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**SBA**

**The Regulatory  
Flexibility Act**

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**U.S. Small Business Administration**  
Office of Chief Counsel for Advocacy

October 1982

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**U.S. Small Business Administration**  
Office of the Chief Counsel for Advocacy  
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October 1982

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## Foreword

The Regulatory Flexibility Act of 1980 (RFA) offers small businesses, working with Federal regulators, a unique opportunity to root out some of the institutional biases that work against the small entrepreneur. The law recognized that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation.

For example, the costs of complying with a particular regulation—measured in staff time, direct compliance costs, recordkeeping, outside expertise, and other costs—may be roughly the same for a company with sales of \$10,000,000 as they are for a company with sales of \$1,000,000. That expenditure of resources, easily manageable for the large company, may make the difference in the smaller company's ability to set competitive prices, to devise innovations or even to continue as a viable organization.

The Regulatory Flexibility Act puts the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. Major goals of the act are: **(1)** to increase agency awareness and understanding of the impact of their regulations on small business, **(2)** to require that agencies communicate and explain their findings to the public, and **(3)** to encourage agencies to provide regulatory relief to small entities. It charged the Chief Counsel for Advocacy in the **U.S. Small Business Administration** with the task of monitoring the Federal agencies' progress.

Easing the regulatory burden on small entities will require the help of government regulatory agencies and the interest, participation, and ideas of small business

men and women across the country. If you have comments, please contact the Office of Advocacy, **U.S. Small Business Administration**, 1441 L Street Northwest, Washington, D.C. 20416.

A handwritten signature in black ink, reading "Frank S. Swain". The signature is written in a cursive style with a large, stylized initial "F".

Frank S. Swain  
Chief Counsel for Advocacy

## Overview

Small business and other small organizations have long shouldered the same burden of Federal regulations as their larger competitors, and with fewer resources. The law now provides recourse for these “small entities” through the Regulatory Flexibility Act of 1980 (RFA).

The RFA fundamentally changed the Federal bureaucracy’s method of regulating small entities, defined in the Act as small businesses, small governments, and small not-for-profit organizations. It amended the Administrative Procedures Act—the structure on which Federal administrative policy is built—to ensure that regulators do not burden small units disproportionately by imposing uniform regulations on all entities regardless of size.

Each agency must analyze how its regulations affect the ability of small entities to invent, to produce, and to compete. Agencies must balance the burdens imposed by regulations against their benefits, and propose alternatives to regulations which create economic disparities between different-sized entities.

The RFA, an outline for responsible, deliberate rulemaking, establishes a procedure for looking at the effects of rules on small entities. Federal regulatory agencies must make every effort to notify small entities of proposed regulations to which they may be subjected, beyond traditional **Federal Register** notices. Regulated small entities are encouraged to participate in the development and consideration of alternate means of achieving regulatory objectives. Federal agencies must consider establishing different compliance or reporting requirements, timetables, or exemptions to take into account the resources available to small entities.

The Chief Counsel for Advocacy of the U.S. Small Business Administration has been designated to monitor agency compliance with the Regulatory Flexibility Act.

## **Legislative History**

In a number of hearings over ten years, both Houses of Congress built a conclusive record of disillusionment and discontent among the regulated. Small businesses and small entities repeatedly claimed that uniform application of the same rules to them and to larger entities produced economic injustice.

The Senate and House Small Business and Judiciary Committees heard reports from small businesses, small cities and towns, and small non-profit institutions about the damaging impact of regulatory policy. Federal regulations, it was argued, imposed a disproportionate economic burden of compliance on them. In the business sector, considerable evidence indicates that uniform application of regulatory requirements increases the minimum size a firm must be to compete effectively in the regulated market. Reports on the bills of both Houses of Congress cited these disproportionate economic burdens on small business as contributing to declines in productivity, competition, innovation, and the relative market shares of small business.

Preliminary data from the Office of Advocacy have substantiated this view. In 1963, the small business share of the Gross National Product (GNP) was 43 percent. By 1976, that share had dropped to 39 percent according to a study conducted for Advocacy by the Joel Popkin Company, indicating that business size is generally increasing.

The Senate passed the RFA, adding Chapter VI to the Administrative Procedures Act on August 6, 1980. The Judiciary Committee's report on the original bill read:

“The Committee believes that meaningful regulatory reform must be government-wide, enforceable, and coordinated with the legislative framework for the agencies . . . .”



“The APA is the fundamental legislation upon which Federal rulemaking is based, and, together with the case law that has grown up around it, provides a foundation for nearly all significant agency actions. This is where regulatory reform must be focused.” (Senate Report No. 96-878, p. 10.)

The House passed the measure on September 9, 1980. The bill was signed into law on September 19, 1980, with most of the provisions taking effect January 1, 1981.

## The Act

While the RFA breaks new ground in a number of regulatory areas, its content and objectives are fairly simple.

The Act directs agencies to analyze the impact of their regulatory actions, and to review existing rules, planned regulatory actions, and actual proposed rules.

## Coverage

The Act applies to every Federal rule on which public comment is required by the Administrative Procedures Act, Section 553 (b), or any other law. A definition of “rule” is set forth that basically corresponds with rules required to be proposed under Section 553 (b) of the APA.

The “small entities” intended to benefit from the Act are of three types:

**1. Small organizations.** Any nonprofit enterprise which is independently owned and operated and is not dominant in its field.

**2. Small governmental jurisdictions.** Governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

**3. Small businesses.** “Small business concerns,” as defined in Section 3 of the Small Business Act (Small Business Administration general size standard definitions, 13 CFR 121). Where SBA’s size standards do not appropriately reflect the specific impacts of the regulatory proposal, agencies may develop more relevant size determinants after consultation with the Office of Advocacy. For more extensive size standard development information, refer to Appendix A of this pamphlet: Small Business Statistical Resources.

**Periodic Review:  
A Plan for  
Looking at  
Existing Rules**

The RFA requires agencies to review all existing regulations to determine whether maximum flexibility is being provided to accommodate the unique needs of small businesses and small entities (Section 610(a)). Because society is not static, changing environments and technology may necessitate modification of existing, anachronistic regulations to assure that they do not unnecessarily impede the growth and development of small entities.

Originally, review of these rules was required to be performed within ten years of enactment of the RFA. However, in the first **Annual Report on Small Business and Competition**, transmitted to Congress in March 1982, President Reagan indicated that he would direct all executive branch agencies to perform their regulatory reviews within five years of enactment of the RFA.

**Semiannual  
Agendas:  
Regulatory  
Planning**

In April and October of each year, Federal agencies are required to publish a regulatory agenda listing all rules which are expected to be published as notices of proposed rulemaking in the **Federal Register** during the coming year (Section 602, RFA). Rules to be included in the agenda are those which are likely to have "a significant economic impact on a substantial number of small entities" (Section 602, RFA). Publication of these agendas substantially lengthens the amount of time the small business community has to react to those proposals and discuss them intelligently with Federal agencies.

**Analysis of New  
Rules: The Heart  
of the Act**

Depending on a proposed rule's expected impact, agencies are required by the Regulatory Flexibility Act to prepare one or more of three documents: **(1)** an initial regulatory flexibility analysis, **(2)** certification, and **(3)** a final regulatory flexibility analysis.

## Initial Regulatory Flexibility Analysis

The RFA requires the agencies of the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be prepared and published in the **Federal Register** describing that impact. If the analysis is lengthy, the agency must publish a summary and make the full text of the analysis available for public examination.

An initial regulatory flexibility analysis assures that agencies have examined selected regulatory alternatives which minimize the economic burdens of proposed rules on small entities. Several general principles should be applied in the writing of all initial regulatory flexibility analyses.

The nature of the program must be adequately described. For example, what are the characteristics of the affected industry? What are the beneficial and detrimental effects of the proposed changes? What are the indirect effects? What is the overall effect, and what are the objectives of the proposed rule?

Consider all the viable alternatives to achieving the regulatory objective. Identify, for example, how the costs of compliance or the economic burden on small business could be lessened. Explain why certain alternatives are not appropriate and why the proposed rule is the best choice.

As delineated in Section 603 (b) of the RFA, each initial regulatory flexibility analysis is required to identify: **(1)** reasons why the agency is considering action, **(2)** the objectives and legal basis for the proposed

rule, **(3)** the kind and number of small entities to which the proposed rule will apply, **(4)** the projected reporting, recordkeeping and other compliance requirements of the proposed rule, and **(5)** all Federal rules which may duplicate, overlap or conflict with the proposed rule.

**1. A description of the reasons why action by the agency is being considered.** This is currently included in all published regulations and should be clear to agency analysts.

**2. A succinct statement of the objectives of, and legal basis for, the proposed rule.** This is currently required for all proposed rules.

**3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply.** Describe the industry or economic sector in total and its small and large entity segments. Since industries and sectors are rarely static, it is important to describe the preregulation condition at the time of proposed regulatory action and any existing dynamics, such as trends in employment and birth of entities.

The definition of small entity is an important element of this analysis. Agencies may either use the statute's definition of "small" or may choose to "tier" the definition into multiple size categories from small to large. Tiering can be proposed where appropriate to the regulation's economic impact, as defined in the statute. (See Appendix A for further details.)

Include a description of the industry or economic sectors (e.g., the four-digit Standard Industrial Classification (SIC) codes) that would be directly or indirectly affected by the proposed regulation in this

demographic analysis. A definition of “small entity” that is to be applied in the analysis should identify the source of the definition, a description of the size specification to be applied, and a justification for the selection of the particular specification. State the number of entities in each sector or industry by size class; by total employment of each class; or alternatively, by the number of minority and/or woman-owned entities.

Describe the geographic dispersion of entities by sector or industry showing dispersion by state or region; the regional, state, or local concentration of entities; or the relative employment concentration in affected areas. The birth and death rate of these entities can also be analyzed.

**4. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.** This cost analysis should describe each item and estimate the costs, comparing large and small entities.

One-time or initial costs associated with adjusting to the new regulation should be identified. Note whether additional assets such as physical facilities, equipment, inventories, testing or monitoring equipment will be required. Other factors that should be described include disciplinary fines; relocation (where required); information costs, consulting fees, or research costs; financial standing (changes in costs of equity and debt); and other start-up costs, such as lost time and production delays.

In addition, recurring or operating costs

necessary to remain in compliance should be analyzed. The following factors should be considered: licenses, permits or registration fees; changes in work assignments; inspections; reporting requirements; recordkeeping; legal, accounting, technical or other professional staff required; staff time increases; administrative time requirements; financial costs such as interest on capital required; consulting fees for outside professionals; and other costs.

Spill-over costs should also be discussed. The agency should identify the effects of the proposed regulation on aspects of the entity's functions that are covered by other regulations and explain how other regulated functions are affected. The one-time and operating costs of these spill-over effects should be itemized.

**5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.** Agency analysts should provide information for regulated entities on other rules governing the same activities.

Section 603 (c) of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Significant alternatives may include: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use

of performance rather than design standards; or an exemption from coverage of the rule, or any part thereof, for such small entities.

For assistance in the preparation of initial regulatory flexibility analyses, agencies may wish to consult with agency monitors within the Office of Advocacy.

#### Certification: When a Full Analysis is Not Required

If the proposed regulation is found to have neither a beneficial nor an adverse effect on small entities, an agency may certify that the rule does not exert a “significant economic impact on a substantial number of small entities.” The certification must be published with the proposed rule in the **Federal Register** and forwarded to the Chief Counsel for Advocacy.

In these cases, a regulatory analysis is not required by the Act unless information obtained by the agency after its initial proposal dictates the need for further analysis. It is important to note, however, that a finding of only a beneficial impact does not relieve the agency from performing an analysis.

Merely stating that the rule will not have a significant impact on a substantial number of small entities is not sufficient to comply with the additional requirements of the RFA. Agencies must also explain their decision to certify (Section 605 (b)), discussing why no small entities are significantly affected. These statements enable small businesses and the Office of Advocacy to understand the regulatory objectives of the agency and to better assess the potential effects of the proposed regulation. The Act requires that agencies demonstrate, through the certification statement, that their actions will not affect covered small entities.



## Final Regulatory Flexibility Analysis

When an agency issues any final rule, it must prepare a final regulatory flexibility analysis or again certify that the rule will not have a significant impact on a substantial number of small entities. The final regulatory flexibility analysis should discuss comments received and alternatives considered.

Much of the initial regulatory flexibility analysis may be integrated into the final regulatory flexibility analysis. However, the RFA specifically requires agencies to **(1)** summarize the issues raised by the public comments, **(2)** summarize the agency's assessment of those comments, **(3)** state any changes made in the proposed rule as a result of the comments, **(4)** describe each of the significant alternatives to the rule consistent with the regulatory objectives, and **(5)** state why each one of the alternatives was rejected. (Section 604).

The final regulatory flexibility analysis should be made available at the same time as the final rule, although it may be postponed for up to 180 days in an emergency. If the agency has not published a final analysis within 180 days of the date of publication of the final rule, the rule shall be invalidated, (Section 608) unless, of course, the agency has certified that the rule would have no significant impact.

## Judicial Review

No other issue gave rise to as much lively congressional debate as the issue of the scope of judicial review. The Act as finally passed tries to strike a balance between minimizing opportunities for stalling the regulatory process while still assuring judicial pressure for agency compliance.

No separate review is provided for agency certifications that the Act applies or does not

apply to a given rule. Intermediate review of any regulatory flexibility action is barred expressly (Section 611(a)). The Act states: "When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review" (Section 611 (b)).

The question obviously raised is, "How much weight does the regulatory flexibility analysis portion of the rule carry in the record?" A descriptive analysis accompanying the substitute amendment to S. 299 which passed was submitted on the floor by a principal sponsor, Senator Culver. It indicates that the regulatory flexibility actions of the agency should be considered as evidence of the reasonableness or unreasonableness of the rule. On the same point, however, in the House, a colloquy between Representatives Broomfield and McDade produced the following:

**Mr. Broomfield:** " Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete? What if the agency ignores significant information provided by an affected individual, or more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?"

**Mr. McDade:** " Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation,

it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.” (**Congressional Record**, September 8, 1980, pp. H 8463-8464).

According to the intent of the House, a court could thus give definitive weight to agency regulatory flexibility actions in assessing the validity of an otherwise reasonable rule.

### **Increased Small Business Participation**

During the hearings preceding enactment of the RFA, many small businesses commented that often they are unaware of newly proposed or implemented regulations despite rulemaking agencies’ notification in the **Federal Register**. The RFA marks a recognition that Federal agencies, in order to develop public awareness of their actions, must make greater outreach efforts. Section 609 of the RFA goes beyond the typical **Federal Register** notice required by Section 553 of the APA, and requires agencies to ensure small business participation in the rulemaking process by taking some or all of the following steps:

- Initial notice of the rule in the regulatory agenda of the agency (Section 602).
- Notice in the **Federal Register** of the proposed rule by the agency (Section 603 and 609).
- Clear mention in the initial **Federal**

**Register** notice of the possible impact of the proposed rule on small entities (Section 609 (1)).

- Notice of the rule in the small entities' trade association journal (Section 609 (2)).
- A letter in the mail directly from the agency seeking comments on the rule and enclosing a copy of the regulation (Section 609 (3)).
- Attendance at an agency conference convened to discuss the merits of the rule (Section 609 (4)).
- Testimony at an agency hearing on the rule (Section 609 (4)).

## **Appendix A Small Business Statistical Resources**

One of the most difficult tasks to be faced when preparing either an initial or final regulatory flexibility analysis is locating statistics on small business. The following information has been furnished as a service to agency analysts responsible for developing initial and final regulatory flexibility analyses.

This appendix is divided into three sections. The first defines business entities and the types of tabulations used for measuring them. Section II discusses the availability of data both from the Small Business Administration (SBA) and from other government agencies. Section III outlines more specific assistance available from the SBA.

### **Definitions of Business Entities**

**A. Establishments.** An establishment is the smallest unit in which business activity is conducted and on which statistical information is collected. The establishment concept makes no reference to either ownership or taxpaying status. Furthermore, establishments may be branches of larger firms and differ from separately owned and operated businesses of similar size in purchasing power, advertising coverage, management and control systems, technical resources, and access to capital and credit. Most very small businesses are single establishments.

**B. Enterprises.** The enterprise concept refers to all establishments owned by a "parent" company. For instance, an enterprise can own subsidiaries, branches, and unrelated establishments. In most instances, it is necessary to use the enterprise concept to study the characteristics of small firms since the ownership issue is critical for assessing

the impact of a given policy. About 15 percent of total employment is in small establishments (fewer than 100 employees) owned by large firms (more than 100 employees). There are 3.9 million enterprises in the SBA Small Business Data Base and 5.6 million in the Bureau of the Census'

### **Enterprise Statistics.**

**C. Taxpaying Units.** The concept of taxpaying unit refers to the legal organization of a business as a sole proprietorship, partnership, or corporation. Generally, tax data make no precise distinction between establishments and enterprises. This makes comparisons across data sources difficult, particularly for large, multi-establishment firms which can file taxes as either enterprises, branches (subsidiaries) of a parent enterprise, or consolidated corporations.

There were 12.7 million proprietorship returns filed with the Internal Revenue Service in 1980. Census data on employment, sales, and payrolls cover 31 percent of these proprietorships. (Their average employment is 1.1 employees per proprietorship.) There are no economic data (except for receipts from the IRS) on the remaining proprietorships. About 54 percent have less than \$10,000 in gross receipts.

About 35 percent of the enterprises in the Small Business Data Base are corporations; the remaining 65 percent are proprietorships or partnerships. The Small Business Data Base is the only source of both employment **and** sales information for enterprises and establishments on an annual basis.

About 24 percent of the 5.6 million enterprises in **Enterprise Statistics** are corporations. The remainder are

proprietorships (67.1 percent) and partnerships (7.2 percent). The legal form of organization was not identifiable for 1.8 percent of the firms.

### **Availability of Data from the SBA and Other Government Agencies**

Business data which can be used to analyze regulations are of only two types: **micro data**—data on **individual** establishments, enterprises, proprietorships, partnerships, or corporations; and **macro data**—data on **groups** of establishments, enterprises, proprietorships, partnerships, or corporations.

Table 1 comes from the **State of Small Business: A Report of the President** (Small Business Administration, March, 1982, pp. 259-260), and is an attempt to compare the overall coverage of the Small Business Data Base with other sources of information on businesses published by the Department of Commerce (Bureau of the Census), Internal Revenue Service, and the Federal Trade Commission. All of these sources vary somewhat in industrial coverage, timeliness, size detail, and legal form of organization of the reported entities.

### **SBA Sources**

The Small Business Data Base contains the only useable information available to analyze the impact of projected regulations on an enterprise basis or on a sub-national level. As shown in Table 1, under the heading "micro," the Small Business Data Base contains detailed employment and sales information at the four-digit SIC level for 1978 and 1980 for individual companies and establishments.

Two kinds of specialized tabulations have been prepared from the Small Business Data Base pursuant to the Regulatory Flexibility Act for the purpose of aiding other governmental units in compliance.

The first set of tables, prepared in 1981, is a tabulation of establishments (single business units) for detailed industries up to the four-digit SIC level. In Table 2, for example, data is shown for SIC 1711, contractors in plumbing, heating and air conditioning. The table indicates that 50,018 establishments (out of a total of 76,497) in this industry have one to four employees, account for 15.6% of total sales, and had receipts, on the average, of \$88,000. Average employment in each of the size classes as well as cumulative employment are shown. The differences between the "firm" and "establishment" lines represent establishments grouped by ownership, **not** the number of companies. The totals of the first two lines are therefore identical.

The second set of tables was prepared in July 1982 on an enterprise (number of **companies**) basis. Table 3, an example of these tabulations, shows that, in 1980, there were 78,969 plumbing, heating, and air conditioning companies. When adjusted for ownership, the average enterprise sales for the one-to-four employment size class was \$85,000 in 1980, smaller than the \$88,000 recorded for all establishments in 1978. Thus, when adjusted for ownership, the independently-owned small business contractors had lower sales than when the data included the establishments owned by large firms. Average and cumulative employment data is also displayed in Table 3.

In addition to the employment and sales data shown in Tables 2 and 3, a limited amount of financial information (key balance sheet items, sales, employment, and assets) is available in summary form for enterprises at the four-digit SIC level from 1976 to 1981. The data have the ability to provide evidence on how industry balance sheets may be changing over the recent past.



## Other Sources

The only other major sources of business information, in addition to the Small Business Data Base, are the Bureau of the Census and the **Statistics of Income** series of the Internal Revenue Service.

As summarized in Table 1, the **Enterprise Statistics** publication series of the Bureau of the Census contains detailed size distributions (on a macro or aggregate basis) on numbers of companies, their employment, sales, payrolls, and capital expenditures in manufacturing and mining. **Enterprise Statistics** is published once every five years (latest is 1977), and is the only available time series data on a company basis. As discussed above, there are many reasons to use enterprise information, if available, to analyze the impacts of proposed regulations.

If a long (ten-year) annual time series of data is required for an initial regulatory flexibility analysis, it may be necessary to use an establishment data source such as the Census Bureau's **County Business Patterns**, generally available since 1964, with some definitional changes after 1974. As shown in Table 4, for establishments of up to about 20 employees, the **establishment** and **enterprise** concepts are virtually identical; the establishment **is** the enterprise because it is independently owned. For establishments larger than 20 employees, the generalizations are much more difficult because the ownership problem becomes critical: is the small establishment really a small business or an establishment owned by a larger enterprise?

Aggregate (macro) data on corporations, partnerships and sole proprietorships from the Internal Revenue Service are most useful for studying sales distributions of entities, once the precise form of legal organization is

known. The IRS does not collect data on employment, however. Since employment is frequently used as a basis for small business size standards, IRS statistics are less valuable for judging small business impacts.

### **Developing a Size Standard and Using the SBA Small Business Data Base**

The major source for developing a size standard in preparing an initial regulatory flexibility analysis is the SBA size-standard information published in the **Federal Register** on May 3, 1982. However, agencies are free to propose any defensible size standard in the preparation of an initial regulatory flexibility analysis. For example, 100 or 500 employees or less are frequently-used size standards; the appropriate definition varies with the policy being studied.

The Office of Advocacy is able to make specific inquiries of its Small Business Data Base for agencies which could utilize information about particular types of small business when analyzing a regulatory issue. Agencies in need of custom-made information may: **(1)** prepare a purchase order to cover the service, provided sufficient lead time is given, or **(2)** if a longer lead time permits, minimize costs by adding regulatory flexibility data requests to the list of tabulations which are being prepared for other purposes. Researchers and preparers of initial regulatory flexibility analyses may wish first to consult the available four-digit tabulations which SBA has prepared, or to examine other data sources listed in Table 1. The Office of Advocacy Data Base Branch (202 634-7550) can provide further information.

All of the variables currently in the SBA data base are defined in *U.S. Establishment and Enterprise Microdata: Database Description*, by Candee Harris, Brookings Institution, Washington, D.C., March 1982.

**Table 1**

**Micro and Macro Data Sources In The Small Business Data Base By Size Class**

| Type:                                      | Source:  | Variables:   | Geography:             | Industry:   | Years:   | Legal Form of Organization:                                  | Comparable With Other Aggregate Source:   | Comment:   |
|--|--|--|------------------------|---|--|--|---|--|
| <b>I. MICRO</b>                            |  |  |                        |   |  |  |   |  |
| a. Establishments (4.7 million)            | Dun & Bradstreet <i>Market Identifier File (DMI)</i> with branches imputed for consistency | Employment & Sales, Age, Branch & Subsidiary Relations, Size of Firm | U.S., States, Counties | Excludes Self-Employed, Govt 4 Digit SIC Available, also Secondary SIC & Industry of Firm | 1978/79; 1979/80 in Preparation 5 Year Trend on 1/5 of Records | Corporations, Partnerships, and Sole Proprietorships         | For Emp. (only) County Business Patterns (Census); Unemployment Insurance (U.I.) Data (Bureau of Labor Statistics).   | Major Identification is Dun's Number (9 Digits)  |
| b. Enterprises (3.7 million)               | Same   | Sales, Employment  | U.S., States, Counties | Same; 4 Digit SIC Available   | Same   | Same   | IRS Statistics of Income (SOI); Enterprise Data From Census   | Same   |
| c. Enterprises (2 million)                 | Dun & Bradstreet <i>Financial Statement File</i>   | Employment, Sales, Assets, Balance Sheet Items                       | U.S., States, Counties | Same; 4 Digit SIC Available Excludes Banks  | Up to Five Years 1976-1981 <i>But Many Are Not Consecutive</i> | Same   | Employment With Enterprise Statistics; Sales, Assets, with SOI for Corporations, Partnership and Sole Proprietorship. | Balance Sheet Information for about 500,000 companies per year—about 22% coverage of 1.b above |
| <b>II. MACRO</b>                           |  |  |                        |   |  |  |   |  |
| a. Establishments (4.4 million as of 1977) | <i>County Business Patterns (Census) (CBP)</i>   | Employment, Payrolls   | U.S., States, Counties | Same; 3 Digit SIC Available Excludes Railroads  | 1954-Present   | Incorporated and Unincorporated establishment with employees | Dun & Bradstreet (DMI), U.I. Data   | Identification is EIN (Employer Identification Number)   |
| b. Reporting Units                         | <i>Unemployment Insurance ES202 (U.I.) data</i>  | Employment, Payrolls   | U.S., States           | Excludes Farmers, Railroad Workers, Some Govt. Basically Non-ag, Non-govt.                | 1969-1979  | Same as Above  | DMI, CBP  | Reporting Units can be groups of establishments or EINs within the same county                 |

|   |  |  |                        |  |           |  |  |  |
|---|--|--|------------------------|--|-----------|--|--|--|
| c. Establishments (3.7 million)   | <i>Dun &amp; Bradstreet (DMI)</i>  | Employment, Sales  | U.S., States, Counties | Excludes many large Establishments, Many Branches, and Much of Services Sector   | 1969-1976 | Same as I.a.   | Same as I.a.   | This data file was aggregated by Prof. David Birch—MIT; it is "The Job Generation Process" file.                                       |
| d. Enterprises (5.6 million as of 1977)   | U.S. Dept. of Commerce, Bureau of the Census, <i>Enterprise Statistics</i> | Employment, Payroll, Sales, Value Added (Mfg.), New Capital Expenditures (Mfg), Inventory (excl. Retail Trade, Services) | U.S. Only              | Excludes Agric; Transportation, Communication, Utilities; Finance, Insurance, and Real Estate; Part of Services  | 1958-1977 | Corporations, Proprietorships, Partnerships. (Mining Mfg, Construction, Wholesale, Retail Trade, Selected Services Only) | DMI Enterprise File for Covered Industries; IRS Statistics of Income for Covered Industries Only | Includes (Partially) Inc. Proprietorships and Partnerships as well as Corporations.  |
| e. Enterprises (all Companies with More Than 100 Employees; 168,000 in 1979)        | <i>Equal Employment Opportunity Commission EEO-1 file (1979)</i>           | Employment by Major 1-Digit Occupation by Company Size (Single and Multiple-unit Companies are shown Separately)         | U.S. Only              | Excludes Farms, Govt, Self-employed, all Companies Under 100 Employees Unless They Have a Federal Contract Worth \$50K or More. 2-digit Industry Detail Only | 1974-1980 | Corporations   |  | Only Source of Demographic Data on Small Business Available to SBA. No Alphabetic Identification of Individual Companies is Available. |
| f. Enterprises or Establishments (1.0 mil. or 1% sample of Social Security Numbers) | Social Security Administration, Continuous Work History Sample (CWHS)      | Age, Race, Sex, Industry, Quarterly Wages, Size Approximation  | U.S., States, Counties | Excludes Govt., Self-employed  | 1960-1975 |  | Employment totals are generally comparable with IRS Statistics of Income for Corporations        | Size is defined from randomly reading IRS Form 941 and counting the number of employees.   |
| g. Self-employed (1% Sample)  | Social Security Administration (CWHS)                                      | Wages, Industry, Sex, Race, Age, Composition of Self-Employed  | U.S., States, Counties | Excludes Govt., Railroads  | 1960-1975 | Proprietors and partners   | Proprietorships from Statistics of Income  | Based on IRS form 1040SE (self-employment contributions).  |

|   |   |  |              |                                    |                    |   |  |   |
|---|---|--|--------------|------------------------------------|--------------------|---|--|---|
| h. Statistics of Income-Proprietorships (11.3 million as of 1977) | Internal Revenue Service  | Sales (Receipts), Complete Profit and Loss Items                 | U.S., States | Excludes Govt.                     | 1948-1977 (Latest) | Proprietorships—(Self-employed) with or without employees | Social Security 1% Continuous Work History Samples (CWHS)      | Schedule 1040C Tax Returns and Others including Self-employment income reported on the 1040   |
| i. Partnerships (1.2 million as of 1977)                          | Internal Revenue Service  | Sales (Receipts), Complete Balance Sheet Items Every Other Year. | U.S., States | Excludes Govt.                     | 1948-1977          | Partnerships  |  | IRS Form 1065 or IRS Form 1040  |
| j. Corporations (2.2 million as of 1977)                          | Internal Revenue Service  | Sales (Receipts, Assets) Balance Sheet Items.                    | U.S. Only    | Same                               | 1948-1977          | Corporations  | Compatible with <i>Enterprise Statistics</i> for Corporations. | Corporation can file taxes either as an entire Co. (consolidated) or as separate entities (Establishments).   |
| k. Corporations- (Sample of Corporate Tax Returns— about 250,000) | Internal Revenue Service, Source Book for Corporations (IRSCSB) | Complete Balance Sheet Information                               | U.S. Only    | Excludes Self-Employed, Government | 1968-1977          | Corporations  | Dun and Bradstreet Financial Statistics File (FINSTAT)         | Many asset items are comparable to FINSTAT. However, the reporting units are not necessarily comparable. FINSTAT stresses additional balance sheet items, particularly for liabilities. IRSCSB stresses the expenses involved in production. Other major difference: FINSTAT has no depreciation and tax information. |

1. GNP Share of  
Small Business

Joel Popkin and  
Company

Based on Payroll  
and Sales Data  
from *Enterprise  
Statistics and  
Statistics of  
Income.*

U.S. and  
Selected  
States

Excludes  
Agriculture

1963-1976

Closest to  
Corporations

Bureau of  
Economic  
Analysis  
National  
Income  
Accounting  
Definitions

Major Components are  
employment  
compensation,  
net interest,  
profits, capital  
consumption  
allowances, and  
indirect business  
taxes. Estimates  
for Co. with 500  
employees or  
less.

## SIC: 1711, Contractors in Plumbing, Heating, and Air Conditioning

## Preliminary SBA U.S. Business Data Base\*\*\*

January 1981

## Employment Size of Firms and Establishments\*

|                                | 1-4   | 5-9   | 10-19 | 20-49 | 50-99 | 100-249 | 250-499 | 500-999 | 1,000-<br>2,499 | 2,500-<br>4,999 | 5,000-<br>9,999 | 10,000<br>& over | TOTAL |
|--------------------------------|-------|-------|-------|-------|-------|---------|---------|---------|-----------------|-----------------|-----------------|------------------|-------|
| Number of Establishments       |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 48859 | 14114 | 7201  | 3949  | 1144  | 599     | 167     | 124     | 78              | 103             | 9               | 150              | 76497 |
| By Estab Size                  | 50018 | 14051 | 7179  | 3849  | 973   | 339     | 67      | 17      | 4               | 0               | 0               | 0                | 76497 |
| Average Sales (\$000)**        |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 80    | 255   | 570   | 1339  | 3223  | 6506    | 11926   | 17783   | 36723           | 62471           | 52750           | 42966            | 369   |
| By Estab Size                  | 88    | 269   | 607   | 1455  | 4146  | 9103    | 28263   | 45005   | 82000           | 0               | 0               | 0                | 369   |
| Share of Total Sales (%)       |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 11.5  | 13.4  | 15.6  | 19.5  | 12.5  | 10.1    | 4.4     | 3.6     | 3.0             | 4.2             | 1.0             | 1.2              | 100.0 |
| By Estab Size                  | 15.6  | 13.4  | 15.4  | 19.8  | 14.3  | 10.9    | 6.7     | 2.7     | 1.2             | 0.0             | 0.0             | 0.0              | 100.0 |
| Cumulative Share of Sales (%)  |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 11.5  | 25.0  | 40.5  | 60.0  | 72.5  | 82.6    | 87.0    | 90.6    | 93.6            | 97.8            | 98.8            | 100.0            | 100.0 |
| By Estab Size                  | 15.6  | 29.0  | 44.4  | 64.2  | 78.5  | 89.4    | 96.1    | 98.8    | 100.0           | 100.0           | 100.0           | 100.0            | 100.0 |
| Average Employment             |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 2     | 6     | 12    | 25    | 49    | 74      | 100     | 103     | 132             | 114             | 64              | 51               | 7     |
| By Estab Size                  | 2     | 6     | 12    | 27    | 62    | 139     | 307     | 631     | 1350            | 0               | 0               | 0                | 7     |
| Share of Total Employ (%)      |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 19.3  | 16.3  | 16.2  | 18.4  | 10.5  | 8.2     | 3.1     | 2.4     | 1.9             | 2.2             | 0.1             | 1.4              | 100.0 |
| By Estab Size                  | 19.8  | 16.6  | 16.9  | 19.8  | 11.3  | 8.7     | 3.8     | 2.0     | 1.0             | 0.0             | 0.0             | 0.0              | 100.0 |
| Cumulative Share of Employ (%) |       |       |       |       |       |         |         |         |                 |                 |                 |                  |       |
| By Firm Size                   | 19.3  | 35.6  | 51.8  | 70.2  | 80.7  | 88.9    | 92.0    | 94.4    | 96.3            | 98.5            | 98.6            | 100.0            | 100.0 |
| By Estab Size                  | 19.8  | 36.5  | 53.4  | 73.2  | 84.5  | 93.2    | 97.0    | 99.0    | 100.0           | 100.0           | 100.0           | 100.0            | 100.0 |

TOTAL Employment of Establishments in SIC 1711: 541676

\*For businesses with a single location only, firm size is the same as establishment size. For businesses with more than one establishment, firm size is determined by the total employment of the firm, consolidating the employment of all the establishments (e.g., branches or subsidiaries) within the business family. Zero-employment firms were not included.

\*\*Averages were calculated exclusive of firms with unreported sales. Zero average sales implies that no sales data were available.

\*\*\*These tables were prepared by The Brookings Institution using Version 2 of the SBA Interim U.S. Business Data Base.



### 1980 Firm Employment and Sales\*

SIC: 1711, Contractors in Plumbing, Heating, and Air Conditioning

Total Employment: 593437

Employment Size of Firms\*\*

|                                | 1-4   | 5-9   | 10-19 | 20-49 | 50-99 | 100-249 | 250-499 | 500-999 | 1,000-4,999 | 5,000-9,999 | 10,000 & over | TOTAL |
|--------------------------------|-------|-------|-------|-------|-------|---------|---------|---------|-------------|-------------|---------------|-------|
| Number of Firms                | 51639 | 14655 | 7372  | 3852  | 949   | 396     | 68      | 26      | 11          | 1           | 0             | 78969 |
| Average Sales (\$000)          | 85    | 285   | 739   | 1569  | 3768  | 7859    | 19301   | 28713   | 109581      | 552000      | 0             | 387   |
| Share of Total Sales(%)        | 14.5  | 13.7  | 17.8  | 19.7  | 11.7  | 10.2    | 4.3     | 2.4     | 3.9         | 1.8         | 0.0           | 100.0 |
| Cumulative Share of Sales (%)  | 14.5  | 28.1  | 45.9  | 65.7  | 77.4  | 87.5    | 91.8    | 94.3    | 98.2        | 100.0       | 100.0         | 100.0 |
| Average Employment             | 2.2   | 6.4   | 12.8  | 28.0  | 64.0  | 141.6   | 340.8   | 625.3   | 2171.6      | 5561.0      | 100.0         | 7.5   |
| Share of Total Employ (%)      | 18.8  | 15.8  | 15.8  | 18.2  | 10.2  | 9.5     | 3.9     | 2.7     | 4.0         | 0.9         | 0.0           | 100.0 |
| Cumulative Share of Employ (%) | 18.8  | 34.7  | 50.5  | 68.7  | 78.9  | 88.4    | 92.3    | 95.0    | 99.1        | 100.0       | 100.0         | 100.0 |
| Firms Sales per Employee       | 40    | 44    | 58    | 56    | 59    | 55      | 57      | 46      | 50          | 99          | 0             | 52    |

\*These tables were prepared in July of 1982 by The Brookings Institution for the Small Business Administration using the 1978-1980 USEEM.

\*\*Firm size is determined by the total employment of the firm, consolidating the employment of all the establishments (e.g., branches or subsidiaries) within the business family. Zero-employment firms were not included.

**Table 4**

**Establishments per Company by Employment Size of Company and Industry Divisions, 1977**  
(Number)

| Employment Size<br>of Company                             | All<br>Industries | Minerals | Construction | Manufacturing | Wholesale<br>Trade | Retail<br>Trade | Selected<br>Services <sup>1</sup> |
|---|-------------------|----------|--------------|---------------|--------------------|-----------------|-----------------------------------|
| Total   | 1.114             | 1.369    | 1.009        | 1.639         | 1.220              | 1.162           | 1.037                             |
| No. Paid Employees<br>0 for reporting Period <sup>2</sup> | 1.000             | —        | 1.000        | —             | —                  | —               | 1.000                             |
| 1-4   | 1.005             | 1.005    | 1.000        | 1.001         | 1.008              | 1.004           | 1.004                             |
| 5-9   | 1.034             | 1.040    | 1.002        | 1.007         | 1.053              | 1.040           | 1.039                             |
| 10-19   | 1.120             | 1.084    | 1.012        | 1.021         | 1.175              | 1.158           | 1.150                             |
| 20-49   | 1.337             | 1.274    | 1.060        | 1.085         | 1.543              | 1.464           | 1.412                             |
| 50-99   | 1.892             | 1.801    | 1.272        | 1.294         | 2.552              | 2.452           | 1.992                             |
| 100-249   | 3.275             | 2.984    | 1.801        | 1.926         | 4.644              | 6.282           | 2.961                             |
| 250-499   | 6.938             | 5.876    | 3.379        | 3.616         | 9.906              | 18.393          | 5.983                             |
| 500-999   | 13.833            | 9.333    | 7.076        | 7.009         | 20.216             | 38.301          | 13.323                            |
| 1,000 or more   | 105.200           | 67.227   | 24.324       | 78.470        | 48.544             | 249.310         | 69.583                            |

<sup>1</sup>Selected services covered by the economic censuses are listed in Appendix C of the 1977 *Enterprise Statistics*.

<sup>2</sup>Companies which reported annual payroll but did not report any employees on their payroll during specified pay periods in 1977.

Source: Department of Commerce, Bureau of the Census, 1977 *Enterprise Statistics, General Report on Industrial Organization*, Table 3.

# Appendix B

94 STAT. 1164

PUBLIC LAW 96-354—SEPT. 19, 1980

## Public Law 96-354 96th Congress

### An Act

Sept. 19, 1980  
[S. 299]

To amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

Regulatory  
Flexibility Act.  
5 USC 601 note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".*

#### FINDINGS AND PURPOSES

5 USC 601 note.

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

#### ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

### “CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

“Sec. 601. Definitions.

“Sec. 602. Regulatory agenda.

“Sec. 603. Initial regulatory flexibility analysis.

“Sec. 604. Final regulatory flexibility analysis.

“Sec. 605. Avoidance of duplicative or unnecessary analyses.

“Sec. 606. Effect on other law.

“Sec. 607. Preparation of analyses.

“Sec. 608. Procedure for waiver or delay of completion.

“Sec. 609. Procedures for gathering comments.

“Sec. 610. Periodic review of rules.

“Sec. 611. Judicial review.

“Sec. 612. Reports and intervention rights.

#### “§ 601. Definitions

5 USC 601.

“For purposes of this chapter—

“(1) the term ‘agency’ means an agency as defined in section 551(1) of this title;

5 USC 551.

“(2) the term ‘rule’ means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term ‘rule’ does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

5 USC 553.

“(3) the term ‘small business’ has the same meaning as the term ‘small business concern’ under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

15 USC 632.

“(4) the term ‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

“(5) the term ‘small governmental jurisdiction’ means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

“(6) the term ‘small entity’ shall have the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’ defined in paragraphs (3), (4) and (5) of this section.

5 USC 602.

Publication in  
Federal  
Register.

#### “§ 602. Regulatory agenda

“(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

“(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

“(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

“(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

Transmittal to  
SBA.

“(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

Notice.

“(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

“(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

5 USC 603.

Public comment.  
5 USC 553.

#### “§ 603. Initial regulatory flexibility analysis

“(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Publication in  
Federal  
Register.  
Transmittal to  
SBA.

“(b) Each initial regulatory flexibility analysis required under this section shall contain—

“(1) a description of the reasons why action by the agency is being considered;

“(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

“(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

“(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

“(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

“(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

“(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

“(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

“(3) the use of performance rather than design standards; and

“(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

#### “§ 604. Final regulatory flexibility analysis

5 USC 604.

“(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

5 USC 553.

“(1) a succinct statement of the need for, and the objectives of, the rule;

“(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

“(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

“(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

Public availability; publication in Federal Register.  
5 USC 553.

#### “§ 605. Avoidance of duplicative or unnecessary analyses

5 USC 605.

“(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

Certification, publication in Federal Register and transmittal to SBA.

“(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

“(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

5 USC 606.

“§ 606. Effect on other law

“The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

5 USC 607.

“§ 607. Preparation of analyses

“In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

5 USC 608.

“§ 608. Procedure for waiver or delay of completion

Publication in Federal Register.

“(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

Publication in Federal Register.

“(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

5 USC 609.

“§ 609. Procedures for gathering comments

“When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

“(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

“(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

“(3) the direct notification of interested small entities;

“(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

“(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

#### “§ 610. Periodic review of rules

“(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

“(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

“(1) the continued need for the rule;

“(2) the nature of complaints or comments received concerning the rule from the public;

“(3) the complexity of the rule;

“(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

“(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

“(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

#### “§ 611. Judicial review

“(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provi-

5 USC 610.

Plan, publication in Federal Register.

Consideration factors.

Publication in Federal Register.

5 USC 611.



sions of this chapter to any action of the agency shall not be subject to judicial review.

“(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

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

#### “§ 612. Reports and intervention rights

“(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

“(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

“(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).”.

#### EFFECTIVE DATE

5 USC 601 note.

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

Approved September 19, 1980.

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#### LEGISLATIVE HISTORY:

SENATE REPORT No. 96-878 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 126 (1980):

Aug. 6, considered and passed Senate.

Sept. 8, 9, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 38:

Sept. 19, Presidential statement.





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