In 1980, Congress enacted the RFA after finding that Federal regulations imposed disproportionate economic hardship on small entities. The RFA required agencies to consider ways to reduce regulatory burdens on small entities. This laudable goal was accomplished by requiring Federal agencies to consider the potential economic impact of federal regulations on small entities and to examine regulatory alternatives that achieve the agencies' public policy goals while minimizing small entity impacts. Avoiding its purposes by improperly certifying rules as not requiring a regulatory flexibility analysis, claiming the rules did not have a significant economic impact on a substantial number of small entities.

In 1996, Congress amended the RFA with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Importantly, SBREFA established the right of small businesses to seek judicial review for Federal agencies' failure to comply with the RFA. Federal government to compliance with the RFA with E.O. 13272 signed on August 13, 2002.

E.O. 13272 requires agencies to implement policies protecting small entities when writing new rules and regulations. In addition, E.O. 13272 instructs agencies and Advocacy to work closely together as early as possible in the regulation writing process to address disproportionate impacts on small entities and reduce their regulatory burden. E.O. 13272 directs agencies to consider the Office of Advocacy's written comments on rules and compelling them to publish a response in the Federal Register.

Executive Order 13272 also requires the Office of Advocacy to provide training to agencies on compliance with the RFA. RFA requires regulatory agencies to estimate the impacts of
proposed rules on small entities
the RFA asks agencies to be aware of the economic structure of the entities they regulate and
the effect their regulations may have on small entities. To this end, the RFA requires agencies to
analyze the economic impact of proposed regulations when there is likely to be a significant
economic impact on a substantial number of small entities, and to consider regulatory
alternatives that will achieve the agency's goal while minimizing the burden on small entities.
The concept underlying this analytical requirement is that agencies will revise their decision-
making processes to take account of small entity concerns in the same manner that agency
decision-making processes were modified subsequent to the enactment of the National
Environmental Policy Act (NEPA). The RFA then acts as a statutorily mandated analytical tool
to further assist agencies in meeting the rational rulemaking standard set forth in the APA
through a regulatory flexibility analyses, just as NEPA was intended to rationalize decisions
concerning major federal actions that would affect the environment through the required
environmental impact statement.
It was the designed purpose of the RFA over twenty years Ago to help government base
decisions on a full and open understanding of how regulations will affect small business. The
Office of Advocacy stands ready to assist the Subcommittee and Assistant Secretary Manson to
achieve these goals.
Shortcomings in the Service's past RFA agencies compliance, namely, (1) the Agency failure to
conduct meaningful outreach to potentially affected small farmers and ranchers and
incorporating this outreach into its actions prior to proposing rules, and (2) the Service's recent
imposition of critical habitat requirements on small farmers and ranchers without affording
them the right to participate in the rulemaking process as provided by law. The certify under the
RFA's Section 605(b) needs to be updated. So the agencies publish an IRFA or FRFA even if
the rule would not have "a significant economic impact on a substantial number of small
entities., And explain the findings. President Bush delivered on his commitment to small
business when he signed his Executive Order requiring agencies to incorporate small business
concerns into rules. Unfortunately, small businesses have expressed the concern that the
extensive amount of litigation over critical habitat designations has discouraged the Service
from conducting small business outreach, therefore, the litigation regulation needs to be
changed so that it does not benefit the environmental activists. the agency should seek input
from the small business community during initial policy discussions, just as other Federal
agencies do. Most importantly, this input must be taken into account when the Agency develops
rules that impact small businesses.
Development of public resources, selling timber, mining, farming, fishing, oil and gas, is a win
for all Americans.