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## RFA Strengthens Economic Democracy

“I was very impressed by the efforts made during the SBREFA panel process to understand and consider all the participants’ viewpoints,” wrote Joel Barnhart, a participant in a panel reviewing a federal proposal to regulate occupational exposure to hexavalent chromium. His comment mirrors the response of many small business people to the process put in place by the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA), and President Bush’s Executive Order 13272, to ensure that small business concerns are considered in federal rulemaking.

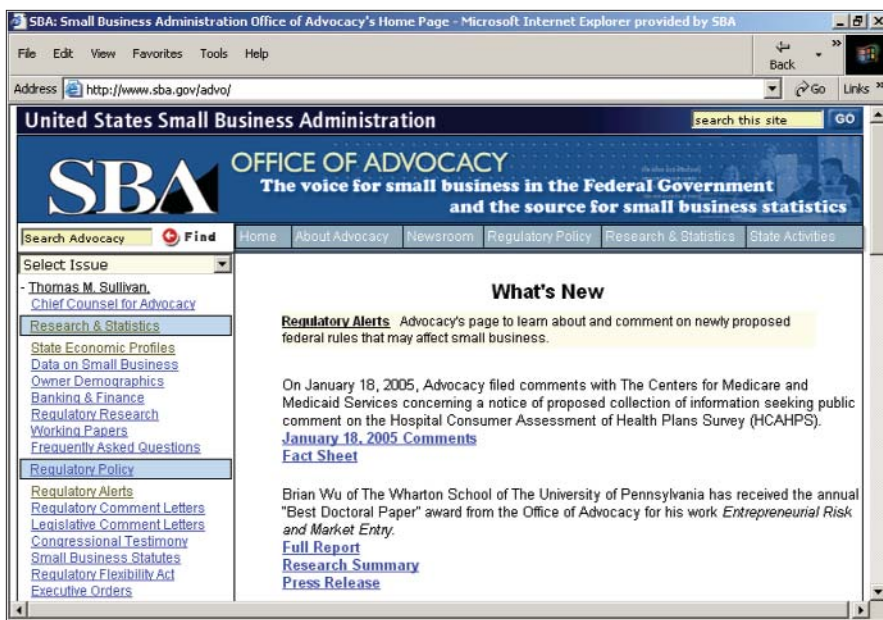
The Office of Advocacy’s FY 2004 efforts to implement the RFA and E.O. 13272 helped save small businesses more than \$17 billion in first-year regulatory compliance

costs and \$2.8 billion in ongoing annual costs, according to the office’s newly released *Report on the Regulatory Flexibility Act, FY 2004*. Advocacy oversees implementation of the law in part by writing comment letters to federal agencies on their proposed regulations. Advocacy’s FY 2004 letters focused on several key RFA compliance issues, including inadequate analysis of small entity impacts, failure to consider significant alternatives to regulatory proposals, and a lack of outreach to small businesses and other small entities. The Environmental Protection Agency and the Federal Communications Commission topped the list of agencies whose regulations received the most Advocacy attention. The report details FY 2004

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Chief Counsel for Advocacy Thomas M. Sullivan presents the 2004 RFA Annual Report to Chairman of the House Small Business Committee Donald Manzullo at the annual meeting of the Small Business Legislative Council (SBLC). They are flanked by SBLC President John Satagaj (left) and SBLC Chairman Ray Hall (right).



## Advocacy Website Has New Look

After months of testing, the Office of Advocacy unveiled its newly redesigned website in January. The redesign of [www.sba.gov/advo](http://www.sba.gov/advo) is based on observations and contributions from Office of Advocacy stakeholders. Users of the newly designed site report that regulatory issues, state profiles, and other issue areas are clearly indexed and easily accessible.

The redesigned site organizes all of the office's regulatory and research documents by topic. On the new site, it's easy to jump from, for instance, research on tax issues to

regulatory comment letters on tax issues.

The new site prominently features Advocacy's Regulatory Alerts webpage, which is a distillation by Advocacy's legal team of important pending federal regulatory actions. The Regulatory Alerts page allows your members, clients, constituents, and customers to easily and quickly let the federal government know what they think about proposed regulations.

Most of the page headings have remained the same, but some bookmarks and links will need to

## The Small Business Advocate

Editor Rebecca Krafft

Managing Editor Rob Kleinsteuber

Contributing Editors John McDowell, Jerry Parshall, Claudia Rodgers, Michael See, Kathryn Tobias

Production Assistant Dawn Crockett

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be updated. Please return to the webpage regularly for frequent updates and news.

## Regulatory Alerts Webpage

Every day, federal agencies issue proposed regulations. Some are of little consequence. Others have a large impact on small business in general, specific industries in particular, and sometimes, both. The Office of Advocacy's Regulatory Alerts webpage collects some of the most important proposed regulations in one spot, so small businesses can readily see how they will be affected by pending rule proposals. All of the notices include email links so small business owners can let regulators know what those regulations will mean to them and their businesses.

The Regulatory Alerts page is an easy, fast, and simple way for small businesses to make their voice heard in Washington. The page also contains information at the bottom so that you can link your website to it. To access it, visit [www.sba.gov/advo](http://www.sba.gov/advo), and see the item immediately below "What's New," or visit [www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html).

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## Message from the Chief Counsel

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### Regulatory Flexibility Is More Than Numbers

by Thomas M. Sullivan, Chief Counsel for Advocacy

The economists in Advocacy love numbers. After all, it is their job. Advocacy's attorneys love numbers, too. They could not be effective regulatory counsels if they did not. It all comes together in our latest Regulatory Flexibility Act (RFA) annual report. In it, Advocacy's efforts on behalf of small business are quantified.

Yet those numbers, impressive as they are, do not tell the whole story. They do not necessarily show the impact regulatory flexibility has on the life and work of thousands of small business owners and their employees across America.

More importantly, the focus on numbers tends to miss a central point and a main reason for the existence of regulatory flexibility, whether in a state or federal law, policy, or in an office like Advocacy. Small businesses ought to be involved, from the very beginning, when agencies design the regulations that implement the laws that Congress or the states pass. Regulatory flexibility is an attempt to institutionalize that mindset.

That point was made clear to me in a trip I took last month to Montana. It was my first trip there and I continually marveled at the size of the state and its vast open spaces. It seemed to me that it would be impossible for someone in the state capital of Helena to know what was going on in, say, Billings or Missoula. However, I was quickly proved wrong as Montanans told me that their state is "just a small town with really, really long streets." Their point was that Montanans look out for each other, and that the government and citizens see themselves as partners, not adversaries.

It is that kind of attitude that

regulatory flexibility is designed to foster.

Regulatory flexibility is an attempt to institutionalize open-door policies. It is an attempt to hold government accountable for listening to its small businesses, and to give small businesses a clear path to express their concerns during the regulatory process. When that happens, entrepreneurs can concentrate on what is most important—running their business.

That is just what happened with Walter Schroth, third-generation owner of Schroth Industries in Indiana, Pennsylvania. I met Walter on a recent trip, and what he told me reminded me of why it is so important that regulators listen to the concerns of small business. His company produces lumber pilings used for shoring mines, fences, and other industrial applications. Treated with chemicals, the pilings

resist corrosion and rotting and so reduce the chance of failure.

Federal regulators became concerned that lumber treated with certain chemicals could affect people who came into constant contact with it. They rightly wanted to reduce exposure for children climbing on playground equipment made with the treated lumber. However, when they proposed regulations they included treated lumber that did not come into direct regular contact with people, such as fences. The proposed regulations were so costly that Walter Schroth began to consider closing his family's business.

But because of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Walter's voice (and those of others like him) was heard. The regulators sensibly exempted him and other manufacturers from using the most expensive

*Continued on page 7*



Chief Counsel Sullivan discusses federal regulation with Walter Schroth, owner of Schroth Industries in Indiana, Pennsylvania, during a visit in summer 2004.



### Department of Justice Considers New ADA Rules—Affecting Millions of Businesses

The U.S. Department of Justice is considering changes to the rules on what businesses must do to comply with the Americans with Disabilities Act (ADA). Currently, the agency is revising its existing rule in response to new architectural standards set this past summer by the Architectural and Transportation Barriers Compliance Board. It is also considering the extent to which businesses will be required to renovate or remodel their buildings to meet these new standards. The Department of Justice has provided small businesses with an excellent opportunity to participate in the process, giving until May 31 for the submission of written comments on the potential costs of the new requirements and recommendations to reduce burdens.

The Office of Advocacy has heard comments on the proposal from diverse establishments including manufacturers, retailers, restaurants, hotels, and office-based businesses. Advocacy needs your help in making sure that the Department of Justice understands how these new requirements will affect your business or your members' businesses. Advocacy is also seeking suggestions on how to reduce or eliminate those effects, in order to propose alternatives to the rule.

Please copy the Office of Advocacy on any comments that include projected cost impacts on small businesses. For more information or for responses to the Office of Advocacy's request for information, please contact Assistant Chief Counsel Michael See at (202) 619-0312, or by email at [michael.see@sba.gov](mailto:michael.see@sba.gov).

**The New Architectural Standards.** In general, the ADA forbids businesses open to the public from discriminating against peo-

ple with disabilities, and the Department of Justice sets the rules on what a business must do to make sure it doesn't have barriers to equal enjoyment by the disabled. The new architectural standards the agency is currently considering span 300 pages and cover everything from the width of paths in restaurant kitchens to the number of wheelchair-accessible bathroom stalls in an office building. The rules may impose duties on owners of buildings, as well as both landlords and tenants of leased properties, to remove architectural and other features that could hinder the full enjoyment of the premises by the disabled. These duties may apply to every facility.

**Examples of Proposed Changes.** The new rule that the Department of Justice is considering will apply to a wide range of small businesses, including one major provision which would apply to almost every business that has employees. For example, the new rule may require businesses to make employee-only areas wheelchair accessible. This provision may apply regardless of whether the public ever entered these areas or the firm had an employee with a disability. Small manufacturers may have to meet a wide range of criteria, including ensuring that shop and office floors not exceed a certain slope, that there are no steps or changes in level, that doors are wide enough for wheelchairs, that curbs have ramps, and that sufficient wheelchair turning radius exist in halls and on the shop floor. This isn't an exhaustive list, and this wheelchair-access provision is only one of three new requirements the Department of Justice is considering for employee work areas. Since businesses are currently only

required to provide access up to the employee work area (not within it), this change represents a major shift in the applicability of the ADA.

The table on page 5 lists a few of the generally applicable changes that small businesses have commented on. Given that the standards themselves fill approximately 300 pages, you should understand that these are but a small portion of the rule's many industry-specific changes and generally applicable changes. They are simply illustrative of the types of proposed requirements contained in the revisions under consideration.

#### **Study It, Tell Other Businesses About It, And Tell Advocacy.**

Advocacy is seeking to inform small businesses of the rule's existence and requests information on actual small business impacts to be incorporated into Advocacy's discussions with and written comments to the Department of Justice and others. Advocacy has been informed by various industry representatives that the new ADA rules could impose billions of dollars of regulatory costs on small businesses across the country, and Advocacy is asking for individual comments from small business owners outlining the exact nature and extent of any potential changes to their business.

The Department of Justice is seeking input on its proposals to reduce the economic impact of the ADA revisions. Advocacy strongly encourages business owners to comment on these. The agency is seeking comments on any combination of: (1) providing a safe harbor from any new standards to buildings that comply with the currently existing standards, (2) providing exemptions to existing buildings

*Continued on page 5*

**New ADA Rules**, from page 4 from certain provisions of the new standards, and (3) lowering the scoping requirements of some standards (e.g., instead of requiring two grocery checkout stands out of five to be wheelchair accessible, lowering the requirement to one out of five).

Advocacy will be submitting detailed, written comments to the Department of Justice prior to the comment deadline of May 31 outlining the economic burdens on small businesses that the ADA standards would impose. Advocacy will be incorporating the information it

receives from small businesses in these comments.

The Department of Justice’s advance notice of proposed rule-making and the written comments that have been submitted thus far can be found at [www.adaanprm.org](http://www.adaanprm.org). The new standards themselves can

be found at [www.access-board.gov/ada-aba.htm](http://www.access-board.gov/ada-aba.htm). Comments may be submitted electronically to the Department of Justice at the [www.adaanprm.org](http://www.adaanprm.org) website.

### Copy Advocacy on Comments

Please copy the Office of Advocacy on any comments that include projected cost impacts on small businesses. For more information or for responses to the Office of Advocacy’s request for information, please contact Assistant Chief Counsel Michael See at (202) 619-0312, or by email at [michael.see@sba.gov](mailto:michael.see@sba.gov).

## Some Examples of Proposed Changes to Architectural Requirements

	Current Standard for Existing Buildings	Proposed Standard for New or Altered Buildings
<i>Section 203.9</i> <b>Employee Work Areas</b>	4.1.1(3) Must provide wheelchair access up to the employee work area, but access through area not required.	Paths of access through employee work area must be wheelchair accessible.
<i>Section 206.4.1</i> <b>Entrances—Public Entrances</b>	4.1.3(8)(a)(i) 50 percent of entrances to building must be accessible (if two entrances from same thoroughfare, usually only one must be accessible).	60 percent of public entrances must be wheelchair accessible (if there are two public entrances to a facility, both must now be accessible).
<i>Section 904.4.2</i> <b>Sales and Service Counters—Forward Approach</b>	7.2(1) Must provide a 30 inch by 48 inch space for wheelchair approach in front of sales counters, either through a forward or parallel approach.	Floor space requirements are the same, but if a forward approach is provided, the counter must include toe space that would likely eliminate bottom shelves.
<i>Section 308.3</i> <b>Side Reach</b>	4.2.6, Fig. 6(b) Where business provides element with a side reach for wheelchairs, the element must be between 9 and 54 inches from the floor.	The side reach range is changed to require elements to be within a smaller range of distance from the floor, to between 15 and 48 inches.
<i>Section 229.1</i> <b>Windows</b>	4.12 No current requirements.	One window in each room with windows must be accessible to a person with a disability, including a wheelchair accessible path of access to the window and clear floor space in front, placement within a reach range, and the ability to operate the window with less than 5 lbs. of pressure.

Source: U.S. Small Business Administration, Office of Advocacy. For the current standards, see [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada); for the proposed standards, [www.access-board.gov/ada-aba.htm](http://www.access-board.gov/ada-aba.htm).

## Advocacy Identifies 48 Manufacturing Regulations Ripe for Reform

Advocacy has been working with the Office of Management and Budget to reduce the federal regulatory burden on small businesses. On January 5, 2005, in response to the Office of Management and Budget's (OMB's) request for public comments on its *Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulation*, Advocacy sent a letter to the Office of Information and Regulatory Affairs (OIRA) of OMB.

Advocacy's letter was sent in response to a request from OIRA Administrator Dr. John Graham asking Advocacy to identify rules that, if reformed, would reduce regulatory burdens on small manufacturers. OMB's request was part of its *2004 Report to Congress on the Costs and Benefits of Federal*

*Regulations and Unfunded Mandates on State, Local, and Tribal Entities*. In its report, OMB identified 189 manufacturing regulatory reform nominations. Advocacy listened to the recommendations of small businesses and identified 48 priority regulations that were ripe for reform and would significantly reduce the regulatory burden on small manufacturers. A copy of Advocacy's letter and its 48 reform nominations can be found at, [www.sba.gov/advo/laws/comments](http://www.sba.gov/advo/laws/comments).

OMB first released its *Draft Report to Congress* for public comment on February 20, 2004. Chapter 2 of the draft report sought public nominations of regulatory reforms relevant to the manufacturing sector, especially on small and medium-size businesses. The public

was requested to suggest specific reforms to regulations, guidance documents, or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty, and increasing flexibility. Advocacy responded to this request for comments by hosting a roundtable in April 2004. The small business representatives who participated in the roundtable made several recommendations for reform. Advocacy highlighted those recommendations in a comment letter to OMB on May 14, 2004. The chief counsel for advocacy has testified twice before Congress on these important nominations for regulatory reform to small business.

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## Staff Changes in the Office of Advocacy

**Charley Maresca** has been promoted to fill the vacant position of director of interagency affairs for the Office of Advocacy. Maresca has served as assistant chief counsel for safety issues since October 2002. As head of Advocacy's interagency team, Maresca will lead Advocacy's efforts to monitor federal agencies' compliance with the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act.

Prior to his work at the Office of Advocacy, Maresca served as the director of legal and regulatory affairs for Associated Builders and Contractors, an association of over 20,000 general contractors and specialty contractors in the commercial, industrial, and heavy construction industries. He is a graduate of the Columbus School of Law at the Catholic University of America in Washington, D.C.

**Bruce Lundegren** will be joining Advocacy as assistant chief counsel for worker safety and

transportation. Lundegren is an experienced regulatory attorney and most recently served as director of regulatory affairs for the U. S. Chamber of Commerce and as regulatory counsel at the National Association of Home Builders. He is a graduate of the Ohio State University College of Law.

**Sarah Wickham** is joining Advocacy as the regulatory and legislative counsel for regional affairs. She will be primarily working on the state regulatory flexibility model legislation initiative. Wickham is a recent graduate of the Catholic University's Columbus School of Law.



Director of Interagency Affairs Charley Maresca.



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## Regional Roundup

### Regional Advocate Till Phillips Retires After 31 Years Serving SBA and the Office of Advocacy

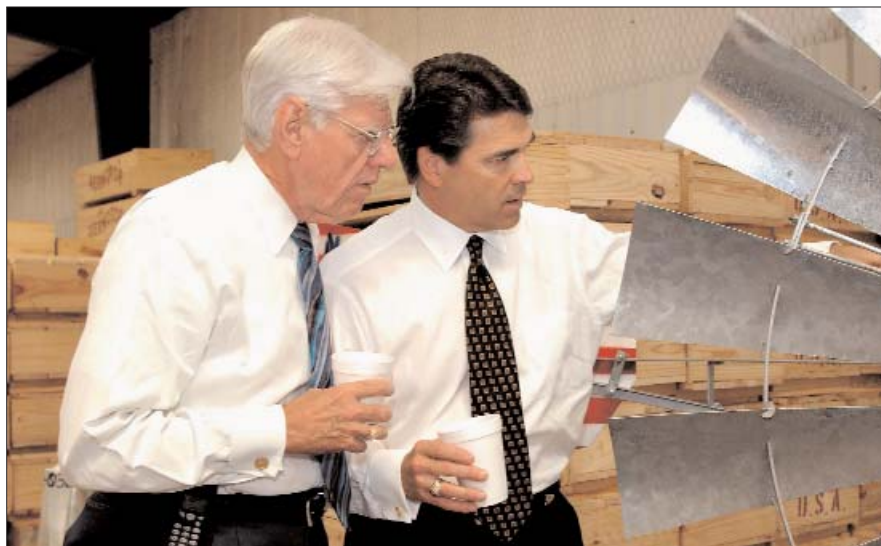
“We value progress that strengthens rural communities, small businesses, and family farms and ranches,” reads the mission statement of one of the organizations supported by Gover Till Phillips, Region VI Advocate for the Office of Advocacy. The statement could describe the distinguished and colorful career of Till Phillips, who retired December 31.

Till was named SBA’s national rural advocate in November 1996. Drawing on his vast experience in agriculture and rural development, he represented the interests of rural small businesses nationwide. Chief Counsel for Advocacy Thomas M. Sullivan officially named Till the Region VI Advocate in January 2003. In that capacity, he ably represented the interests of small businesses in Arkansas, Louisiana, New Mexico, Oklahoma, and his home state of Texas.

Till first joined the SBA team in 1973, serving as chief administrative officer in the Dallas regional office and later as deputy regional administrator.

“To me, Till is the true representative for the SBA,” said his old friend and colleague Ray Chatham, of the SBA disaster assistance office in Fort Worth, Texas. “In my mind I see Till as the ‘Texas philanthropist.’ He is the guy who is constantly thinking about the new angle and what can be done for the business people of this great country. And he just never runs out of energy. He comes in the door running at 100 mph with a new idea and leaves on his way to spread the word to the world. Very big shoes for the next person to fill and no better goal than to try to.”

Before coming to the SBA, Till worked in the private sector at the



In August 2002, Region VI Advocate Till Phillips (left) and Texas Governor Rick Perry took part in an economic development tour of the state. The many businesses they visited included the Air Motor Company, a windmill manufacturer in San Angelo, Texas.

LTV Corporation, where he served as general manager of the Education Services Division. Previously, he was in the exploration department of the Shell Oil Company in Midland, Texas, and before that, he assisted his parents in managing family-owned ranching operations and a small chain of grocery stores.

“I’ve had good assignments at the SBA,” Till reflected. “You start out in working relationships, which turn into friendships that become everlasting.” He said he enjoyed working out effective strategies to help small and rural businesses, for example, with the previous Region VI Advocate, Jim Johnson, a long-time friend and colleague. “I miss Jim a lot. Small businesses are still benefiting from some of the strategies we worked out together.”

Even in retirement, Till will find work that needs doing. “I expect you’ll be hearing from me,” he said. “For now, though, take care, you hear? Adios.”

#### **Message**, from page 3

solution for treated lumber as long as it would not come into direct contact with people. The result is that children (and anyone else who comes into regular contact with treated lumber) are safer, and the legitimate value of lumber that can withstand corrosion is maintained. At the same time, Schroth Industries can continue providing jobs and economic growth for Indiana, Pennsylvania. It is a win for everyone.

That is the way regulatory flexibility is. In this case, as the legal teeth within SBREFA, regulatory flexibility fosters an environment of mutual respect, cooperation, and mutual benefit. Those outcomes sometimes are hard to quantify. But if you look closely at our annual RFA report, just behind the numbers, you will find them. And for a moment, you can get a glimpse of what a small town with really, really long streets must be like.

**RFA, from page 1**

comment letters and SBREFA panels undertaken to date.

In response to E.O. 13272, the Office of Advocacy made significant strides in training federal agencies to comply with the RFA in FY 2004. Some 30 of the 66 federal agencies that affect small businesses have now been trained, and plans are under way to develop an online training module. Agencies increasingly recognize that Advocacy's RFA work can help them regulate more effectively. The report notes that early intervention by the Office of Advocacy has helped agencies understand the role small businesses play in the economy and the reasons for ensuring that regulations carry out their intended purposes without unduly stifling entrepreneurial activity. Advocacy provides agencies with economic data and helps federal

agencies receive constructive input from small businesses.

The report also documents a growing movement among state regulators to adopt statutes similar to the RFA to govern the state regulatory development process. In FY 2004, 17 states introduced state

regulatory flexibility legislation; seven signed the bills into law.

Copies of the report are available on Advocacy's website, [www.sba.gov/advo](http://www.sba.gov/advo).

## President Appoints Tax Reform Panel

On January 7 President Bush appointed the nine-member President's Advisory Panel on Federal Tax Reform, to be headed by two prominent former U.S. Senators, Connie Mack and John Breau. The President has tasked this panel with producing recommendations by July 31, 2005. The executive order forming the panel stressed homeownership, charity, and economic growth as important features of any recommendations. The IRS's National Taxpayer Advocate recently cited the tax code's complexity as the greatest source of difficulty for both small businesses and the IRS itself.

The panel's nine members include James Poterba, a professor of economics at both the Hoover Institution and the Massachusetts Institute of Technology. Poterba was one of the participants in the Office of Advocacy's July 2001 conference, Tax Policy and Small Business. The conference proceedings can be found at [www.sba.gov/advo/tax\\_conf.pdf](http://www.sba.gov/advo/tax_conf.pdf).

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