (2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an

approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

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

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

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

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

§ 603. Initial regulatory flexibility analysis

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

impose on small entities a collection of information requirement.

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

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

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

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

(4) a description of the projected reporting, record-keeping 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, record-keeping 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 rule-making 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 E

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 F

Abbreviations

ACC	American Chemistry Council
Access Board	Architectural and Transportation Barriers Compliance Board
ADA	Americans with Disabilities Act
ADIZ	air defense identification zone
A&E	architecture and engineering
ALEC	American Legislative Exchange Council
AMP	average manufacturer price
ANPRM	advance notice of proposed rulemaking
APA	Administrative Procedure Act
APHIS	Animal and Plant Health Inspection Service
BMP	best management practices
CAIR	Clean Air Act (2005) Implementation Rule
CFR	Code of Federal Regulations
CGMP	current good manufacturing practice
CHD	critical habitat designation
CMS	Centers for Medicare and Medicaid Services
COFPAES	Council on Federal Procurement of Architectural and Engineering Services
CPNI	customer proprietary network information
CPSC	Consumer Product Safety Commission
CTGs	control techniques guidelines
DFARS	Defense Federal Acquisition Supplement
DHS	Department of Homeland Security
DME	durable medical equipment
DMEPOS	durable medical equipment, prosthetics, orthotics, and supplies
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
DRS	Direct Registration System
DTC	Depository Trust Company
EBSA	Employee Benefits Security Administration
Education	Department of Education
E.O.	Executive Order
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right to Know Act
ESA	Employment Standards Administration
ESD	examination support document
EVAP	evaporative systems
ETA	Employment and Training Administration
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FAST	fast automated securities transfer
FCC	Federal Communications Commission
FDA	Food and Drug Administration
<i>Fed. Reg.</i>	<i>Federal Register</i>
FHWA	Federal Highway Administration
FIP	federal implementation plan

FMCSA	Federal Motor Carrier Safety Administration
FMLA	Family and Medical Leave Act of 1993
FNPRM	further notice of proposed rulemaking
FRA	Federal Railroad Administration
FRFA	final regulatory flexibility analysis
FRZ	flight restricted zone
FWS	Fish and Wildlife Service
FY	fiscal year
GAO	Government Accountability Office
GHS	Globally Harmonized System of Classification and Labeling of Chemicals
GIPSA	Grain Inspection, Packers and Stockyard Administration
GSA	General Services Administration
HBV	hepatitis B virus
HCAHPS	Hospital Consumer Assessment of Healthcare Providers and Systems
HCFA	Health Care Financing Agency, now renamed, see CMS
HCFC	hydrochlorofluorocarbon
HCV	hepatitis C virus
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
ICE	Bureau of Immigration and Customs Enforcement
IRCA	Immigration Reform and Control Act of 1986
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
LOA	letter of authorization
MHz	megahertz
MSGP	multisector general permit
MSHA	Mine Safety and Health Administration
NASA	National Aeronautics and Space Administration
NASE	National Association for the Self-Employed
NATSS	national air tour safety standards
NFIB	National Federation of Independent Business
NHTSA	National Highway Traffic Safety Administration
NMFS	National Marine Fisheries Service
NPCA	National Paint and Coating Association
NPDES	National Pollutant Discharge Elimination System
NPRM	notice of proposed rulemaking
NPS	National Park Service
NSPS	New Source Performance Standard
OCC	Office of the Comptroller of the Currency
OFPP	Office of Federal Procurement Policy
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
OTS	Office of Thrift Supervision
PCAOB	Public Company Accounting Oversight Board
perc	perchloroethylene
PHMSA	Pipeline and Hazardous Materials Safety Administration
P.L.	Public Law
PM	particulate matter
ppm	parts per million
PTO	Patent and Trademark Office
r3	Regulatory Review and Reform initiative
RACT	reasonably available control technology
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
SBEAP	Small Business Environmental Assistance Program
SBEC	Small Business & Entrepreneurship Council

SBO	small business ombudsman
SBREFA	Small Business Regulatory Enforcement Fairness Act
SEC	Securities and Exchange Commission
SER	small entity representative
SPCC	Spill Prevention Control and Countermeasures
SSA	Social Security Administration
State	Department of State
Treasury	Department of the Treasury
TRI	toxics release inventory
TSA	Transportation Security Administration
TTB	Alcohol and Tobacco Tax and Trade Bureau
USAID	U.S. Agency for International Development
U.S.C.	United States Code
USDA	United States Department of Agriculture
VA	Department of Veterans Affairs
VOC	volatile organic compound
VoIP	Voice over Internet Protocol