

103^D CONGRESS
1ST SESSION

S. 490

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 SENATE OF THE UNITED STATES

MARCH 3, 1993

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Flexibility
5 Amendments Act of 1993”.

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

7 (a) IN GENERAL.—Section 611 of title 5, United
8 States Code, is repealed.

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions at the beginning of chapter 6 of title 5, United
 3 States Code, is amended by striking the item relating to
 4 section 611.

5 **SEC. 3. CONSIDERATION OF DIRECT AND INDIRECT EF-**
 6 **FECTS OF RULES.**

7 (a) IN GENERAL.—Title 5, United States Code, is
 8 amended by inserting after section 610 the following new
 9 section:

10 **“§611. Consideration of direct and indirect effects of**
 11 **rules**

12 “In determining under this chapter whether or not
 13 a rule is likely to have a significant impact on a substan-
 14 tial number of small entities, an agency shall consider both
 15 the direct and indirect effects of the rule.”.

16 (b) CONFORMING AMENDMENT.—The table of sec-
 17 tions at the beginning of chapter 6 of title 5, United
 18 States Code, is amended by inserting after the item relat-
 19 ing to section 610 the following:

“611. Consideration of direct and indirect effects of rules.”.

20 **SEC. 4. RULES OPPOSED BY SBA CHIEF COUNSEL FOR AD-**
 21 **VOCACY.**

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

25 “(d) STATEMENT OF OPPOSITION.—

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

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 OPPOSITION.—On or be-
18 fore the fifteenth day following receipt of a proposed
19 rule and initial regulatory flexibility analysis from an
20 agency under paragraph (1), the Chief Counsel for
21 Advocacy may transmit to the agency a written
22 statement of opposition to the proposed rule.

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

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

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

10 **SEC. 5. SENSE OF CONGRESS REGARDING SBA CHIEF**
11 **COUNSEL FOR ADVOCACY.**

12 It is the sense of Congress that the Chief Counsel
13 for Advocacy of the Small Business Administration should
14 be permitted to appear as amicus curiae in any action or
15 case brought in a court of the United States for the pur-
16 pose of reviewing a rule.

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