

1 **“§ 611. Judicial review**

2 “(a)(1) Except as provided in paragraph (2), not
3 later than 1 year after the effective date of a final rule
4 with respect to which an agency—

5 “(A) certified, pursuant to section 605(b) of
6 this title, that such rule would not have a significant
7 economic impact on a substantial number of small
8 entities; or

9 “(B) prepared final regulatory flexibility analy-
10 sis pursuant to section 604 of this title,

11 an affected small entity may petition for the judicial re-
12 view of such certification or analysis in accordance with
13 the terms of this subsection. A court having jurisdiction
14 to review such rule for compliance with the provisions of
15 section 553 of this title or under any other provision of
16 law shall have jurisdiction to review such certification or
17 analysis.

18 “(2)(A) Except as provided in subparagraph (B), in
19 the case where a provision of law requires that an action
20 challenging a final agency regulation be commenced before
21 the expiration of the 1-year period provided in paragraph
22 (1), such lesser period shall apply to a petition for the
23 judicial review under this subsection.

24 “(B) In the case where an agency delays the issuance
25 of a final regulatory flexibility analysis pursuant to section

1 608(b) of this title, a petition for judicial review under
2 this subsection shall be filed not later than—

3 “(i) 1-year; or

4 “(ii) in the case where a provision of law re-
5 quires that an action challenging a final agency reg-
6 ulation be commenced before the expiration of the 1-
7 year period provided in paragraph (1), the number
8 of days specified in such provision of law,
9 after the date the analysis is made available to the public.

10 “(3) For purposes of this subsection, the term ‘af-
11 fected small entity’ means a small entity that is or will
12 be adversely affected by the final rule.

13 “(4) Nothing in this subsection shall be construed to
14 affect the authority of any court to stay the effective date
15 of any rule or provision thereof under any other provision
16 of law.

17 “(5)(A) In the case where the agency certified that
18 such rule would not have a significant economic impact
19 on a substantial number of small entities, the court may
20 order the agency to prepare a final regulatory flexibility
21 analysis pursuant to section 604 of this title if the court
22 determines, on the basis of the rulemaking record, that
23 the certification was arbitrary, capricious, an abuse of dis-
24 cretion, or otherwise not in accordance with law.

1 “(B) In the case where the agency prepared a final
2 regulatory flexibility analysis, the court may order the
3 agency to take corrective action consistent with the re-
4 quirements of section 604 of this title if the court deter-
5 mines, on the basis of the rulemaking record, that the final
6 regulatory flexibility analysis was prepared by the agency
7 without observance of procedure required by section 604
8 of this title.

9 “(6) If, by the end of the 90-day period beginning
10 on the date of the order of the court pursuant to para-
11 graph (5) (or such longer period as the court may pro-
12 vide), the agency fails, as appropriate—

13 “(A) to prepare the analysis required by section
14 604 of this title; or

15 “(B) to take corrective action consistent with
16 the requirements of section 604 of this title,
17 the court may stay the rule or grant such other relief as
18 it deems appropriate.

19 “(7) In making any determination or granting any
20 relief authorized by this subsection, the court shall take
21 due account of the rule of prejudicial error.

22 “(b) In an action for the judicial review of a rule,
23 any regulatory flexibility analysis for such rule (including
24 an analysis prepared or corrected pursuant to subsection

1 (a)(5)) shall constitute part of the whole record of agency
2 action in connection with such review.

3 “(c) Nothing in this section bars judicial review of
4 any other impact statement or similar analysis required
5 by any other law if judicial review of such statement or
6 analysis is otherwise provided by law.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date of enactment
9 of this Act, except that the judicial review authorized by
10 section 611(a) of title 5, United States Code (as added
11 by subsection (a)), shall apply only to final agency rules
12 issued after the date of enactment of this Act.

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