

107TH CONGRESS
1ST SESSION

S. 849

To amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) to ensure full analysis of potential impacts on small entities of rules proposed by certain agencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2001

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Small Business

A BILL

To amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) to ensure full analysis of potential impacts on small entities of rules proposed by certain agencies, 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 “Agency Accountability
5 Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) A vibrant and growing small business sector
2 is critical to creating jobs in a dynamic economy.

3 (2) Small businesses bear a disproportionate
4 share of regulatory costs and burdens.

5 (3) Federal agencies must consider the impact
6 of their regulations on small businesses early in the
7 rule making process.

8 (4) Small business input in rule makings con-
9 tributes to more effective and less burdensome regu-
10 lations.

11 (5) Federal agencies' decisions to certify regula-
12 tions as not having a significant economic impact on
13 a substantial number of small entities have fre-
14 quently been supported by inadequate analysis, data,
15 and outreach.

16 (6) The Small Business Advocacy Review Panel
17 process that was established by the Small Business
18 Regulatory Enforcement Fairness Act of 1996 (Pub-
19 lic Law 104–121) is—

20 (A) effective in allowing small businesses
21 to participate in rules that are being developed
22 by the Environmental Protection Agency and
23 the Occupational Safety and Health Adminis-
24 tration; and

1 (B) appropriate for use in rule making of
2 other agencies.

3 (7) The Environmental Protection Agency, the
4 Occupational Safety and Health Administration, and
5 other agencies often fail to comply with chapter 6 of
6 title 5, United States Code (commonly referred to as
7 the Regulatory Flexibility Act).

8 (b) PURPOSES.—The purposes of this Act are the fol-
9 lowing:

10 (1) To provide a forum for the effective partici-
11 pation of small businesses in the Federal regulatory
12 process.

13 (2) To clarify and strengthen the Small Busi-
14 ness Advocacy Review Panel process.

15 (3) To expand the number of Federal agencies
16 that are required to convene Small Business Advo-
17 cacy Review Panels.

18 (4) To provide more consistent compliance by
19 agencies with the requirements of chapter 6 of title
20 5, United States Code (commonly referred to as the
21 Regulatory Flexibility Act).

22 (5) To provide a more effective way for small
23 entities to hold agencies accountable for their per-
24 formance under the Small Business Regulatory En-

1 enforcement Fairness Act of 1996 (Public Law 104–
2 121), including the amendments made by that Act.

3 **SEC. 3. ENSURING FULL ANALYSIS OF POTENTIAL IMPACTS**
4 **ON SMALL ENTITIES OF RULES PROPOSED BY**
5 **CERTAIN AGENCIES.**

6 Section 609(b) of title 5, United States Code, is
7 amended to read as follows:

8 “(b)(1) Before the publication of an initial regulatory
9 flexibility analysis that a covered agency is required to
10 conduct under this chapter, the head of the covered agency
11 shall—

12 “(A) notify the Chief Counsel for Advocacy of
13 the Small Business Administration (in this sub-
14 section referred to as the ‘Chief Counsel’) in writing;

15 “(B) provide the Chief Counsel with informa-
16 tion on the potential impacts of the proposed rule on
17 small entities and the type of small entities that
18 might be affected; and

19 “(C) not later than 30 days after complying
20 with subparagraphs (A) and (B)—

21 “(i) in consultation with the Chief Counsel,
22 identify affected small entity representatives;
23 and

24 “(ii) transmit to the identified small entity
25 representatives a detailed summary of the infor-

1 mation referred to in subparagraph (B) or the
2 information in full, if so requested by the small
3 entity representative, for the purposes of ob-
4 taining advice and recommendations about the
5 potential impacts of the draft proposed rule.

6 “(2)(A) Not earlier than 30 days after the covered
7 agency transmits information pursuant to paragraph
8 (1)(C)(ii), the head of the covered agency shall convene
9 a review panel for the draft proposed rule. The panel shall
10 consist solely of full-time Federal employees of the office
11 within the covered agency that will be responsible for car-
12 rying out the proposed rule, the Office of Information and
13 Regulatory Affairs of the Office of Management and
14 Budget, and the Chief Counsel.

15 “(B) The review panel shall—

16 “(i) review any material the covered agency has
17 prepared in connection with this chapter, including
18 any draft proposed rule;

19 “(ii) collect advice and recommendations from
20 the small entity representatives identified under
21 paragraph (1)(C)(i) on issues related to paragraphs
22 (3), (4), (5), (6), and (7) of section 603(b) and sec-
23 tion 603(c); and

1 “(iii) allow any small entity representative iden-
2 tified under paragraph (1)(C)(i) to make an oral
3 presentation to the panel, if requested.

4 “(C) Not later than 60 days after the date a covered
5 agency convenes a review panel pursuant to this para-
6 graph, the review panel shall report to the head of the
7 covered agency on—

8 “(i) the comments received from the small enti-
9 ty representatives identified under paragraph
10 (1)(C)(i); and

11 “(ii) its findings regarding issues related to
12 paragraphs (3), (4), (5), (6), and (7) of section
13 603(b) and section 603(c).

14 “(3)(A) Except as provided in subparagraph (B), the
15 head of the covered agency shall print in the Federal Reg-
16 ister the report of the review panel under paragraph
17 (2)(C), including any written comments submitted by the
18 small entity representatives and any appendices cited in
19 the report, as soon as practicable, but not later than—

20 “(i) 180 days after the date the head of the
21 covered agency receives the report; or

22 “(ii) the date of the publication of the notice of
23 proposed rulemaking for the proposed rule.

24 “(B) The head of the covered agency shall submit a
25 copy of the report of the review panel under paragraph

1 (2)(C) to the small entity representatives on the date that
2 the report is submitted under subparagraph (A).

3 “(C) The report of the review panel printed in the
4 Federal Register shall not include any confidential busi-
5 ness information submitted by any small entity represent-
6 ative.

7 “(4) Where appropriate, the covered agency shall
8 modify the draft proposed rule, the initial regulatory flexi-
9 bility analysis for the draft proposed rule, or the decision
10 on whether an initial regulatory flexibility analysis is re-
11 quired for the draft proposed rule.”.

12 **SEC. 4. DEFINITIONS.**

13 (a) IN GENERAL.—Section 609(d) of title 5, United
14 States Code, is amended to read as follows:

15 “(d) In this section—

16 “(1) the term ‘covered agency’ means—

17 “(A) the Environmental Protection Agen-
18 cy;

19 “(B) the Occupational Safety and Health
20 Administration of the Department of Labor;

21 “(C) the Internal Revenue Service of the
22 Department of the Treasury;

23 “(D) the United States Forest Service of
24 the Department of Agriculture;

1 “(E) the National Marine Fisheries Service
2 of the Department of Commerce; and

3 “(F) the United States Fish and Wildlife
4 Service of the Department of Interior; and

5 “(2) the term ‘small entity representative’
6 means a small entity, or an individual or organiza-
7 tion that primarily represents the interests of 1 or
8 more small entities.”.

9 (b) REGULATORY DEFINITIONS.—Not later than 18
10 months after the date of enactment of this Act, the Chief
11 Counsel for Advocacy of the United States Small Business
12 Administration shall—

13 (1) promulgate regulations to define the terms
14 “significant economic impact” and “substantial
15 number of small entities” for purposes of chapter 6
16 of title 5, United States Code; and

17 (2) in promulgating such regulations, consider
18 the effect indirect impacts from regulations have on
19 small businesses.

20 **SEC. 5. COLLECTION OF INFORMATION REQUIREMENT.**

21 (a) DEFINITION.—Section 601 of title 5, United
22 States Code, is amended—

23 (1) in paragraph (5), by inserting “and” after
24 the semicolon;

1 (2) in paragraph (6), by striking “; and” and
2 inserting a period; and

3 (3) by striking paragraphs (7) and (8).

4 (b) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
5 Section 603(a) of title 5, United States Code, is
6 amended—

7 (1) by striking the fifth sentence;

8 (2) by inserting “(1)” after “(a)”; and

9 (3) by adding at the end the following:

10 “(2)(A) In the case of an interpretative rule in-
11 volving the internal revenue laws of the United
12 States, this chapter applies to interpretative rules
13 (including proposed, temporary, and final regula-
14 tions) published in the Federal Register for codifica-
15 tion in the Code of Federal Regulations.

16 “(B)(i) The Internal Revenue Service may
17 make a determination not to follow the procedures
18 of this subsection or to conduct a panel review as re-
19 quired under section 609(b) with respect to a tem-
20 porary regulation (as defined under section 7805(e)
21 of the Internal Revenue Code of 1986).

22 “(ii) If the Internal Revenue Service makes a
23 determination under clause (i), the Internal Revenue
24 Service shall provide the Chief Counsel for Advocacy
25 at the time the determination is made with—

1 “(I) notice of the determination;

2 “(II) an explanation of the reasons the
3 temporary regulation is impracticable, unneces-
4 sary, or contrary to the public interest; and

5 “(III) an explanation of the reasons the
6 circumstances warrant an exception from the
7 panel review of the regulation as required under
8 section 609(b).

9 “(iii) The notice and explanation under clause
10 (ii) shall be published in the Federal Register with
11 the notice promulgating the temporary regulation.”.

12 **SEC. 6. INITIAL REGULATORY FLEXIBILITY ANALYSIS.**

13 Section 603(b) of title 5, United States Code, is
14 amended—

15 (1) in paragraph (5), by striking the period and
16 inserting a semicolon; and

17 (2) by adding at the end the following:

18 “(6) an initial assessment of the costs and ben-
19 efits of the proposed rule, including, to the extent
20 practical, an estimate of—

21 “(A) the cumulative cost on small entities
22 effected by the proposed rule of all rules appli-
23 cable to those small entities; and

24 “(B) the effect of the proposed rule on
25 that cumulative cost; and

1 “(7) an initial certification that the benefits of
2 the proposed rule justify the costs, of the rule to
3 small entities.”.

4 **SEC. 7. FINAL REGULATORY FLEXIBILITY ANALYSIS.**

5 Section 604(a) of title 5, United States Code, is
6 amended—

7 (1) in paragraph (4), by striking “and” at the
8 end;

9 (2) in paragraph (5), by striking the period and
10 inserting “; and”; and

11 (3) by adding at the end the following:

12 “(6)(A) a final assessment of the costs and ben-
13 efits of the rule on the small entities affected by the
14 rule; and

15 “(B)(i) a summary of comments received on the
16 initial assessment under section 603; and

17 “(ii) a statement of any change made as a re-
18 sult of those comments; and

19 “(7)(A) a final certification that the benefits of
20 the rule justify the costs of the rule to the small en-
21 tities that will be subject to the rule; and

22 “(B)(i) a summary of comments received on the
23 initial certification under section 603; and

24 “(ii) a statement of any change made as a re-
25 sult of those comments.”.

1 **SEC. 8. PUBLICATION OF DECISION TO CERTIFY A RULE.**

2 Section 605 of title 5, United States Code, is
3 amended—

4 (1) by redesignating subsection (c) as sub-
5 section (d); and

6 (2) by inserting after subsection (b) the fol-
7 lowing:

8 “(c)(1) Not later than 60 days before the publication
9 of general notice of proposed rule making with respect to
10 a rule for which an agency makes a certification under
11 subsection (b), the agency shall publish in the Federal
12 Register—

13 “(A) a notice of the decision to make that cer-
14 tification; and

15 “(B) a summary of the analysis and data sup-
16 porting the decision; and

17 “(C) a statement on how small entities may ob-
18 tain the complete analysis and data used to support
19 the decision.

20 “(2) The summary under paragraph (1)(B) shall
21 include—

22 “(A) a summary of the potential costs and any
23 methodology and data used to determine the poten-
24 tial costs associated with complying with the rule;

1 “(B) a description of each type of entity (re-
2 gardless of size) potentially subject to the require-
3 ments of the rule;

4 “(C) a description of each type of small entity
5 potentially subject to the requirements of the rule
6 including—

7 “(i) business types and the standard indus-
8 trial classification codes of those businesses;

9 “(ii) all forms of government including
10 county, local, or special district; and

11 “(iii) nonprofit organizations such as hos-
12 pitals, universities, or research institutes;

13 “(D) a description of the methodology and data
14 used to determine the potential economic impact on
15 small entities of the rule, including—

16 “(i) data available to the agency collected
17 from sources other than the agency; and

18 “(ii) lack of data that was not considered
19 in the analysis;

20 “(E) a description of the number of small enti-
21 ties, and the economic impact on each type of small
22 entity potentially subject to the requirements of the
23 rule;

1 “(F) a description of information collected from
2 small entities about the cumulative cost of compli-
3 ance with the regulations of that agency;

4 “(G) a description of the guidelines or method-
5 ology used to determine—

6 “(i) whether the potential small entity eco-
7 nomic impact of the rule would represent a sig-
8 nificant economic impact on a substantial num-
9 ber of small entities; and

10 “(ii) the application of such guidelines or
11 methodologies to the rule making;

12 “(H) a listing of the actual small entities or
13 their representatives or associations that partici-
14 pated in or contributed information to the small en-
15 tity economic impact analysis; and

16 “(I) a determination of whether any small enti-
17 ties would be forced to stop operating because of the
18 regulation.

19 “(3) To the extent practicable, the complete analysis
20 and data used to support the decision to make a certifi-
21 cation shall be made available on the Internet.”.

22 **SEC. 9. JUDICIAL REVIEW OF CERTIFICATION DECISION.**

23 Section 611(a) of title 5, United States Code, is
24 amended—

25 (1) in subsection (a)—

1 (A) in paragraph (1) by inserting “or (c)”
2 after “605(b)”; and

3 (B) in paragraph (2) by inserting “or (c)”
4 after “605(b)”;

5 (2) by redesignating paragraph (5) as para-
6 graph (6); and

7 (3) by inserting after paragraph (4) the fol-
8 lowing:

9 “(5)(A) For the purpose of any judicial review
10 under paragraph (1) of agency compliance with sec-
11 tion 605(c) a decision to make a certification re-
12 ferred to under section 605(c)(1)(A) shall be treated
13 as a final agency action.

14 “(B) A civil action for review under this para-
15 graph may be filed not later than 45 business days
16 after the publication of the notice of the decision
17 under section 605(c)(1)(A).

18 “(C) A court may grant a stay of any rule mak-
19 ing relating to the applicable rule at any time after
20 the filing of a civil action under subparagraph (B)
21 and during the period of review.

22 “(D) If a court rules in favor of the plaintiff in
23 a civil action filed under this paragraph, the court
24 shall order that, with respect to the applicable
25 rule—

1 “(i) certification under section 605 shall
2 not apply; and

3 “(ii) sections 603 and 604 shall apply to
4 rule making.”.

5 **SEC. 10. EXCLUSION OF AGENCY OUTREACH TO SMALL**
6 **BUSINESSES FROM CERTAIN COLLECTION OF**
7 **INFORMATION REQUIREMENTS.**

8 Section 3502(3)(B) of title 44, United States Code,
9 is amended to read as follows:

10 “(B) shall not include a collection of
11 information—

12 “(i) described under section
13 3518(c)(1); or

14 “(ii) conducted for the purpose of de-
15 termining the impact of regulations on
16 small entities under section 603, 604, 605,
17 or 609 of title 5.”.

18 **SEC. 11. EFFECTIVE DATE.**

19 This Act shall take effect 90 days after the date of
20 enactment of this Act.

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