

104TH CONGRESS
2D SESSION

H. R. 3048

To authorize small entities to seek judicial review of agency certifications of the economic impacts of rules on small entities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1996

Mr. EWING introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize small entities to seek judicial review of agency certifications of the economic impacts of rules on small entities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Flexibility
5 Amendments Act of 1996”.

6 **SEC. 2. JUDICIAL REVIEW.**

7 (a) AMENDMENT.—Section 611 of title 5, United
8 States Code, is amended to read as follows:

1 **“§ 611. Judicial review**

2 “(a)(1) Not later than one year, notwithstanding any
3 other provision of law, after the effective date of a final
4 rule with respect to which an agency—

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

8 “(B) prepared a final regulatory flexibility anal-
9 ysis pursuant to section 604,

10 an affected small entity may petition for the judicial re-
11 view of such certification or analysis in accordance with
12 the terms of this subsection. A court having jurisdiction
13 to review such rule for compliance with the provisions of
14 section 553 or under any other provision of law shall have
15 jurisdiction to review such certification or analysis. In the
16 case where an agency delays the issuance of a final regu-
17 latory flexibility analysis pursuant to section 608(b), a pe-
18 tition for judicial review under this subsection shall be
19 filed not later than one year, notwithstanding any other
20 provision of law, after the date the analysis is made avail-
21 able to the public.

22 “(2) For purposes of this subsection, the term ‘af-
23 fected small entity’ means a small entity that is or will
24 be adversely affected by the final rule.

25 “(3) Nothing in this subsection shall be construed to
26 affect the authority of any court to stay the effective date

1 of any rule or provision thereof under any other provision
2 of law.

3 “(4)(A) In the case where the agency certified that
4 such rule would not have a significant economic impact
5 on a substantial number of small entities, the court may
6 order the agency to prepare a final regulatory flexibility
7 analysis pursuant to section 604 if the court determines,
8 on the basis of the rulemaking record, that the certifi-
9 cation was arbitrary, capricious, an abuse of discretion,
10 or otherwise not in accordance with law.

11 “(B) In the case where the agency prepared a final
12 regulatory flexibility analysis, the court may order the
13 agency to take corrective action consistent with the re-
14 quirements of section 604 if the court determines, on the
15 basis of the rulemaking record, that the final regulatory
16 flexibility analysis was prepared by the agency without ob-
17 servance of procedure required by section 604.

18 “(5) If, by the end of the 90-day period beginning
19 on the date of the order of the court pursuant to para-
20 graph (4) (or such longer period as the court may pro-
21 vide), the agency fails, as appropriate—

22 “(A) to prepare the analysis required by section
23 604; or

24 “(B) to take corrective action consistent with
25 the requirements of section 604,

1 the court may stay the rule or grant such other relief as
 2 it deems appropriate.

3 “(6) In making any determination or granting any
 4 relief authorized by this subsection, the court shall take
 5 due account of the rule of prejudicial error.

6 “(b) In an action for the judicial review of a rule,
 7 any regulatory flexibility analysis for such rule (including
 8 an analysis prepared or corrected pursuant to subsection
 9 (a)(4)) shall constitute part of the whole record of agency
 10 action in connection with such review.

11 “(c) Nothing in this section bars judicial review of
 12 any other impact statement or similar analysis required
 13 by any other law if judicial review of such statement or
 14 analysis is otherwise provided by law.”.

15 (b) EFFECTIVE DATE.—The amendment made by
 16 subsection (a) shall apply only to final agency rules issued
 17 after the date of enactment of this Act.

18 **SEC. 3. RULES COMMENTED ON BY SBA CHIEF COUNSEL**
 19 **FOR ADVOCACY.**

20 (a) IN GENERAL.—Section 612 of title 5, United
 21 States Code, is amended by adding at the end the follow-
 22 ing new subsection:

23 “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-
 24 VOCACY.—

1 “(1) TRANSMITTAL OF PROPOSED RULES AND
2 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO
3 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before
4 the 30th day preceding the date of publication by an
5 agency of general notice of proposed rulemaking for
6 a rule, the agency shall transmit to the Chief Coun-
7 sel for Advocacy of the Small Business Administra-
8 tion—

9 “(A) a copy of the proposed rule; and

10 “(B)(i) a copy of the initial regulatory
11 flexibility analysis for the rule if required under
12 section 603; or

13 “(ii) a determination by the agency that an
14 initial regulatory flexibility analysis is not re-
15 quired for the proposed rule under section 603
16 and an explanation for the determination.

17 “(2) STATEMENT OF EFFECT.—On or before
18 the 15th day following receipt of a proposed rule and
19 initial regulatory flexibility analysis from an agency
20 under paragraph (1), the Chief Counsel for Advo-
21 cacy may transmit to the agency a written statement
22 of the effect of the proposed rule on small entities.

23 “(3) RESPONSE.—If the Chief Counsel for Ad-
24 vocacy transmits to an agency a statement of effect
25 on a proposed rule in accordance with paragraph

1 (2), the agency shall publish the statement, together
2 with the response of the agency to the statement, in
3 the Federal Register at the time of publication of
4 general notice of proposed rulemaking for the rule.

5 “(4) SPECIAL RULE.—Any proposed rules is-
6 sued by an appropriate Federal banking agency (as
7 that term is defined in section 3(q) of the Federal
8 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-
9 tional Credit Union Administration, or the Office of
10 Federal Housing Enterprise Oversight, in connection
11 with the implementation of monetary policy or to en-
12 sure the safety and soundness of federally insured
13 depository institutions, any affiliate of such an insti-
14 tution, credit unions, or government sponsored hous-
15 ing enterprises or to protect the Federal deposit in-
16 surance funds shall not be subject to the require-
17 ments of this subsection.”.

18 (b) CONFORMING AMENDMENT.—Section 603(a) of
19 title 5, United States Code, is amended by inserting “in
20 accordance with section 612(d)” before the period at the
21 end of the last sentence.

22 **SEC. 4. SENSE OF CONGRESS REGARDING SBA CHIEF**
23 **COUNSEL FOR ADVOCACY.**

24 It is the sense of Congress that the Chief Counsel
25 for Advocacy of the Small Business Administration should

1 be permitted to appear as amicus curiae in any action or
2 case brought in a court of the United States for the pur-
3 pose of reviewing a rule.

