



FACT SHEET

**WHAT SMALL ENTITIES
SHOULD KNOW ABOUT
REGULATORY FLEXIBILITY
ACT AND THE SMALL
BUSINESS REGULATORY
ENFORCEMENT FAIRNESS
ACT**

Why should I be interested in RFA/SBREFA?

EPA has an ongoing commitment to minimize the burden of our regulations on small entities to the extent we can while still meeting our statutory requirements. The Regulatory Flexibility Act (RFA), as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA), provides small entities with an expanded opportunity to participate in the development of certain regulations.

What is SBREFA?

SBREFA was signed into law on March 29, 1996, and contains five distinct sections:

- **Subtitle A—Regulatory Compliance Simplification:** Among other things, requires the agency to publish Small Entity Compliance Guides that are written in plain language and explain the actions a small entity must take to comply with a rule or group of rules.
- **Subtitle B—Regulatory Enforcement Reforms:** Requires agencies to support the rights of small entities in enforcement actions, specifically providing for the reduction, and in certain cases, the waiver of civil penalties for violations by small entities.
- **Subtitle C—Equal Access to Justice:** Provides small businesses with expanded authority to go to court to be awarded attorneys' fees and costs when an agency has been found to be excessive in enforcement of federal regulations.
- **Subtitle D—Regulatory Flexibility Act Amendments:** Provides small entities with expanded opportunities to participate in the development of certain regulations.
- **Subtitle E—Congressional Review of Agency Rulemaking:** Agencies generally must provide Congress and the General Accounting Office with copies of all final rules and supporting analyses. Congress may decide not to allow a rule to take effect.

How does SBREFA affect EPA rulemaking?

SBREFA established certain formal procedural and analytical requirements (outlined below) for rules with the potential to impose a significant economic impact on a substantial number of small entities. But EPA also considers the concerns of small entities in the more frequent cases where impacts on small entities are more modest, even though SBREFA doesn't require it.

What does RFA/SBREFA require for proposed rules?

Initial Regulatory Flexibility Analysis. Generally, the RFA requires EPA to prepare an Initial Regulatory Flexibility Analysis (IRFA) for each proposed rule unless the rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the type and number of small entities potentially subject to the rule, recordkeeping and compliance requirements, and significant regulatory alternatives, among other things.

What does RFA/ SBREFA require for final rules?

Small Business Advocacy Review Panel. When an IRFA is required, EPA must also convene a Small Business Advocacy Review Panel before proposing a rule. EPA's Small Business Advocacy Chair convenes each Panel, which includes representatives from the Small Business Administration, the Office of Management and Budget, and EPA. A Panel conducts its own outreach to Small Entity Representatives likely to be subject to the rule and prepares a report to the Administrator of EPA on ways to reduce the potential impact of the rule on small entities. Each Panel's report becomes part of the rulemaking record for the proposed rule.

Final Regulatory Flexibility Analysis. When EPA issues a rule that may have a significant economic impact on a substantial number of small entities, we must prepare a Final Regulatory Flexibility Analysis (FRFA). The elements of a FRFA are similar to those of an IRFA, outlined above. In addition, each FRFA must summarize the significant issues raised by public comments on the IRFA, assess these issues, and describe any changes made in response to the comments.

Small Entity Compliance Guide. When a FRFA is required, EPA must also publish Small Entity Compliance Guides that are written in plain language and explains the actions a small entity must take to comply with a rule or group of rules.

What is the progress to date?

- EPA has completed 30 SBAR Panels in cooperation with SBA and OMB. In each case, the Panel recommended changes to the rule that would reduce impacts on small entities.
- EPA maintains a website dedicated to RFA/SBREFA issues: www.epa.gov/sbrefa. The primary purpose of the site is to provide public access to information and documents produced for, or directly related to, the Agency's implementation of SBREFA.
- Small Entity Compliance Guides are available on the RFA/SBREFA website.
- In March 1998, EPA delivered to Congress reports on SBREFA Section 223 - Penalty Reduction Program for Small Entities and SBREFA Section 213 - Informal Guidance Program. These reports are also available from the SBAC staff or from the RFA/SBREFA website.
- To date, EPA has submitted approximately 5,400 documents to Congress under the Congressional Review Act.

Where can I get more information?

Several EPA documents are available that can provide more information on the RFA/SBREFA, the Agency's small entity compliance assistance efforts and the elements of a regulatory flexibility analysis. These documents and further assistance with any RFA/SBREFA questions are available from the SBAC, SBAC Staff, or from the RFA/SBREFA website, listed below.

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RFA/SBREFA Website

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