February 2018

Report on the Regulatory Flexibility Act, FY 2017

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

The Office of Advocacy of the U.S. Small Business Administration was created by Congress in 1976 to be an independent voice for small business within the federal government. The office is led by the Chief Counsel for Advocacy who is appointed by the President and confirmed by the U.S. Senate. The chief counsel advances the views, concerns, and interests of small business before the White House, Congress, federal agencies, federal courts, and state policymakers. The office relies on economic research, policy analyses, and small business outreach to identify issues of small business concern. Ten regional advocates around the country and an office in Washington, D.C., support the chief counsel's efforts.

This annual report on federal agency compliance with the Regulatory Flexibility Act is mandated under Section 612 of the Regulatory Flexibility Act. It is available on Advocacy's website, www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports. Reports from previous years are available there as well.

Information about Advocacy's initiatives on behalf of small businesses is accessible via the website; three Listservs (regulatory communications, news, and research); and social media including a blog, Twitter feed, and Facebook page.

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U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF ADVOCACY

REGULATION • RESEARCH • OUTREACH

February 2018

To the President and Congress of the United States:

It is an honor to present to you this report on federal agency compliance with the Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 is the statutory foundation of federal efforts to relieve the burden of regulation on small businesses. This law is the key tool allowing small businesses to participate in regulatory decisions that affect them. This report is submitted in fulfillment of section 12 of the RFA, which directs the Chief Counsel for Advocacy to report on federal agency compliance with the law at least annually. The report covers the FY 2017 period, from October 1, 2016, to September 30, 2017.

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in $913.4 million in regulatory cost savings for small entities in FY 2017. These savings came from 16 regulatory and deregulatory actions taken by six agencies.

One of this year's regulatory cost savings concerned the application of the Americans with Disabilities Act to movie theaters. After receiving input from theater operators and in official comments from the Office of Advocacy, the Department of Justice reduced the amount of closed captioning and descriptive equipment that theaters are required to purchase. The change resulted in savings of $66 million between the proposed and final rule.

One cost-saving deregulatory action was the nullification of the Fair Pay and Safe Workplaces rule. Advocacy argued that the burdensome requirements of this rule would deter small businesses from participating as prime and subcontractors in federal contracting. The rule was rescinded by an act of Congress in January 2017, resulting in small business savings of $260.7 million.

Advocacy's other activities to promote RFA compliance included:

- Hosting 14 roundtable discussions on regulatory issues to gather small businesses' views and concerns;
- Conducting training sessions at 12 agencies for 195 officials, to familiarize them with the requirements of the RFA; and
- Filing 24 regulatory comment letters with nine agencies to publicly register official comments on behalf of small business.

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The year 2017 marked the start of an era of deregulation ushered in by two new executive orders: E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," and E.O. 13777, "Enforcing the Regulatory Reform Agenda." Advocacy's RFA activities in FY 2017 included a new initiative to identify small businesses' priorities for deregulation. Advocacy's Regional Regulatory Reform Roundtables bring federal agency officials and small businesses together around the country so officials can learn about specific regulations that create paperwork, red tape, personnel, and financial obstacles. The first roundtable took place in June, and they are continuing in FY 2018.

- In the four-month period from June to September 2017, Advocacy sponsored Regional Regulatory Reform Roundtables in 11 cities;
- Individuals in 19 states filed online comments on the Regulatory Reform webpage; and
- Advocacy summarized small businesses' difficulties with regulatory compliance and sent letters to 21 members of Congress and 15 heads of federal agencies and their regulatory reform officers. The agency letters are on the Advocacy website at www.sba.gov/advocacy/regulatory-reform.

Finally, in 2017, Advocacy convened the first interagency working group as required by the Trade Facilitation and Trade Enforcement Act of 2015. The group of six federal agencies is evaluating the small business impact of the modernization of the North American Free Trade Agreement.

The Office of Advocacy looks forward to building on these efforts in the coming year and making continued significant progress in relieving small businesses' regulatory burden.

Sincerely,

Major L. Clark, III
Acting Chief Counsel for Advocacy

Contents

Chapter 1
The Regulatory Flexibility Act, Small Business, and the Era of Deregulation. 9
The RFA, Its Requirements, and the Need To Strengthen It 9
The Congressional Review Act 12
Conclusion. 12

Chapter 2
Compliance with Executive Order 13272 and the Small Business Jobs Act of 2010 13
Table 2.1 Compliance with the Small Business Jobs Act and E.O. 13272, FY 2017 14

Chapter 3
Advocacy's Communications with Federal Agencies on Behalf of Small Business 15
Regulatory Agendas 15
Table 3.1 RFA Training at Federal Agencies in FY 2017. 16
SBREFA Panels. 16
Retrospective Review of Existing Regulations 16
Interagency Communications and Training 16
Regional Regulatory Reform Roundtables 16
Small Business Regulatory Issue Roundtables 17
Figure 3.1 Regional Regulatory Reform Roundtables, FY 2017 17
Table 3.2 Regulatory Roundtables Hosted by the Office of Advocacy, FY 2017 18
Consumer Financial Protection Bureau. 18
Department of Labor 19
Department of Labor, Occupational Safety and Health Admin; Mine Safety and Health Admin 19
Environmental Protection Agency 20

Chapter 4
Advocacy's Formal Public Comment Letters to Federal Agencies in FY 2017 23
Figure 4.1. Number of Specific Issues of Concern in Agency Comment Letters, FY 2017. 23
Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2017. 24
Consumer Financial Protection Bureau. 25
Payday, Vehicle Title, and Certain High-Cost Installment Loans 25
Assessment of the 2013 Mortgage Servicing Rule 25
Assessment of the 2013 Qualified Mortgage Rule 26
Small Business Lending; Dodd-Frank Section 1071 27
Consumer Product Safety Commission. 27
Safety Standard for Portable Generators 27
Amendments to Fireworks Regulations 28
Safety Standard Addressing Blade-Contact Injuries on Table Saws 29
Department of Homeland Security, U.S. Citizenship and Immigration Services 29
International Entrepreneur Rule 29

Department of the Interior . . . 29
Bears Ears National Monument Review . . . 29
Review of Certain National Monuments Established Since 1996 . . . 30
Department of Labor . . . 30
Request for Information on the Overtime Rule . . . 30
Department of Labor, Occupational Safety and Health Administration . . . 30
Occupational Exposure to Beryllium in Construction and Shipyard Sectors . . . 30
Department of State . . . 31
Intercountry Adoptions . . . 31
Exchange Visitor Program-Summer Work Travel . . . 32
Department of the Treasury, Internal Revenue Service . . . 32
Estate Transfer Taxes; Restrictions on Liquidation of an Interest . . . 32
Environmental Protection Agency . . . 33
TSCA Reporting and Recordkeeping for Small Manufacturers and Processors . . . 33
Financial Responsibility Requirements for the Hardrock Mining Industry . . . 33
Regulation of Trichloroethylene under TSCA Section 6(a) . . . 34
Prioritizing Chemicals for Risk Evaluation under TSCA and the Amended TSCA . . . 34
Effluent Limitations Guidelines and Standards for Steam Electric Power Plants . . . 34
Regulation of Trichloroethylene in Vapor Degreasing under TSCA Section 6(a) . . . 35
Regulation of Methylene Chloride and N-Methylpyrrolidone under TSCA Section 6(a) . . . 35
Environmental Protection Agency and Army Corps of Engineers . . . 36
Definition of 'Waters of the United States'—Recodification of Pre-Existing Rules . . . 36
Federal Communications Commission . . . 36
Issues: Business Data Service for Small Business and the Special Access Market . . . 36

Chapter 5
Small Business Regulatory Cost Savings and Success Stories . . . 37
Descriptions of Small Business Regulatory Cost Savings . . . 38
Table 5.1 Summary of Small Business Regulatory and Deregulatory Cost Savings, FY 2017 . . . 38
Department of Agriculture, Food and Nutrition Service . . . 39
Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP) . . . 39
Department of Justice . . . 39
Americans with Disabilities Act—Accessibility in Movie Theaters . . . 39
Department of Labor . . . 39
Fiduciary Rule, Delay of Applicability Date . . . 39
Environmental Protection Agency . . . 40
Chlorpyrifos Tolerance Revocations . . . 40
Effluent Limitations Guidelines for Steam Electric Plants, Delay of Compliance Dates . . . 40
Greenhouse Gas Emissions from Heavy Duty Vehicles . . . 40
Pesticide Applicators Certification . . . 40
Pesticide Applicators Certification; Delay of Effective Date . . . 41
Reassessment of Use Authorizations for PCBs in Fluorescent Lights in Schools and Daycares . . . 41
Clean Air Act Risk Management Programs; Accidental Release Prevention Requirements . . . 41
Clean Air Act Risk Management Programs; Delay of Accidental Release Prevention Requirements . 41
TSCA Formaldehyde Emission Standards for Composite Wood Products . . . 42

TSCA Formaldehyde Emission Stds for Composite Wood Products; Delay of Compliance Date. 42
TSCA Reporting and Recordkeeping Requirements; Nanoscale Materials 42
Federal Acquisition Regulation (FAR) Council. 42
Fair Pay and Safe Workplaces 42
General Services Administration 43
Transactional Data. 43
Small Business Regulatory Success Stories 44
Table 5.2 Summary of Small Business Regulatory Success Stories, FY 2017 44
Department of State 44
International Adoption Regulations. 44
Federal Communications Commission 44
Protecting the Privacy of Broadband and Other Telecommunications Customers 44
Expanding Consumers' Video Navigation Choices 45
Protecting and Promoting the Open Internet; Enhanced Transparency Rules 45

Appendix A
Text of the Regulatory Flexibility Act 47

Appendix B
Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking 55

Appendix C
Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs 57
Executive Order 13777: Enforcing the Regulatory Reform Agenda 59

Appendix D
RFA Training, Case Law, and SBREFA Panels. 61
Federal Agencies Trained in RFA Compliance, 2003–2017 61
RFA-Related Case Law, FY 2017 63
SBREFA Panels Convened Through FY 2017. 65
Table D.1 SBREFA Panels Convened through FY 2017 65

Appendix E
History of the Regulatory Flexibility Act 69

Appendix F
Abbreviations. 73

Chapter 1

The Regulatory Flexibility Act, Small Business, and the Era of Deregulation

In 1976, Congress created the Office of Advocacy to provide small businesses in the United States with an independent advocate inside the federal government. Led by a presidentially appointed, Senate-confirmed Chief Counsel for Advocacy, the office would assess the effects of government regulations and act as a credible voice for small business in the regulatory process.

The RFA, Its Requirements, and the Need To Strengthen It

The Regulatory Flexibility Act (RFA)[1] was passed in 1980 to address the disproportionate impact of federal regulations on small businesses. Under the RFA, when an agency proposes a rule that would have a "significant economic impact on a substantial number of small entities," the rule must be accompanied by an impact analysis, known as an initial regulatory flexibility analysis (IRFA), when it is published for public comment.[2] When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).[3] Alternatively, if a federal agency determines that a proposed rule would not have such an impact on small entities, the head of that agency shall "certify" the rule and bypass the IRFA and FRFA requirements.[4]

The key to understanding the RFA's importance is that in order to produce an IRFA, the agency must consider less burdensome alternatives to its own rule, and in the FRFA the agency must explain why it chose among the alternatives in the IRFA.[5]

Since 1980, a number of developments have affected the treatment of small businesses in federal regulatory policy. Congress passed the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The amendments to the RFA under SBREFA provided new emphases on federal agency compliance with the RFA's requirements, as well as additional procedures specifically addressing small business concerns regarding environmental and occupational safety and health regulations. The SBREFA amendments also made a federal agency's compliance with certain sections of the RFA judicially reviewable, meaning petitioners could challenge regulations based on the agency's failure to comply with those sections of the statute.

The SBREFA amendments required the Environmental Protection Agency and the Occupational Safety and Health Administration to convene small business advocacy review panels whenever the agency proposes a rule that may have a significant impact on a substantial number of small entities. The panel's job is to consult with small business representatives on the agency's regulatory proposals to ensure that the agency has identified and considered regulatory alternatives that could attain the policy objectives while minimizing the impacts on small businesses.

President George W. Bush's Executive Order (E.O.) 13272, "Proper Consideration of Small Entities in Agency Rulemaking," strengthened compliance with

1. 5 U.S.C. § 601, et seq. The Regulatory Flexibility Act was originally passed in 1980 (Pub. L. No. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121), the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203), and the Small Business Jobs Act of 2010 (Pub. L. No. 111-240).

2. 5 U.S.C. § 603.

3. 5 U.S.C. § 604.

4. 5 U.S.C. § 605(b).

5. 5 U.S.C. § 604.

Regional Regulatory Reform Roundtable, Baton Rouge, La.
Advocacy staff members pose for a picture after the first Regional Regulatory Reform Roundtable in Baton Rouge. The staff received feedback about federal regulatory strife from small businesses in the tobacco, education, and financial services industries.

the RFA.[6] The E.O. directs Advocacy to provide training to federal agencies to apprise them of their responsibilities under the RFA and educate them on the best RFA compliance practices. In addition, E.O. 13272 requires Advocacy to track agency compliance with these requirements and report annually to the White House Office of Management and Budget. It also requires agencies to notify Advocacy of any draft proposed rule that would impose a significant impact on a substantial number of small entities, and to respond to any written comment from Advocacy when they publish a final rule.

The Small Business Jobs Act of 2010[7] codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.[8] The new law created the Consumer Financial Protection Bureau and made the agency's major rules subject to the RFA's SBREFA panel provisions.

Executive Order 13563, "Improving Regulation and Regulatory Review," signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review.[9] President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to increase transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, "Identifying and Reducing Regulatory Burdens," which placed greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and har-

6. E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," www.gpo.gov/fdsys/pkg/FR-2002-08-16/pdf/02-21056.pdf, (Aug. 13, 2002).

7. Small Business Jobs Act, Pub. L. No. 111–240 (2010).

8. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).

9. E.O. 13563, "Improving Regulation and Regulatory Review," www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf (Jan. 18, 2011).

monizing regulatory requirements imposed on small businesses.[10]

This year, President Trump signed two executive orders addressing the regulatory burden faced by the private sector. On January 30, 2017, he signed E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," with a goal of reducing costs associated with complying with federal regulations. Under this E.O., federal regulatory agencies were not to issue new rules in FY 2017 unless they identified at least two existing rules to repeal.[11]

A second executive order, E.O. 13777, "Enforcing the Regulatory Reform Agenda," was signed on February 24, 2017. This order further outlined the steps federal regulatory agencies must take when considering their regulatory agenda. It established a Regulatory Reform Task Force within each agency to evaluate existing regulations and make recommendations to the agency head on which rules should be repealed, replaced or changed. Among other criteria, it placed particular emphasis on rules that inhibit job creation; eliminate jobs; are outdated, unnecessary or ineffective; or which impose costs that exceed benefits.[12]

To maximize this opportunity for small business regulatory reform, Advocacy launched the Regional Regulatory Reform Roundtable initiative. Advocacy headquarters staff and regional advocates host small business roundtables around the country in order to identify regional small business regulatory issues and to assist agencies with regulatory reform and reduction in compliance with Executive Orders 13771 and 13777. Advocacy invited several federal agencies to send representatives to these roundtables to hear directly from stakeholders on specific recommendations for regulatory changes. In FY 2017, these regulatory review and reform roundtables were held in Idaho, Kansas, Kentucky, Louisiana, Missouri, Ohio, and Washington.

Agencies' implementation of these executive orders offer significant opportunities for regulatory relief

10. E.O. 13610, "Identifying and Reducing Regulatory Burdens," www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf (May 10, 2012)

11. Reducing Regulation and Controlling Regulatory Costs," Executive Order 13771 of January 30, 2017, 82 Fed. Reg. 9339 (Feb. 3, 2017)

12. Id.

Regional Regulatory Reform Roundtable, Baton Rouge, La. Advocacy staff members discuss industrial equipment after the first Regional Regulatory Reform Roundtable in Baton Rouge. The staff also received feedback about federal regulatory strife from small businesses in the tobacco, education, and financial services industries.

targeted to small businesses. In this context, the RFA requires agencies to analyze their deregulatory actions to maximize small business benefits in the marketplace.

The Congressional Review Act

This year also saw several regulations voided by Congress under the Congressional Review Act (CRA).[13] The CRA was passed in 1996, and it allows Congress to declare a regulation null and void if it acts within a specified time period. In addition the CRA bars the agency that promulgated the voided rule from promulgating any similar rule unless authorized by another act of Congress. Fifteen rules were voided by Congress this year, most with small business impacts.

Conclusion

Since its passage in 1980, the RFA has demonstrated remarkable staying power. It has helped establish small business consideration as a necessary part of federal rulemaking. The careful tailoring of regulation to business size has helped make better regulations with improved compliance in pursuit of safety, health, and other public goods. The subsequent regulatory and legislative improvements have solidified Advocacy's participation in rulemakings affecting small business. What these regulatory reform initiatives all have in common is agreement that the regulatory burden on small business must be minimized. Over its 37-year history, the RFA has provided federal agencies with the framework to accomplish this goal. With Advocacy's ongoing monitoring, this important tool will continue to remind agencies that are writing new rules or reviewing existing ones to guard against "significant economic impacts on a substantial number of small entities."

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13. Congressional Review Act, Subtitle E of the Contract with America Advancement Act of 1996, Pub.L. 104–121 (1996).

Chapter 2

Compliance with Executive Order 13272 and the Small Business JOBS Act of 2010

Federal agencies' compliance with the Regulatory Flexibility Act improved markedly after President George W. Bush signed Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," in 2002. The executive order established new responsibilities for Advocacy and federal agencies to facilitate greater consideration of small businesses in regulatory development.

This chapter fulfills one of Advocacy's responsibilities: to make an annual report on federal agency compliance with the executive order to the director of the Office of Management and Budget.

Advocacy's two other responsibilities are to educate federal agency officials on compliance with the RFA and to provide resources to facilitate their continued compliance.

- **RFA Training.** Over the past 15 years, Advocacy has offered RFA training sessions to every rule-writing agency in the federal government. These training sessions are attended by the agency's attorneys, economists, and policymakers. In FY 2017, Advocacy held 12 training sessions for 195 federal officials (see Table 3.1). The entire list of agencies trained since FY 2003 appears in Appendix D.
- **RFA Compliance Guide.** To aid in continued compliance, Advocacy publishes a practical manual called *A Guide for Government Agencies: How To Comply with the Regulatory Flexibility Act*. The hands-on guide was updated this year to include Executive Orders 13771 and 13777 on reducing and reforming federal regulations.[1]

E.O. 13272 requires federal agencies to take certain steps to boost transparency and ensure small business concerns are represented in the rulemaking process. These include the following:

- **Written RFA Procedures.** First, agencies are required to show publicly how they take small business concerns and the RFA into account when creating regulations. Most agencies have posted their RFA policies and procedures on their websites.
- **Notify Advocacy.** Second, agencies are required to engage Advocacy during the rulemaking process, to ensure small business voices are being heard. If a draft regulation may have a significant impact on a substantial number of small entities, the agency must notify Advocacy by sending copies of the draft regulation to the office.
- **Respond to Comments.** Third, if Advocacy submits written comments on a proposed rule, the agency must consider these comments and provide a response to them in the final rule published in the Federal Register. The Small Business Jobs Act of 2010 codified this as an amendment to the RFA.

A summary of federal agencies' compliance with these three requirements is shown in Table 2.1.

As federal agencies have become more familiar with the RFA and have established cooperative relationships with Advocacy, the regulatory environment under E.O. 13272 and the Small Business Jobs Act has led to less burdensome federal regulation. In addition to improving compliance with the RFA, Advocacy finds that E.O. 13272 has improved the office's overall relationship with federal agencies.

1 *The most recent edition can be found at www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.*

Table 2.1 Federal Agency Compliance with Rule-Writing Requirements under E.O. 13272 and the JOBS Act, FY 2017

Agency	Written Procedures	Notifies Advocacy	Responds to Comments	Notes
Cabinet Agencies				
Agriculture	√	√	n.a.	
Commerce	√	√	√	
Defense	√	√	√	
Education	√	√	n.a.	
Energy	√	√	n.a.	
Environmental Protection Agency	√	√	√	
General Services Administration	√	√	√	
Health and Human Services	√	√	√	
Homeland Security	√	√	√	
Housing and Urban Development	√	√	n.a.	
Interior	√	X	n.a.	
Justice	√	√	n.a.	
Labor	√	√	√	
Small Business Administration	√	√	√	
State	X	√	n.a.	State is required to publish its written procedures, but it has not done so.
Transportation	√	√	√	
Treasury	√	n.a.	n.a.	The Internal Revenue Service (IRS), a bureau of the Department of Treasury, fails to participate in the interagency review process and does not notify Advocacy of rulemakings prior to publication.
Veterans Affairs	√	√	√	
Other Agencies with Regulatory Powers				
Consumer Financial Protection Bureau	n.a.	√	√	
Consumer Product Safety Commission	√	√	n.a.	
Equal Employment Opportunity Commission	√	n.a.	n.a.	
Federal Acquisition Regulation Council	√	√	√	
Federal Communications Commission	√	√	√	
Federal Reserve Board	X	n.a.	n.a.	As an independent agency, the Federal Reserve Board is not subject to the E.O. requiring written procedures.
National Labor Relations Board	n.a.	n.a.	n.a.	
Securities and Exchange Commission	√	√	n.a.	

√ = Agency complied with the requirement. X = Agency did not comply with the requirement.
n.a. = Not applicable because Advocacy did not publish a comment letter in response to an agency rule or because the agency is not required to do so.

Chapter 3

Advocacy's Communications with Federal Agencies on Behalf of Small Business

The Office of Advocacy is the voice of small business in the federal government. The RFA is a key reason that Advocacy's lawyers have a seat at the rulemaking table. As a result of the RFA, there are numerous established communications channels between federal agencies and Advocacy. These are all vehicles for conveying small business input into policy and rulemaking.

Regulatory Agendas

Section 602 of the Regulatory Flexibility Act facilitates greater participation from the public, especially small business owners, by requiring agencies to publish their regulatory flexibility agendas twice a year in the Federal Register. These agendas specify the subjects of upcoming proposed rules and whether these rules are likely to have a significant economic impact on a substantial number of small entities. Agencies are specifically required to provide these agendas to the chief counsel for advocacy and make them available to small businesses and their representatives. Often, these agendas alert Advocacy and interested parties to forthcoming regulations, and they are sometimes discussed in Advocacy's roundtables.

The spring regulatory flexibility agenda for FY 2017 was published on August 24, 2017.[1] It represents a key component of the regulatory planning mechanism prescribed in Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs."

1 The fall regulatory flexibility agenda for FY 2017 was published on December 23, 2016. The regulatory agendas can be found here: https://www.federalregister.gov/agencies/regulatory-information-service-center.

Regional Regulatory Reform Roundtable, Lexington, Ky. Acting Chief Counsel for Advocacy Major L. Clark, III meets with Kentucky Congressman Andy Barr before the Regional Regulatory Reform Roundtable in Lexington, Ky. A total of 113 people participated in the roundtable, including more than 90 small business owners and stakeholders.

SBREFA Panels

The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require certain agencies to convene review panels whenever a potential regulation is expected to have a significant economic impact on a substantial number of small entities. These are commonly called SBREFA or SBAR panels (for small business advocacy review). These panels provide for small business input at the earliest stage of rulemaking—when a topic is still being studied, before a proposed rule sees the light of day.

Today, three agencies are covered by this requirement: the Environmental Protection Agency, Occupational Safety and Health Administration, and Consumer Financial Protection Bureau. A complete list of SBREFA panels since 1996 can be found in Appendix D. No new SBREFA panels were initiated in FY 2017.

Retrospective Review of Existing Regulations

Under section 610 of the RFA, agencies are required to conduct a retrospective review of existing regulations that have a significant economic impact on small entities. Executive Orders 13563 and 13610, requiring all executive agencies to conduct periodic retrospective reviews of all existing regulations, bolster the mandate of section 610. As a result, agencies publish retrospective review plans in the Unified Agenda of Regulatory and Deregulatory Actions semiannually. Advocacy monitors these retrospective review plans and their implementation, and accepts input from small entities regarding any rules needing review. Overall agency compliance with this provision has been improving, but still needs work.

Table 3.1 RFA Training at Federal Agencies in FY 2017

Date	Agency	Number Trained
10/13/16	Department of Homeland Security	16
11/02/16	Access Board	8
11/21/16	Department of Transportation, Federal Aviation Administration	8
02/16/17	Department of Justice, Drug Enforcement Agency	12
02/15/17	Department of Agriculture	15
03/15/17	Department of Agriculture	25
03/23/17	Department of Agriculture	17
04/04/17	Department of Education	5
04/25/17	Department of Education	30
05/03/17	Consumer Product Safety Commission	18
05/10/17	Department of Treasury	26
06/28/17	Environmental Protection Agency	15

Interagency Communications and Training

Advocacy utilizes numerous methods of communication to present the concerns of small businesses and other small entities to federal officials promulgating new regulations. Meetings with officials, comment letters to agency directors, and training sessions on RFA compliance help facilitate meaningful participation by all interested parties and produce more effective federal regulation. In FY 2017, Advocacy's communications with federal agencies included 24 formal comment letters and RFA compliance training sessions for 195 federal officials from a variety of agencies. Table 3.1 lists the agencies where training was held this year, and Appendix D contains a list of all agencies that have participated in RFA training.

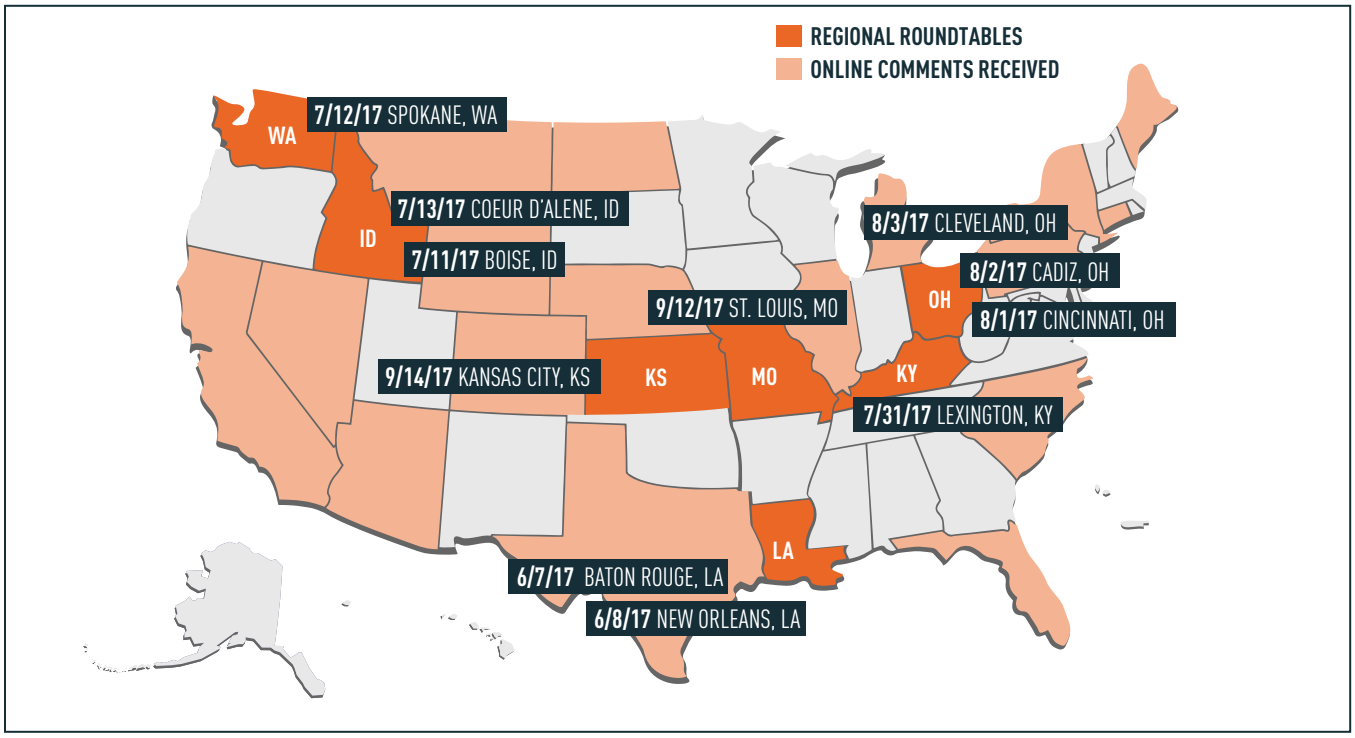
Regional Regulatory Reform Roundtables

In response to E.O.s 13771 and 13777, Advocacy launched a national effort to pinpoint areas in need of deregulation, so as to reduce the small business regulatory burden. Advocacy's Regional Regulatory Reform Roundtable series brings together Advocacy staff, regulators, small businesses, and small business representatives. These events allow federal officials to hear firsthand from small businesses about specific regulations and compliance burdens.

The purpose of Advocacy's Regional Regulatory Roundtables is to:

- Identify regional small business regulatory issues to assist agencies with the regulatory reform and reduction goals spelled out in E.O.s 13771 and 13777;
- Compile crucial information for Advocacy's new report on existing small business regulatory burdens across the nation, identifying specific recommendations for regulatory

FIGURE 3.1 REGIONAL REGULATORY REFORM ROUNDTABLES, *FY 2017*



changes based on firsthand accounts from small businesses across the country; and

- Inform and educate the small business public as to how Advocacy and SBA can assist them.

Between June and September, Advocacy held 11 Regional Regulatory Reform Roundtables around the country, and more are planned. At these events, small businesses describe their experiences with regulatory compliance, and make recommendations for reforming or eliminating regulations. Advocacy also held a regulatory reform session for a national group of small independent automobile dealers at their annual meeting in Washington, D.C., in September. Figure 3.1 shows the locations and dates of the 11 regional roundtables, as well as the 19 states from which Advocacy received small business comments on regulatory reform.

While traveling to roundtables around the country, Advocacy's headquarters staff and regional advocates conduct site visits to small businesses to learn about their regulatory issues and to meet owners and employees. Information on Regional Regulatory Reform Roundtables, including a description of the small business concerns heard at each one, can be found at www.sba.gov/advocacy/regulatory-reform.

Small Business Regulatory Issue Roundtables

Roundtables on specific regulatory issues are another important means of gathering small business input. Advocacy hosts these throughout the year. Participants may include small business owners and representatives, federal officials, and congressional staff. The usefulness of roundtables is further enhanced when agency officials participate, either as presenters or to hear small business views directly. These roundtables present a unique opportunity for those involved in promulgating federal regulations to hear directly from the public as Advocacy facilitates an open discussion.

Advocacy held 14 roundtables on proposed rules and regulatory topics under consideration by federal agencies in FY 2017. Table 3.2 lists the roundtables which took place at SBA headquarters in Washington, D.C. Following the table are descriptions of each roundtable.

Table 3.2 Regulatory Roundtables Hosted by the Office of Advocacy, FY 2017

Agency	Purpose	Date
Consumer Financial Protection Bureau	CFPB assessment process on servicing qualified mortgages; section 1071 of the Dodd-Frank Act	06/26/17
	Equal Credit Opportunity Act; section 1071 of the Dodd-Frank Act	08/04/17
	Presentation on the commercial lending process; section 1071 of the Dodd-Frank Act	09/25/17
Department of Labor	Request for information on overtime regulations	09/08/17
Department of Labor, Occupational Safety and Health Administration; Mine Safety and Health Administration	Listening session on labor safety	11/18/16
	Communication tower safety; telecommunications structures	03/24/17
	Listening session on labor safety	07/21/17
	Proposed deregulatory action on occupational exposure to beryllium in construction and shipyards	8/22//17
Environmental Protection Agency	Proposed financial responsibility requirements for the hardrock mining industry	02/03/17
	Toxic Substances Control Act (TSCA) procedure rules; prioritizing and conducting chemical risk evaluations	02/17/17
	Regulation of certain uses of trichloroethylene (TCE) under TSCA section 6(a)	03/10/17
	Regulation of certain uses of methylene chloride and N-methylpyrrolidone under TSCA section 6(a); discussion of new regulatory reform agenda (E.O. 13771 and E.O. 13777)	04/07/17
	D.C. Circuit Court decision of July 7, 17, revising EPA's Definition of Solid Waste Rule	08/04/17
	Cooperative Federalism 2.0; A report from Advocacy's Regional Regulatory Reform Roundtables	09/22/17

Consumer Financial Protection Bureau

Assessment of Rule on Servicing Qualified Mortgages

June 26, 2017

This roundtable covered CFPB's assessment process and issues pertaining to small business lending. The participants discussed the impact of the mortgage servicing rule and the qualified residential mortgage rule on small financial institutions. The CFPB attended and responded to questions.

Compilation of Credit Applications; Section 1071 of the Dodd-Frank Act

August 4, 2017

Representatives of the financial industry, community groups, the CFPB, and other government entities attended this small business lending roundtable on the Equal Credit Opportunity Act Rule on compilation of credit applications. Participants then discussed the Dodd-Frank Section 1071 request for information which requires lenders to collect data on small business lending. One concern was the definition of small business, which is determined by the SBA's Office of Size Standards. Participants asked for a future roundtable on this topic, as well as the differences between consumer and business lending.

Presentation on the Commercial Lending Process; Section 1071 of the Dodd-Frank Act

September 25, 2017

As a result of the August 4 roundtable, this roundtable addressed Dodd-Frank Section 1071 and other financial issues. The SBA's Office of Size Standards discussed the topic of how business size cut-offs are determined, and small bankers led a discussion of business lending.

Department of Labor

Overtime Rules—White Collar Exemption under the Fair Labor Standards Act

September 8, 2017

In July 2017, the Department of Labor issued a request for information on the white-collar exemption to the overtime pay requirements under the Fair Labor Standards Act; the agency plans to formulate a new proposal on this issue. Advocacy's September roundtable addressed this topic. Small business participants recommended that the agency adopt a lower national salary threshold that is adjusted to minimize the impact on small businesses in low-wage regions and industries.

Dept of Labor, Occupational Safety and Health Administration; Mine Safety and Health Administration

Listening Session on Labor Safety

November 18, 2016

This roundtable covered several occupational safety and health topics: (1) the Agricultural Retailers Association's litigation against OSHA in the process safety management "retail exemption" case; (2) OSHA's rulemaking effort requiring employers to maintain injury and illness records; and (3) OSHA's possible communication tower safety rulemaking, changes to its "Lock Out-Tag Out" rule, and the final Walking-Working Surfaces rule.

Communication Tower Safety; Telecommunications Structures

March 24, 2017

This roundtable covered a number of occupational safety and health and regulatory reform topics: (1) the planned small business advocacy review (SBAR or SBREFA) panel on communication tower safety/telecommunications structures; (2) the American Bar Association's occupational safety and health law section meeting; and (3) Executive Orders 13771 and 13777 on regulatory review and reform and the "One In-Two Out" directive.

Regional Regulatory Reform Roundtable, Cadiz, Ohio
Advocacy staff members speak with small business owners in the oil and natural gas industry in Cadiz, Ohio. As the third state to discover oil and natural gas deposits, Ohio has been producing oil and natural gas since 1814. Industry members spoke of "better days ahead."

Regulatory Review and Reform at the Department of Labor

July 21, 2017

This roundtable covered a number of legal, legislative, and regulatory issues involving the Department of Labor and other agencies: (1) A presentation by the newly appointed deputy assistant secretary of labor for policy on the agency's plans to implement Executive Orders 13771 and 13777; (2) Advocacy's Regional Regulatory Reform Roundtables; (3) pending OSHA regulatory actions, including deregulatory action on the Occupational Exposure to Beryllium rule; (4) the Mine Safety and Health Administration (MSHA) actions to repeal recently promulgated regulations under the Congressional Review Act; and (5) the status of pending litigation against OSHA and MSHA.

Listening Session on Labor Safety

August 22, 2017

This roundtable was conducted via teleconference to obtain small business input on OSHA's proposed deregulatory action on the Occupational Exposure to Beryllium rule. The proposed changes would remove the ancillary provisions of OSHA's final beryllium rule for the construction and shipyards sectors, but would retain the new lower permissible exposure limit and the short-term exposure limit for each sector. Representatives of both OSHA and the Department of Labor participated in the discussion. Advocacy subsequently filed a public comment letter based on the issues raised by small businesses and their representatives.

Small Business Site Visit, Meridian, Idaho
Advocacy staff visited Big D Ranch in Meridian, Idaho, just a few miles southwest of Boise, to learn how family farms operate and compete in the worldwide food market. In Idaho, 97 percent of all agricultural operations are small businesses.

Proposed Financial Responsibility Requirements for the Hardrock Mining Industry

February 3, 2017

Participants discussed EPA's proposed rule to require development of financial responsibility instruments to provide insurance coverage for potential liabilities for releases of hazardous substances from hardrock mines. Agency officials provided an overview of the proposal, which would impose costly requirements on hardrock mines owned by small firms, which are already highly regulated by robust state and federal programs.

Prioritization of Chemicals for Risk Evaluation under TSCA and the Amended TSCA

February 17, 2017

At this roundtable, EPA officials gave presentations on two proposed rules. First, the agency discussed its proposal for the procedures for prioritizing chemicals for the chemical risk evaluations under the amended Toxic Substance Control Act (TSCA), which sought to establish a risk-based screening process to group chemical substances as either high-priority substances requiring risk evaluation or low-priority ones that do not require it. Second, the agency discussed its proposed procedures for chemical risk evaluations under the amended TSCA. The risk evaluation process would determine whether an existing chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors.

Regulation of Trichloroethylene under TSCA Section 6(a)

March 10, 2017

At this roundtable EPA officials gave presentations on two proposed rules to regulate trichloroethylene (TCE). The proposals would prohibit the manufacture, import, processing, and distribution of TCE for use in aerosol degreasing, spot cleaning at dry cleaning facilities, and in vapor degreasers. The ban is based on an unreasonable risk finding for these uses under section 6(a) of the Toxic Substance Control Act.

Small Business Site Visit, Willoughby, Ohio
Advocacy staff tours a new home in Willoughby, Ohio, with George Davis, president of ProBuilt Homes, a small home developer. After the tour, the group discussed the hardships independent home builders face due to expensive and time-consuming regulatory compliance

Regulation of Methylene Chloride and N-Methylpyrrolidone under TSCA Section 6(a)

April 7, 2017

At this roundtable, EPA officials discussed the agency's proposal to prohibit the manufacture, import, processing, and distribution of methylene chloride and n-methylpyrrolidone in consumer and commercial paint removers. The ban is based on an unreasonable risk finding for each chemical and for these uses under section 6(a) of the Toxic Substance Control Act. Advocacy staff also discussed the office's small business outreach efforts and activities as part of the new regulatory reform agenda under E.O.s 13771 and 13777.

D.C. Circuit Opinion Revising EPA's Definition of Solid Waste

August 4, 2017

This roundtable began with an overview of the potential implications for both hazardous and nonhazardous waste recyclers as a result of the D.C. Circuit Court's July 7, 2017, decision on EPA's 2015 modification of the definition of solid waste. Second, Advocacy staff discussed the new Administration's Unified Agenda of Regulatory and Deregulatory Actions and the likely impacts on small businesses.

Cooperative Federalism 2.0

September 22, 2017

The executive director and general counsel of the Environmental Council of States gave a presentation on Cooperative Federalism 2.0. This is an effort to explore and enhance the relationship between EPA and the state governments who bear significant environmental enforcement responsibilities. Advocacy's director of interagency affairs reported on the office's efforts to gather nationwide small business input in support of deregulatory actions under Executive Orders 13771 and 13777.

Chapter 4

Advocacy's Formal Public Comment Letters to Federal Agencies in FY 2017

In FY 2017, the Office of Advocacy issued 24 formal comment letters to regulatory agencies. The most frequent concerns were that the agency did not consider significant alternatives to its proposal and that greater outreach to small entities was needed. Another frequently cited issue was an inadequate analysis of the small entity impact. Figure 4.1 summarizes the issues of concern that Advocacy found. Table 4.1 lists all the letters in chronological order. Descriptions of each one follow, sorted by the agency that issued the proposed rule.

FIGURE 4.1. NUMBER OF SPECIFIC ISSUES OF CONCERN IN AGENCY COMMENT LETTERS, *FY 2017*

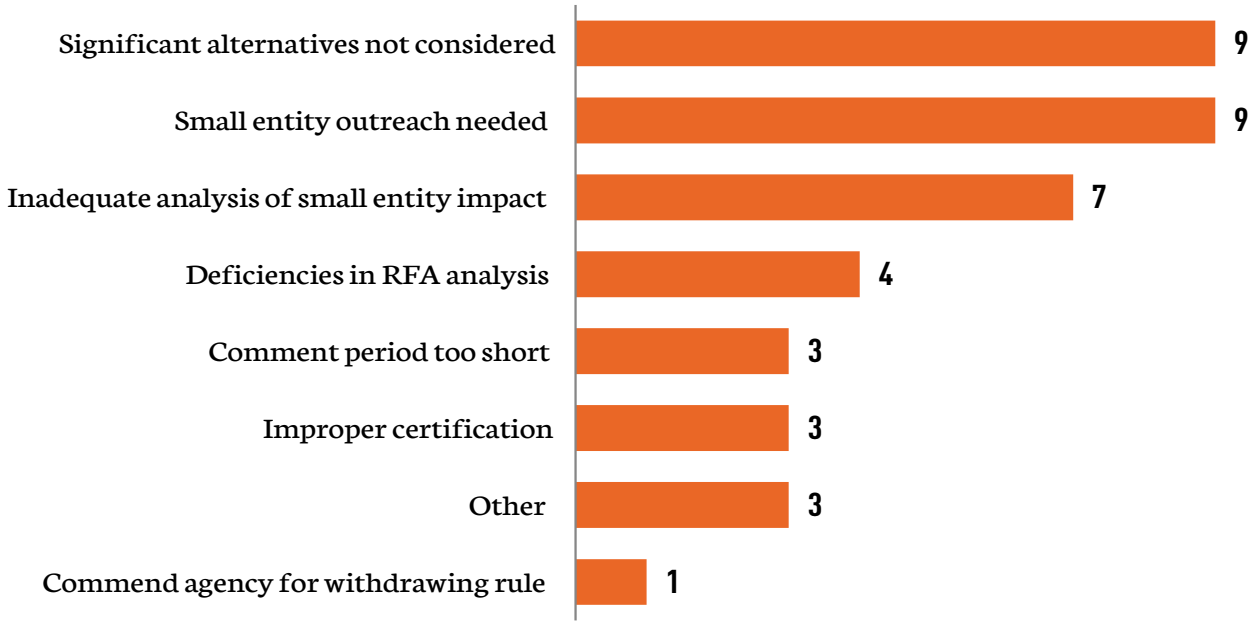


Table 4.1 Regulatory Comment Letters Filed by the Office of Advocacy, FY 2017

Date	Agency*	Topic	Citation to Rule
10/07/16	CFPB	Payday, Vehicle Title, and Certain High-Cost Installment Loans	81 Fed. Reg. 47,864 (07/22/16)
10/14/16	DHS/USCIS	International Entrepreneurs Rule	81 Fed. Reg. 60,130 (08/31/16)
11/01/16	Treasury/ IRS	Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest	81 Fed. Reg. 51,413 (08/04/16)
11/16/16	State	Intercountry Adoptions	81 Fed. Reg. 62,321 (09/08/16)
01/11/17	EPA	Toxic Substances Control Act Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors	81 Fed. Reg. 90,840 (12/15/16)
01/19/17	EPA	Financial Responsibility Requirements Under CERCLA section 108(b) for Hardrock Mining	82 Fed. Reg. 3,388 (01/11/17)
02/27/17	State	Exchange Visitor Program: Summer Work Travel	82 Fed. Reg. 4,120 (01/12/17)
03/15/17	EPA	Trichloroethylene; Regulation of Certain Uses Under TSCA section 6(a)	81 Fed. Reg. 91,592 (12/16/16)
03/16/17	EPA	Procedures for Prioritization of Chemicals for Risk Evaluation Under TSCA, and Procedures for Chemical Risk Evaluation Under the Amended TSCA	82 Fed. Reg. 4,825 (01/17/17); 82 Fed. Reg. 7,562 (01/19/17)
04/05/17	EPA	Regulatory Petition on Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	80 Fed. Reg. 67,837 (11/03/15)
04/17/17	FCC	Ex Parte Letter on Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access Rates for Price Cap Local Exchange Carriers; and Business Data Services in an Internet Protocol Environment	WC Docket No. 15-247; WC Docket No. 05-25; WC Docket No. 16-143
04/17/17	EPA	Regulation of Methylene Chloride and N-Methylpyrrolidone under TSCA Section 6(a)	82 Fed. Reg. 7,464 (01/19/17)
04/17/17	EPA	Regulation of Trichloroethylene in Vapor Degreasing Under TSCA Section 6(a)	82 Fed. Reg. 7,432 (01/19/17)
04/24/17	CPSC	Safety Standard for Portable Generators	81 Fed. Reg. 83,556 (11/21/16)
05/26/17	DOI	Review of Bears Ears National Monument	82 Fed. Reg. 22,016 (05/11/17)
07/07/17	DOI	Review of Certain National Monuments Established Since 1996	82 Fed. Reg. 22,016 (05/11/17)
07/10/17	CFPB	Request for Information on 2013 Real Estate Settlement Procedures Act Assessment	82 Fed. Reg. 21,952 (05/11/17)
07/17/17	CPSC	Amendments to Fireworks Regulations	82 Fed. Reg. 9,012 (02/02/17)
07/26/17	CPSC	Safety Standards Addressing Blade-Contact Injuries on Table Saws	82 Fed. Reg. 22,190 (06/12/17)
07/28/17	CFPB	Request for Information Regarding Ability-to-Repay/Qualified Mortgage Assessment	82 Fed. Reg. 25,246 (06/01/17)
08/28/17	DOL/OSHA	Occupational Exposure to Beryllium and Its Compounds in Construction and Shipyards	82 Fed. Reg. 29,182 (06/27/17)
09/14/17	CFPB	Request for Information Regarding the Small Business Lending Market	82 Fed. Reg. 22,318 (05/15/17)
09/22/17	DOL	Request for Information on the Overtime Rule	81 Fed. Reg. 32,391 (05/23/16)
09/27/17	EPA/CORPS	Definition of "Waters of the United States," Recodification of Pre-Existing Rules	82 Fed. Reg. 34,899 (07/27/17)

*Abbreviations:

CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CORPS	U.S. Army Corps of Engineers
CFPB	Consumer Financial Protection Bureau
CPSC	Consumer Product Safety Commission
DHS/USCIS	Dept of Homeland Security, US Citizenship and Immigration Service
DOI	Department of Interior
OSHA	Occupational Safety and Health Administration
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
State	Department of State
TSCA	Toxic Substances Control Act
Treasury/IRS	Department of Treasury, Internal Revenue Service

Issue: Payday, Vehicle Title, and Certain High-Cost Installment Loans

In July 2016, the Consumer Financial Protection Bureau (CFPB) proposed a rule creating consumer protections for payday, vehicle title, and certain high-cost installment loans. Prior to proposing the rule, the CFPB convened a SBREFA panel to solicit input from small entity representatives. One result of the SBREFA panel was a reduction of the proposed cooling-off period between loans, from 60 to 30 days.

On October 7, 2016, Advocacy submitted a letter to the agency voicing small business concerns with the rule. Businesses were particularly concerned about the proposed ability-to-repay requirements (ATR). They also expressed concerns about the inability to provide loans to customers in the event of an emergency. Tribal representatives expressed concerns about the lack of full tribal consultation and the infringement on tribal sovereignty.

Advocacy's letter encouraged the CFPB to take several steps to improve the proposal:

- Exempt small lenders in states that currently have payday lending laws and exempt small credit unions,
- Consider the proposal's detrimental effects on access to credit in small rural communities,
- Develop requirements that protect consumers without interfering with their access to legitimate credit,
- Perform a full analysis of the rulemaking's impact on the cost of credit for small entities, and
- Allow at least 24 months for small entities to comply.

As of year-end FY 2017, there has been no further activity on this rule.

Issue: Assessment of the 2013 Mortgage Servicing Rule

In May 2017, the CFPB began an assessment of its 2013 Real Estate Settlement Procedures Act Servicing Rule. (The Dodd-Frank Act requires the CFPB to conduct assessments of significant rules within five years of taking effect.) The 2013 RESPA Servicing Rule imposed new mortgage servicing requirements and prohibitions

Small Business Site Visit, Kansas City, Mo.
In Kansas City, Mo., Advocacy staff met with representatives of Kaw River Railroad, a small shortline railroad company. The company operates over relatively short distances compared to large national rail networks. Kansas City's role as a U.S. transportation and railway hub began in the 19th century and continues today.

on loan servicers. It exempted small lenders that (1) service 5,000 or fewer mortgage loans and (2) only service loans owned or originated by them or an affiliate from certain requirements. These relate to obtaining force-placed insurance; provisions relating to general servicing policies, procedures, and requirements; and certain requirements and restrictions relating to communicating with borrowers about loss mitigation applications.

Advocacy held a roundtable on June 26, 2017, received small business input, and submitted comments on July 7, 2017. In its comment letter, Advocacy asked CFBP to raise the exemption threshold. As Advocacy and small lenders have repeatedly asserted, small entities did not cause the problems that the servicing rule was meant to address. Advocacy asked the CFPB to exempt all loan servicers that fall under the SBA's definition of a small business entity. Advocacy encouraged the CFPB to evaluate the burden associated with the requirement of waiting 120 days before foreclosing on an abandoned property, which create problem for the servicers and the community.

Advocacy encouraged the agency to delay its assessment until forthcoming amendments to its servicing rule are in place. Advocacy also encouraged the CFPB to perform additional outreach. As of year-end FY 2017, there has been no further activity on this rule.

Issue: Assessment of the 2013 Qualified Mortgage Rule

In June 2017, the CFPB initiated an assessment of its 2013 Ability-to-Repay/Qualified Mortgage (ATR/QM) rules, as required by the Dodd-Frank Act. The rule prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan and any mortgage-related obligations (such as property taxes).

The ATR/QM rule provides a separate, temporary category of qualified mortgage loans for loans eligible to be purchased or guaranteed by either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation while they operate under federal conservatorship or receivership. There is also a category of qualified mortgages that allows for more flexible underwriting standards for small creditor portfolio loans as well as a category for small creditors that operate in rural or underserved areas to make balloon-payment portfolio loans that are qualified mortgages.

Advocacy held a roundtable on the ATR/QM assessment in June 2017. At the roundtable, small financial institution representatives identified several issues: credit is being denied to customers who would have qualified for a mortgage in the past; the rule is too complex and problematic for self-employed borrowers; the rule's 43 percent debt-to-income ratio may be too low; the three percent cap on points and fees imposed by the rule is problematic; and the required points and fees test is confusing.

In a public comment letter dated July 28, 2017, Advocacy expressed concerns that the rule's effects on small financial institutions is causing them not to approve loans they previously would have made, even to qualified borrowers. Advocacy encouraged the CFPB to analyze the rule's impact on the availability of mortgages to creditworthy individuals, including in the interior and rural parts of the country, and on small businesses that use home mortgages to finance their business ventures. Advocacy asked the agency to consider the effect on small financial institutions of having to turn away creditworthy individuals and recommended additional outreach and analysis of the economic impact of the ATR/QM rule on the mortgage industry and its customers.

As of year-end FY 2017, there has been no further activity on this rule.

Small Business Site Visit, Cleveland, Ohio
Advocacy staff and Ohio Congressman Dave Joyce meet with a small coffee manufacturer, Caruso's Coffee, located on the outskirts of Cleveland. These on-site meetings help Advocacy gain a deeper understanding of the impact of federal regulations on daily operations.

Issue: Small Business Lending; Dodd-Frank Section 1071

In May 2017, the CFPB issued a Request for Information Regarding the Small Business Lending Market. Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require financial institutions to report information on credit applications from women-owned, minority-owned, and small businesses. Section 1071 specifies particular data points that financial institutions must submit to the CFPB, and make available to members of the public.

Advocacy held roundtables on the topic on August 4 and September 25. Participants stated that developing a computer system to collect the required information would be costly and that the difference between consumer and commercial lending is not always clear. In addition, the definition of "small business concern" to be used in the information collection was complex and confusing.

On September 14, 2017, Advocacy submitted a letter to the CFPB. Advocacy encouraged the CFPB to convene a SBREFA panel for the rulemaking and to have several pre-panel meetings or conference calls to research the possible economic impact. Advocacy asserted that an advance notice of proposed rulemaking could help the agency learn more about the challenges associated with commercial lending and to identify less costly alternatives. Advocacy encouraged the CFPB to perform small entity outreach and work with Advocacy and SBA's Office of Size Standards to develop a workable solution to the definitional challenges. As of year-end FY 2017, there has been no further activity on this rule.

Consumer Product Safety Commission

Issue: Safety Standard for Portable Generators

In November 2016 the Consumer Product Safety Commission (CPSC) published a proposed rule titled Safety Standard for Portable Generators. The proposed rule establishes carbon monoxide emissions rates for portable generators in an effort to reduce the risk of unreasonable injury or death from use of the devices in indoor or confined spaces. The CPSC performed an initial regulatory flexibility analysis (IRFA) in which it concluded that the proposed rule would have a significant impact on a substantial number of small entities.

On April 24, 2017, Advocacy filed a comment letter. Advocacy urged the CPSC to consider significant alternatives to reduce the burden to small businesses including extended compliance deadlines, less stringent carbon monoxide emissions limits, and an automatic shut-off option.

As of the end of FY 2017, no subsequent action has been taken on the proposed rule.

Issue: Amendments to Fireworks Regulations

In February 2017 the CPSC published a proposed rule titled Amendments to Fireworks Regulations. The proposed rule aims to reduce the risk of death or injury from the use of consumer fireworks by imposing various requirements including changes to manufacturing. In its IRFA, the agency stated that in many instances it did not have enough information about compliance costs to be able to determine whether the requirement would have a significant impact on a substantial number of small entities.

On July 17, 2017, Advocacy filed a comment letter stating that the agency's proposed rule will have a significant economic impact on a substantial number of small entities. Specifically, the rule would require the use of X-ray fluorescence technology to test the level of metallic "fuel" in the burst charge. These devices cost approximately $35,000 to purchase, which would be a significant cost if a business wished to test their own products for compliance. Further, the allowable level of metallic "fuel" in the burst charge may make the products unmarketable and result in a higher failure rate for products. Additionally, the cost to destroy failed products will result in a significant loss of revenue to small businesses.

Advocacy recommended two courses of action to the agency. The CPSC could publish for public comment a supplemental IRFA that properly assesses the costs to small businesses and includes alternatives to the rule with cost data and explanations as to why the alternatives were not selected. Or if the agency determines the rule will not have a significant impact on a substantial number of small entities, it could certify the rule using a proper factual basis and certification language.

As of the end of FY 2017, no subsequent action has been taken on the proposed rule.

Small Business Site Visit, St. Louis, Mo.
Staff and owners of Chocolate Chocolate Chocolate in St. Louis discuss the difficulties small businesses face in understanding and implementing complex food regulations. While the small company enjoys growing popularity, expanding operations is complicated by the high cost of regulatory compliance.

Issue: Safety Standard Addressing Blade-Contact Injuries on Table Saws

In May 2017 the CPSC published a proposed rule titled Safety Standard Addressing Blade-Contact Injuries on Table Saws. The proposed rule would require table saw manufacturers to incorporate active injury mitigation technology in all types of table saws. Specifically, the rule would require the use of proprietary technology that is available from only one supplier. In addition to being overly broad, CPSC's proposed rule imposes such stringent and cost-prohibitive requirements that it would cause most if not all small table saw manufacturers to exit the market.

On July 26, 2017, Advocacy filed a comment letter urging CPSC to publish a supplemental IRFA addressing the issue of using propriety technology, reanalyzing voluntary standards, supplementing the existing cost-benefit analysis, and analyzing significant alternatives to the proposed rule. In addition, Advocacy urged CPSC to extend the comment period deadline.

As of the end of FY 2017, no subsequent action has been taken on the proposed rule.

Department of Homeland Security, U.S. Citizenship and Immigration Services

Issue: International Entrepreneur Rule

In August 2016, the U.S. Citizenship and Immigration Services (USCIS) proposed a rule that would allow international entrepreneurs to use an immigration program called parole to gain temporary entry into the United States to work for an initial two-year period, with a possible three-year extension. Advocacy held a small business roundtable in which most participants expressed support for the goals of the rule. However, small businesses were concerned that the rule's strict requirements might be a barrier to many international entrepreneurs. Advocacy recommended that USCIS lower the capital investment threshold, reconsider whether the "qualified investor" definition was too strict, and clarify parole procedures. In the final rule, USCIS lowered the capital investment threshold from $345,000 to $250,000. In July 2017, USCIS delayed the effective date of the final rule from July 17, 2017, to March 14, 2018. The delay will provide USCIS the opportunity to obtain comments from the public regarding a proposal to rescind the rule pursuant to Executive Order 13767, "Border Security and Immigration Enforcement Improvements."

Department of the Interior

Issue: Bears Ears National Monument Review

On April 26, 2017, President Trump issued Executive Order 13792, Review of Certain National Monuments Established Since 1996. The order directed the secretary of the interior to conduct a review of certain national monument designations including the Bears Ears National Monument in Utah. On May 11, 2017, the Department of Interior published a notice of opportunity for public comment on its review of monument designations under the Antiquities Act of 1906. While a public comment period is not required for the designation of national monuments under the Antiquities Act, the agency chose to accept and consider public input on this issue. The Bears Ears National Monument was given a public comment period of 15 days, whereas all other monuments under review were given a more lengthy comment period.

Bears Ears National Monument was established on December 28, 2016, via presidential proclamation. The area covers 1.4 million acres in southeastern Utah. According to the proclamation, visitors to Bears Ears enjoy a number of recreational activities, as well as historic sites. Currently, the secretaries of agriculture and interior manage the monument. Pursuant to the

executive order, the agency was considering whether Bears Ears should remain a national monument.

On May 26, 2017, Advocacy filed a comment letter encouraging the agency to consider feasible alternatives to minimize the impact to small entities while still achieving its mission. Such alternatives may include designating a smaller portion of land. In addition, Advocacy urged the agency to extend the comment period deadline for the Bears Ears Monument Review, and suggested using the RFA as a framework for its small business economic analysis. As of September 30, 2017, no further action has been taken.

Issue: Review of Certain National Monuments Established Since 1996

In April 2017, President Trump issued Executive Order 13792, Review of Certain National Monuments Established Since 1996. On May 11, 2017, the Department of the Interior published a notice of opportunity for public comment on its review of monument designations under the Antiquities Act of 1906. While a public comment period is not required for the designation of national monuments under the Antiquities Act, the agency chose to accept and consider public input on this issue.

On July 7, 2017, Advocacy filed a comment letter requesting that in its review, the agency consider the impact to small business from any changes to the designations and suggested using the factors in the RFA as a framework for its analysis of impacts. As of September 30, 2017, no further action has been taken.

Department of Labor

Issue: Request for Information on the Overtime Rule

In May 2016, the Department of Labor finalized a rule that made changes to the Fair Labor Standards Act, specifically the white collar exemption to the regular minimum wage and overtime payments for executive, administrative, and professional employees. The final rule changed the standard salary requirements to meet this exemption, from $23,660 to $47,476. This change would have increased the number of workers eligible for overtime pay. Almost everyone making under $47,476 would be eligible for overtime pay. The final rule was never made effective, as it was subject to a temporary injunction (in November 2016) and a permanent injunction (in August 2017).

In July 2017, the Department of Labor announced that it was considering a new proposed rule on the white collar exemption, and issued a Request for Information to gain feedback on the standard salary requirement. Advocacy held a roundtable and meetings on this issue, and submitted a comment letter on September 22, 2017. The letter recommended that the agency adopt a lower nationwide standard salary threshold that is adjusted to reflect low-wage regions and industries. In the Unified Regulatory Agenda, the agency has scheduled the release of this proposed rule for October 2018.

Department of Labor, Occupational Safety and Health Administration

Issue: Occupational Exposure to Beryllium in Construction and Shipyard Sectors

On June 27, 2017, the Occupational Safety and Health Administration (OSHA) issued a proposed rule, Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors. This is a deregulatory action that would remove the ancillary provisions for construction and shipyards from the OSHA beryllium rule that was finalized on January 9, 2017. (Ancillary provisions include exposure

Small Business Site Visit, Spokane, Wash.
In Spokane, Wash., Advocacy staff meets with Scott Meyer, the general counsel of Zak Designs, a small dinnerware designer and distributor. Meyer and the company's senior staff explained how some federal regulations could be simplified to help small distributors expand their businesses internationally.

assessment, respiratory protection, personal protective equipment, hazard communication, and recordkeeping.) However, the proposed rule would retain the new lower permissible exposure limit (PEL) of 0.2 mg/m3 (measured as an eight-hour time-weighted average) and the short-term exposure limit (STEL) of 2.0 mg/m3 (over a 15-minute sampling period) for each sector.

Advocacy discussed the proposed rule at its small business labor safety roundtable on July 21, 2017, and during a teleconference on August 22, 2017. Representatives from both OSHA and the Department of Labor were present for both discussions.

Advocacy's public comments reflect the three main issues raised during the roundtable and teleconference. First, because small businesses in the construction and shipyards (except abrasive blasting) were not represented in OSHA's SBREFA panel for the original beryllium rule, Advocacy recommended that OSHA convene a new SBREFA panel for construction and shipyard sectors prior to including these sectors in a new final rule. Second, because OSHA lacks sufficient information about the health risks from naturally occurring beryllium exposure in materials used in the construction and shipyard sectors, Advocacy recommended that OSHA consider suspending the PEL and STEL while it develops a more complete record of these health effects before proceeding with a final rule. Third, Advocacy recommended that OSHA consider significant alternatives to the proposed rule that achieve its statutory objectives while minimizing any significant economic impacts on small business, including a rule that would apply only to abrasive blasting and welding.

OSHA has not published a final rule as of year-end FY 2017.

Department of State

Issue: Intercountry Adoptions

In September 2016, the State Department proposed amendments to requirements for adoption agencies that arrange international adoptions. Under this rule, the agency would issue country-specific authorizations, and adoption agencies would have to meet higher standards to be approved to do business in these

specific countries. The agency certified that the rule would not have a substantial impact on a significant number of small entities. After speaking to small adoption agencies, Advocacy submitted a comment letter dated November 16, 2016, citing concern that the agency's certification was improper because it did not have enough information about the number of small businesses affected and costs of this rule to these businesses. Advocacy recommended that the agency either re-propose the rule when more information could be provided, or submit a supplemental notice of proposed rulemaking with a proper regulatory flexibility analysis. In April 2017, the State Department withdrew this rule; it has been moved to a long-term action.

Issue: Exchange Visitor Program-Summer Work Travel

In January 2017, the State Department proposed a rule to strengthen protections for foreign exchange students under the Summer Work Travel Program. This program allows participants aged 18-30 to work in seasonal placements while learning the culture of the United States. The rule required that sponsors complete a new form for each exchange visitor, complete background checks for host employers and any third parties they utilize, and conduct interviews with foreign exchange students. The proposed rule also required that sponsors complete cross-cultural activities and pay for employee uniforms for exchange students. Small businesses commented that the agency did not adequately analyze the economic impacts of this rule on employers and that the requirements might make it too costly for small businesses to participate in this program. In a comment letter dated February 27, 2017, Advocacy recommended that the agency consider additional alternatives to minimize the costs of this rule for small businesses. The State Department moved this rule to a long-term action.

Department of the Treasury, Internal Revenue Service

Issue: Estate Transfer Taxes; Restrictions on Liquidation of an Interest

In August 2016, the Internal Revenue Service (IRS) published proposed regulations relating to the valuation of interests in a closely held partnership or corporation for estate, gift, and generation-skipping transfer tax purposes. In general, for the transfer of a business interest via estate or gift, the interest is taxed based on the fair market value of the amount of the gift on the transfer date. In the case of an interest in a closely held corporation or partnership, however, case law has evolved to permit discounts in valuing interests where the interests represent minority positions for which there is no ready market. This tax policy, known as a "valuation discount," allows the transferor of a closely held business interest to reduce the value of a small percentage of their ownership interest, which reduces the amount of the transfer subject to tax. The IRS proposed regulations would eliminate most of these valuation discounts.

The IRS certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The IRS supported this certification by stating that the proposed regulations would "affect the transfer tax liability of individuals who transfer an interest in certain closely held entities and not the entities themselves."

Small business stakeholders expressed concern to Advocacy that the proposed regulations would be such a large departure from current IRS policy and industry practice that expensive new business valuations would need to be completed for closely held businesses. Moreover, small business owners and representatives indicated that, by eliminating valuation discounts, the proposed regulations would negatively affect succession planning for many small businesses. Based on this feedback, on November 1, 2016, Advocacy submitted a public comment letter to the IRS indicating that its statement in support of the RFA certification did not appear to be valid. Advocacy recommended that the IRS conduct a fuller RFA analysis of the proposed rules and publish either a supplemental RFA assessment

supporting its certification or an initial regulatory flexibility analysis.

On October, 4, 2017, the Department of Treasury announced that it would withdraw the proposed regulations as part of the regulatory reform effort called for under Executive Order 13789, Identifying and Reducing Tax Regulatory Burdens.

Environmental Protection Agency

Issue: TSCA Reporting and Recordkeeping for Small Manufacturers and Processors

In December 2016, EPA issued a public notice, Toxic Substances Control Act (TSCA) Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors. In the notice, the agency requested public comment on whether a revision of the current size standards for small chemical manufacturers and processors under TSCA section 8(a) is warranted.

On January 11, 2017, Advocacy submitted a comment letter in response to the notice. Advocacy agreed with EPA's preliminary determination that a revision to the size standard is warranted but expressed concerns that EPA was not considering the full range of factors necessary to set an appropriate size standard in future actions. Advocacy recommended that EPA convene a SBREFA panel in support of a future rulemaking to establish a new size standard. The panel would provide a venue for a robust consultation with Advocacy, the SBA Office of Size Standards, the Office of Management and Budget, and the regulated community. As of year-end 2017, EPA has not yet issued any proposal related to this notice.

Issue: Financial Responsibility Requirements for the Hardrock Mining Industry

On January 11, 2017, EPA proposed the rule, Financial Responsibility Requirements for the Hardrock Mining Industry. In its proposal, the agency sought to require the development of financial responsibility instruments to provide coverage for potential liabilities for releases of hazardous substances from hardrock

Small Business Site Visit, New Orleans, La.
Advocacy staff tours WeChem, a small chemical manufacturing plant in New Orleans, with company vice president Richard Wisecarver. The group discussed how small businesses in the chemical industry are at a disadvantage due to the high cost of strict regulatory compliance.

mines. On January 19, 2017, Advocacy submitted a comment letter on the proposal. Advocacy emphasized that small mines that would be subject to this rule are already highly and effectively regulated by robust state and federal programs. Based on information from the SBREFA panel and the rulemaking record, Advocacy expressed concerns that the rule would result in substantial costs for small businesses without significant environmental benefits. Advocacy urged EPA to withdraw this proposed rule. As of year-end FY 2017, the agency has not yet finalized any rules related to this proposal.

Issue: Regulation of Trichloroethylene under TSCA Section 6(a)

In December 2016, EPA proposed a rule, Trichloroethylene (TCE); Regulation of Certain Uses under TSCA Section 6(a). In its proposal, the agency sought to regulate the use of TCE in aerosol degreasing and spot cleaning products. Specifically, EPA proposed to prohibit the manufacture, import, processing, distribution, and commercial use of TCE in aerosol degreasing and for spot cleaning in dry cleaning facilities. On March 15, 2017, Advocacy submitted a comment letter on the proposal. Advocacy expressed concerns with the risk assessment used to support the ban and with the inadequate analysis of small entity impact. Advocacy urged EPA to carefully address the small business concerns and to reconsider the impact of its proposal on small businesses by convening a SBREFA panel. As of year-end FY 2017, the agency has not yet finalized any rules related to this proposal.

Issue: Prioritizing Chemicals for Risk Evaluation under TSCA and the Amended TSCA

In January 2017 EPA proposed two rules, Procedures for Prioritization of Chemicals for Risk Evaluation under TSCA and Procedures for Chemical Risk Evaluation under the Amended TSCA. Prioritization is the first step under the new TSCA in determining unreasonable risks. For its procedures for prioritization of chemicals, EPA proposed to establish a risk-based screening process and criteria to identify chemicals as either high-priority substances requiring risk evaluation or low-priority substances that do not require it. Risk evaluation is the second step, after a rule has been designated as a high-priority. The proposal for the procedures for chemical risk evaluations outlined a process for determining whether a chemical presents an unreasonable risk.

On March 16, 2017, Advocacy submitted a comment letter expressing concerns regarding small entity outreach to be included as part of the agency's proposed processes. Advocacy urged EPA to act in a transparent manner and engage in targeted outreach with small businesses early and throughout its chemical prioritization and risk evaluation processes. EPA published final rules for both proposals on July 20, 2017. Both rules include a commitment to engage with small businesses and to collaborate with Advocacy to facilitate this outreach.

Issue: Effluent Limitations Guidelines and Standards for Steam Electric Power Plants

On April 5, 2017, Advocacy submitted a petition to EPA to reconsider the effluent limitations guidelines (ELG) for steam electric power plants which had been finalized on September 30, 2015. The regulation imposes technology-based standards on power plants operating as utilities to control wastewater under the Clean Water Act. Advocacy supported reopening the rulemaking for reconsideration as it would provide an opportunity for regulatory relief for small utilities, particularly those that are independently owned or owned by rural electric cooperatives or municipalities. Advocacy provided specific recommendations for regulatory alternatives such as excluding all plants with *de minimis* amounts of pollution, especially those owned by small entities, and evaluating controls for bottom ash wastewater and flue gas desulfurization. Advocacy

urged the agency to provide greater transparency in its pollutant loadings and cost estimates, and correct its overestimation of pollution removals. On April 12, 2017, EPA announced that it is reconsidering this rulemaking; a new rule is expected in three years.

Issue: Regulation of Trichloroethylene in Vapor Degreasing under TSCA Section 6(a)

In January 2017, EPA proposed a rule, Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing under TSCA Section 6(a). In its proposal, the agency sought to regulate the use of TCE in vapor degreasing. Specifically, EPA proposed to prohibit the manufacture, import, processing, distribution, and commercial use of TCE in vapor degreasers. On April 17, 2017, Advocacy submitted a comment letter on the proposal. Advocacy expressed concern about the risk assessment methodology underlying the ban on production and use of TCE in vapor degreasers. Advocacy also expressed concerns with the agency's lack of adequate consideration of the significant alternatives. Advocacy urged EPA to address the concerns associated with the risk assessment and to consider providing small business flexibilities that accomplish the agency's regulatory objective. As of year-end FY 2017, the agency has not yet finalized any rules related to this proposal.

Issue: Regulation of Methylene Chloride and N-Methylpyrrolidone under TSCA Section 6(a)

In January 2017, EPA issued the proposed rule, Methylene Chloride and N-Methylpyrrolidone (NMP); Regulation of Certain Uses under TSCA Section 6(a). In its proposal, the agency sought to regulate the use of methylene chloride and NMP for paint and coating removal. Specifically, EPA proposed to prohibit the manufacture, import, processing, and distribution of methylene chloride and NMP in paint and coating removal, for both commercial and consumer uses. The agency also proposed a 55-gallon container restriction on the use of methylene chloride for any non-prohibited uses. On April 17, 2017, Advocacy submitted a comment letter on the proposal. Advocacy expressed concerns with the risk analyses for both chemicals. Advocacy was also concerned with the lack of adequate consideration of small entity impacts and

Small Business Site Visit, Cincinnati, Ohio
Capt. Alan Bernstein, the owner of BB Riverboats in Cincinnati, speaks to Advocacy staff about the regulatory woes of operating a passenger vessel according to rules written for stationary buildings.

of significant alternatives. Advocacy urged EPA to address the concerns with the risk analyses for both chemicals and to provide regulatory flexibilities that are least restrictive in the use of both chemicals. As of year-end FY 2017, the agency has not yet finalized any rules related to this proposal.

Environmental Protection Agency and Army Corps of Engineers

Issue: Definition of 'Waters of the United States'—Recodification of Pre-Existing Rules

On July 27, 2017, the EPA and Army Corps of Engineers published a proposed rule titled: Definition of "Waters of the United States"—Recodification of Pre-Existing Rules. The proposed rule is the first in a two-step process to revise the definition of "waters of the United States." The first step proposes to rescind the definition that was promulgated in the 2015 Clean Water Act rule, and revert to the definition that existed before the 2015 rule. Advocacy applauds the two agencies' effort to revise the definition since it will provide certainty to small businesses as to the current definition and ultimately ensure that the definition is clear and not overly broad.

On September 27, 2017, Advocacy filed a comment letter urging EPA and the Corps of Engineers in the second phase of this process to properly consider the impacts to small business as required by the RFA, and to conduct a thorough and detailed regulatory flexibility analysis of any rule they propose. Advocacy encouraged the two agencies to conduct meaningful outreach to small business stakeholders and to provide small entities with options to consider in revising the rule.

Federal Communications Commission

Issues: Business Data Service for Small Business and the Special Access Market

Special access, or business data service (BDS) as it is now commonly called, is a critical input for many of the country's small businesses. Advocacy has consistently urged the Federal Communications Commission (FCC) to take a close look at the special access market and pursue price regulation wherever there is insufficient competition to ensure the availability of affordable and reliable broadband for small business customers. Advocacy supported the FCC's efforts to conduct its 2015 data collection on the special access market; however, when the FCC released its draft final order for the BDS proceeding, Advocacy had concerns about the impact the order would have on prices for small business consumers of BDS. Specifically, Advocacy expressed concerns to the FCC that the proposed competitive market test for Digital Signal 1 (DS1) and Digital Signal 3 (DS3) end-user channel terminations may result in reduced choices for small businesses.

Advocacy's comments were contained in a letter dated April 14, 2017. They are in response to three FCC proposals: (1) Investigation of certain price cap local exchange carrier business data services tariff pricing plans; (2) Special access rates for price cap local exchange carriers; and (3) Business data services in an internet protocol environment.

Ultimately, the FCC adopted its order with no significant changes. As of year-end FY 2017, the order was being challenged in litigation, and has yet to take effect.

Chapter 5

Small Business Regulatory Cost Savings and Success Stories

In FY 2017, small businesses saved $913.4 million in estimated foregone regulatory costs because of the Regulatory Flexibility Act and the Office of Advocacy's efforts to promote federal agency compliance. There were additional regulatory successes as well, whose impact is not quantifiable.

In FY 2017, small businesses benefited from Advocacy's RFA activities in two ways, through regulatory and deregulatory actions. *Regulatory* cost savings generally represent the difference between the rule's costs as proposed by an agency and the final one incorporating flexibilities or alternatives that achieve the rule's goal while posing less of a burden. One of this year's regulatory cost savings concerned the application of the Americans with Disabilities Act to movie theaters. After receiving input from theater operators and in official comments from the Office of Advocacy, the Department of Justice reduced the amount of closed captioning and descriptive equipment that theaters are required to purchase. The change resulted in savings of $66 million between the proposed and final rule.

Savings resulting from *deregulatory* actions ensued from the withdrawal of regulations. One example was the nullification of the Fair Pay and Safe Workplaces rule by act of Congress. This rule by the Federal Acquisition Regulation Council was the subject of an Advocacy comment letter in FY 2015. Advocacy argued that the cost of gathering the data required by the rule was so great that it would deter small businesses from participating as prime and subcontractors in federal contracting. The rule was made final at the end of FY 2016 but was rescinded by a resolution under the Congressional Review Act in January 2017. It resulted in savings to small businesses of $260.7 million.

Deregulatory savings also occurred when agencies delayed or withdrew proposed rules with a significant impact on a substantial number of entities. Table 5.1 summarizes the cost savings from 16 regulatory and deregulatory actions at six federal agencies in FY 2017.

Regional Regulatory Reform Roundtable, St. Louis
Advocacy staff gathers after the St. Louis Regional Regulatory Reform Roundtable. Small businesses shared insights into the effects of federal agency regulations. Some have had to lay off employees to keep up with the cost of regulatory compliance.

Descriptions of Small Business Regulatory Cost Savings

Table 5.1 Summary of Small Business Regulatory Cost Savings, FY 2017
(Deregulatory actions in bold)

Agency	Rule	Initial cost savings ($million)	Recurring cost savings ($million)
Department of Agriculture, Food and Nutrition Service	Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)[1]	13.7	
Department of Justice	Americans with Disabilities Act—Accessibility in Movie Theaters[2]	66.0	43.0
Department of Labor	**Fiduciary Rule, Delay of Applicability Date[3]**	74.1	
Environmental Protection Agency	Chlorpyrifos Tolerance Revocation[4]	147.8	147.8
	Steam Electric Plant Effluent Limitation Guidelines, Compliance Date Delay[5]	7.9	
	Greenhouse Gas Emissions from Heavy-Duty Vehicles[6]	12.1	9.9
	Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares[7]	112.0	
	Pesticide Applicators Certification[8]	13.2	13.2
	Pesticide Applicators Certification; Delay of Effective Date[9]	11.4	
	Risk Management Programs under the Clean Air Act; Accidental Release Prevention Requirements[10]	17.8	
	Risk Mgmt Program; Delay of Accidental Release Prevention Requirements[11]	82.3	
	TSCA Formaldehyde Emission Standards for Composite Wood Products[12]	61.0	61.0
	TSCA Formaldehyde Emission Standards, Compliance Date Delay[13]	13.9	
	TSCA Reporting and Recordkeeping Requirements; Nanoscale Materials[14]	6.5	0.7
Federal Acquisition Regulation Council	**Fair Pay and Safe Workplaces; Withdrawal[15]**	260.7	226.6
General Services Administration	Transactional Data Reporting[16]	13.0	13.0
FY 2017 Small Business Regulatory Cost Savings		**913.4**	

Note: Advocacy generally bases its cost savings estimates on agency estimates. Cost savings estimates are derived independently for each rule from the agency's analysis, and accounting methods and analytical assumptions for calculating costs may vary by agency. Cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule as a result of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency. The actions listed in this table include deregulatory actions such as delays, rule withdrawals, and a nullification under the Congressional Review Act. For details, please see descriptions below.

Sources:
1. Final Rulemaking, 81 Fed. Reg. 90675 (Dec. 15, 2017).
2. Final Rulemaking, 81 Fed. Reg. 87348 (Dec. 2, 2016).
3. Final Rulemaking, 82 Fed. Reg. 41365 (Aug. 31, 2017).
4. Final Rulemaking, 82 Fed. Reg. 16581 (Apr. 5, 2017).
5. Final Rulemaking, 82 Fed. Reg. 43494 (Sept. 18, 2017).
6. Final Rulemaking, 81 Fed. Reg. 73478 (Oct. 25, 2016).
7. Draft proposal under OMB review withdrawn Jan. 23, 2017.
8. Final Rulemaking, 82 Fed. Reg. 952 (Jan. 4, 2017).
9. Final Rulemaking, 82 Fed. Reg. 25529 (Jun. 2, 2017).
10. Final Rulemaking, 82 Fed. Reg. 4594 (Jan. 13, 2017).
11. Final Rulemaking, 82 Fed. Reg. 27133 (Jun. 14, 2017).
12. Final Rulemaking, 81 Fed. Reg. 89674 (Dec. 12, 2016).
13. Final Rulemaking, 82 Fed. Reg. 44533 (Sept. 25, 2017).
14. Final Rulemaking, 82 Fed. Reg. 3641 (Jan. 12, 2017).
15. Final Rulemaking, 81 Fed. Reg. 58562 (Aug. 25, 2016).
16. GSA announcement on Aug. 17, 2017.

Department of Agriculture, Food and Nutrition Service

Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)

This rule proposed to increase the requirements of retailers who participate in the Supplemental Nutrition Assistance Program (formerly the Food Stamps Program). As a result of comments submitted by Advocacy and other stakeholders, the agency modified several provisions between the proposed and final rules. In particular, the agency adopted Advocacy's recommendation to decrease the stocking requirements outlined in the NPRM in order to reduce the burden on small entities. Specifically:

- The Food and Nutrition Service made significant changes to the proposed stocking requirements for three categories: dairy; bread and cereals; and meats, poultry, and fish. The changes resulted in estimated savings of $58.89 per affected firm.
- In connection with the stocking changes, the agency also estimated in the final rule that inventory carrying costs would decrease, producing savings of $14.72 per affected firm.

Taken together, these changes result in cost savings of $73.61 per entity. When that savings are multiplied by the number of affected small firms (186,582), **Advocacy estimates that small businesses will save at least $13.7 million in initial compliance costs due to the office's engagement.**

Department of Justice

Americans with Disabilities Act—Accessibility in Movie Theaters

This Department of Justice rule implementing the Americans with Disabilities Act requires movie theaters to screen all movies with closed captioning and audio description. This requires the purchase of hardware and a number of individual accessibility devices. Advocacy submitted a comment letter, citing small theaters' concerns that the agency had required an excessive number of accessibility devices. In the final rule, the agency reduced the number of required devices, reducing the costs for small theaters. **The final rule achieves $23 million in initial cost savings, as well as annual cost savings of $43 million, for a total of $66 million in cost savings for small movie theaters as a result of final rule scoping requirements.**

Department of Labor

Fiduciary Rule, Delay of Applicability Date

In April 2017, the Department of Labor issued an extension of the applicability dates of its new fiduciary requirements. Advocacy raised and engaged on critical issues to reduce the regulatory burden for affected small entities by holding a roundtable and making recommendations for small business considerations in a public comment letter during rule development. **According to agency estimates, delay of the applicability dates saves small entities approximately $74.1 million in compliance costs.**

Chlorpyrifos Tolerance Revocations

On November 6, 2015, pursuant to a court order, EPA proposed to revoke all chlorpyrifos tolerances. (As part of the regulation of pesticide residues on food, EPA sets "tolerances," or the maximum amount of a pesticide allowed to remain in or on a food.) Following a review of public comments, EPA concluded that the science addressing neurodevelopmental effects remains unresolved and that further evaluation of the science is warranted. On April 4, 2017, EPA denied a petition requesting that it revoke all tolerances for chlorpyrifos under section 408(d) of the Federal Food, Drug, and Cosmetic Act and cancel all chlorpyrifos registrations under the Federal Insecticide, Fungicide and Rodenticide Act. Because of unresolved questions regarding the science underlying the pesticide, EPA concluded that it would not complete any tolerance revocation of chlorpyrifos without first attempting to come to a clearer scientific resolution.

Advocacy heard concerns from agricultural representatives throughout the rulemaking process, from the early stages of rule development to the review of the scientific issues after the proposed rule. Advocacy determined that there was a small business impact if the revocation of chlorpyrifos tolerances was finalized, and the office communicated this concern to EPA. **Therefore, as a result of the agency's denial of the petition to revoke chlorpyrifos tolerances, the total annual cost savings for small businesses is up to $147.8 million.**

Effluent Limitations Guidelines for Steam Electric Plants, Delay of Compliance Dates

The Steam Electric Rule published in November 2015 requires coal-fired power plants to implement plant upgrades to reduce water pollution. On April 5, 2017, Advocacy submitted a petition to EPA to reconsider this rule. In a rule effective on September 18, 2017, the EPA agreed to postpone the associated compliance dates for two years. **The estimated cost savings of the EPA's compliance delay for small entity-owned power plants is $7.9 million.**

Greenhouse Gas Emissions from Heavy Duty Vehicles

Under the Clean Air Act, EPA proposed a rule to reduce greenhouse gas emissions associated with the transportation of goods across the United States. The rule changed the engine and vehicle greenhouse gas standards, as well as regulatory standards and certification requirements for previously unregulated new trailers pulled by semi-tractors. The rule requires manufacturers of heavy-duty engines, chassis, vehicles, and trailers to incorporate greenhouse gas-reducing and fuel-saving technologies in those vehicles.

As a result of small business input through a SBREFA panel and from comments submitted by small entities, the final rule achieved regulatory cost savings for small entities by exempting non-box small trailer manufacturers. The rule also achieves cost savings for small box trailer manufacturers by allowing pre-approved devices instead of requiring more costly aerodynamic testing**. The total first-year cost savings for these flexibilities is $12.1 million, and annual cost savings is $9.9 million.**

Pesticide Applicators Certification

EPA finalized its revision to the existing standards for the certification of applicators of restricted-use pesticides on December 12, 2016. The final rule provides several modifications to the proposed rule that will benefit small businesses. These include a five-year recertification requirement instead of every three years as proposed; elimination of the requirement to complete a specific number of training hours in order

to maintain certification; and an exception to its minimum age (18 years old) requirement to allow a minimum age of 16 for a noncertified applicator under the supervision of a private applicator who is an immediate family member. **As a result of the changes adopted to reduce the regulatory burdens, the total cost savings for small businesses is $13.2 million annually ($10.6 million for private applicators, and $2.6 million for commercial).**

Pesticide Applicators Certification; Delay of Effective Date

On June 2, 2017, EPA delayed the effective date of its final rule on the certification of applicators of restricted use pesticides until May 22, 2018. The original effective date for the rule had been March 6, 2017. **As a result of the delay, the total cost savings for small businesses is approximately $11.4 million.**

Reassessment of Use Authorizations for PCBs in Fluorescent Lights in Schools and Daycares

On January 23, 2017, EPA withdrew its proposed rule reassessing the use of authorizations for polychlorinated biphenyls (PCBs) in small capacitors in fluorescent light ballasts in schools and daycares from the Office of Management and Budget's review. Based on the potential regulatory options presented during the SBREFA panel to modify and eventually eliminate the current use authorization for PCBs in fluorescent light ballasts in schools and day cares, **the withdrawal of the proposed rule provides first-year cost savings for small businesses up to $112 million.**

Risk Management Programs under the Clean Air Act; Accidental Release Prevention Requirements

EPA finalized its rule implementing its revised changes to its Risk Management Program (RMP) regulations on January 13, 2017. Among other changes, the final rule reduces and streamlines requirements for provisions related to information sharing with local emergency planning committees and the public, and conducting field and tabletop facility exercises. The most notable change benefiting small businesses is EPA's added flexibilities to its requirement for independent third-party auditors. EPA eliminated several criteria and requirements of individuals who can qualify to perform the required audits for facilities. **As a result of the changes adopted to reduce the regulatory burdens, the total cost savings for small businesses is approximately $17.8 million.**

Risk Management Programs under the Clean Air Act; Delay of Accidental Release Prevention Requirements

On June 14, 2017, EPA delayed the effective date of its Risk Management Program amendments until February 19, 2019, from the original date of March 14, 2017. **As a result of the delay of compliance, the total cost savings for small businesses is approximately $82.3 million.**

TSCA Formaldehyde Emission Standards for Composite Wood Products

EPA finalized its rule implementing the Formaldehyde Standards for Composite Wood Products Act on December 12, 2016. The rule reduces formaldehyde emissions from composite wood products. Among other changes, the final rule includes a *de minimis* exemption, an expanded exemption for certain laminated products, the addition of a petition process to expand the laminated product exemption, elimination of the requirement to hold lots selected for testing until test results are received, reduced recordkeeping for non-laminating fabricators, and lengthening the time period for importers to certify their products from one to two years after final publication of the rule. The most notable small business benefit is the seven-year delay for laminated product producers to comply with testing and certification requirements. **As a result of these regulatory burden reductions, the cost savings for small businesses is $61 million annualized.**

TSCA Formaldehyde Emission Standards for Composite Wood Products; Delay of Compliance Date

On September 25, 2017, EPA delayed the compliance dates for specific provisions of the formaldehyde emission standards for composite wood products final rule by one year. **As a result of the delay, the total cost saving for small businesses is approximately $13.9 million.**

TSCA Reporting and Recordkeeping Requirements; Chemical Substances when Manufactured or Processed as Nanoscale Materials

EPA finalized its rule implementing the recordkeeping and reporting requirement for nanoscale materials on January 12, 2017. Largely due to Advocacy's engagement, 130 additional small manufacturers and processors were exempted from the nanoscale reporting rule requirements. In the final rule, EPA adjusted the threshold to qualify for the small business exemption from $4 million to $11 million, after adjusting for inflation as requested by Advocacy. **As a result of the revised small manufacturer and processor exemption, the total cost savings for small businesses is $6.5 million initially and over $700,000 annually, totaling $7.2 million.**

Federal Acquisition Regulation (FAR) Council

Fair Pay and Safe Workplaces

Advocacy raised and engaged on critical issues to reduce the regulatory burden for small entities from the Federal Acquisition Regulation (FAR) Council's final rule on Fair Pay and Safe Workplaces. As the result of recent litigation and a Congressional Review Act action, the rule and all requirements were completely withdrawn. Previously, Advocacy calculated that it had saved small subcontractors $18.7 million in costs removed from the proposed rule. Now that there are no costs imposed on prime contractors as well, they also realize cost savings from the retraction of this rule. Overall the rule would impose costs of $412 million to all employers annually and a first year cost of $474 million. Small businesses make up 55 percent of contractors affected by this rule. Assuming that small entities face the same costs as large ones, then their cost savings will be 55 percent of the total cost to all employers. Therefore, in addition to the $18.7 million in savings for small subcontractors, there are **$226.6 million in annual cost savings and $260.7 million in initial cost savings as a result of withdrawing this rule**.

Transactional Data

On June 23, 2016, the General Services Administration (GSA) published a final rule to obtain transactional data (TDR) on procurements across several contracting vehicles (including certain federal supply schedules, multiple award schedule, government-wide indefinite-delivery, indefinite-quantity, and government-wide acquisition contracting vehicles). TDR requires vendors to electronically report prices paid for products and services purchased through GSA acquisition vehicles. Advocacy submitted a comment letter on May 4, 2015, outlining its concerns about GSA's supporting economic analysis. Advocacy argued that the new requirements had the potential to increase costs for small businesses as contracting officers can ask for duplicative information. Specifically, Advocacy believed that these cost increases could be greater than any potential cost savings. To address such concerns, GSA authorized the program on an optional voluntary basis across all GSA contracts, as of May 2017. According to GSA almost half of potential participants opted into the program. Advocacy believes that the voluntary implementation will reduce the regulatory burden resulting in cost savings for affected small businesses and allowing GSA an opportunity to find any potential inefficiencies in the implementation of the final rule. **The regulatory cost savings to small businesses is estimated to be $13 million.**

Interagency Working Group on International Trade
Advocacy convened the first Interagency Working Group in May 2017 to evaluate impact of the modernization of the North American Free Trade Agreement on small busiensses. Representatives of six agencies participated: the Departments of Agriculture, Commerce, Homeland Security, and State; the U.S. Trade Representative; and the Small Business Administration.

Small Business Regulatory Success Stories

Four regulatory and deregulatory actions produced small business successes in FY 2017. These are listed in Table 5.2.

Table 5.2 Summary of Small Business Regulatory Success Stories, FY 2017

Agency	Rule
Department of State	International Adoption Regulations[1]
Federal Communications Commission	Protecting the Privacy of Broadband and Telecommunications Customers[2]
	Expanding Consumers' Video Navigation Choices[3]
	Protecting and Promoting the Open Internet; Enhanced Transparency Rules[4]

Sources:
1. 82 Fed. Reg. 16322 (April 2017). https://www.federalregister.gov/documents/2017/04/04/2017-06558/intercountry-adoptions
2. WC Docket No. 16-106. Final rule implementing the Congressional Review Act at https://www.federalregister.gov/documents/2017/09/21/2017-20137/protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services (82 Fed. Reg. 44118, Sep. 21, 2017).
3. MB Docket No. 16-42. Proposed rule at https://www.federalregister.gov/documents/2016/03/16/2016-05763/expanding-consumers-video-navigation-choices-commercial-availability-of-navigation-devices (81 Fed. Reg. 14033, Mar. 16, 2016), withdrawn by FCC.
4. GN Docket No. 14-28. Waiver published March 2017. RIN number: 3060-AK21.

Department of State

International Adoption Regulations

On September 8, 2016, the State Department proposed amendments to existing requirements for adoption agencies that arrange intercountry adoptions. These requirements included country-specific authorizations, disclosures of services and fees, and training for adoptive parents. Advocacy heard from small adoption agencies concerned about the ambiguity of the rule and its potential costs. The State Department estimated a total up front cost of $774,400 for all adoption services providers, but did not break down the costs of the rule for small entities. In a public comment letter, Advocacy recommended that the State Department either re-propose the rule when more information can be provided, or submit a supplemental notice of proposed rulemaking with a proper RFA analysis. On April 4, 2017, the State Department withdrew this regulation. The agency plans to re-issue a new proposed rule in October 2018.

Federal Communications Commission

Protecting the Privacy of Broadband and Other Telecommunications Customers

On June 27, 2016, Advocacy submitted reply comments to the Federal Communications Commission (FCC), asking the agency to further analyze the small business impact of its proposed rules regarding broadband providers' obligations to protect consumer proprietary information (PI). Advocacy conveyed numerous concerns of small broadband providers and their representatives regarding the disproportionate impact

that the proposed regulations would have on their operations. They described heavy compliance burdens and offered a number of suggestions to the FCC that would ease the compliance burden on small broadband providers. Their suggestions included delayed compliance schedules for small entities, small business exemptions from specific provisions, safe harbor provisions, grandfathering of customer consent, and best practices to give small entities more certainty in the compliance process. Ultimately, in 2017 Congress used its authority under the Congressional Review Act to prevent the FCC from adopting this proposal or any substantially similar rules in the future.

Expanding Consumers' Video Navigation Choices

In 2016 the FCC proposed rules that would require multi-channel video programming distributors (MVPDs) to supply certain programming information in formats that conform to specifications set by open standards bodies. These software updates would allow equipment manufacturers to more easily interface with content streams. Small MVPDs (as well as public interest groups and technology companies supporting the rule) indicated to the FCC that the proposed rule would disproportionately affect small MVPDs. These stakeholders also suggested that the FCC could exempt small MVPDs from the regulations, while still achieving its goals under section 629 of the Communications Act. On May 31, 2016, Advocacy submitted an *ex parte* letter to the FCC asking the agency to further analyze the small business impact of its proposed rules, and to adopt flexibility for small entities, including an exemption for small MVPDs. In January 2017, FCC Chairman Ajit Pai withdrew the proposal from circulation among the FCC commissioners.

Protecting and Promoting the Open Internet; Enhanced Transparency Rules

During the public comment period for the 2015 Open Internet Order, many small business stakeholders raised concerns regarding the disproportionate impact that the FCC's proposals would have on small broadband providers. Because of those concerns, the FCC temporarily exempted small broadband providers with 100,000 or fewer broadband connections from certain enhancements of the FCC's existing transparency rules. (These govern the content and format of disclosures that broadband providers are required to make.) The FCC directed its Consumer and Governmental Affairs Bureau to seek comment on questions regarding continued implementation of the exemption, and the FCC published a notice seeking comment on June 22, 2015. Advocacy submitted public comments to the FCC on September 8, 2015. Advocacy encouraged the agency to continue to exempt small broadband providers from the enhanced transparency requirements. In February 2017, the FCC adopted an order permanently exempting small broadband providers from compliance with the enhanced transparency rules.

Appendix A

Text of 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), the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), and the Small Business JOBS Act of 2010 (P.L. 111-240).

Congressional Findings and Declaration of Purpose

(a) The Congress finds and declares that —

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

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

Regulatory Flexibility Act

§ 601 Definitions
§ 602 Regulatory agenda
§ 603 Initial regulatory flexibility analysis
§ 604 Final regulatory flexibility analysis

§ 605 Avoidance of duplicative or unnecessary analyses
§ 606 Effect on other law
§ 607 Preparation of analyses
§ 608 Procedure for waiver or delay of completion
§ 609 Procedures for gathering comments
§ 610 Periodic review of rules
§ 611 Judicial review
§ 612 Reports and intervention rights

§ 601. Definitions

For purposes of this chapter—

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;

(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the *Federal Register*;

(6) the term "small entity" shall have the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information" —

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

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

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

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

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

§ 602. Regulatory agenda

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

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

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

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

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

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

§ 603. Initial regulatory flexibility analysis

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

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

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

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

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

(4) a description of the projected reporting, 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.

(d) (1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

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

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement 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) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) 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;

(5) 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;

(6) 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;

(6)[1] for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(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.

1. *So in original. Two paragraphs (6) were enacted.*

§ 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 advance 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

(1) the Environmental Protection Agency,

(2) the Consumer Financial Protection Bureau of the Federal Reserve System, and

(3) 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 B

Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

Executive Order of August 13, 2002

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:[2]

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

2 67 FR 53461. www.federalregister.gov/documents/2002/08/16/02-21056/proper-consideration-of-small-entities-in-agency-rulemaking

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.

George W. Bush

THE WHITE HOUSE,
August 13, 2002.

Filed 08-15-02; 8:45 am]
[FR Doc. 02-21056

Billing code 3195-01-P

Appendix C

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Executive Order of January 30, 2017

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 *et seq.*), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:[3]

Section 1. *Purpose.* It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. *Regulatory Cap for Fiscal Year 2017.* (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

Sec. 3. *Annual Regulatory Cost Submissions to the Office of Management and Budget.* (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this

3 82 FR 9339. www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs

order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

Sec. 4. *Definition.* For purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Donald J. Trump

THE WHITE HOUSE,
January 30, 2017.

Filed 2-2-17; 11:15 am]
[FR Doc. 2017-02451

Billing code 3295-F7-P

Executive Order 13777: Enforcing the Regulatory Reform Agenda

Executive Order of February 24, 2017

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:[4]

Section 1. *Policy.* It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. *Regulatory Reform Officers.* (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

(i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
(ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
(iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
(iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. *Regulatory Reform Task Forces.* (a) Each agency shall establish a Regulatory Reform Task Force composed of:

(i) the agency RRO;
(ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;
(iii) a representative from the agency's central policy office or equivalent central office; and
(iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

(i) eliminate jobs, or inhibit job creation;
(ii) are outdated, unnecessary, or ineffective;
(iii) impose costs that exceed benefits;
(iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

4 82 FR 12285. www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda

(v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
(vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:
(i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and
(ii) identifying regulations for repeal, replacement, or modification.

Sec. 4. *Accountability.* Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. *Waiver.* Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) the authority granted by law to an executive department or agency, or the head thereof; or
(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Donald J. Trump

THE WHITE HOUSE,
February 24, 2017.

Filed 2-28-17; 11:15 am]
[FR Doc. 2017-04107

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Appendix D

RFA Training, Case Law, and SBREFA Panels

Federal Agencies Trained in RFA Compliance, 2003–2017

Executive Order 13272 directed the Office of Advocacy to provide training to federal agencies in RFA compliance. RFA training began in 2003, and since that time Advocacy has conducted training for 18 cabinet-level departments and agencies, 78 separate component agencies and offices within these departments, 23 independent agencies, and various special groups including congressional staff, business organizations and trade associations. The following agencies have participated in RFA training.

Cabinet Agencies

Department of Agriculture
- Animal and Plant Health Inspection Service
- Agricultural Marketing Service
- Forest Service
- Grain Inspection, Packers, and Stockyards Administration
- Livestock, Poultry, and Seed Program
- National Organic Program
- Rural Utilities Service
- Office of Budget and Program Analysis
- Office of the General Counsel

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

Department of Defense
- Defense Acquisition Regulations System
- Defense Logistics Agency
- Department of the Air Force
- Department of the Army, Training and Doctrine Command
- U.S. Strategic Command

Department of Education
- Office of Elementary and Secondary Education
- Office of Post-Secondary Education
- Office of Special Education and Rehabilitative Services
- Office of the General Counsel

Department of Energy

Department of Health and Human Services
- Center for Disease Control and Prevention
- Center for Medicare and Medicaid Services
- Center for Tobacco Products
- Food and Drug Administration
- Indian Health Service
- Office of Policy
- Office of Regulations

Department of Homeland Security
- Federal Emergency Management Agency
- National Protection and Programs Directorate
- Office of the Chief Procurement Officer
- Office of the General Counsel
- Office of Small and Disadvantaged Business Utilization
- Transportation Security Administration
- U.S. Citizenship and Immigration Service
- U.S. Coast Guard
- U.S. Customs and Border Protection
- U.S. Immigration and Customs Enforcement

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
- Bureau of Ocean Energy Management, Regulation and Enforcement
- Fish and Wildlife 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
- Office of Federal Contract Compliance Programs

Department of State

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
- Pipeline and Hazardous Materials Safety Administration
- Research and Special Programs Administration

Department of the Treasury
- Alcohol, Tobacco, Tax, and Trade Bureau
- Bureau of Fiscal Services
- Financial Crimes Enforcement Network
- Financial Management Service
- Internal Revenue Service
- Office of the Comptroller of the Currency
- Office of the General Counsel
- Surface Transportation Board

Department of Veterans Affairs
- National Cemetery Administration

Office of the Director of National Intelligence

Office of Management and Budget
- Office of Federal Procurement Policy

Small Business Administration
- Office of the General Counsel

Independent Federal Agencies

Access Board
Consumer Financial Protection Bureau
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 Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Reserve System
Federal Trade Commission
General Services Administration / FAR Council
National Aeronautics and Space Administration
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
Nuclear Regulatory Commission
Pension Benefit Guaranty Corporation
Securities and Exchange Commission
Trade and Development Agency

RFA-Related Case Law, FY 2017

Courts across the country have decided various issues regarding the Regulatory Flexibility Act through litigation. This section notes pertinent cases in which the RFA was discussed by the courts. This section does not reflect the Office of Advocacy's opinion of the cases and is intended to provide the reader with information on what the courts have held regarding agency compliance with the RFA in FY 2017.

Free Access & Broadcast Telemedia, LLC v. Federal Communications Commission[1]

Plaintiff Free Access & Broadcast Telemedia, LLC, sought to challenge recent orders concerning procedures for auctioning mobile broadband spectrum issued by the Federal Communications Commission. The court declined to consider several of the claims made by the plaintiff, including a claim that the FCC failed to adequately consider the impact of a Channel-Sharing Order on small businesses and therefore was in violation of the RFA. The court, relying on its 2016 decision in **U.S. Telecom Association v. FCC**,[2] held that it did not have jurisdiction to rule on this particular argument. The court restated its previously held opinion that in order for an RFA challenge to an FCC order to be judicially reviewable, the plaintiff must first file a petition for reconsideration under the Communications Act. Here plaintiffs had not done so, and therefore the court dismissed the RFA claims.

Alfa International Seafood v. Ross[3]

In another case, **Alfa International Seafood v. Ross**, plaintiffs challenged a rule promulgated by the Department of Commerce National Marine Fisheries Service (NMFS) under the Magnuson-Stevens Fishery Conservation and Management Act. The Seafood Import Monitoring Program established by the Commerce rule attempts to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud. Plaintiffs made several arguments challenging the statutory authority, procedural propriety, and substantive quality of the rule as promulgated by Commerce, but ultimately the court upheld the rule.

Here, plaintiffs made two arguments regarding the agency's FRFA in an attempt to show the Seafood Import Monitoring Program did not comply with the RFA. The court reviewed the adequacy of the FRFA under the "arbitrary and capricious" standard of the Administrative Procedure Act. The court further noted the RFA is a purely procedural statute and stated that an agency need only make a "good faith" effort in its application of the statute. First, plaintiffs argued that NMFS did not adequately consider significant costs associated with the rule. The court ultimately disagreed and found that because the court determined that the agency's compliance cost estimates involved a reasoned analysis under the APA, so too did those same compliance cost estimates comply with the RFA. Second, the plaintiffs argued that NMFS failed to consider a fourth alternative to the rule regarding developing new or modifying existing technologies for identification and tracking purposes. The court held this argument did not hold water. The court first explained that the RFA requires only "significant" alternatives be explored when considering the impacts on small business. The court emphasized that the use of the statutory language of "significant" does not require the consideration of *all* alternatives in order to comply with the RFA. Thus the court found that NMFS made a good faith effort in its analysis of the significant alternatives under the rule, and thus the rule complied with the requirements of the RFA.

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1 Free Access & Broad. Telemedia, LLC v. FCC, 865 F.3d 615 (D.C. Cir. 2017).

2 U.S. Telecom Ass'n v. FCC, 825, F.3d 674, 701 (D.C. Cir. 2016).

3 Alfa Int'l Seafood v. Ross, No. 1:17-cv-00031, 2017 U.S. Dist. LESIX 137714 (D.D.C. Aug. 28, 2017).

Nicopure Labs, LLC v. Food and Drug Administration[4]

Similarly, in **Nicopure Labs, LLC v. Food and Drug Administration**, the court upheld an RFA challenge to the FDA's Deeming Rule which categorizes ecigarettes as subject to the FDA's regulatory authority granted in the Tobacco Control Act. Plaintiffs in the case pursued an argument that the agency failed to adequately consider costs and significant alternatives. The court reiterated past precedent that the RFA is a procedural statute. The court stated the record showed the FDA had made a good faith effort to consider the cost to small businesses and had considered alternatives. Therefore, the court upheld the Deeming Rule.

Montgomery County, Maryland v. Federal Communications Commission[5]

In another case, **Montgomery County, Maryland v. Federal Communications Commission**, the court again considered the standard of review for RFA analysis in a case involving two FCC orders. This time the orders concerned a rule addressing fee collection from cable franchising authorities on cable franchise applicants. Several local governments and franchising authorities brought suit. Several arguments as to the propriety of the rule were made, including whether the rule complied with the RFA. The plaintiffs argued that a supplemental FRFA—replacing one particular order's prior analysis that the FCC had conceded was inadequate—failed to meet the procedural requirements of the RFA. The court held that when it reviews the agency's FRFA it reviews it under the "arbitrary and capricious standard" only to ensure that the agency made a "reasonable, good faith effort" to comply with the requirements of the RFA. Here, because the FCC explained that, in its view, the rules at issue in this case would not impose a significant impact on any small entity the court concluded that the agency's analysis of the relevant orders' effects upon small entities was procedurally adequate.

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4 *Nicopure Labs, LLC v. FDA, No. 16-0878, 2017 U.S. Dist. LEXIS 113583 (D.D.C . July 21, 2017).*

5 *Montgomery Cty. V. FCC, 863 F.3d 485 (6th Cir. 2017).*

SBREFA Panels Convened Through FY 2017

Table D.1 SBREFA Panels Convened through FY 2017

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Environmental Protection Agency				
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
Industrial Laundries Effluent Guidelines	06/06/97	08/08/97	12/17/97	Withdrawn 08/18/99
Stormwater Phase II	06/19/97	08/07/97	01/09/98	12/08/99
Transportation Equipment Cleaning Effluent Guidelines	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 (UIC) 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 Action Plan for Regional Nitrogen Oxide 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
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
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gas	08/27/98	10/26/98	05/13/99	02/10/00
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	04/22/08
Metals Products and Machinery	12/09/99	03/03/00	01/03/01	05/13/03
Concentrated Animal Feedlots	12/16/99	04/07/00	01/12/01	02/12/03
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Stage 2 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

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking. CRA = Congressional Review Act

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Construction and Development Effluent Limitations Guidelines	07/16/01	10/12/01	06/24/02	Withdrawn 04/26/04
Nonroad Large Spark Ignition Engines, Recreation Land Engines, Recreation Marine Gas Tanks and Highway Motorcycles	05/03/01	07/17/01	10/05/01 08/14/02	11/08/02
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 Engines – Tier IV	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 Interstate Rule)	04/27/05	06/27/05	08/24/05	04/28/06
Federal Action Plan for Regional Nitrogen Oxide/Sulfur Dioxide (2005 Clean Air Interstate Rule)	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
Non-Road Spark-Ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Total Coliform Monitoring	01/31/08	01/31/08	07/14/10	
Renewable Fuel Standards 2	07/09/08	09/05/08	05/26/09	03/26/10
Pesticides; Agricultural Worker Protection Standard Revisions	09/04/08	11/03/08	03/19/14	09/28/15
Pesticides; Certification of Pesticide Applicators (Revisions)	09/04/08	11/03/08	08/24/15	01/04/17
National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers: Major and Area Sources	01/22/09	03/23/09	06/04/10	03/21/11
Pesticides; Reconsideration of Exemptions for Insect Repellents	11/16/09	01/15/10		
Revision of New Source Performance Standards for New Residential Wood Heaters	08/04/10	10/26/11	02/03/14	03/16/15
National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units	10/27/10	03/02/11	05/03/11	02/16/12
Stormwater Regulations Revision to Address Discharges from Developed Sites	12/06/10	10/04/11	-	Withdrawn 07/06/17
Formaldehyde Emissions from Pressed Wood Products	02/03/11	04/04/11	06/10/13	07/27/16

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking. CRA = Congressional Review Act

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
National Emission Standards for Hazardous Air Pollutants (NESHAP) Risk and Technology Review (RTR) for the Mineral Wool and Wool Fiberglass Industries	06/02/11	10/26/11	11/12/11	07/29/15
Greenhouse Gas Emissions from Electric Utility Steam Generating Units	06/09/11	Proposed rule published without completion of the SBREFA panel report.	04/14/13	04/13/12 01/08/14 06/02/14
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	08/04/11	10/14/11	05/21/13	04/28/14
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards	08/04/11	Proposed rule published without completion of the SBREFA panel report.	06/30/14	12/01/15
Long Term Revisions to the Lead and Copper Rule	08/14/12	08/16/13	-	-
National Emissions Standards for Hazardous Air Pollutants (NESHAP): Brick and Structural Clay Products and Clay Products	06/12/13	01/16/14	12/18/14	10/26/15
Review of New Source Performance Standards and Amendments to Emission Guidelines for Municipal Solid Waste Landfills	12/05/13	07/21/15	07/17/14 08/27/15	08/29/16
PCB (Polychlorinated Biphenyls) Use Authorizations Update Rule	02/07/14	04/07/14		
Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Vehicles	10/22/14	01/15/15	07/13/15	10/25/2016
Federal Plan for Regulating Greenhouse Gas Emissions from Electric Generating Units	04/30/15	07/28/15	10/23/15	Withdrawn 04/03/17
Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector	06/16/15	08/13/15	09/18/15	06/3/16
Risk Management Program Modernization	11/04/15	02/19/16	03/14/16	01/13/17
Regulation of N-Methylpyrrolidone and Methylene Chloride in Paint and Coating Removal under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Regulation of Trichloroethylene for Vapor Degreasers under Section 6(a) of the Toxic Substances Control Act	06/01/16	09/26/16	01/19/17	
Financial Responsibility Requirements for Hard Rock Mining	08/24/16	12/01/16		Withdrawn December 2017

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking. CRA = Congressional Review Act

Rule	Date Convened	Date Completed	NPRM	Final Rule Published
Occupational Safety and Health Administration				
Tuberculosis	09/10/96	11/12/96	10/17/97	Withdrawn 12/31/03
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
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	04/11/14
Occupational Exposure to Crystalline Silica	10/20/03	12/19/03	09/12/13	03/25/16
Occupational Exposure to Hexavalent Chromium	01/30/04	04/20/04	10/04/04	02/28/06
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	08/09/10
Occupational Exposure to Beryllium	09/17/07	01/15/08	08/07/15	
Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	05/05/09	07/02/09		
Occupational Exposure to Infectious Diseases in Healthcare and Other Related Work Settings	10/14/14	12/22/14		
Process Safety Management Standard	06/02/16	08/01/16		
Consumer Financial Protection Bureau				
Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	02/21/12	04/23/12	08/23/12	12/31/13
Mortgage Servicing under the Real Estate Settlement Procedures Act (RESPA or Regulation X) and Truth in Lending Act (TILA or Regulation Z)	04/09/12	06/11/12	09/17/12	02/14/13
Loan Originator Compensation Requirements under Regulation Z	05/09/12	07/12/12	09/07/12	02/15/13
Home Mortgage Disclosure Act	02/27/14	04/24/14	08/29/14	10/15/15
Limit Certain Practices for Payday, Vehicle Title, and Similar Loans	04/27/15	06/25/15	07/22/16	11/17/17
Arbitration Clauses	10/20/15	12/11/15	05/24/16	07/19/17. Repealed under CRA 10/24/17
Debt Collection	08/25/16	10/19/16		

See Appendix F for abbreviations. NPRM = notice of proposed rulemaking. CRA = Congressional Review Act

Appendix E

History of the Regulatory Flexibility Act

Shortly after the Office of Advocacy was founded in 1976, the first White House Conference on Small Business engaged small business representatives from across the United States in national brainstorming sessions. One recurring concern was the difficulty that "one-size-fits-all" regulations created for small businesses trying to compete in U.S. markets. President Jimmy Carter, a one-time small business owner himself, understood the necessity for greater protections for small businesses in the regulatory process and helped facilitate administrative and legislative changes. In 1979, President Carter issued a memorandum to the heads of all executive agencies, instructing them to "make sure that federal regulations [would] not place unnecessary burdens on small businesses and organizations," and more specifically, to apply regulations "in a flexible manner, taking into account the size and nature of the regulated businesses."[1] He asked Advocacy to ensure that the agencies' implementation would be consistent with government-wide regulatory reform.

In 1980, Congress enacted the Regulatory Flexibility Act (RFA), which elevated aspects of this memorandum to the level of federal statute.[2] The new law mandated that agencies consider the impact of their regulatory proposals on small businesses, analyze proposed regulations for equally effective alternatives, and make their analyses of equally effective alternatives available for public comment. This new approach to federal rulemaking was viewed as a remedy for the disproportionate burden placed on small businesses by one-size-fits-all regulation, "without undermining the goals of our social and economic programs."[3]

RFA Requirements

Under the RFA, when an agency proposes a rule that would have a "significant economic impact on a substantial number of small entities," the rule must be accompanied by an impact analysis (an initial regulatory flexibility analysis or IRFA) when it is published for public comment.[4] Following that, should the agency publish a final rule, that agency must publish a final regulatory flexibility analysis (FRFA) as well.[5] If a federal agency determines that a proposed rule would not have a "significant economic impact on a substantial number of small entities," the head of that agency may "certify" the rule and bypass the IRFA and FRFA requirements.[6]

During a November 2015 interview, Frank Swain, chief counsel for advocacy from 1981 to 1989, noted that "The RFA is the only regulatory reform that is statutorily required. Most of the regulatory reforms are largely executive orders." Executive orders frequently expire at the end of a president's term. "The RFA, because of its statutory basis, is going to be around indefinitely," Swain said. As such, the RFA continues to be an important check on burdensome regulation in an era where regulatory reform is an Administration priority.

Interpreting and Strengthening the RFA

During the first half of the 1980s, the federal courts were influential in developing the RFA's role in the regulatory process. One question that required the courts' intervention was whether a federal agency had to consider a proposed rule's indirect effects on small

1. *Jimmy Carter, Regulation of Small Businesses and Organizations Memorandum from the President, (Nov. 16, 1979), www.presidency.ucsb.edu/ws/?pid=31709.*

2. *5 U.S.C. § 601 et seq.*

3. *Carter,* supra *note 1.*

4. *5 U.S.C. § 603.*

5. *5 U.S.C. § 604.*

6. *5 U.S.C. § 605(b).*

businesses, in addition to its direct effects. In *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC)*, the D.C. Circuit found that "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy."[7] This interpretation—that federal agencies must only consider the direct effects on small businesses within the jurisdiction of the rule—has continued to be the judicial interpretation of the RFA, even after subsequent amendments.[8]

The following year, in the run-up to the second White House Conference on Small Business in 1986, conference planners noted that "the effectiveness of the RFA largely depends on small business' awareness of proposed regulations and [their] ability to effectively voice [their] concerns to regulatory agencies."[9] They also voiced concern that at the time "the courts' ability to review agency compliance with the law is limited." Eight years later, the Government Accounting Office reported that agency compliance with the RFA varied widely across the federal government, a condition that likely impaired efforts to address the disproportionate effect of federal regulation on small business.

Advocacy was statutorily required to report annually on federal agency compliance, but given that compliance with the RFA was not itself reviewable by the courts at the time, the effectiveness of such reporting was limited. The RFA did allow the chief counsel for advocacy to appear as *amicus curiae* (friend of the court) in any action to review a rule, expanding the chief counsel's role in representing small business interests in policy development. However, given that Courts did not review compliance with the RFA, any challenge to regulation would need to be primarily under the Administrative Procedure Act.

After the third White House Conference on Small Business in 1995 renewed the call for strengthening the RFA, Congress and President Bill Clinton did so by enacting the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). SBREFA provided new checks on federal agency compliance with the RFA's requirements, as well as additional procedures specifically addressing small business concerns regarding environmental and occupational safety and health regulations. The SBREFA amendments also made a federal agency's compliance with certain sections of the RFA judicially reviewable, allowing challenges to regulations based on the agency's failure to supply a FRFA or sufficient reason for certification.

After amending the RFA to allow for judicial review of agency compliance, the courts again provided guidance regarding the RFA's requirements for federal agencies. In *Southern Offshore Fishing Associations v. Daley*, the court held that the National Marine Fisheries Service failed to make a "reasonable, good-faith effort" to inform the public about the potential impacts of a proposed rule imposing fishing quotas and to consider less harmful alternatives.[10] The agency had published a FRFA with its final rule, but had not published an IRFA when the rule was proposed. The court's holding established that an IRFA must precede a FRFA for an agency to have "undertak[en] a rational consideration of the economic effects and potential [regulatory] alternatives."[11]

SBREFA Panels

The SBREFA amendments also required the Environmental Protection Agency and the Occupational Safety and Health Administration to convene small business advocacy review panels whenever the agency proposes a rule that may have a significant impact on a substantial number of small entities. These panels consist of officials from the promulgating agency, the Office of Information and Regulatory Affairs, and the Office of Advocacy. Their task is to consult with small business representatives on the agency's regulatory proposals to ensure that the agency has identified and considered regulatory alternatives that could attain the policy

7. Mid-Tex Elec. Coop. v. FERC, *773 F.2d 327, 341 (D.C. Cir. 1985).*

8. *See* American Trucking Ass'ns v. EPA, *175 F.3d 1027 (D.C. Cir. 1999).*

9. The Small Business Advocate *newsletter, U.S. Small Business Administration, Office of Advocacy, September 2005.*

10. Southern Offshore Fishing Ass'ns v. Daley, *995 F.Supp 1411, 1437 (M.D. Fla. 1998).*

11. Id.

objectives while minimizing the impacts on small businesses. After each collaborative panel has concluded, the panel issues a report of its findings and any recommendations for providing flexibility for small entities.

The innovation of SBREFA panels has allowed for greater consideration of small business alternatives for federal rules. Jere W. Glover, chief counsel for advocacy during the passage of SBREFA, made two key observations about the rulemaking process. First, "If you get to the agency early in the process, they are more likely to change their mind." And second, the mission of these efforts is to "make the regulation work for the industry," not to "kill the regulation." Glover's perspective comes not only from his tenure as chief counsel from 1994 to 2001; he was also present at the creation of the RFA as deputy to Milton Stewart, the first chief counsel for advocacy.

Executive Order 13272

As the President George W. Bush's administration began to consider small business priorities, improved RFA compliance was one key goal. To this end, President Bush issued Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" in 2002.[12] This order tasked Advocacy with training federal agencies and other stakeholders on the RFA. The training sessions helped apprise agencies of their responsibilities under the RFA and educated agency officials on the best RFA compliance practices. In addition, E.O. 13272 required Advocacy to track agency compliance with these education requirements and report on them annually to the White House Office of Management and Budget.

E.O. 13272 also instituted new procedures to help facilitate a collaborative relationship between agencies and the Office of Advocacy. First, it required agencies to notify Advocacy of any draft proposed rule that would impose a significant impact on a substantial number of small entities. Second, it required agencies to provide a response in the *Federal Register* to any written comment on the proposed rule from the Office of Advocacy when the final rule was published.

Thomas M. Sullivan, chief counsel for advocacy during the Bush administration, discussed E.O. 13272's pivotal role in furthering RFA compliance. He noted that, because of the executive order, "Advocacy became a part of the fabric of federal rulemaking." The aspect most responsible for this evolution in Sullivan's view was federal agency training. "Training really helped accomplish this," he said. "The goal is to create regulations that meet the regulatory purpose and are sensitive to small business requirements." Sullivan added that "The biggest misperception is how hard it is to work with an agency for a win-win solution as opposed to just being critical of regulation."

Eight years and one presidential administration later, Congress and President Barack Obama enacted the Small Business Jobs Act of 2010,[13] which codified some of the procedures introduced in E.O. 13272. That same year, the Dodd-Frank Wall Street Reform and Consumer Protection Act became law.[14] The new law created the Consumer Financial Protection Bureau and required that the new agency's major rules come under the SBREFA panel provisions of the RFA.

The Obama administration looked to Advocacy for ways of encouraging economic activity. Again, the RFA was an important part of the answer. Executive Order 13563, "Improving Regulation and Regulatory Review,"[15] signed in 2011, directed agencies to heighten public participation in rulemaking, consider overlapping regulatory requirements and flexible approaches, and conduct ongoing regulatory review. President Obama concurrently issued a memorandum to all federal agencies, reminding them of the importance of the RFA and of reducing the regulatory burden on small businesses through regulatory flexibility. In this memorandum, President Obama directed agencies to in-

12. E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," www.gpo.gov/fdsys/pkg/FR-2002-08-16/pdf/02-21056.pdf, (Aug. 13, 2002).

13. Small Business Jobs Act, Pub. L. 111–240 (2010).

14. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).

15. E.O. 13563, "Improving Regulation and Regulatory Review," www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf (Jan. 18, 2011).

crease transparency by providing written explanations of any decision not to adopt flexible approaches in their regulations. The following year, President Obama further attempted to reduce regulatory burdens with Executive Order 13610, "Identifying and Reducing Regulatory Burdens,"[16] which placed greater focus on initiatives aimed at reducing unnecessary regulatory burdens, simplifying regulations, and harmonizing regulatory requirements imposed on small businesses.

Executive Orders 13563 and 13610 bolstered the retrospective review requirements of the RFA by requiring all executive agencies to conduct periodic retrospective review of existing rules. President Obama also issued an administrative action, Executive Order 13579, which recommended that all independent agencies do the same.[17] This emphasis on the principles of regulatory review and the sensitivity to small business concerns in the federal rulemaking process further increased federal agency compliance.

Dr. Winslow Sargeant, chief counsel for advocacy from 2010 to 2015, stressed that these executive orders sought to "make federal regulation more clear, predictable, and transparent." Sargeant identified two key areas, "retrospective review of existing regulation and deregulation when rules are no longer needed," as important future challenges for regulatory improvement.

New Horizons: Small Business and International Trade

With the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, Advocacy's duties to small business expanded beyond our borders. Under the Act, the chief counsel for advocacy must convene an interagency working group whenever the president notifies Congress that the administration intends to enter into trade negotiations with another country. The working group conducts small business outreach in manufacturing, services, and agriculture sectors and gather input on the trade agreement's potential economic effects. Informed by these efforts, the working group is charged with identifying the most important priorities, opportunities, and challenges affecting these industry sectors in a report to Congress.

With the inauguration of President Donald J. Trump in January 2017, the regulatory process would see its most dramatic reform yet. Shortly after the beginning of his administration, President Trump issued two executive orders aimed at substantially ameliorating the regulatory burden faced by the private sector. The first, E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," commonly known as "one-in, two-out," required that any new regulations be balanced by the reduction of at least two other regulations—and that the incremental cost of new regulations be entirely offset by elimination of existing costs of other regulations. The second, E.O. 13777, "Enforcing the Regulatory Reform Agenda," set a framework for implementing this vision of regulatory reform, requiring *inter alia* each agency appoint a Regulatory Reform Officer to supervise the process of regulatory reform going forward. These measures are another opportunity for small business regulatory reform, and the challenge to Advocacy going forward is to match both the letter and spirit of these measures with vigor. Agency implementation of these executive orders offers significant opportunities for regulatory relief targeted to small businesses. FY 2017 offers the first instance of how the RFA functions in a deregulatory environment.

Since its passage in 1980, the RFA has demonstrated remarkable staying power. It has helped establish small business consideration as a necessary part of federal rulemaking.

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16. E.O. 13610, "Identifying and Reducing Regulatory Burdens," www.whitehouse.gov/sites/default/files/docs/microsites/omb/eo_13610_identifying_and_reducing_regulatory_burdens.pdf (May 10, 2012).

17. E.O. 13579, "Regulation and Independent Regulatory Agencies," www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf (July 11, 2011).

Appendix F

Abbreviations

RFA	Regulatory Flexibility Act
SBREFA	Small Business Regulatory Enforcement Fairness Act
SBAR	small business advocacy review
IRFA	initial regulatory flexibility analysis
FRFA	final regulatory flexibility analysis
ATR	ability-to-repay requirements
ATR/QM	ability-to-repay/qualified mortgage
BDS	business data service
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
CFPB	Consumer Financial Protection Bureau
CORPS	Army Corps of Engineers
CPSC	Consumer Product Safety Commission
CRA	Congressional Review Act
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
E.O.	executive order
ELG	effluent limitations guideline
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation Council
FCC	Federal Communications Commission
FDA	Food and Drug Administration
Fed. Reg.	Federal Register
FLSA	Fair Labor Standards Act
FRFA	final regulatory flexibility analysis
FY	fiscal year
GSA	General Services Administration
IRFA	initial regulatory flexibility analysis
IRS	Internal Revenue Service
JOBS Act	Jumpstart Our Business Startups
MVPD	multi-channel video programming distributor
MSHA	Mine Safety and Health Administration
NESHAP	national emission standards for hazardous air pollutants
NMFS	National Marine Fisheries Service
NPRM	notice of proposed rulemaking
NMP	N-methylpyrrolidone
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PCB	polychlorinated biphenyls
PEL	permissible exposure limit
PI	proprietary information
RESPA	Real Estate Settlement Procedures Act
RFA	Regulatory Flexibility Act
RMP	risk management program
SBA	Small Business Administration
SBAR	small business advocacy review
SBREFA	Small Business Regulatory Enforcement Fairness Act
SER	small entity representative
SNAP	Supplemental Nutrition Assistance Program
STEL	short-term exposure limit
TCE	trichloroethylene
TDR	transactional data reporting
TILA	Truth in Lending Act
TSCA	Toxic Substances Control Act
U.S.C.	United States Code
USCIS	U.S. Citizenship and Immigration Services