SBA
Office of Advocacy
www.sba.gov/advo

Advocacy: the voice of small business in government

Report on the Regulatory Flexibility Act FY 2009

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

January 2010

The full text of this report is available on the Office of Advocacy's Internet site at **http://www.sba.gov/advo/**. Reprints in paper or microfiche are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Federal Recycling Program
Printed on recycled paper.

To the President and the Congress of the United States

It is my pleasure to present to President Obama and the Congress the fiscal year (FY) 2009 *Report on the Regulatory Flexibility Act* of the U.S. Small Business Administration, Office of Advocacy. The report covers federal agencies' FY 2009 compliance with the Regulatory Flexibility Act of 1980 (RFA) and Executive Order 13272. The RFA requires agencies to review the expected impact of proposed regulations on small entities—small businesses as well as small governmental jurisdictions and small nonprofits—and to consider significant alternatives that minimize these impacts. Advocacy is responsible for monitoring agency compliance with the RFA and reporting the findings to Congress and the President.

The Office of Advocacy's involvement in reviewing agency compliance occurs during all regulatory development stages. Advocacy's experience shows that the earlier an agency considers small entity concerns, the more effective the agency can be in fulfilling the RFA's intent. In numerous cases, the office has provided federal agencies with assistance in meeting their regulatory goals and reducing the disproportionate burden of those regulations on small entities. Advocacy directs its efforts through comments regarding key agency rules, testimony to Congress, RFA compliance training for federal agencies, participation in Small Business Regulatory Enforcement Fairness Act (SBREFA) panels, advocacy for legislative reform, and vital research on small business issues.

In FY 2009, small entities continued to help Advocacy identify and prioritize regulations that would significantly affect their operations. Advocacy hosted numerous roundtables to gather small entity input on the regulatory process and key proposed rules. Training small business stakeholders on the valuable tools provided by the RFA continued to help Advocacy engage a broader community and leverage limited resources. The office's outreach efforts are further enhanced by numerous web-based tools that place information sharing at the forefront: RSS feeds, email alerts, an Advocacy blog, *The Small Business Watchdog*, Regulatory Alerts, and an electronic notification system for agencies' use in alerting Advocacy about rules that will have a significant economic impact on small entities.

In FY 2009, Advocacy's involvement in federal agency rulemakings helped save small entities $7 billion in foregone regulatory costs without undermining agencies' regulatory goals. Moreover, successful implementation of the RFA at the federal level has led to success at the state level in persuading states to adopt similar legislation to ease the burden of state regulations.

I hope you will find this report useful in your efforts to monitor federal agency compliance with the RFA. In the next year, Advocacy looks forward to providing continued support for federal agencies as they work to reduce the impacts of their regulations on small entities and to provide further training and outreach to the small business community.

Susan Walthall
Acting Chief Counsel for Advocacy

Contents

1 An Overview of the Regulatory Flexibility Act and Related Policy in Fiscal Year 2009

Nearly three decades ago, small business owners asked the Congress to remedy one of their most urgent concerns: the disproportionate impact of regulations on small companies. In September of 1980, Congress passed the Regulatory Flexibility Act of 1980 (RFA), requiring federal agencies to analyze the impact of their proposed regulations on small businesses and other small entities. The U.S. Small Business Administration's Office of Advocacy, less than a half decade old at the time, was charged with overseeing the act's implementation. A decade and a half later, small business owners pushed for improvements to the law, and the amendments that passed were called the Small Business Regulatory Enforcement Fairness Act of 1996, or SBREFA.[1]

The Office of Advocacy's mandate to represent the interests of small business in the regulatory process, rooted in the RFA as amended by SBREFA, was augmented again in 2002, when Advocacy and the agencies were given additional responsibilities under Executive Order (E.O.) 13272.[2] In carrying out these responsibilities, Advocacy has become an integral part of the rulemaking process, as well as a partner with the federal agencies.

Since 1981, the Office of Advocacy has been reporting annually on implementation of the RFA and SBREFA. Through all the changes in the intervening years, the Office of Advocacy's mission has remained the same, to represent the interests of small business in the rulemaking process.

1 The RFA as amended by SBREFA is codified at 5 U.S.C. §§ 601 et seq.

2 67 *Fed. Reg*. 53461 (August 16, 2002).

Interagency Communications

FY 2009 brought the need to review not only the final surge of an outgoing administration's rules, but a new set of rules addressing such pressing issues as the economic recovery, financial regulatory reform, global warming, and homeland security. Advocacy's advice to the agencies remained consistent: small businesses will be the engine driving the economic recovery, and proposed rules should be analyzed to determine whether they will have important effects on small firms.

Over the past several years, the Office of Advocacy has increased its presence in the interagency dialog that precedes a rule's promulgation. In 2009, Advocacy continued to train rule writers, economists, and attorneys at the various agencies in the requirements of the RFA, as directed by E.O. 13272. Advocacy also continued to assist agencies in developing the small business regulatory analyses required by the RFA. As a result, overall agency compliance continues to improve, although important technical problems remain, as demonstrated by Advocacy's regulatory comment letters.

Roundtables

Roundtables coordinated by the Office of Advocacy provide small business representatives a forum to voice their concerns about a regulation's potential impacts, while giving Advocacy and the agencies an opportunity to learn about various concerns and to craft potential responses. At every opportunity Advocacy has encouraged agencies to consider participating in Advocacy's roundtables to get a better idea of the impact of the agencies' rules on small business. Many agencies accepted Advocacy's invitation, including the Department of Labor, the Department of Transportation, the Department of Homeland Security, the Environmental Protection Agency (EPA), and others. Whether the agencies' representatives engaged the roundtable participants or simply observed the discussions, they gained a

better appreciation for small businesses' view of the impacts of federal regulation.

The Regulatory Review and Reform (r3) Initiative

In FY 2009, as part of its ongoing effort to implement section 610 of the RFA (periodic review of rules), the Office of Advocacy continued to encourage small businesses to identify particular federal rules for review and reform. In 2009, Advocacy chose two nominated rules for review and reform for its "top ten" list, replacing two of the 2008 top ten rules that agencies reviewed and reformed in the previous year. In October 2008, EPA reformed the definition of solid waste, encouraging recycling rather than disposal of certain spent materials. And in December, the Federal Aviation Administration (FAA) finalized its Special Flight Rules Area rule for the Washington, D.C., area. The final rule creates a smaller restricted airspace than was originally imposed, addressing many of the economic concerns raised by small businesses.

Judicial Review

As small businesses continue to seek judicial review of agencies' actions or inactions under the RFA, the courts in recent cases seem to be carefully delineating the extent to which review may be sought. Representatives of rural telephone companies challenged the legal sufficiency of a regulatory flexibility analysis by the Federal Communications Commission (FCC). The court found that since the analysis at issue addressed all of the legally mandated subject areas, the agency had complied with the RFA.[3] A cooperative of milk producers brought action challenging the U.S. Department of Agriculture's (USDA) amendment of a regional milk marketing order arguing that USDA violated the RFA by failing to undertake an analysis and by employing the certification option without sufficient factual support. The court held that the association did not have standing to raise a challenge under the RFA because the impact on small businesses was indirect.[4] A fishery association, fishermen, and a seafood company challenged the validity of an amendment to a fishery management plan, but a federal appeals court held that there had not yet been a final decision on the amendment and dismissed the appeal.[5]

Advocacy and the RFA in FY 2009

The Congress and the federal government have developed an impressive set of tools to address the very real concern that the regulatory structure, as important as it is to the efficient and fair functioning of a modern economy, can place an undue burden on small businesses and other small entities. With each new improvement in the tools for review—the RFA, SBREFA, E.O. 13272—the Office of Advocacy has been able to work with other federal agencies to create a better regulatory environment for America's important small business economy. In FY 2009, efforts by Advocacy to help federal agencies create more rational and less burdensome regulations had the added benefit of saving small businesses some $7 billion in regulatory costs.

3 National Telephone Cooperative Association v. Federal Communications Commission and United States of America, 563 F.3d 536, 385 U.S.App.D.C. 327, 47 Communications Reg. (P&F) 985 (C.A. D.C. 2009).

4 White Eagle Cooperative Association, et al. v. Charles F. Conner, Acting Secretary, United States Department of Agriculture, 553 F. 3d 467 (7th Cir. 2009).

5 North Carolina Fisheries Association, Inc., v. Gutierrez, 550 F.3d 16, 384 U.S.App.D.C. 16, (D.C. Cir. 2008).

2 Federal RFA and E.O. 13272 Compliance and the Role of the Office of Advocacy

In addition to monitoring agency compliance with the Regulatory Flexibility Act, the Office of Advocacy oversees compliance with the requirements of Executive Order 13272. This executive order contains additional tasks federal agencies must complete to ensure that their regulations minimize undue economic burdens on small entities.

Signed in August 2002, the executive order requires federal agencies to do three things. First, they must publicly document their policies for ensuring that small entities are properly considered during the rulemaking process. Second, they are required to notify Advocacy of draft regulations that may impose a significant economic impact on small entities, either when the rule is sent to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) or at a reasonable time prior to publication in the *Federal Register*. To make this task easier, agencies may forward this information to a dedicated website: **notify.advocacy@sba.gov**. This year, more agencies are using this electronic option, although some still send paper copies to Advocacy and many still do not comply with this provision. Finally, the executive order requires 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*.

E.O. 13272 also contains three duties for the Office of Advocacy. The first of these, to notify agencies of the RFA and executive order compliance requirements, was accomplished in 2003 by the publication of *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.* A revised edition, published in fiscal year 2009, is currently being distributed to agencies upon request and during RFA training sessions, and is available on Advocacy's website at **http://www.sba.gov/advo/laws/rfaguide.pdf**.

Advocacy's second task under the executive order is annual reporting to OIRA on agency compliance with the executive order's requirements. This information is included in this report in Chapter 3. Finally, E.O. 13272 added another important mission for Advocacy, to train federal regulatory agencies in how to comply with the RFA.

RFA Training under E.O. 13272

Over the past seven years, Advocacy has trained employees at federal agencies, including economists, attorneys, and regulatory and policy staff, in RFA compliance. RFA training stresses the importance of considering the small entity impacts of agency regulations from the beginning of the rulemaking process. These important training sessions have led to agencies' greater willingness to share draft documents with Advocacy. The training program has also 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 to small businesses.

In fiscal year 2009, the number of actual trainings decreased, as many agencies were reluctant to commit to scheduling training for their employees during a change in administrations. Agencies that had previously received RFA training nevertheless made efforts to work more closely with Advocacy on predecisional draft regulations to ensure that potential small entity impacts of their regulations were considered. This willingness to bring Advocacy into the regulatory process before final decisions were

made was a direct result of the learning that took place and the relationships established during the agency RFA training sessions.

As the fiscal 2009 transition year drew to a close, the number of RFA training requests began to increase. Agencies with new employees and those interested in refresher sessions continue to call on Advocacy for additional and more detailed assistance in RFA compliance. Moving into 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 continuing to offer training to employees who were unable to attend previous sessions. The continued focus on the basics of the RFA—a detailed economic analysis as an integral part of the public comment period, the factual basis for a threshold analysis of a rule's impact, and contemplating a rule's impact before preparing a first draft—will continue to be important issues for Advocacy's training team in the next fiscal year.

Overview of RFA Implementation

Overseeing RFA and E.O. 13272 compliance continues to be an important mission of the Office of Advocacy. In FY 2009, Advocacy provided comments to numerous agencies indicating areas of concern with respect to RFA compliance and highlighting particular alternative solutions to agency regulations that would accomplish the agency's regulatory goal while reducing the economic impact of the rule on small entities. The following chart and tables illustrate the areas in which Advocacy continues to work with agencies to comply with the RFA and summarizes the small business cost savings realized through Advocacy's efforts.

Chart 2.1 Advocacy Comments by Key RFA Compliance Issue, FY 2009

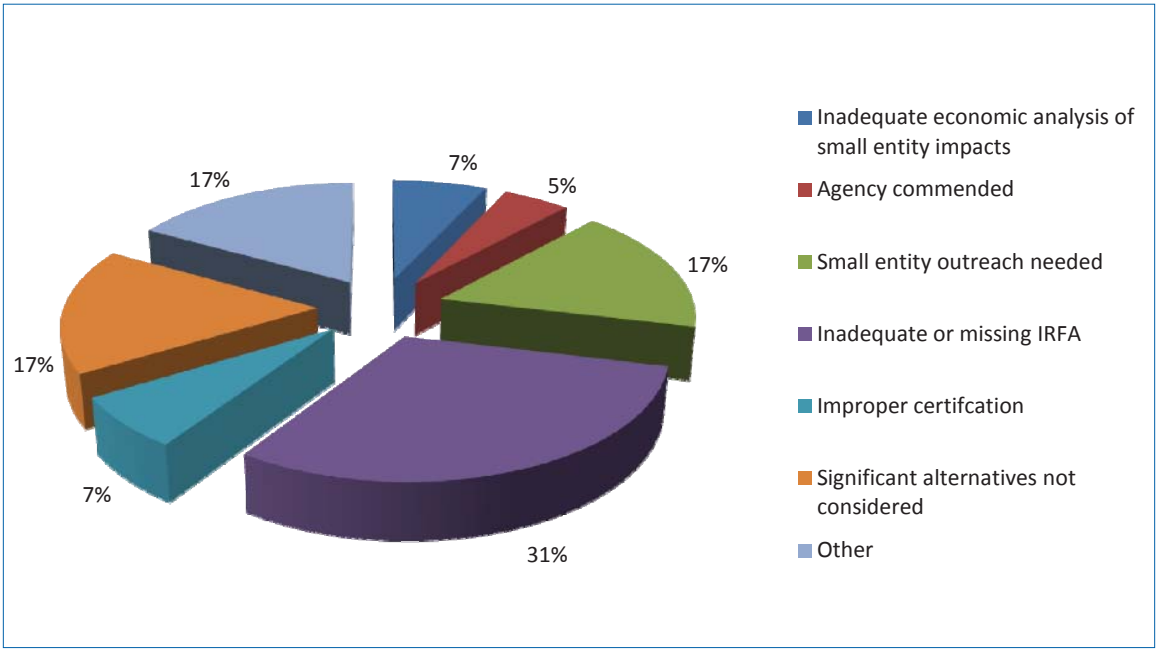


Chart 2.1 illustrates the most common concerns raised in Advocacy's comment letters. The chart highlights areas in need of continued improvement based on Advocacy's analysis of its FY 2009 comment letters.

Table 2.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2009

Date	Agency	Comment Subject
10/09/08	USDA	A letter regarding a rule restricting movement and importation of fish with viral hemorrhagic septicemia (73 *Fed. Reg*. 52173).
10/09/08	SSA	A letter recommending that the Social Security Administration take small hearing health care providers' concerns into consideration while promulgating its Revised Medical Criteria for Evaluating Hearing Loss proposed rule (73 *Fed. Reg*. 47103).
11/06/08	DOL	Comments on the Mine Safety and Health Administration's (MSHA) proposed Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance rule (Drug and Alcohol Testing rule) (73 *Fed. Reg.* 52136).
11/13/08	DOI	Comments on the National Park Service's proposed rule on winter visitation and recreational snowmobile use in Yellowstone National Park (73 *Fed. Reg*. 65784).
11/20/08	DOI	Comments on the U.S. Fish and Wildlife Service (FWS) proposal to designate 25 million acres of critical habitat for the Canada lynx (73 *Fed. Reg.* 62450).
11/28/08	EPA	A letter discussing Advocacy's concerns with EPA's advance notice of proposed rulemaking (ANPRM), Regulating Greenhouse Gas Emissions under the Clean Air Act, (73 *Fed. Reg.* 44354).
12/01/08	DHS, Treasury	Comments on the proposed Uniform Rules of Origin for Imported Merchandise Rule, which would establish uniform rules governing determinations of the country of origin (COO) of imported merchandise and amend the COO rules for certain products to reflect various international agreements (73 *Fed. Reg.* 43385).
12/17/08	HHS	Comments sent to the Centers for Medicare and Medicaid Services (CMS) asking that the agency do a better job analyzing the economic impacts of the FY 2009 Payment for Certain Durable Medical Equipment final rule on small oxygen suppliers (73 *Fed. Reg.* 69725).

Date	Agency	Comment Subject
01/16/09	DOL	Comments on the Occupational Safety and Health Administration (OSHA) proposed Cranes and Derricks in Construction rule, imposing new obligations on employers in the construction industry to ensure the safe operation of cranes and hoisting equipment used in construction (73 *Fed. Reg.* 59919).
01/22/09	EPA	Reply to the notification letter regarding a Small Business Advocacy Review Panel for the proposed Combined Rulemaking for Industrial, Commercial, and Institutional Boilers.
02/02/09	USDA	Comments to the Animal and Plant Health Inspection Service (APHIS) asking that the agency do a better job of analyzing the economic impacts of its proposed rule on Contingency Plans for the Handling of Animals (73 *Fed. Reg.* 63085).
02/03/09	DOT	Comments to the National Highway Traffic Safety Administration (NHTSA) on the proposed Early Warning Reporting Regulations, which would raise the early warning reporting threshold levels for light vehicle and trailer manufacturers (73 *Fed. Reg.* 74101).
02/06/09	EPA	Comments regarding the rulemaking, Proposed Ban on the Sale or Distribution of Pre-Charged Appliances (73 *Fed. Reg.* 78705).
02/26/09	EPA	Comments regarding the proposed rule, Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (73 *Fed. Reg.* 72562).
02/27/09	DHS	Comments regarding the Transportation Security Administration's (TSA) proposed rule expanding current aviation security regulations, Proposed Large Aircraft Security Program Rule (73 *Fed. Reg.* 6764970).
03/17/09	HHS	Comments to CMS asking that the agency analyze the economic impacts of new cytology proficiency testing requirements on small health care businesses (74 *Fed. Reg.* 3264).
03/25/09	FCC	A letter to the FCC in response to its request for comment on the creation of a rural broadband strategy as required by the Farm Bill of 2008.
04/13/09	FCC	A letter to the FCC in response to the agency's request for recommendations on its consultative role in the Recovery Act's broadband programs (74 *Fed. Reg.* 6879).

Date	Agency	Comment Subject
04/13/09	FCC	A letter to the FCC in response to its request for comment on the Motion for Expedited Order on Verizon Petition for Forbearance filed on July 25, 2007.
04/17/09	EPA	A letter to the EPA administrator endorsing an industry letter representing over 10,000 small business facilities, and asking for expeditious action to implement the noncontroversial portions of the December 2008 Spill Prevention, Control and Countermeasure (SPCC) reforms (74 *Fed. Reg*. 14736).
04/23/09	DOL	Reply to the notification letter regarding a Small Business Advocacy Review Panel on OSHA's Preliminary Draft Standard for Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl.
04/24/09	EEOC	A letter to the Equal Employment Opportunity Commission (EEOC) on its notice of proposed rulemaking (NPRM), Regulations Under the Genetic Information Nondiscrimination Act of 2008 (GINA) (74 *Fed. Reg.* 9056).
04/27/09	CPSC	A letter concerning a notice of inquiry published in the *Federal Register* on tracking labels for children's products under section 103 of the Consumer Product Safety Improvement Act (CPSIA) (74 *Fed. Reg.* 8781).
05/26/09	DOI	Comments to the FWS regarding the impacts of proposed critical habitat for the California red-legged frog on small farms in the state of California (73 *Fed. Reg.* 19184).
06/03/09	EPA	Comments on the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE). The proposed RICE rule regulates the emission of air toxics from specific categories of RICE engines (74 *Fed. Reg.* 9698).
06/03/09	EPA	Comments on the proposed National Emissions Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines. Advocacy submitted one letter concerning the proposed RICE requirements overall and a separate letter solely addressing the proposed start-up, shutdown, and malfunction (SSM) standards as applied to RICE engines (74 *Fed. Reg.* 9698).
06/09/09	EPA	Letter to the EPA discussing Advocacy's views on the agency's proposed rule, Mandatory Reporting of Greenhouse Gases (74 *Fed. Reg.* 16448).

Date	Agency	Comment Subject
06/30/09	FASB/ IASB	Letter on a discussion paper issued by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) on Leases: Preliminary Views, recommending alternatives for small business.
07/06/09	FAR Council	Comments on the Federal Acquisition Regulation (FAR) Council proposed rule, Payments Under Fixed-Price Architecture and Engineering Contracts (A&E).
07/09/09	OCC, FRB, OTS, NCUA, FCA, FDIC	Comments on the joint proposed rulemaking on Registration of Mortgage Loan Originators (74 *Fed. Reg.* 27385).
08/13/09	EPA	Comments on possible revisions to the 2008 final rule regarding EPA's Revisions to the Definition of Solid Waste (DSW) (74 *Fed. Reg.* 25200).
09/24/09	DOC	Comments on the Department of Commerce (DOC) National Marine Fisheries Service's (NMFS) proposed rule on the Fisheries of the Northeastern United States; Modification of the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter (74 *Fed. Reg.* 45798).
09/25/09	EPA	Letter to the EPA discussing Advocacy's concerns with the agency's proposed rule, Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program (74 *Fed. Reg.* 24903).
09/29/09	PERAB	Letter in response to the Tax Subcommittee of the Presidential Economic Recovery Advisory Board's (PERAB) request for tax reform recommendations.

Table 2.2 Regulatory Cost Savings, FY 2009

Agency	Subject Description	Cost Savings/ Impact Measures
FAA	***Washington, D.C., Metropolitan Area Special Flight Rules Area.*** On December 16, 2008, the FAA finalized a rule proposed on August 4, 2005. After the rule was proposed, the Office of Advocacy hosted a small business roundtable to discuss it. Advocacy subsequently filed formal comments with the FAA, recommending that the FAA more fully assess the economic impact of the proposed rule and consider alternative approaches that would make the rule less costly to small entities, while still meeting the FAA's security objectives. The FAA's final rule eased its impact by narrowing the size of the restricted airspace by approximately 1,800 square miles and removing 33 small airports and helipads from the final regulation. The change to a smaller, more uniform airspace addressed many of the issues raised in public comments on the proposed rule, including those of the Office of Advocacy.	**Based on FAA data, this change leads to a one-time cost savings of $30 million in the first year and $30 million in recurring annual cost savings for the following nine years.**
HUD	***Real Estate Settlement Procedures Act.*** On November 17, 2008, the Department of Housing and Urban Development (HUD) finalized its rule on the Real Estate Settlement Procedures Act (RESPA). The purpose of the rule is to simplify and improve the disclosure requirements for mortgage settlement costs under RESPA and to protect consumers from unnecessarily high settlement costs. Following the proposal on March 14, 2008, Advocacy held a roundtable on the proposed rule, and in June, Advocacy submitted comments. As a result of involvement by Advocacy and members of the industry, significant changes were made to the proposed rule. These changes included the removal of language regarding volume discounts, changing the requirements regarding tolerances, and eliminating the closing script. Some of the cost savings, such as those associated with volume discounts and tolerances cannot be easily quantified.	**The elimination of the closing script resulted in annual cost savings of $450 million.**

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	***Reporting Exemption for Releases of Hazardous Substances from Small Poultry and Livestock Operations.*** On December 12, 2008, EPA signed a final rule that exempts many small poultry and livestock operations from having to notify emergency response officials at the local, state, and federal levels concerning naturally occurring air releases of ammonia or hydrogen sulfide from animal manure. Larger poultry and livestock operations are required to notify emergency response officials about these air releases under the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Response Act. Advocacy worked with EPA to ensure that smaller farms would be exempt from the reporting, based on data showing that naturally occurring releases from small farms do not pose any danger to the public. The exemption is estimated to save small farms 1.3 million hours of paperwork burden over 10 years, and local, state, and federal officials another 161,000 hours of paperwork burden over 10 years.	**The resulting cost savings are estimated at $6 million in the first year and $6 million in recurring annual cost savings for the following nine years for farms, and $8.1 million over 10 years for local, state, and federal government agencies.**

Agency	Subject Description	Cost Savings/ Impact Measures
EPA	***Spill Prevention, Control, and Countermeasures (SPCC II).*** In December 2006, EPA published a final rule on Spill Prevention, Control, and Countermeasures establishing streamlined requirements for small facilities that handle below a certain threshold of oil and for those facilities with oil-filled equipment (SPCC I). First published in 2002, the SPCC rule requires affected facilities to take steps to prevent or minimize releases of oil to navigable waters. On December 5, 2008, EPA promulgated further revisions, providing additional flexibility for small facilities (SPCC II). 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. These simplified requirements for the smaller facilities go beyond SPCC I, including a visual inspection option for small volume tanks. The agency also tailored the requirements for hundreds of thousands of oil production facilities, which are mostly owned by small businesses. Overall, these revisions will reduce the regulatory and paperwork burdens on small facilities, while increasing overall compliance with the SPCC program and focusing facilities on measures that will prevent oil spills from reaching waterways.	**EPA estimates the savings for these revisions at $188 million per year, 70 percent of which Advocacy estimates should accrue to small businesses, or $132 million per year.**
EPA	***Definition of Solid Waste.*** On October 30, 2008, EPA promulgated a rule revising the definition of solid waste to exclude certain hazardous secondary materials from regulation under the Resource Conservation and Recovery Act. Before this rule became effective, many useful materials that could otherwise be recycled were required to be treated and handled as hazardous waste. These requirements are more costly and complex than those for materials recovered for reuse. In reforming this rule, EPA streamlined the requirements for certain hazardous materials, including materials generated and reclaimed under the control of the generator and materials transferred to another company for legitimate reclamation.	**Advocacy estimates that about half of EPA's total industry projected savings, or $48 million annually, will accrue to small businesses.**

Agency	Subject Description	Cost Savings/ Impact Measures
Treasury	***Government Entities Required to Withhold Three Percent on Payments for Services and Property.*** Under section 3402(t) of the Internal Revenue Code, which was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, all government entities (except certain small state entities) will be required to withhold three percent of all payments for services or property made after December 31, 2010, on contract amounts of $10,000 or more. Small businesses in contact with Advocacy indicated that this three percent withholding requirement would adversely affect all small businesses that provide services to government entities. To advise Congress, the Department of the Treasury, and the Internal Revenue Service (IRS) about the potential impact of this three percent withholding requirement on small businesses, Advocacy engaged in a number of outreach efforts, including attending meetings and submitting public comments to the IRS. Because of these efforts, the effective date for the three percent withholding requirement was delayed by one year to after December 31, 2011, by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. Based on Federal Procurement Data System (FPDS) data for FY 2009, small businesses were awarded $102,106,652,309 in contracts valued at $10,000 or more.	**The efforts of Advocacy have resulted in one-year cost savings of $3.1 billion.**

Agency	Subject Description	Cost Savings/ Impact Measures
FAR Council / DHS	***FAR Case 2007-013, Employment Eligibility Verification.*** On June 4, 2008, President Bush issued Executive Order 13465, which amended Executive Order 12989. Pursuant to these executive orders, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council amended the Federal Acquisition Regulation (FAR) to require certain contractors and subcontractors to use the U.S. Citizenship and Immigration Services' (USCIS) E-Verify system as the means of verifying that certain of their employees are eligible to work in the United States. Small businesses in contact with Advocacy indicated that this new requirement to verify employees would adversely affect their businesses. Advocacy engaged in a number of outreach efforts, holding a public stakeholders' roundtable to discuss the E-Verify regulation and submitting public comments to the FAR Council on the potential harm to small businesses. The FAR Council considered comments submitted by the Office of Advocacy and other small business stakeholders in the drafting of the final regulation. The final regulation was modified to accommodate some of the concerns of Advocacy and small businesses. Implementation of the final regulation was delayed until June 30, 2009. The FAR regulation estimated that the number of small businesses that would have to comply with this regulation would be 177,196 annually, and that the small business initial year compliance cost was $12,653.	**The six-month cost savings totaled $1.1 billion.**

Agency	Subject Description	Cost Savings/ Impact Measures
APHIS	***Export Certification for Plants and Plant Products (Final Rule).*** On June 12, 2007, the Animal and Plant Health Inspection Service published a proposal in the *Federal Register* to amend the user fee regulations in 7 CFR 354.3 by adjusting the fees charged for export certification of plants and plant products. The agency initially proposed to increase the user fees for fiscal years 2007-2012 to reflect the anticipated costs associated with providing the services each year. APHIS also proposed to add a new user fee for federal export certificates for plants and plant products that an exporter obtains from a state or county cooperator in order to recover their costs associated with that service. The rule would have greatly increased the cost structure, doubling the user fees in some cases, and adding an additional administrative fee in others, particularly for small businesses, which represent the vast majority of entities affected by this rule. Advocacy and other commenters suggested a phased-in approach for the cost increases to provide small businesses with more time to adjust to the fee increases. Advocacy also suggested imposing the new administrative fees incrementally. After consideration of the comments, APHIS agreed that a two-year phase-in period would be less burdensome to the industry than an immediate implementation of the full fees. In addition, APHIS agreed to phase in the administrative fees.	**The phase-in results in a one-time saving of $6 million.**
EPA	***Spill Prevention, Control, and Countermeasure Rule.*** The U.S. Environmental Protection Agency (EPA) has extended the compliance date for all facilities and established a new compliance date for farms subject to the oil Spill Prevention, Control, and Countermeasures regulations. This final rule is part of EPA's multi-phased strategy to address concerns with the SPCC regulation. Specifically, this SPCC rule amendment extends the dates by which the owner or operator of an SPCC-regulated facility or farm must prepare or amend and implement an SPCC plan to November 10, 2010, from the earlier established date of July 1, 2009. The Office of Advocacy supported this deadline extension, along with the affected industry groups. This allows one year and four months to comply with any new requirements that will be finally promulgated by November 2009.	**The extension results in a one-time cost savings of $1.5 billion.**

Agency	Subject Description	Cost Savings/ Impact Measures
FAR Council / DHS	***FAR Case 2007-013, Employment Eligibility Verification.*** On June 4, 2008, President Bush issued Executive Order 13465, which amended Executive Order 12989. Pursuant to these executive orders, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council amended the Federal Acquisition Regulation to require certain contractors and subcontractors to use the USCIS E-Verify system as the means of verifying that certain of their employees are eligible to work in the United States. Implementation of the final regulation was delayed until September 8, 2009. The FAR regulation estimated that the number of small businesses that would have to comply with this regulation would be 177,196 annually, and that the small business initial year compliance cost was $12,653 per entity.	**The cost savings for three months totaled $561 million.**
FDA	***Prevention of Salmonella Enteritidis in Shell Eggs.*** The Food and Drug Administration (FDA) finalized its rule on the prevention of salmonella enteritidis in shell eggs during production, storage, and transportation, and it became effective on September 8, 2009. Early in the rulemaking process, Advocacy encouraged the FDA to entertain alternatives under the requirements of the RFA. In the final rule, the FDA decided to exempt egg producers that produce fewer than 3,000 layers of eggs. This alternative exempts 90 percent of farm sites, while protecting the American public as the exempted farms produce only 1 percent of the total egg supply.	**The estimated first-year and annual cost savings total $74 million.**

Agency	Subject Description	Cost Savings/ Impact Measures
DOT	***Early Warning Reporting Rule.*** On September 17, 2009, the National Highway Traffic Safety Administration finalized a rule that modifies the threshold levels for submitting quarterly early warning reports (EWR) for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle, and trailer manufacturers. The EWR program was created pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 and is designed to identify safety defects in vehicles and equipment by requiring manufacturers to report warranty, accident, and other data to NHTSA. NHTSA initially set the reporting levels to include manufacturers of 500 or more units per year. However, industry representatives petitioned the agency to raise the reporting thresholds from 500 to 5,000 units per year, thereby eliminating many small businesses from the requirements of the rule. At the request of NHTSA, the Office of Advocacy hosted a small business roundtable on March 16, 2006, to obtain industry information and discuss small business concerns about the rule. On December 5, 2008, the agency published a proposed rule to raise the threshold levels for some vehicles and lower them for others. The Office of Advocacy filed a public comment letter that supported the proposed changes for light vehicles and trailers and asked the agency to consider raising them for buses, medium-heavy vehicles, and motorcycles as well. The final rule raises the reporting levels for light vehicles, motorcycles or trailers from 500 to 5,000 units annually (unless a death is involved), but lowers them for buses from 500 to 100 (emergency vehicles remain at 500). The agency states that the reduction in reporting data will not hamper its ability to identify safety concerns.	**The regulatory changes will result in first-year and annual cost savings of $4.4 million.**

Table 2.3 Summary of Cost Savings, FY 2009[1] (dollars)

Rule/ Intervention	First-year Costs	Annual Costs
Washington, D.C., Metropolitan Area Special Flight Rules Area (FAA)[2]	30,000,000	30,000,000
Real Estate Settlement and Procedures Act (HUD)[3]	450,000,000	450,000,000
Reporting Exemption for Releases of Hazardous Substances from Small Poultry and Livestock Operations (EPA)[4]	6,080,000	6,080,000
Spill Prevention, Control and Countermeasures SPCC II (EPA)[5]	132,000,000	132,000,000
Definition of Solid Waste (EPA)[6]	48,000,000	48,000,000
Government Entities Required to Withhold Three Percent on Payments for Services and Property (Treasury)[7]	3,063,199,569	
Employment Eligibility Verification, FAR Case 2007-013 (FAR Council, DHS)[8]	1,121,030,494	
Export Certification of Plants and Plant Products (APHIS)[9]	6,000,000	
Spill Prevention Control and Countermeasures (EPA)[10]	1,499,846,320	
Employment Eligibility Verification, FAR Case 2007-013 (FAR Council, DHS)[11]	560,515,247	
Prevention of Salmonella Enteritidis in Shell Eggs (FDA)[12]	74,100,000	74,100,000
Early Warning Reporting Rule (DOT)[13]	4,443,652	4,443,652
TOTAL	**6,995,215,282**	**744,623,652**

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, 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. Source: FAA.
3. Source: HUD.
4. Source: EPA.
5. Source: EPA.
6. Source: EPA.
7. Source: FPDS-NG.
8. Source: FAR Council, E-Verify economic analysis.
9. Source: APHIS regulatory impact analysis (RIA), Table 4.
10. Source: EPA Nov 12 2008, RIA, Final Amendments to the Oil Pollution Prevention Regulations (40 CFR PART112), vol 1.
11. Source: E-Verify economic analysis.
12. Source: FDA RIA, p. 181.
13. Source: DOT final regulatory analysis available at regulations.gov/search/regs/home.html#documentDetail?R=0900006480a27caf.

3 Advocacy Review of Agency RFA Compliance in Fiscal Year 2009

Since the enactment of the Regulatory Flexibility Act in 1980, the Office of Advocacy has worked with federal agencies to examine the effects of their proposed regulations on small entities. Advocacy demonstrates its commitment to helping agencies reduce the burden of federal regulations on small entities by providing written interagency communications, public comments, RFA training, and congressional testimony, as well as hosting RFA panels and roundtables. The Office of Advocacy has consistently increased its interactions with other federal agencies in efforts to address small business concerns in policy deliberations. The following section provides an overview of RFA and E.O. 13272 compliance by agency in fiscal year 2009.

Department of Agriculture

E.O. 13272 Compliance

The U.S. Department of Agriculture (USDA) has complied with section 3(a) of E.O. 13272 by making its policies for considering small business impacts when promulgating regulations publicly available on its website. The following agencies within USDA generally comply with section 3(b) of E.O. 13272 by notifying Advocacy of rules that may have a significant economic impact on a substantial number of small entities: the Animal and Plant Health Inspection Service (APHIS), the Agricultural Marketing Service (AMS), and the Grain Inspection, Packers, and Stockyards Administration (GIPSA). Advocacy has provided RFA training to all of these agencies, and APHIS has scheduled additional training for 2010. In addition, the U.S. Forest Service (FS) has consistently reached out to Advocacy to increase its understanding of the RFA and continues to contact Advocacy well in advance of publishing rules that could have a significant economic impact on a substantial number of small entities. USDA published two final rules that were the subject of Advocacy comment in FY 2009 and regularly complied with section 3(c) of E.O. 13272 by responding to Advocacy's written comments.

Animal and Plant Health Inspection Service

Issue: Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish (Docket No. APHIS -2007-0038) (73 *Fed. Reg.* 52173 September 9, 2008). On September 9, 2008, the Animal and Plant Health Inspection Service published Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish and proposed an interim final rule in the *Federal Register.* APHIS performed an initial regulatory flexibility analysis (IRFA) and concluded that the net impact of the interim rule would be relatively small, but acknowledged that the entities most likely to be adversely affected would be small businesses. APHIS also noted that the magnitude of the economic impact was unclear because of a lack of data. Advocacy received several inquiries from small aquaculture businesses and their representatives voicing concern about their financial ability to comply with the regulation's requirements. On October 9, 2008, Advocacy commented on the rule, asking APHIS to take numerous small aquaculture businesses' concerns into consideration. Advocacy also provided APHIS with examples of how certain provisions in the rule would impose significant economic impacts on the affected industries, including, for example, the veterinary inspection and certification requirements of the rule. Because of Advocacy's involvement and the concerns voiced by small aquaculture businesses, APHIS delayed the implementation of the regulation by 10 months, allowing the agency additional time to study the impacts and make adjustments to the rule necessary for successful implementation.

Issue: Handling of Animals; Contingency Plans (Docket No. APHIS-2006-0159, 73 Fed. Reg. 63085, October 23, 2008). On October 23, 2008, the Animal and Plant Health Inspection Service proposed amending provisions of the Animal Welfare Act to add requirements for contingency planning and training of personnel by research facilities and dealers, exhibitors, intermediate handlers, and carriers for all animals regulated under the act. Advocacy was contacted by affected small businesses concerned about APHIS's assumptions contained in the rule's regulatory impact analysis and IRFA. As a result of Advocacy's comments, APHIS improved its regulatory analysis in the final rule.

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) not only notifies Advocacy of its draft rules, but also routinely submits them to the Office of Advocacy for interagency review. Similarly, in the last year, the U.S. Patent and Trademark Office (PTO) complied with section 3(b) of E.O. 13272 by notifying Advocacy of its draft rules and submitting them to Advocacy.

National Marine Fisheries Service

Issue: Modification of the Herring Midwater Trawl Gear Authorization Letter. On September 4, 2009, the National Marine Fisheries Service published a proposed rule on Fisheries of the Northeastern United States; Modification of the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Authorization Letter. For vessels fishing in closed Area I (CA I), the proposed rule would modify the requirements for midwater trawl vessels that have been issued All Areas and/or Areas 2 and 3 Atlantic herring limited access permits. To fish in CA I, midwater trawl vessels with these permits would be required to carry a NMFS-approved observer and to bring the entire catch aboard the vessel, unless specific conditions are met, so that it is available to the observer for sampling. The proposed changes to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Letter of Authorization would be effective indefinitely, until changed by a subsequent action.

NMFS certified that the rule would not have a significant economic impact on a substantial number of small entities. However, after talking to industry representatives, Advocacy concluded that the rule's impacts might be significant. On September 24, 2009, Advocacy filed comments on the proposed rule. Advocacy advised NMFS that certification may be inappropriate and that an IRFA may be warranted. The office recommended that NMFS consider alternatives such as lifting the prohibition on fishing without an observer if no observer is available; clarifying the phrase "unless the fish has been brought aboard the vessel" to prevent fishers from being penalized unnecessarily, giving full consideration to the industry's rewritten version of the dogfish exemption, and allowing a vessel to discontinue fishing in Closed Area I but keep the fish if it has to discontinue a trip due to mechanical failure or safety concerns. NMFS did not publish a final rule in FY 2009.

Department of Defense

E.O. 13272 Compliance

The Federal Acquisition Regulation Council (FAR Council) promulgates procurement regulations that are governmentwide 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. The FAR Council and DOD regulatory processes are interrelated and DOD's procedures comply with section 3(a) of E.O. 13272. DOD notifies Advocacy of its draft rules in compliance with section 3(b) of E.O. 13272, and routinely submits prepublication rulemakings for Advocacy's consideration. DOD published a final rule in FY 2009 that was the subject of Advocacy comments. DOD's staff received RFA training in FY 2005.

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 economic 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 2009 that were the subject of any Advocacy comment; therefore, Education's compliance with section 3(c) cannot be assessed.

Department of Energy

E.O. 13272 Compliance

The Department of Energy (DOE) has complied with section 3(a) of E.O. 13272 by maintaining its RFA policies on its website. DOE complies with section 3(b) of E.O. 13272 by notifying Advocacy of draft rules that may have a significant economic impact on a substantial number of small entities, and also routinely submits draft rules to Advocacy for review prior to their publication in the *Federal Register*. DOE did not publish any final rules in FY 2009 that were the subject of Advocacy comment; 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) has complied with section 3(a) of E.O. 13272 by making its policies and procedures publicly available online. Agencies within HHS do not consistently notify Advocacy of draft proposed rules pursuant to section 3(b) of E.O. 13272. The Centers for Medicare and Medicaid Services (CMS) published two final rules that were the subject of Advocacy comments and complied with section 3(c) of E.O. 13272 by publicly responding to Advocacy's comments when publishing their final rules in the *Federal Register.*

Centers for Medicare and Medicaid Services

Issue: Medicaid Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009, E-Prescribing Exemption for Computer-Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, and Supplies (73 *Fed. Reg.* 69726). On December 7, 2008, CMS published a final rule in the *Federal Register* proposing to revise payment policies for certain durable medical equipment. Advocacy was contacted by durable medical equipment suppliers who were concerned that the rule did not adequately analyze the impact changes in the payment policies would have on their industry (especially as it related to the administration of oxygen and oxygen equipment) and how it might potentially cause disruptions to Medicaid beneficiaries. CMS admitted that up to 85 percent of the affected industry was composed of small businesses. Advocacy requested that CMS improve its RFA analysis, appreciate the concerns of the affected small entities, and take into consideration their suggested alternatives.

Issue: Medicare, Medicaid, and Clinical Laboratory Improvement Amendments of 1988 (CLIA) Program; Cytology Proficiency Testing (74 *Fed. Reg.* 3264, January 16, 2009). The Centers for Medicare and Medicaid Services' proposed rule noted that the Clinical Laboratory Improvement Amendments of 1988 (CLIA) established minimum standards for all clinical laboratories in the United States performing testing on human specimens for health purposes. CLIA required the secretary of HHS to develop standards that included: 1) personnel qualifications and quality control, 2) quality assurance procedures, and 3) proficiency testing (PT) as one measure of ensuring quality laboratory testing. The proposed rule sought to amend the CLIA regulations for cytology PT to reflect changes in cytology laboratory operations and practices. CMS stated in the proposed rulemaking that the majority of cytology laboratories and cytology PT programs were to be considered small entities for RFA purposes. Advocacy presented CMS with affected small industry concerns including an argument that CMS's attempt to regulate under CLIA would result in a program that fails to measure competency adequately, is not supported by science, and does not support improved health outcomes; further, small businesses were concerned that CMS had failed to analyze whether the PT provisions would result in a measurable benefit to the Medicare and Medicaid programs and that the rule's provisions will be economically burdensome to the small businesses regulated by the rule. Based on Advocacy's comments, CMS agreed to take the small industry's concerns into consideration as it finalized the rule.

Department of Homeland Security

E.O. 13272 Compliance

The Department of Homeland Security (DHS) has made some 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) was trained in RFA compliance in FY 2005, and the U.S. Coast Guard was trained in FY 2005 and FY 2008. Advocacy has scheduled RFA trainings in 2010 for DHS personnel. DHS did not notify Advocacy of all of its draft rules that may have had a significant economic impact on a substantial number of small entities in FY 2009, as required by section 3(b) of E.O. 13272. DHS published final rules in FY 2009 that were subject to Advocacy comments, and the agency addressed Advocacy comments in compliance with section 3(c) of E.O. 13272. In addition, Advocacy submitted comments to DHS on two rules that were not finalized in FY 2009, including TSA's proposed Large Aircraft Security Program rule and Customs and Border Protection's proposed Uniform Rules of Origin for Imported Merchandise rule (proposed jointly with the Department of the Treasury).

Issue: Safe Harbor Procedures for Employers Who Receive a No-Match Letter. On April 25, 2008, Advocacy submitted comments to DHS on its supplemental proposed rule, Safe-Harbor Procedures for Employers Who Receive a No-Match Letter ("No-Match" rule). Advocacy had previously asked that DHS do a better job of considering the rule's impact on small business. The initial proposed rule (released in August 2007) 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 issued its supplemental proposal in response to Advocacy's request and to address several legal issues upon which the Federal District Court for the Northern District of California had enjoined a prior final "no-match" rule. Along with the supplemental proposal, DHS prepared and published an IRFA that assessed the impact of the rule on small

business. Advocacy's letter recommended that DHS consider alternatives that would reduce the costs and impacts of the rule on small entities. Advocacy also offered to assist DHS in its preparation of a final regulatory flexibility analysis (FRFA) and of the small entity compliance guide required as part of the final rule. On October 28, 2008, however, DHS published a supplemental final rule with a FRFA that had no changes from the IRFA. On August 19, 2009, DHS released a proposed rule rescinding the no-match regulations and this rescission was to be effective November 6, 2009.

Issue: Secure Flight. On August 23, 2007, TSA published a proposed rule titled Secure Flight Program. As required under security directives issued following the terrorist attacks of September 11, 2001, aircraft operators perform passenger watch list matching using the Federal No Fly and Selectee Lists. Under the Secure Flight program, aircraft carriers would be required to request certain information from passengers and transmit the information to TSA. TSA would receive passenger and certain nontraveler information, conduct watch list matching against the No Fly and Selectee portions of the federal government's consolidated terrorist watch list, and transmit boarding pass printing instructions back to aircraft operators. Advocacy commented that TSA may not have fully considered the economic impact on aircraft operators and travel agents as required by the RFA. For example, the Regional Airline Association (RAA) was concerned about the potential impact the rule may have on their schedules (on-time departures). Moreover, the American Society of Travel Agents (ASTA) informed Advocacy that the time to collect the additional information would require an increase in reservation time. ASTA also asserted that travel agencies would need to reprogram their computers and provide training on the new requirements. These are costs that were not considered by TSA in preparing its IRFA. Advocacy encouraged TSA to prepare and publish for public comment a revised IRFA to determine the full economic impact on small entities and consider significant alternatives to meet its objective while minimizing the impact on small entities.

TSA published the final Secure Flight rule on October 28, 2008. According to TSA, the final rule provided small business carriers the flexibility of either reprogramming their reservation systems to interface directly with the Secure Flight system or to transmit passenger and nontraveler information to Secure Flight through a secure Internet interface. Thus, small business carriers have the option of using the Internet portal if they determine reprogramming their systems to communicate directly with Secure Flight is too costly. Similarly, small business carriers scheduled to use the Secure Flight Internet portal have the option to reprogram their systems to communicate directly with Secure Flight if they determine that using the portal is too burdensome on their business processes. While either method imposes some costs on small businesses, TSA determined that exempting these carriers from the requirements of the rule would fail to meet the mandate within the Intelligence Reform and Terrorism Prevention Act that TSA assume the watch list matching function. Taking this into consideration, TSA determined that the options described above would effectively minimize the impact on small businesses.

TSA has also considered the potential impact on small business travel agencies, as these entities are likely to be indirectly affected by the rule, given their role in the airline reservation process. TSA stated that it did not believe the final rule would have a significant economic impact on a substantial number of these small business travel agencies.

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 consistently notifies Advocacy of 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. HUD

received RFA training in FY 2005. HUD published a final rule in FY 2009 that was the subject of an Advocacy public comment. HUD addressed Advocacy's comments in the final rule.

Issue: Real Estate Settlement Procedures Act of 1974 (RESPA). In 2002, HUD issued a proposed rule to revise the regulations implementing RESPA. The purpose of the proposal was to simplify and improve the process of obtaining home mortgages and to reduce settlement costs to consumers. Small businesses throughout the real estate and settlement services industry strongly opposed the rule. Advocacy filed comments on behalf of small businesses in October 2002. Advocacy's comments suggested that HUD prepare a revised IRFA to provide information to the public about the industries affected by the proposal and alternatives to minimize the impact on small entities. Advocacy also emphasized its desire to continue working with HUD to ensure that improvements in the mortgage financing and settlement process are sensitive to the impact on small business.

In March 2004, HUD withdrew the draft final RESPA rule from OMB review. Subsequently, Advocacy worked with HUD to perform outreach to the small business community, to discuss the impact of RESPA reform on small entities, and to develop less burdensome alternatives. In addition to attending roundtables that HUD held in Washington, D.C., Advocacy and HUD cosponsored three roundtables around the country. Members of every aspect of the real estate community were invited to participate in the roundtables held in Chicago, Illinois; Fort Worth, Texas; and Los Angeles, California.

On March 14, 2008, HUD published a new proposed rule on RESPA. The purpose of the proposed rule was to simplify and improve the disclosure requirements for mortgage settlement costs under RESPA and to protect consumers from unnecessarily high settlement costs. The revisions aimed to protect consumers by taking steps to: 1) improve the good faith estimate (GFE) form to make it easier to shop for settlement service providers; 2) ensure that page one of the GFE provides a clear summary of the loan terms and total settlement charges; 3) provide accurate estimates of costs of settlement services; 4) improve disclosure of yield spread premiums; 5) facilitate comparison of the GFE and the HUD-1/HUD-1A settlement statements; 6) ensure that at settlement borrowers are aware of final loan terms and settlement costs by allowing them to read and receive a copy of the "closing script"; 7) clarify HUD-1 instructions; 8) clarify HUD's current regulations concerning discounts; and 9) expressly state under what circumstances RESPA permits certain pricing mechanisms that benefit consumers, such as average cost pricing and discounts, including volume-based discounts.

After holding a roundtable attended by several members of the industry (including representative realtors, settlement service providers, mortgage brokers, and mortgage bankers), Advocacy submitted comments on the proposal. Advocacy was concerned that HUD may have underestimated the proposal's costs, thereby creating a potential uneven playing field for some small entities. Advocacy suggested that HUD create a GFE that mirrors the HUD-1 to prevent consumer confusion and clarify the language on tolerances. Advocacy also suggested that HUD eliminate the closing script from the proposal and reconsider volume discounts and the yield spread premium disclosure. Advocacy further requested a delayed implementation period for small entities, if HUD decided to go forward with the proposal.

The final rule was published in November 2008. As a result of involvement by Advocacy and the members of the industry, significant changes were made to the proposed rule. Among other things, the changes included the removal of the language regarding volume discounts, changing the requirements regarding tolerances, and eliminating the closing script. Some of the cost savings, such as those associated with volume discounts and tolerances, cannot be easily quantified. However, the elimination of the closing script resulted in cost savings of $450 million.

Department of the Interior

E.O. 13272 Compliance

The Department of the Interior (DOI) has complied with section 3(a) of E.O. 13272 by maintaining its RFA policies on its website. Not all of DOI's agencies comply with section 3(b) of 13272 by notifying Advocacy of draft rules that may have a significant economic impact on a substantial number of small entities. In particular, the U.S. Fish and Wildlife Service (FWS) fails to provide Advocacy notification of such draft rules. The National Park Service (NPS) generally does provide Advocacy advance notice. Advocacy filed three public comment letters with DOI in FY 2009. For the two rules that were ultimately published as final rules in FY 2009, DOI complied with section 3(c) of E.O. 13272 by responding to Advocacy's written comments.

In addition, for all of its rules proposing to designate critical habitat under the Endangered Species Act, FWS has failed to comply with the RFA by publishing an IRFA or a certification for public comment concurrently with its proposed rules. Instead, FWS delays the publication of its RFA analysis until late in the rulemaking process. Advocacy believes that these delays in completing RFA analyses hinder the ability of affected small entities to provide meaningful comment on the agency's proposals. Advocacy provided FWS with two public comment letters in FY 2009.

Fish and Wildlife Service

Issue: Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx. On November 20, 2008, Advocacy filed comments with FWS regarding its proposal to designate 25 million acres of critical habitat for the Canada lynx. In its proposal, FWS discussed possible areas for exclusion from the final critical habitat under section 4(b)(2) of the Endangered Species Act (ESA), which allows the Secretary of the Interior to exclude an area from critical habitat if the benefits of excluding it outweigh the benefits of inclusion. The areas FWS considered excluding consisted mostly of privately owned timber lands in Maine and Montana, as well as tribal lands across the entire designation.

After hearing from stakeholders that the proposed critical habitat designation (CHD) would have a significant economic impact on a substantial number of small entities, Advocacy urged FWS to exclude the private timber lands in Maine and Montana from a final CHD and instead adopt private conservation agreements with stakeholder groups in Maine and Montana, which would provide greater conservation benefits to the lynx. On February 25, 2009, FWS published a final CHD for the lynx which did not exclude any of the areas suggested in Advocacy's comments.

Issue: Revised Critical Habitat for the California Red-Legged Frog. On May 26, 2009, Advocacy filed comments with FWS regarding the impacts of proposed critical habitat for the California red-legged frog on small farms in the state of California. The IRFA prepared by FWS identified 499 small farms that would be significantly affected by the proposed CHD. The IRFA also concluded that 16,725 acres of farmland owned by small farming operations would be taken out of production if the CHD were to be finalized as proposed.

FWS estimated that taking the farmland out of production would cost each of the 499 affected small farms between $313,000 and $338,000, with the total impact on small farms estimated between $156 million and $169 million. To reduce the burden of the CHD on small farms, Advocacy recommended that FWS consider exercising its discretion under the ESA to exclude the 16,725 acres of small business-owned farmland that would be taken out of production as a result of this CHD. FWS has not yet published a final rule designating critical habitat for the red-legged frog. Advocacy is continuing to work with FWS to assess the economic impacts of the rule on small entities.

National Park Service

Issue: Winter Visitation and Recreational Snowmobile Use in Yellowstone National Park. On November 5, 2008, the National Park Service (NPS) published a proposed rule revising its daily snowmobile entry limits for Yellowstone National Park, which set the limits at 318 entries per day for the 2008-2011 winter seasons. Because of a court decision vacating the Park Service's previous daily entry limit of 540 snowmobiles, no snowmobiles would have been allowed entry into the park for the 2008-2009 winter season unless the NPS finalized a regulation setting a different limit.

On November 13, Advocacy filed comments with NPS regarding its proposed rule. In its public comments, Advocacy commended the Park Service for acting quickly to ensure that small businesses operating snowmobile tours in Yellowstone would be granted continued access to the park during the next winter season. Advocacy expressed concerns that the new limit was lower than that of the previous year and would have had a significant negative impact on small snowmobile tour operators. Because of the significant costs associated with decreasing the limit from 540 to 318 daily snowmobile entries, Advocacy urged the NPS to refrain from implementing the proposed entry limits beyond the 2008-2009 season and consider more alternatives before finalizing rules that would apply to later seasons. Ultimately, NPS withdrew its initial proposal and published an interim final rule designating a much higher daily entry limit than initially proposed. Advocacy continues to follow this rulemaking and anticipated revisiting the rule for the 2009-2010 winter season.

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 2009 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 2009. Using Advocacy's email notification system or U.S. mail, agencies within DOL notify Advocacy in a timely manner 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 finalized rules in FY 2009 upon which Advocacy submitted comments and addressed Advocacy comment letters in compliance with section 3(c) of E.O. 13272. Advocacy submitted comments to OSHA on its proposed Cranes and Derricks in Construction rule and to MSHA on its Alcohol- and Drug-Free Mines rule; however, neither of those rules was finalized in FY 2009. Advocacy also participated in a Small Business Advocacy Review panel on OSHA's draft standard for Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl; however, that rule was not proposed in FY 2009.

Issue: Family and Medical Leave Act. In February 2008, DOL released a proposed rule with revisions to the regulations implementing the Family and Medical Leave Act (FMLA) of 1993. Under the FMLA, a business with 50 or more employees is required to provide up to 12 weeks of unpaid job-

protected leave for eligible employees if they need time off for the birth or adoption of a child, or for a personal or family member's serious health condition. The proposed rule clarified FMLA provisions regarding employer and employee notification requirements, medical certifications, and other minor definitions. At Advocacy's roundtable on this proposed rule, small entities were concerned that DOL did not reform two provisions that are particularly burdensome for employers —the definition of a "serious health condition" and the "intermittent leave" provisions. On April 4, 2008, Advocacy submitted a public comment letter to DOL citing these concerns. On November 4, 2008, DOL released a final rule on these regulations and did not implement Advocacy's recommendations. This final rule became effective on January 16, 2009.

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 was trained in RFA compliance in FY 2003 and FY 2008. The Federal Motor Carrier Administration (FMCSA) and the Federal Railroad Administration (FRA) were trained in RFA compliance in FY 2004 and FY 2008. 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. DOT's NHTSA finalized two rules in FY 2009 on which Advocacy filed comments: Tire Registration and Recordkeeping and Early Warning Reporting regulations. The agency responded to comments raised by Advocacy as required by section 3(c).

National Highway Traffic Safety Administration

Issue: Early Warning Reporting Regulations. On September 17, 2009, the National Highway Traffic Safety Administration (NHTSA) finalized a rule that modifies the threshold levels for submitting quarterly early warning reports (EWR) for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle, and trailer manufacturers. The EWR program was created pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 and is designed to identify safety defects in vehicles and equipment by requiring manufacturers to report warranty, accident, and other data to NHTSA. NHTSA initially set the reporting levels to include manufacturers of 500 or more units per year. However, industry representatives petitioned the agency to raise the reporting thresholds from 500 to 5,000 units per year, thereby eliminating many small businesses from the requirements of the rule. At the request of NHTSA, the Office of Advocacy hosted a small business roundtable on March 16, 2006, to obtain industry information and discuss small business concerns with the rule. Then, on December 5, 2008, the agency published a proposed rule to raise the threshold levels for some vehicles and lower them for others. The Office of Advocacy filed a public comment letter that supported the proposed changes for light vehicles and trailers and asked the agency to consider raising the threshold levels for buses, medium-heavy vehicles, and motorcycles as well.

The final rule raises the reporting levels for light vehicles, motorcycles, or trailers from 500 to 5,000 units annually (unless a death is involved), but lowers them for buses from 500 to 1 (emergency vehicles remain at 500). The agency states that the reduction in reporting data will not hamper its ability to identify safety concerns. According to the agency's final regulatory evaluation, the regulatory changes will result in cost savings of $4.4 million, virtually all of which accrue to small business.

Issue: Tire Registration and Recordkeeping. In order to be able to notify consumers of tire safety recalls, Congress mandated that every tire manufacturer maintain records of the names and addresses of the first purchasers of tires that the manufacturer produces. In accordance with that mandate, NHTSA established a tire registry program that required independent tire dealers to give each consumer a tire registration card that the consumer had to complete and mail back to the manufacturer. While the tire registration program has been successful in some respects, it has failed to take advantage of the Internet and other electronic technologies to register tires, which has resulted in low tire registration rates. In response, NHTSA proposed to allow tire dealers to electronically transmit tire registry information to the manufacturer via the Internet. This issue was discussed during Advocacy's regular transportation safety roundtable. Advocacy filed comments in strong support of NHTSA's proposal.

NHTSA issued a final rule on November 28, 2008, that allows for Internet-based tire registry by independent dealers, as supported by industry groups and Advocacy. The final rule should increase tire registration rates, ensure that consumers receive timely notifications of recalls, and reduce paperwork burdens on some 46,000 independent dealers, most of which are small businesses.

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 Currency (OCC), and the Office of Thrift Supervision (OTS). Both OCC and OTS notify Advocacy in accordance with the requirements of section 3(b) of E.O. 13272. Treasury and the Internal Revenue Service have not notified Advocacy of any draft proposed rules under section 3(b) of E.O. 13272. Treasury finalized one rule in FY 2009 upon which Advocacy had commented, and it addressed Advocacy's comments.

Issue: Unlawful Internet Gambling. On October 4, 2007, the Federal Reserve Board (FRB) and the Department of the Treasury published a proposed rule titled Prohibition on Funding of Unlawful Internet Gambling to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006. The proposed rule required participants in designated payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling. The proposed rule did not specify which gambling activities or transactions were legal or illegal because the act itself defers to underlying state and federal gambling laws in that regard; determinations under those laws may depend on the facts of specific activities or transactions. Advocacy commented that the agencies may not have fully considered the economic impact on small businesses as required by the RFA. Although the IRFA submitted by the agencies identified types of small businesses affected by the proposal, it failed to provide information about the nature of the impact; to analyze viable alternatives; or to identify duplicative, overlapping, or conflicting federal rules as required by the RFA. Instead of identifying duplicative rules, the agencies sought public comment on whether there are statutes or regulations that would duplicate, overlap, or conflict with the proposal. Advocacy commented that the RFA places the duty to identify existing regulations on agencies, not small entities. Advocacy encouraged the agencies to prepare and publish for public comment a revised IRFA to determine the full economic impact on small entities and consider significant alternatives to meet its objective while minimizing the impact on small entities.

The agencies published a final rule in November 2008. The final rule expanded the implementation date from 6 months to 12 months. It also

exempted all participants including "send" agents except the operator in a money transmitting business. The final rule exempted more than 95 percent of the small entities that would have been affected by the proposed rule.

Issue: Registration of Mortgage Loan Originators to Implement the Secure and Fair Enforcement for Mortgage Licensing Act. On June 9, 2009, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) issued a joint proposed rule on the Registration of Mortgage Loan Originators to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act). The SAFE Act requires an employee of a bank, savings association, credit union, or other depository institution and their subsidiaries who act as residential mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry. It also requires financial institutions to require their employees who act as residential mortgage loan originators to comply with the SAFE Act's requirements to register and obtain a unique identifier. Agency-regulated institutions must also adopt and follow written policies and procedures designed to assure compliance with the requirements in the proposal.

On July 9, 2009, Advocacy submitted comments on the proposed rule. Advocacy expressed concerns that the agencies may have underestimated the economic burden of the proposal. The proposal provided for a *de minimus* exception, which the agencies defined as being a financial institution processing fewer than 25 mortgages per year in the aggregate. Advocacy stated that the agencies are defining *de minimus* in an extremely restrictive manner. As such, the rule may be unduly burdensome on small community banks that had little to do with the recent problems in the mortgage industry. Advocacy encouraged the agencies to work with representatives from the small financial institution industry to develop a better definition.

The proposal also provided for a grace period for initial registrations for 180 days from the date that the agencies provide public notice that the registry is accepting initial registrations. Advocacy recommended that the agencies expand the time period for compliance to at least one year to provide small financial institutions the additional time needed to register employees, develop compliance policies, and make any other necessary changes.

Department of Veterans Affairs

E.O. 13272 Compliance

The Department of Veterans Affairs (VA) has made its RFA policies publicly available on its website, as required by section 3(a) of E.O. 13272, while maintaining that most of its regulations do not affect small entities. The VA notifies Advocacy of any proposed rules that may have a significant economic impact on a substantial number of small entities in accordance with section 3(b) of E.O. 13272. The VA did not publish any final rules in FY 2009 that were the subject of Advocacy's comments; therefore, the department's compliance with section 3(c) of E.O. 13272 cannot be assessed.

Consumer Product Safety Commission

E.O. 13272 Compliance

The Consumer Product Safety Commission (CPSC) has made its RFA policies and procedures publicly available on its website as required by section 3(a) of E.O. 13272. The CPSC does not regularly give Advocacy draft proposed rules before publication as required by section 3(b) of E.O. 13272. The CPSC published one final rule in FY 2009 upon which Advocacy had commented.

Issue: Notice of Inquiry, Implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008, Tracking Labels for Children's Products (74 *Fed. Reg.* 8781, February 26, 2009). On February 26, 2009, the CPSC published a notice of inquiry in the *Federal Register* seeking public comment on the Consumer Product Safety Improvement Act of 2008 (CPSIA). In 2007, several large toy manufacturers were forced to issue recalls of millions of Chinese-made toys due to safety risks of lead paint and small magnets. Congress reacted to the massive recalls by passing the CPSIA, which was signed into law by President George W. Bush on August 14, 2008. The CPSIA added many consumer safety provisions to the Consumer Product Safety Act, including a requirement in Section 103 that manufacturers or importers of children's products "place permanent, distinguishing marks on the product and its packaging, to the extent practicable." The labeling requirement was intended to give manufacturers and consumers the ability to ascertain the specific source of a children's product in instances of a consumer safety recall. The CPSIA defined a "children's product" as a consumer product that is designed or intended for use by children 12 years old and under.

Ninety-nine percent of businesses manufacturing toys, dolls, and/or games are classified as small businesses. Advocacy was supportive of the public policy underlying the law, but was concerned about the regulatory and economic effects of the CPSIA on small businesses. The act's broad definition of children's products meant that any small business that produced a children's product, not just toy manufacturers, would have to comply with section 103 labeling requirements, including manufacturers and importers of clothing, textiles, toiletries, furniture, and the like. Advocacy encouraged the CPSC to complete a regulatory analysis while promulgating the tracking labeling rules pursuant to the Regulatory Flexibility Act, to allow small businesses flexibility in determining the location and appearance of the label, and to entertain reasonable alternatives designed to minimize the regulation's cost to affected small businesses. As a result of Advocacy's comments and those voiced by affected businesses, the CPSC agreed to stay enforcement of the CPSIA for one year and to entertain certain exceptions and exemptions as it issues regulations under the CPSIA.

Environmental Protection Agency

E.O. 13272 Compliance

The Environmental Protection Agency (EPA) has made its RFA policies and procedures publicly available through its website in accordance with section 3(a) of E.O. 13272. EPA has also consistently notified Advocacy of draft proposed rules that are expected to have a significant economic impact on a substantial number of small entities before publishing them in the *Federal Register*, as required by section 3 (b) of E.O. 13272. EPA also consistently provides prepublication draft rules for Advocacy review. EPA continues to respond to Advocacy's comments in accordance with section 3(c) of E.O. 13272.

Issue: Reporting Exemption for Releases of Hazardous Substances from Small Poultry and Livestock Operations. On December 12, 2008, EPA signed a final rule that exempts many small poultry and livestock operations from having to notify emergency response officials at the local, state, and federal level concerning naturally occurring releases into the air of ammonia or hydrogen sulfide from animal manure. Larger poultry and livestock operations are required to notify emergency response officials about these air releases under the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Response Act. Advocacy worked with EPA to ensure that smaller farms would be exempt from the reporting, based on data showing that the naturally occurring releases from small farms do not pose any danger to the public. The exemption is estimated to save small farms 1.3 million hours of paperwork burden over 10 years, and local, state,

and federal officials another 161,000 hours of paperwork burden over 10 years. The resulting cost savings are estimated at $6 million in the first year and $6 million in recurring annual cost savings for the following nine years for farms, and $8.1 million over 10 years for local, state, and federal government agencies.

Issue: Spill Prevention, Control and Countermeasure (SPCC) Rule. On December 26, 2006, EPA published a final rule governing the Spill Prevention, Control and Countermeasure (SPCC I) rule for facilities that use or manage oil. The SPCC rule requires affected facilities to take steps to prevent or minimize releases of oil to navigable waters. In the final rule, EPA adopted streamlined requirements for small facilities that handle less than a threshold quantity of oil, and for those facilities with oil-filled equipment. These requirements largely reflect June 2004 recommendations of the Office of Advocacy, developed in concert with a large group of interested trade associations. A group of associations banded together to form a small facility coalition, and worked with the Office of Advocacy to support relief for smaller SPCC facilities.

In October 2007, EPA proposed additional flexibility for small facilities. Advocacy again worked with affected trade associations to seek this additional relief and other simplified requirements affecting a wide variety of facilities, including oil and gas production facilities. This effort culminated in a final rule promulgated in December 2008 (SPCC II). Among the specific changes were a visual inspection option for small volume tanks and simplified requirements for oil containment. Overall, these revisions will reduce the regulatory and paperwork burdens on small facilities, while increasing overall compliance with the SPCC program and focusing facilities on measures that will prevent oil spills from reaching waterways.

EPA estimates the savings for these revisions at $188 million per year, of which 70 percent, or $132 million per year, are estimated to accrue to small businesses. The agency is in the process of reviewing the rule, but virtually all of the regulatory relief was expected to be preserved in a final rule.

Issue: Definition of Solid Waste. On October 30, 2008, EPA promulgated a rule revising the definition of solid waste to exclude certain hazardous secondary materials from regulation under the Resource Conservation and Recovery Act. Before the rule became effective, many useful materials that could otherwise be recycled were required to be treated and handled as hazardous waste. These requirements are more costly and complex than those for materials recovered for reuse. In reforming this rule, EPA streamlined the requirements for certain hazardous materials, including materials generated and reclaimed under the control of the generator and materials transferred to another company for legitimate reclamation. EPA estimated that about 5,600 facilities would benefit from this rule, with a savings of about $95 million annually. Advocacy estimates that about 50 percent of the savings, or about $48 million per year, will accrue to small firms. EPA is reviewing the rule and has not announced a timeframe for its completion.

Issue: Construction and Development Water Pollution Guidelines. On November 28, 2008, EPA proposed the Construction and Development Water Pollution Guidelines, which impose requirements for stormwater discharges from construction and development sites. EPA's preferred option was to require an advanced treatment system, at great cost, at facilities with 30 acres or more, even in sites with minimal rainfall, which would be capable of filtering out many small soil particles. Advocacy suggested a modification of this option that, using EPA's figures, would save about $1.8 billion per year. Advocacy's modification would allow passive treatment, such as flocculant logs or other devices, which would achieve lower turbidity, but not as low as the 13 nephelometric turbidity units (NTUs) standard suggested by EPA for the advanced treatment system. The passive measures would substantially reduce pollution, and would be considerably less expensive than the advanced treatment system

approach. The agency included Advocacy's suggested approach for public comment. EPA was required by a judicial decree to issue a final rule by December 1, 2009.

Equal Employment Opportunity Commission

E.O. 13272 Compliance

The Equal Employment Opportunity Commission (EEOC) has posted its RFA policy on its website, as required by section 3(a) of E.O. 13272. The EEOC has never attended RFA training and did not notify Advocacy of all of the draft rules that may have had a significant economic impact on a substantial number of small entities in FY 2009, as required by section 3(b) of E.O. 13272. The EEOC did not publish any final rules in FY 2009 that were subject to Advocacy comments; therefore, compliance with section 3(c) of E.O. 13272 cannot be assessed.

Issue: Genetic Information Nondiscrimination Act (GINA). On March 2, 2009, the EEOC released a proposed rule implementing title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which applies to employers with 15 or more employees. This proposed rule prohibits discrimination based on genetic information, restricts the deliberate acquisition of genetic information, and requires that genetic information be kept confidential. After speaking to small business representatives, Advocacy recommended in a public comment letter that the EEOC clarify the definitions, prohibitions, and exceptions in this rule. Advocacy also recommended that the EEOC publish a small business compliance guide that provides practical examples of prohibited conduct, employer best practices, and the interactions between GINA and local, state and federal workplace rules. This rule has not been finalized for FY 2009. However, title II took effect November 21, 2009.

Federal Acquisition Regulation Council

E.O. 13272 Compliance

The policies and procedures required by section 3(a) that were provided by DOD (see elsewhere in this report) apply also to the Federal Acquisition Regulation Council (FAR Council). The FAR Council has complied with section 3(b) by making its deliberations and predecisional deliberative rulemaking processes open to the Office of Advocacy. Advocacy commented on several of the preproposed FAR rules that may have a significant economic impact on a substantial number of small entities in FY 2009. (See the Department of Defense entry for more detail.) The FAR Council published one rule in FY 2009 that was the subject of Advocacy comments and was in compliance with section 3(c) of E.O. 13272

Issue: Payments Under Fixed-Price Architecture and Engineering Contracts, FAR Case 2008-015. On July 6, 2009, the Office of Advocacy submitted a comment letter to the FAR Council on the proposed regulation, Payments Under Fixed-Price Architecture and Engineering Contracts, FAR Case 2008-015. The proposed regulation was published in the *Federal Register* on May 5, 2009. The FAR Council proposed to amend the FAR to provide the contracting officer with greater flexibility regarding retainage on fixed-price architecture and engineering (A&E) contracts. Under the proposed rule, the contracting officer may retain less than the maximum of 10 percent of the contract price on each voucher of the A&E firm. The government retains the amount until the contracting officer determines that the work has been satisfactorily completed.

Advocacy commended the FAR Council for proposing this regulation in response to the Office of Advocacy's Regulatory Review and Reform (r3) initiative. The r3 initiative, launched in 2008, is a process developed to help implement section 610 of the RFA, which requires agencies to consider

whether their current rules should continue without change, or should be amended or rescinded. It enlists small business comment in the effort to identify and address existing federal regulations that should be revised because they are ineffective, duplicative, or out of date. The A&E small business community recommended this proposed regulatory change under r3.

Federal Communications Commission

E.O. 13272 Compliance

The Federal Communications Commission's (FCC's) compliance with E.O. 13272 has varied. In past years, the FCC has attempted to use its status as an independent agency to bypass compliance with E.O. 13272. In FY 2005, the FCC sent Advocacy a letter suggesting that as an independent agency it is not required to comply with E.O. 13272, but that it is committed to upholding the spirit of the law by examining its rules for small entity impacts. Most recently, the FCC explained its understanding of RFA compliance in its brief before the U.S. Court of Appeals for the District of Columbia Circuit in *National Telecommunications Cooperative Association v. Federal Communications Commission and the United States of America* (No. 08-1071).

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 complies in part with section 3(b) by notifying Advocacy of proposed rules that may have a significant impact on a substantial number of small entities. This notice is sent via first class mail following the adoption and release of the rule and prior to the rule's publication in the *Federal Register*.

In FY 2009, the FCC enhanced its focus on small business issues and properly addressed Advocacy's concerns in some of its IRFAs. However, the FCC still does not provide its draft rules to Advocacy as required by section 3(b).

Additionally, some of the FCC's IRFAs still lack a proper economic analysis of how the rule will affect small entities and fail to include meaningful alternatives as required by the RFA. Nevertheless, the FCC continued to improve its consideration of alternatives offered by small businesses in their comments in FY 2009. The FCC has improved its compliance with section 3(c), the consideration that it gives to Advocacy's comments on draft rules. For example, the FCC incorporated many of Advocacy's recommendations into the final rule regarding the procedural requirements to govern forbearance.[1]

The Office of Advocacy continues to offer the FCC assistance in complying with the RFA, and FCC staff received RFA training in 2005. Advocacy often reaches out to the FCC to engage staff early in the rulemaking process and to discuss the impact their proposed rules may have on a variety of small businesses.

Issue: Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended. On June 29, 2009, the Federal Communications Commission released its *Report and Order* regarding the new procedural requirements that govern section 10 forbearance proceedings. Several of Advocacy's recommendations for the final rule were adopted by the FCC, including an emphasis on making the entire process more transparent for the benefit of small businesses. The final rule requires that petitions must be complete as filed and that the petitioner bears the burden of proof, among other changes. This rule resulted in small business cost savings that were unquantifiable.

Issue: Rural Broadband Strategy. On March 25, 2009, Advocacy filed a public comment letter in response to the FCC's request for input on a rural broadband strategy. Advocacy recommended that the FCC consider how to foster competition in the

1 See Advocacy's March 7, 2008, comments at **http://www.sba.gov/advo/laws/comments/fcc08_0307.pdf**.

markets for rural telecommunications as a long-term goal of a broader strategy. Advocacy also recommended that the FCC coordinate at an interagency level in constructing the strategy.

Financial Accounting Standards Board and International Accounting Standards Board

E.O. 13272 Compliance

Opinions and guidance issued by the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB) are not subject to the requirements of the Regulatory Flexibility Act and E.O. 13272.

Issue: Lease Accounting. On March 19, 2009, FASB and IASB issued a discussion paper that proposed a new approach on lease accounting that would apply the existing "finance lease" model to all leases, including operating leases.

The discussion paper's proposed approach would require that all leases be accounted for as though the asset were purchased and financed with a loan. Because the discussion paper would reclassify operating leases as capital leases, this would substantially increase the debt shown on small business lessees' financial statements. It would also mean these small companies would have financial statements showing reduced earnings and reduced capital. The proposed changed standard would add complexity and would result in small business lessees having financial statements that are less understandable and less comparable than under the current standards. The discussion paper invited public comment.

On June 30, 2009, Advocacy filed a public comment letter with FASB and IASB. Advocacy commended FASB and IASB for their efforts to create a common standard on lease accounting but recommended that the boards develop alternatives that would minimize the burden of the proposed standard on small businesses engaging in shorter term, less costly lease transactions. In particular, Advocacy recommended that FASB and IASB create a *de minimis* exception to the standard that would exempt lease transactions of less than $250,000 from the proposed standard.

Presidential Economic Recovery Advisory Board

E.O. 13272 Compliance

Opinions and guidance issued by the Presidential Economic Recovery Advisory Board (PERAB) are not subject to the requirements of the Regulatory Flexibility Act and E.O. 13272.

Issue: Recommendations for Tax Reform. On September 24, 2009, the Tax Subcommittee of the PERAB requested ideas for tax reform. On September 29, 2009, Advocacy filed a comment letter with recommendations for tax reform to the Tax Subcommittee. Based on years of feedback from small businesses on tax burdens, Advocacy recommended: (1) simplifying the home office business deduction; (2) equalizing the tax deductibility of group health insurance costs; (3) eliminating the three percent withholding requirement for government contractors; and (4) continuing to permit small businesses to use the last in, first out (LIFO) inventory accounting method.

Fifty-three percent of all small businesses are home-based businesses, and the complexity of the current home office business deduction rules is such a prominent issue in the small business community that Congress has introduced several pieces of legislation over the last few years to address this problem.

Tax deductibility of group health insurance costs continues to be an issue particularly for non-C corporations. Although C corporations may obtain a deduction for health insurance premiums as an "ordinary and necessary" business expense,

self-employed small business owners—sole proprietors, partners in partnerships, and S corporation owners—are unable to deduct the cost of health insurance premiums.

Under U.S. Code section 3402(t), which was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222), all government entities (except for certain small state entities) will be required to withhold three percent of all payments for services or property made after December 31, 2010. The three percent withholding requirement will adversely affect all small businesses that provide services to government entities. Most such businesses will have to increase their debt level to ensure sufficient cash flow and will be forced to pass these additional expenses on to their government customers. The three percent withholding requirement will force many other small firms unable to secure additional debt out of the federal contracting business.

Finally, in recent years, several federal agencies, including the IRS, have contemplated plans to unify America's current Generally Accepted Accounting Principles (GAAP) with the International Financial Reporting Standards (IFRS). Small businesses that have been in contact with Advocacy have expressed concern that under the IFRS they would no longer be permitted to utilize the LIFO accounting method. Prohibiting businesses from using LIFO would raise business taxes in two ways. First, a business would see higher future taxes because it would be unable to use LIFO to protect itself from rising inventory costs. Second, a business would be required to pay taxes on its existing "LIFO reserves."

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). The SEC did not publish any proposed or final rules in FY 2009 that were the subject of Advocacy comments.

Small Business Administration

E.O. 13272 Compliance

The U.S. Small Business Administration (SBA) has made significant efforts to stay in compliance with E.O. 13272. SBA has published its RFA procedures in compliance with section 3(a) of E.O. 13272. SBA notifies Advocacy of draft rules in compliance with section 3(b) of E.O. 13272 and consistently provides Advocacy with rules for review. 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. SBA did not publish a final rule in FY 2009 that was the subject of an Advocacy comment letter; therefore, the agency's compliance with section 3(c) of E.O. 13272 cannot be assessed.

Social Security Administration

E.O. 13272 Compliance

The Social Security Administration (SSA) has complied with section 3(a) of E.O. 13272 by making its policies and procedures publicly available online. The agency does not consistently notify Advocacy of draft proposed rules pursuant to section 3(b) of E.O. 13272. The SSA did not publish any final rules in the *Federal Register* that were the subject of Advocacy comments, so Advocacy cannot address compliance with section 3(c) of E.O. 13272.

Issue: Revised Medical Criteria for Evaluating Hearing Loss (Docket No. SSA-2008-0016) (73 *Fed. Reg.* 47103, August 13, 2008). The Social Security Administration (SSA) published this proposed rule to revise the criteria in the listing of impairments used to evaluate claims of hearing loss. The SSA proposed to apply the criteria when evaluating claim benefits based on disability under title II and title XVI of the Social Security Act. In the RFA section of the rule, SSA asserted that any impacts associated with the revision of the criteria used to determine hearing loss would be minimal, as the rule only provided patients with instructions on the criteria that SSA would use to determine their disability and would not affect the health care providers performing the testing. Advocacy filed comments with the SSA suggesting that not all of the impacts associated with the rule would be indirect, based on information provided by the small health care businesses likely to be affected by the rule. For example, the rule would require the use of costly soundproof booths and would mandate that any audiometric testing be performed by, or under the supervision of, an otolaryngologist or by an audiologist qualified to perform such tests. Advocacy asked that the SSA take into consideration the cost information and alternatives suggested by affected small businesses as it finalized the rule.

Conclusion

In FY 2009, Advocacy observed continued improvement by federal agencies with respect to their RFA and E.O. 13272 compliance. Advocacy continues to face the challenge of working with stakeholders and federal agencies to ensure that federal regulations do not place small businesses at a competitive disadvantage because of disproportionate regulatory burdens. The significant small business cost savings realized through increased interagency dialogue and outreach to small business stakeholders is evidence of Advocacy's success in fostering agency RFA compliance.

In the future, Advocacy will continue to work cooperatively with federal agencies so that they can both meet their regulatory goals and fulfill their obligations under the RFA. To accomplish this, Advocacy will focus its efforts on training new agency staff to establish continuity with respect to agency compliance with the RFA and E.O. 13272. Advocacy will continue providing input to federal agencies about the impacts of proposed regulations on small entities early in the rulemaking process

4 Small Business Regulatory Flexibility Model Legislation Initiative

In December 2002, Advocacy presented model regulatory flexibility legislation for the states based on the federal RFA.[1] The intent of the model legislation was 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, including 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).

Advocacy's state model legislation suggests that 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 of the effect of a rule on small businesses before they regulate; (3) a requirement that state agencies consider less burdensome alternatives for small businesses that still meet the agency's regulatory goals; (4) a provision that requires state governments to review all of their regulations periodically; and (5) judicial review to give the law "teeth."

Since 2002, 44 states have enacted the model bill, at least in part, through legislation or an executive order. Of the 44, 17 states, plus one territory, have active regulatory flexibility statutes in place. In 2009, 11 states introduced regulatory flexibility legislation: Arkansas (SB 884), California (SB 356), Connecticut (HB 5930), Hawaii (SB 1276, HB 1428), Illinois (HB 492), Massachusetts (SB 87, HB 207), Michigan (SB 434, SB 435), Mississippi (SB 2132), Montana (HB 547), Ohio (SB 3, HB 230), and Rhode Island (SB 290). Arkansas and Connecticut signed bills into law. The following is a real-world example that demonstrates the value to small businesses of regulatory flexibility at the state level.

Wisconsin's Family Child Care Centers Benefit from Regulatory Flexibility

The Wisconsin Department of Health and Family Services (DHFS) is required to establish minimum requirements and standards for the operation of day care centers in the state. In November 2007, the department proposed a series of rules to update the current standards. One chapter affected was HFS 45, dealing with family child care centers.

The initial proposed modification to the standards required family child care centers that use on-premises play space to have a permanent boundary to protect children under care from nearby hazards. The initial analysis suggested fences be used as the boundary and estimated that 80 percent of currently licensed family child care providers already had the appropriate enclosure, and another 1 to 2 percent of facilities had permission to use off-premises play space that did not require enclosure. That, however, still left 500 to 600 facilities affected.

The department estimated that the cost to purchase and install the fences would start at $300 and noted that using other materials could increase the costs. No other specific estimates were listed. The analysis also touched on the possibility of centers qualifying for an exception to the rule (decided on a case-by-case basis) based on other protections that

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

could be put in place to adequately protect children; however, few details were given.

Under Wisconsin law, agencies are required to review the economic impact of their proposed rules on small businesses and consider alternatives that would be less burdensome. In addition, the Wisconsin Small Business Regulatory Review Board (SBRRB) was created in 2004 to serve as a voice for small businesses. Rules are brought to the SBRRB for review in several ways. Agencies may ask the board directly for comments about an economic analysis, or representatives of affected industries may request that the board review a rule when they feel that the analysis is lacking or inadequate. In this case, representatives of the day care center industry requested the board's involvement on rule HFS 45 because they felt that the economic analysis was deficient.

After review, the SBRRB submitted comments about HFS 45 to the department. One section of the analysis believed by the board to be inadequate was an estimate of the economic impact with respect to the permanent barrier requirement. The board recommended that DHFS reevaluate the data sources used in the analysis. The board acknowledged that the analysis may have met minimum requirements but that by neglecting to include a broad range of fencing options and costs, it misrepresented the likely economic impact of the proposed rule on small businesses. The SBRRB requested that the department include any nonfencing options that would still be acceptable and include more information about the differences in fencing options and costs.

In its final analysis, the department took the board's suggestions into consideration and included several fencing options (with costs listed), making it clear that a fence was not required if other alternatives were used (such as plants and landscaping). As a result, small businesses were provided a more thorough analysis of possible costs, and were offered alternatives to permanent fencing that might be more affordable.

This example demonstrates the importance of analyzing the economic impact of a rule on smaller entities and of considering less burdensome alternatives. In this example, when the burden on small firms was reduced, they were better able to survive in a competitive marketplace and benefit the state's economy, while at the same time meeting the agency's objective of creating appropriate requirements and standards for day care centers.[2]

The Role of the Office of Advocacy

The Office of Advocacy's regional team helps identify the regulatory concerns of small businesses in the states by monitoring the impact of federal and state policies at the grassroots level. Their work has gone far to develop programs and policies that encourage fair regulatory treatment of small businesses and to help ensure their future growth and prosperity. The team promotes, counsels, and champions the causes of small business to stakeholders, legislative bodies, universities, and small business owners. This work is essential in supporting the three main components of the state model regulatory flexibility initiative: introduction and passage of the state model regulatory flexibility act, small business activism, and executive leadership.

Introduction and Passage of the Legislation

Advocacy's regional team has worked with state and local government officials, small businesses, and other stakeholders to encourage the introduction, passage, and implementation of state regulatory flexibility legislation. Such involvement has included providing educational information, testifying at committee hearings, or answering questions about the model RFA, as well as working with state legislators interested in introducing the legislation and seeing it through the legislative process with

2 Effective July 1, 2008, agency authority to administer the licensing of child care centers was transferred from the Department of Health and Family Services (DHFS) to the Department of Children and Families (DCF).

the support of small businesses and other support groups.

Small Business Activism and Executive Leadership

Facilitating the implementation of state regulatory flexibility laws has included small business activism and executive leadership. Governors, secretaries of state, and other executive departments are critically important leaders. Small business activism is essential. Stakeholders (small business owners, trade associations, and other membership groups) will benefit from a state's regulatory flexibility law if they are educated and encouraged to become actively engaged in the system.

Small business outreach is also important to determine whether an existing regulatory flexibility law is or is not working effectively. Also important are examples of best practices in each state—the regulatory alert systems, e-mail notification systems, and other programs that inform small businesses of agency regulatory activities and facilitate the efficient functioning of the program. Advocacy's regional team provides examples that show how a state's law or system is working and how it can be improved to create a friendlier small business regulatory environment.

With the involvement of the small business community and state and local policymakers, and with the support of Advocacy's regional team, the model regulatory flexibility initiative continues to achieve a better regulatory and economic environment for small businesses across the nation.

Small Business Regulatory Flexibility Model Legislation Initiative

Table 4.1 State Regulatory Flexibility Legislation, FY 2009 Legislative Activity

Two states enacted regulatory flexibility legislation in 2009

Arkansas (SB 884)
Connecticut (HB 5930)

Eleven states introduced regulatory flexibility legislation in 2009

Arkansas (SB 884)
California (SB 356)
Connecticut (HB 5930)
Hawaii (SB 1276, HB 1428)
Illinois (HB 492)
Massachusetts (SB 87, HB 207)
Michigan (SB 434, SB 435)
Mississippi (SB 2132)
Montana (HB 547)
Ohio (SB 3, HB 230)
Rhode Island (SB 290)

Table 4.2 State Regulatory Flexibility Legislation, Status as of October 2009

17 states and one territory have active regulatory flexibility statutes

Arizona
Colorado
Connecticut
Hawaii
Indiana
Maine
Missouri
Nevada
New York
North Dakota
Oklahoma
Oregon
Puerto Rico
Rhode Island
South Carolina
Tennessee
Virginia
Wisconsin

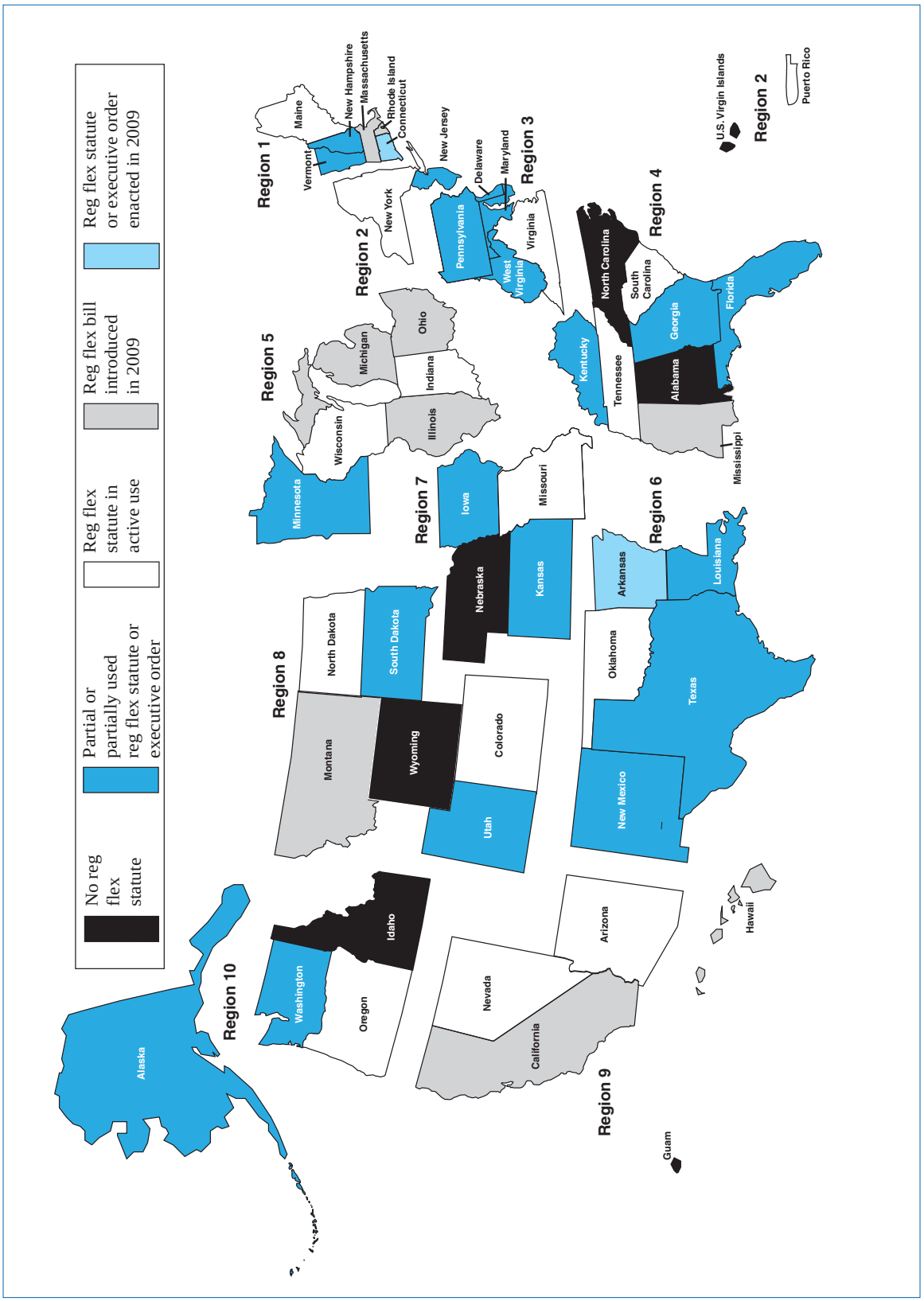
27 states have a partial or partially used regulatory flexibility statute or executive order

Alaska
Arkansas
California
Delaware
Florida
Georgia (EO)
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts (EO)
Michigan
Minnesota
Mississippi
New Hampshire
New Jersey
New Mexico
Ohio
Pennsylvania
South Dakota
Texas
Utah
Vermont
Washington
West Virginia (EO)

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

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

Chart 4.1 Mapping State Regulatory Flexibility Provisions, FY 2009



Appendix A Supplementary Tables

Table A.1 Federal Agencies Trained in RFA Compliance, 2003-2009

As required by E.O. 13272, the Office of Advocacy has offered training to the following federal departments and agencies in how to comply with the Regulatory Flexibility Act.

- 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 Agency
- 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
  - Access Board
  - Consumer Product Safety Commission
  - Commodity Futures Trading Commission
  - Environmental Protection Agency
  - Farm Credit Administration
  - Federal Communications Commission
  - Federal Deposit Insurance Corporation
  - Federal Election Commission
  - Federal Housing Finance Board
  - Federal Reserve System
  - Federal Trade Commission
  - General Services Administration / FAR 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 FY 2009 Status Report on Top Ten Rules for Review and Reform

Rule	Agency	Description / Current Status
Remove the "Foreign Exemption" from Federal Contracting Contact: Major Clark **major.clark@sba.gov**	FAR Council	Remove the "foreign exemption" from federal procurement policy, increasing federal agencies' incentive to award government contracts to small and disadvantaged businesses seeking to work outside of the U.S. According to the nominator, these businesses lose over $20 billion worth of work outside of the U.S. each year because of the foreign exemption.
Eliminate Duplicative Background Checks for Commercial Truck Drivers Contact: Bruce Lundegren **bruce.lundegren@sba.gov**	TSA	Eliminate the current Transportation Safety Administration requirement that commercial truck drivers who hold a valid Transportation Worker Identification Credential (TWIC) must undergo a duplicate security background check when they apply for a hazardous materials endorsement. According to the nominator, this duplicative background check requirement needlessly adds as much as $28 million to the costs truckers must pay each year. TSA informed Advocacy in a letter dated March 23, 2009, that the Agency is working to align the security threat assessments for the TWIC and HME programs. At present, TSA lacks the technical capability to make the programs fully integrated. Implementing comparability mechanisms is a priority for TSA.
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. Contact: Keith Holman **keith.holman@sba.gov**	EPA	Revising the New Source Performance Standard (NSPS) for petroleum dry cleaning equipment is a priority for EPA. When implemented, the NSPS revision will update emission testing requirements to work with modern dry cleaning machines. The Standard of Performance for Petroleum Dry Cleaners was published in the *Federal Register* on September 21, 1984. EPA is currently gathering information and intends to conduct site visits to get a better understanding of how the performance standards for petroleum dry cleaners should be updated.
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. Contact: Kevin Bromberg **kevin.bromberg@sba.gov**	EPA	On March 2, 2006, EPA announced a review of the affordability criteria for small systems (**http://edocket.access.gpo.gov/2006/pdf/06-1917.pdf**, 71 *Federal Register* 10671). EPA has not announced when it will complete the review. In order to solicit feedback on how best to consider the concerns of small systems, EPA recently held meetings with stakeholder groups. On May 20, 2009, EPA held a public meeting. On May 27, 2009, EPA met with the Drinking Water Advisory Council. On June 26, 2009, EPA met with states, and on July 22, EPA consulted with the National Environmental Justice Advisory Council.

Rule	Agency	Description / Current Status
Clearly Define "Oil" in 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 prevention program requirements. Contact: Kevin Bromberg **kevin.bromberg@sba.gov**	EPA	On May 30, 2008, EPA and representatives of the U.S. Coast Guard met with small business stakeholders. EPA has not formally announced its intention to review its definition of "oil" in its oil spill program.
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. Contact: Major Clark **major.clark@sba.gov**	FAR Council	The Office of Federal Procurement Policy (OFPP) submitted Advocacy's r3 retainage proposal to the FAR Council. The FAR case number assigned to this issue is 2008-015. The FAR finance team issued a report indicating the council's next steps regarding the proposed FAR change. (**http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=af578f0605dcf172475b4fe29b115955&rgn=div6&view=text&node=48:1.0.1.1.1.5&idno=48**) On January 7, 2009, a proposed rule implementing the change was sent to OFPP for approval (**www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf**). On May 5, 2009, the FAR Council published the proposed rule in the *Federal Register* at 74 Reg. 20,666 (May 5, 2009). The public comment period closed on July 6, 2009.
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. Contact: Dillon Taylor **dillon.taylor@sba.gov**	IRS	On March 14, 2008, the IRS informed Advocacy that this issue has been assigned to IRS attorneys for review (**www.sba.gov/advo/r3/irs08_0314.pdf**). On July 30, 2008, the Deputy Commissioner of the IRS's Small Business/Self-Employed Division testified on this issue before the House Small Business Subcommittee on Regulations, Healthcare, and Trade (**www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/IRS.pdf**). The IRS is continuing to review this issue, including exploring opportunities to simplify the rules and make Form 8829, Expenses for Business Use of Your Home, (**www.irs.gov/pub/irs-pdf/f8829.pdf**) easier to use. On February 5, 2009, Advocacy hosted a roundtable on important tax issues, including the Home Office Business Deduction. A representative from the Internal Revenue Service's Taxpayer Advocate Service (TAS) made a presentation demonstrating the current complexity of the deduction and the need to simplify it. On June 25, 2009, Senators Snowe and Conrad, along with U.S. Representative Gonzalez, announced the Home Office Tax Deduction Simplification and Improvement Act of 2009. The legislation would establish an optional home office deduction to help ease compliance with the tax code for small businesses.

Rule	Agency	Description / Current Status
Update MSHA Rules on 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. Contact: Bruce Lundegren **bruce.lundegren@sba.gov**	DOL/ MSHA	The group that nominated this issue testified before the House Small Business Subcommittee on Regulations, Healthcare and Trade on July 30, 2008. (**www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/Santis.pdf**). On November 6, 2008, MSHA committed in a letter to Chairman Gonzalez of the House Subcommittee on Regulations, Healthcare and Trade that MSHA would review the rule (**www.sba.gov/advo/r3/gonzalez08_1106.pdf**). Subsequently, MSHA listed this rule in the Fall 2008 *Unified Agenda and Regulatory Plan* and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (**www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291765**). The Department of Labor/MSHA added this rule to its Spring 2009 *Unified Agenda and Regulatory Plan* for review under Section 610 of the Regulatory Flexibility Act.
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. Contact: Bruce Lundegren **bruce.lundegren@sba.gov**	DOL/ OSHA	On October 22, 2008, OSHA noted in a letter to Chairman Gonzalez of the House Small Business Subcommittee on Regulations, Healthcare and Trade that this rule was being considered for review (**www.sba.gov/advo/r3/resgonzalez08_1022.pdf**). Subsequently, OSHA listed this rule in the Fall 2008 *Unified Agenda and Regulatory Plan* and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (**www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291742**). The Department of Labor/OSHA added this rule to its Spring 2009 *Unified Agenda and Regulatory Plan* for review under Section 610 of the Regulatory Flexibilty Act.
Update Reverse Auction Techniques for Online Procurement of Commercial Items. 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. Contact: Major Clark **major.clark@sba.gov**	OFPP	On October 4, 2006 the Office of Federal Procurement Policy (OFPP) announced a review to determine the appropriate course of action for this acquisition tool (**www.sba.gov/advo/r3/ofpp06_1004.pdf**). OFPP has completed surveys of vendors (**http://edocket.access.gpo.gov/2007/pdf/07-1967.pdf**) and users (**http://edocket.access.gpo.gov/2007/pdf/07-4065.pdf**). The surveys were targeted for government buyers who have never done a procurement using a reverse auction (**www.dau.mil/performance_support/mdcsurvey/pros/pros.htm**), and government buyers with experience using reverse auctions (**www.dau.mil/performance_support/mdcsurvey/govtexp/govtexp.htm**). The outcome of this review should be a FAR reverse auction regulation establishing conditions of applicability. This regulatory framework will be supplemented by a detailed "best practice" guide for the acquisition community.

Table A.3 Updates of RFA-related Case Law, 2008-2009

Case	Description and Status
National Hospice and Palliative Care Organization, Inc., v. Weems, 587 F.Supp.2d 184, Med & Med GD (CCH) P 302,678 (D.D.C., 2008).	A nonprofit membership organization representing hospices brought action for declaratory and injunctive relief against the Centers for Medicare and Medicaid Services (CMS), challenging the final rule in which CMS eliminated the budget neutrality adjustment factor (BNAF), which was an adjustment to the hospice wage index applied to Medicare payments for hospice services. The organization moved for preliminary injunction, which was converted to a motion for summary judgment, and CMS moved to dismiss, or, alternatively, for summary judgment. The District Court held that the provision in the regulation generally allowing a hospice to seek administrative appeal of a Medicare payment determination that barred appeal of "methods and standards for the calculation of the payment rates" by CMS was ambiguous as to whether the term "payment rates" referred to statutory payment rates or adjusted payment rates and that CMS's interpretation of the hospice-specific administrative appeals regulation was reasonable and thus entitled to judicial deference. The District Court granted the defendant's motion to dismiss after finding that the court lacked subject matter jurisdiction over claims.
North Carolina Fisheries Association, Inc., v. Gutierrez, 550 F.3d 16, 384 U.S.App.D.C. 16, (D.C. Cir. 2008).	A fishery association, fishermen, and a seafood company brought action against the Department of Commerce, challenging the validity of an amendment to the fishery management plan (FMP) as to rebuilding of overfished Atlantic species. The U.S. District Court for the District of Columbia held that Commerce had not complied with its statutory obligation to promulgate a rebuilding plan for certain fish species following a determination that the species was overfished. Commerce conceded this failure. Granted in part and denied in part the plaintiff's motion for summary judgment. Plaintiffs appealed. The Court of Appeals held that the district court's agency remand of the amendment was not the "final decision" for purposes of appeal and dismissed the appeal.

Case

White Eagle Cooperative Association, et al. v. Charles F. Conner, Acting Secretary, United States Department of Agriculture, 553 F. 3d 467 (7th Cir. 2009).

Description and Status

White Eagle Cooperative Association (WECA) is a cooperative of milk producers that brought action challenging the United States Department of Agriculture's (USDA) amendment of a regional milk marketing order. The U.S.District Court for the Northern District of Indiana entered summary judgment in the government's favor, and the association appealed. Among other things, WECA asserted that in adopting the amendments to the marketing order, USDA violated the RFA by failing to undertake an analysis and by employing the certification option without sufficient factual support. USDA asserted that WECA could not challenge the agency's RFA compliance because the order regulates handlers, not producers. Since WECA is an association of producers, not handlers, USDA argued that WECA lacked standing to challenge the agency's compliance. The court held that the association did not have standing to raise a challenge under the RFA because the impact was indirect.

Case

National Telephone Cooperative Association v. Federal Communications Commission and United States of America, 563 F.3d 536, 385 U.S.App.D.C. 327, 47 Communications Reg. (P&F) 985 (C.A. D.C. 2009).

Description and Status

In U.S. Telecom Ass'n v. FCC, 400 F.3d 29, a nonprofit association representing small and rural telephone cooperatives and commercial companies petitioned for review of a Federal Communications Commission (FCC) intermodal portability order, which set conditions under which wireline telecommunications carriers were required to transfer telephone numbers to wireless carriers. The Court of Appeals stayed enforcement and remanded the order because the FCC failed to publish the required analysis. On remand, the FCC issued an analysis and an association challenged it.

The National Telephone Cooperative Association (NTCA) asserted that the analysis did not comply with the RFA. NTCA also asserted that the FCC's actions were arbitrary and capricious under the APA because the agency did not address the impact on small businesses. The court stated that the arbitrary and capricious standard requires agency rules to be reasonable and reasonably explained. Since the RFA makes the interests of small business a relevant factor, the APA together with the RFA requires a rule's impact on small businesses to be reasonable and reasonably explained.

In reviewing the RFA, the court reiterated its previous finding that the RFA's requirements are "purely procedural." Though it directs the agencies to state, summarize, and describe, the RFA in and of itself imposes no substantive constraint on agency decision-making. The RFA requires agencies to publish analyses that address certain legally delineated topics. Because the analysis at issue addressed all of the legally mandated subject areas, it complied with the RFA.

In ruling for the FCC, the court addressed each of NTCA's arguments. First, NTCA argued that the portability order causes small businesses to incur unreasonably high implementation costs. The agency found "scant support" for the implementation costs offered by the commentators. The court stated that an agency's explanation of regulatory action does not have to be elaborate as long as that action is reasonable and reasonably explained. Second, NTCA also argued that the order burdens small businesses with significant and disproportionate transport costs. The FCC stated that transport cost problems were not unique to intermodal porting and that it would rather address the issue comprehensively. The court found that since the FCC was reviewing the issue of transport costs, NTCA's opposition was misplaced. Third, NTCA asserted that the FCC should have imposed additional mitigating measures to lighten the burden on small businesses. The court stated that it had limited capacity to second guess an agency or dispute an agency's assessment on how to minimize the impact on small businesses. Fourth, NTCA alleged that the FCC inadequately considered alternatives. The court stated that it may not broadly require an agency to consider policy alternatives in reaching a decision. It found that the agency's rejection of the alternative approaches was both reasonable and reasonably explained.

Case	Description and Status
Farm-to-Consumer Legal Defense Fund, et al., v. Vilsack, Secretary, U.S. Department of Agriculture, et al, 636 F.Supp.2d 116, (D.D.C. 2009).	Farmers and an advocacy group brought action against the secretary of the U.S. Department of Agriculture (USDA) and director of Michigan Department of Agriculture (MDA) seeking to enjoin implementation and enforcement of the National Animal Identification System (NAIS). USDA moved to dismiss, and MDA moved for summary judgment. The court held that the plaintiffs did not have standing because the plaintiffs alleged injuries were due to an order from the state of Michigan, not the federal government.
California State Grange v. National Marine Fisheries Service, 620 F.Supp.2d 1111 (E.D. CA, 2008).	A private property rights advocacy group and forestry interests brought action against the National Marine Fisheries Service (NMFS), challenging the listing of five populations of West Coast steelhead as threatened or endangered species under the Endangered Species Act (ESA). Nonprofit organizations dedicated to promotion of fly fishing and to conservation of fishery resources intervened. A coalition of irrigation districts filed a separate suit challenging the listing of one population segment of one species. Nonprofit organizations dedicated to promotion of fly fishing and to conservation of fishery resources intervened in that lawsuit. After cases were consolidated, parties filed cross-motions for summary judgment. The Regulatory Flexibility Act was discussed as part of the debate over whether Chevron deference (467 U.S. 937, 1984) should apply to NMFS's hatchery listing policy (HLP). Plaintiffs argued that the HLP is owed no *Chevron* deference; it is a general policy statement not subject to the Administrative Procedure Act. The Grange used the language from the RFA section to support its argument. The court stated that NMFS correctly concluded that the RFA does not apply to interpretive rules or general policy statements. The court found that although HLP is not a rule subject to notice and comment, it is a policy intended to fill a statutory gap and was established after public notice and opportunity for public comment that should be afforded *Chevron* deference.

Table A.4 SBREFA Panels through Fiscal Year 2009

Rule Title	Date Convened	Report Completed	NPRM[1] Published	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[2]	06/06/97	08/08/97	12/12/97	
Stormwater Phase	06/19/97	08/07/97	01/09/98	12/08/99
Transportation 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	09/10/03 01/13//99	12/22/00
Underground Injection Control Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Federal Implementation Plan (FIP) 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
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	
Metals 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

Rule Title	Date Convened	Report Completed	NPRM[1] Published	Final Rule Published
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Stage 2 Disinfectant Byproducts Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03 08/18/03	01/04/06 01/05/06
Nonroad Large Spark Ignition Engines, Recreational Land Engines, Recreational Marine Gas Tanks, and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
Construction and Development Effluent Guidelines[3]	07/16/01	10/12/01	06/24/02 11/28/08	
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 IV 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 (2005 CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Nonroad Spark-ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Total Coliform Monitoring Rule (TCR)	01/31/08	03/31/08		
Renewable Fuel Standards 2 (RFS2)	07/09/08	09/05/08	05/26/09	
Occupational Safety and Health Administration				
Tuberculosis[4]	09/10/96	11/12/96	10/17/97	
Safety and Health Program Rule	10/20/98	12/19/98	**	
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
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	11/28/07	
Occupational Exposure to Respirable Crystalline Silica Dust	10/20/03	12/19/03		

Rule Title	Date Convened	Report Completed	NPRM[1]	Final Rule Published
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	
Occupational Exposure to Hexavalent Chromium	01/03/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Beryllium	09/17/07	01/15/08		
Occupational Exposure to Diacetyl	05/05/09	07/02/09		

[1] Notice of Proposed Rulemaking (NPRM) published in the Federal Register.
[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 issued a new proposal November 28, 2008.
[4] Proposed rule was withdrawn on December 31, 2003. OSHA does not plan to issue a final rule.
[**] In process

Appendix B The Regulatory Flexibility Act

The following text of the Regulatory Flexibility Act of 1980, as amended, is taken from Title 5 of the United States Code, Sections 601–612. The Regulatory Flexibility Act was originally passed in 1980 (P.L. 96-354). The act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121).

Congressional Findings and Declaration of Purpose

(a) The Congress finds and declares that —
(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;
(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;
(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;
(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;
(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;
(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;
(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act [enacting this chapter and provisions set out as notes under this section] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

Regulatory Flexibility Act

§ 601 Definitions

For purposes of this chapter —

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

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

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

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

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.
(8) Recordkeeping requirement — The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the *Federal Register* a regulatory flexibility agenda which shall contain —
(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;
(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an

approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and
(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).
(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.
(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.
(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the *Federal Register* at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the *Federal Register* for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.
(b) Each initial regulatory flexibility analysis required under this section shall contain —
(1) a description of the reasons why action by the agency is being considered;
(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.
(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —
(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
(3) the use of performance rather than design standards; and
(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice

of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain —

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the *Federal Register* such analysis or a summary thereof.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the *Federal Register* at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the *Federal Register*, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the *Federal Register* of a final rule by publishing in the *Federal Register*, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under

subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.
(d) For purposes of this section, the term "covered agency" means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.
(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:
(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
(2) Special circumstances requiring prompt issuance of the rule.
(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the *Federal Register*. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the *Federal Register* and may extend the completion date by one year at a time for a total of not more than five years.
(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—
(1) the continued need for the rule;
(2) the nature of complaints or comments received concerning the rule from the public;
(3) the complexity of the rule;
(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.
(c) Each year, each agency shall publish in the *Federal Register* a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

§ 611. Judicial review

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

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

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

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

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

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

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

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

(A) remanding the rule to the agency, and

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

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

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

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

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

§ 612. Reports and intervention rights

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

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

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

Appendix C
Executive Order 13272

Presidential Documents

Executive Order 13272 of August 13, 2002

The President

Proper Consideration of Small Entities in Agency Rulemaking

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

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

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

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

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

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

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

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

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

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

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

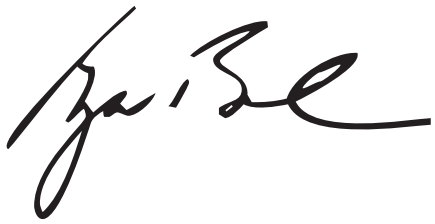
Sec. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term ''agency,'' shall have the same meaning in this order.

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

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

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

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



THE WHITE HOUSE,
August 13, 2002.

Appendix D
Abbreviations

Access Board	Architectural and Transportation Barriers Compliance Board
A&E	architecture and engineering
ALEC	American Legislative Exchange Council
AMS	Agricultural Marketing Service
ANPRM	Advance notice of proposed rulemaking
APA	Administrative Procedure Act
APHIS	Animal and Plant Health Inspection Service
ASTA	American Society of Travel Agents
BNAF	budget neutrality adjustment factor
CA	closed area
CAIR	Clean Air Implementation Rule
CFR	Code of Federal Regulations
CHD	critical habitat designation
CLIA	Clinical Laboratory Improvement Amendments of 1988
CMS	Centers for Medicare and Medicaid Services
COO	country of origin
CPSC	Consumer Product Safety Commission
CPSIA	Consumer Product Safety Improvement Act
DFARS	Defense Federal Acquisition Regulation Supplement
DHFS	Department of Health and Family Services (Wisconsin)
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
DSW	definition of solid waste
EBSA	Employee Benefits Security Administration
Education	Department of Education
EEOC	Equal Employment Opportunity Commission
E.O.	Executive Order
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right to Know Act
ESA	Employment Standards Administration
ESA	Endangered Species Act
ETA	Employment and Training Administration
EWR	early warning reports
FAA	Federal Aviation Administration

FAR	Federal Acquisition Regulation
FASB	Financial Accounting Standards Board
FCA	Farm Credit Administration
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
Fed. Reg.	*Federal Register*
FHWA	Federal Highway Administration
FIP	federal implementation plan
FMCSA	Federal Motor Carrier Safety Administration
FMLA	Family and Medical Leave Act
FMP	fishery management plan
FPDS-NG	Federal Procurement Data System-Next Generation
FRA	Federal Railroad Administration
FRB	Federal Reserve Board
FRFA	final regulatory flexibility analysis
FS	Forest Service
FWS	Fish and Wildlife Service
FY	fiscal year
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GFE	good faith estimate
GINA	Genetic Information Nondiscrimination Act
GIPSA	Grain Inspection, Packers, and Stockyards Administration
GSA	General Services Administration
HHS	Department of Health and Human Services
HLP	hatchery listing policy
HUD	Department of Housing and Urban Development
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
IRTPA	Intelligence Reform and Terrorism Prevention Act
LDV/LDT	light-duty vehicles / light-duty trucks
LIFO	last-in first-out
MDA	Michigan Department of Agriculture
MSHA	Mine Safety and Health Administration
NAIS	National Animal Identification System
NASA	National Aeronautics and Space Administration
NASE	National Association for the Self-employed .
NCUA	National Credit Union Administration
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFIB	National Federation of Independent Business
NHTSA	National Highway Traffic Safety Administration
NMFS	National Marine Fisheries Service

NOx	nitrogen oxide
NPRM	notice of proposed rulemaking
NPS	National Park Service
NSPS	New Source Performance Standard
NTUs	nephelometric turbidity units
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
PERAB	Presidential Economic Recovery Advisory Board
P.L.	Public Law
PT	proficiency testing
PTO	Patent and Trademark Office
r3	Regulatory Review and Reform Initiative
RAA	Regional Airline Association
RESPA	Real Estate Settlement Procedures Act
RIA	regulatory impact analysis
RICE	reciprocating internal combustion engine
RFA	Regulatory Flexibility Act
SAFE	Secure and Fair Enforcement for Mortgage Licensing Act
SBA	Small Business Administration
SBAR	Small Business Advocacy Review Panel
SBEC	Small Business & Entrepreneurship Council
SBREFA	Small Business Regulatory Enforcement Fairness Act
SBRRB	Small Business Regulatory Review Board (Wisconsin)
SEC	Securities and Exchange Commission
SO2	sulfur dioxide
SPCC	Spill Prevention, Control, and Countermeasures
SSA	Social Security Administration
SSM	startup, shutdown, and malfunctioning standards
TAS	Taxpayer Advocate Service
TCR	Total Coliform Monitoring Rule
TREAD	Transportation Recall Enhancement Accountability and Documentation
Treasury	Department of the Treasury
TSA	Transportation Security Administration
U.S.C.	United States Code
USCG	U.S. Coast Guard
USCIS	U.S. Citizenship and Immigration Services
USDA	United States Department of Agriculture
VA	Department of Veterans Affairs
VHS	vital hemorrhagic septicemia
WECA	White Eagle Cooperative Association