

104TH CONGRESS
1ST SESSION

H. R. 937

To amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1995

Mrs. MEYERS of Kansas 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 amend title 5, United States Code, to clarify procedures for judicial review of Federal agency compliance with regulatory flexibility analysis requirements, 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. JUDICIAL REVIEW.**

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

1 **“§ 611. Judicial review**

2 “(a)(1) Except as provided in paragraph (2), not
3 later than 180 days 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 a final regulatory flexibility anal-
10 ysis 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 or under any other provision of law shall have
16 jurisdiction to review such certification or analysis.

17 “(2)(A) Except as provided in subparagraph (B), in
18 the case where a provision of law requires that an action
19 challenging a final agency regulation be commenced before
20 the expiration of the 180 day period provided in paragraph
21 (1), such lesser period shall apply to a petition for the
22 judicial review under this subsection.

23 “(B) In the case where an agency delays the issuance
24 of a final regulatory flexibility analysis pursuant to section
25 608(b) of this title, a petition for judicial review under
26 this subsection shall be filed not later than—

1 “(i) 180 days; or

2 “(ii) in the case where a provision of law re-
3 quires that an action challenging a final agency reg-
4 ulation be commenced before the expiration of the
5 180 day period provided in paragraph (1), the num-
6 ber of days specified in such provision of law,
7 after the date the analysis is made available to the public.

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

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

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

23 “(B) In the case where the agency prepared a final
24 regulatory flexibility analysis, the court may order the
25 agency to take corrective action consistent with the re-

1 requirements of section 604 if the court determines, on the
2 basis of the rulemaking record, that the final regulatory
3 flexibility analysis was prepared by the agency without ob-
4 servance of procedure required by section 604 of this title.

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

9 “(A) to prepare the analysis required by section
10 604 of this title; or

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

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

18 “(b) In an action for the judicial review of a rule,
19 any regulatory flexibility analysis for such rule (including
20 an analysis prepared or corrected pursuant to subsection
21 (a)(5)) shall constitute part of the whole record of agency
22 action in connection with such review.

23 “(c) Nothing in this section bars judicial review of
24 any other impact statement or similar analysis required

1 by any other law if judicial review of such statement or
2 analysis is otherwise provided by law.”.

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

6 **SEC. 2. RULES COMMENTED ON BY SBA CHIEF COUNSEL**
7 **FOR ADVOCACY.**

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

11 “(d) ACTION BY SBA CHIEF COUNSEL FOR ADVO-
12 CACY.—

13 “(1) TRANSMITTAL OF PROPOSED RULES AND
14 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO
15 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before
16 the 30th day preceding the date of publication by an
17 agency of general notice of proposed rulemaking for
18 a rule, the agency shall transmit to the Chief Coun-
19 sel for Advocacy of the Small Business Administra-
20 tion—

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

22 “(B)(i) a copy of the initial regulatory
23 flexibility analysis for the rule if required under
24 section 603; or

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.

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