Treatment
for Small Entities

Message from the Chief Counsel

This pamphlet is an introduction to a new law—the Regulatory Flexibility Act (RFA). Its major features are outlined for laymen; they may check what is said against the brief text of the law which is printed in full.

Several reasons are suggested for using the term "landmark" to describe the importance of the new status as a law. But there is an even "larger-than-law" sense in which the RFA is a "landmark" for those concerned with diversity, competition, balance, and individual opportunity in our economy—as well as our political liberty. This law is a prime example of a big institution—our Federal Government—imposing a new discipline on itself. It is an effort by what is perhaps the largest institution in the world to limit its own negative regulatory impact on "small entities." It is a conscious and laudable, if over-due, effort at self-control, at forbearance in the exercise of power.

In that sense, the RFA is an important and promising precedent in two directions. The same direct effort to limit the negative effect of Federal "uniform action" on large and small entities needs to be extended beyond regulation. And, indeed, in the fields of taxation, procurement, capital and credit, science, and technology support—in all these areas we are intensifying the quest for multi-tiered policies to replace the spurious equality of treating large and small entities in the same way.

To understand what is meant by "spurious equality" just think of a single regulation's impact on two competing businesses of very different sizes. Larger Company, Inc. has assets of $5,000,000 and sales of $10,000,000. Smaller Company, Inc. has assets of $500,000 and sales of $1,000,000. Now each must comply with the same Federal regulations; that looks and sounds fair. But assume the cost of compliance is $10,000—the same indirect tax is being imposed on both. Obviously, the Federal Government is intervening in the marketplace with a burden that will be heavier for the small business to bear. Larger Company, Inc. has 10 times the sales and assets over which to spread the cost of regulation.

While it looks and sounds fair, it is a *spurious* equality of treatment. The Federal Government is actually intervening in the marketplace on the side of the larger business, giving it a new non-market competitive edge. Now multiply the one regulation by 100 to reflect many regulations. The cumulative impact becomes a major obstruction to small entities and a built-in synthetic bias and pressure towards bigness. Obviously, we want no needless and indefensible regulation of *anyone* by government. But where regulation is necessary, the RFA brings the welcome relief of genuine fairness—regulation must be tailored to the size and ability of the regulated to bear the burden—as well as the other legitimate goals of proper regulation.

What is happening in government, moreover, needs to be made a model for the giant institutions of the private sector. They too, in ways appropriate to their roles, must contribute to the survival and expansion of "small entities." Multinational businesses, major unions, universities—all can profit from this example of self-discipline and forbearance.

Milton D. Stewart
Chief Counsel
Office of Advocacy

December 1980

The Regulatory Flexibility Act

The Regulatory Flexibility Act (P.L. 96-354, hereafter RFA) is a straight-forward piece of legislation which represents a landmark determination to alter fundamentally the manner in which the bureaucracy behaves toward small business and other "small entities." It amends the Administrative Procedure Act (APA), adding a new Chapter VI. Congress thus sent a message to the entire administrative law community, both in the government and out of it, that this action is to be treated as a major government-wide regulatory reform. Most provisions go into effect on January 1, 1981.

Perhaps the use of the word "landmark" here will turn out, in the long reach of time, to be an exaggeration, but support for its use is provided by these elements:

- The conscious imposition of a substantial burden on regulators expressly to lighten the regulatory burden, from both present and future rules, of a vast class of the regulated—the "small entities." 'Consideration of alternative ways of adjusting regulations is now an express duty of all regulators.

- A clarification of the meaning of our traditional standard of *"equal justice under the law"* in administrative process. Now that mandate is clarified to mean *"equal treatment of the regulated of approximately the same size"* or *"equal treatment with due regard for the difference in the capacities of the regulated to bear the direct and indirect costs of regulations."*

- Additional imperatives to regulators to: (a) try harder to achieve ac-

"be focused." (Senate Report No. 96-878, p.13)

The House emphasized its concurrence by passing the measure on September 9, 1980. President Carter signed the bill on September 19, 1980.

Both Houses built, in a number of hearings over 10 years, a conclusive record of disillusionment and discontent among the regulated. Small businesses and small entities repeatedly claimed that uniform application of the same regulations to them and to larger entities produced economic injustice.

Four congressional committees (the Senate and House Small Business and Judiciary Committees), among others, heard damage reports from small businesses, small cities and towns, and small nonprofit associations. Federal regulations, it was argued, imposed a disproportionate economic burden of compliance on them. In the business sector, there is considerable evidence that uniform application of regulatory requirements increases the minimum size of firms that can compete effectively in that regulated market. This translates directly into increased economic concentration. Reports on the bills of both Houses of Congress cited these disproportionate economic burdens on small business as key contributors to declines in productivity, competition, innovation, and the relative market shares of small business.

These economic arguments were articulated by Dr. Milton Kafoglis, then a member of the President's Council on Wage and Price Stability, in testimony before the Senate Subcommittee on Administrative Practice and Procedure. Dr. Kafoglis told the subcommittee:

"There seems to be clear economies of scale imposed by most regulatory endeaors. Uniform application of regulatory requirements thus seems to increase the size firm that can effectively compete ... As a result, industrial concentration will have increased. It suggests that the 'small business' problem goes beyond mere sympathy for the small businessman but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly."

The Office of Advocacy has some preliminary data which appear to support this view. In 1963, the small business share of the Gross National Product (GNP) was 43%. By 1976, that share had dropped to 39%, according to a study for Advocacy by the Joel Popkin Company, indicating that business size is generally increasing.

The Mechanics of the Act

While the Act breaks new ground in a number of areas, its mechanics are fairly simple.

A definition of "rule" is set forth that basically corresponds with rules required to be proposed under Section 553(b) of the APA or other laws with some specified exceptions and inclusions (Section 601, RFA). The coverage of the Act extends to every agency which engages in such proposed rulemaking.

Federal agencies are directed to publish in April 1981 a regulatory agenda. They must list all rules for which they are likely to publish a notice of proposed rulemaking in the **Federal Register.** They are to revise and republish the list in October 1981 and in every April and October thereafter (Section 602, RFA). Rules to be included in the regulatory agenda are those which, in the judgment of the

substantive law.

When the agency promulgates a final rule, it must issue a Final Regulatory Flexibility Analysis (FRFA). Generally, the final analysis is to include information on how the agency handled issues brought up in the initial analysis. It also must respond to public comments (Section 604, RFA). These analyses can be either qualitative or quantitative (Section 607). The initial analysis may be waived or delayed in an emergency, but, except as provided in the Act, the final analysis may be delayed only. A rule is void after 180 days without a final analysis (Section 608, RFA).

An agency may avoid the preparation of an IRFA or FRFA with respect to a particular rule. It must certify that the rule will not exert, if promulgated, a significant economic impact on a substantial number of small entities. A copy of the certification must be sent to the Chief Counsel for Advocacy for comment (Section 605, RFA).

Agencies have to insure participation of small affected parties in development of rules through use of several special techniques:

- Statement in the advance notice that the rule may affect small entities.
- Publication of the notice in publications of small entities and their groups.
- A direct notification of affected parties.
- Conferences or public hearings.

- Modification of their own agency procedures for obtaining input from small entities (Section 609, RFA).

The agencies also are required to review systematically within 10 years *all* of their existing and outstanding rules with respect to small entities (Section 610, RFA). In reviewing a rule, an agency must take into consideration the continued need for the rule, public complaints regarding the rule, its complexity, the extent to which it overlaps, duplicates, or conflicts with other Federal or State rules.

Each agency must publish annually in the **Federal Register** a list of the rules it intends to review during the next year. Within 180 days after January 1, 1981, each agency must publish in the **Federal Register** a 10 year plan for a review of its rules which affect small entities. It is reasonable to expect that agencies will review their most significant and burdensome regulations first.

In an attempt to prevent the litigious experience of other reform laws, such as the National Environmental Policy Act (NEPA), Congress cut off judicial review of all agency actions under regulatory flexibility provisions during the promulgation process, including the regulatory flexibility analyses (Section 611(a)). However, the initial and final regulatory flexibility analyses are subject to judicial review as constituting "part of the whole record of agency action in connection with the review" of a final rule (Section 611(b)).

The Chief Counsel for Advocacy is given overall responsibility for monitoring agency compliance with the Act. The President and the Judiciary and Small Business Committees of both Houses are to receive annual reports from him (Section 612(a)). It is anticipated from informal expressions of interest that the authorizing and ap-

proposed its own "uniform" standard specifically "to facilitate flexible regulations by government." This was, of course, *before* the passage of RFA. The definition proposed is limited to number of employees: 500 each of whom works 1800 or more hours per year. Subclasses of 0 to 9 employees, 10 to 49 employees, 50 to 249, and 250 to 499 were also recommended for possible differential treatment.

The term "small entities" includes not-for-profit, independently owned and operated enterprises. Cities, counties, towns, townships, villages, school districts or special districts of less than 50,000 population also are included. The protections and benefits of the Act thus reach far beyond small business. Despite its locus in the SBA, the Office of Advocacy is to monitor compliance on behalf of these additional "small entities."

Significant economic impact on a substantial number of small entities is made the touchstone of RFA applicability. Rules with such impacts are to be included in the regulatory agenda. The agency head must certify, in the alternative, that a rule is not subject to regulatory flexibility and is therefore not included in the regulatory agenda.

Real questions will arise immediately concerning the term "significant economic impact on a substantial number of small entities." That criteria is the test for inclusion of rules in the regulatory agenda, and the reverse test for certification by an agency head that a rule is not subject to regulatory flexibility.

It is obvious from the legislative record that Congress does not want this test to be reduced to an absolute number. For instance, existing

protections provided by Executive Order 12044 were triggered only if the total impact of the proposed regulation were estimated to be $100 million or more. Legislative intent clearly indicates that no such arbitrary numbers are to be developed for general applicability. The House Report specifically advocates the case by case approach as the best way to decide the matter, and states in an example that the number of firms affected may be as low as 15 or even fewer, and still trigger the Act (House Report 96-519, p. 13).

Economic Analysis

Assessment of the overall impact of a regulation or rule ideally would address several characteristics of the affected firms and other small entities included in the Act. Such an assessment should include:

Demographic Impact: This should summarize and present data on the preregulation condition of affected firms and industries and forecast the results of the proposed regulation on them.

Economic Cost Analysis: A model economic cost impact statement would attempt to separate, identify, and quantify the various types of costs associated with regulation. It would be beneficial to separate direct compliance costs from other indirect costs, such as administrative, information and avoidance, startup, and opportunity costs. An illustrative check-list for economic analysis follows:

License/permit/registration fees

Product development

Relocation

Government contract work

Financial standing

Competitive Effects: Regulations almost invariably affect competitive relationship within and among industries. The assessment of competitive effects should describe the impact of the regulatory costs previously enumerated upon the competitive capability of small and large firms. Non-cost factors must be enumerated. Some factors that typically affect competitiveness include:

Prices of goods or services

Quality of goods or services

Location

Growth

Profits

Innovation

Relationships with employees

Merger and acquisition activity

Barriers to entry

Access to export markets

Domestic producers vs. imports

Aggregated Impact: This section should sum up the quantitative and qualitative impacts itemized in the previous two sections to produce estimates of the overall impact. Forecasts should be made of the number and size of firm failures, along with employment losses due to these failures. Other qualitative factors might be: community impact of business failures, effects on concentration of firms in the market, psychological effects on business/government relationships, loss of incentives to invest and/or innovate in the industry, and possible reduction in the number of independent business persons.

The legislative history emphasizes the central importance of competition. Congress' intent is clear that regulations which propose to affect competition significantly should be included in the agency's agenda. In this regard, agency personnel will be well advised to try to "think like regulated small entities" in examining their own proposed rules, and in developing the agenda.

The same general attitude should be adopted by regulatory officials regarding the search for alternatives to compliance with the Act. Agencies can take an affirmative or negative attitude. They can be creative and diligent in seeking ways to ease the regulatory traumas on small entities. Or they can be equally diligent in trying to find the legal minimum to permit mere ceremonial agency compliance with

tries to strike a balance between minimizing opportunities for stalling the regulatory process and 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. Some judicial review is made possible by these words:

> *"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."*

The question obviously raised is, *"How much weight does the regulatory flexibility analysis portion of the rule carry in the record?"* Suppose a rule seems otherwise reasonable, but both the initial and final regulatory analyses are inadequate, sloppy, or incomplete. Can and will the court condemn substandard regulatory flexibility work by vacating an otherwise reasonable rule based on that finding alone?

A descriptive analysis accompanying the substitute amendment to S.299 which passed was submitted on the floor by a principal sponsor, Senator Culver (D-Iowa). It indicates that the regulatory flexibility actions of the agency should be given weight as evidence of the reasonableness or unreasonableness of the rule. On the same point, however, in the House a colloguy between Representatives Broomfield and McDade produced the following:[1]

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1 **Congressional Record,** September 8, 1980 at H8463-8464.

*"**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."[2]

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.

Several other issues of legal significance deserve mention. Procedures are set out by which the agencies are to gather comments on proposed rules. The Congress (as noted earlier) here expresses its frustration with the ineffectiveness of the concept of passive or con-

- A letter in the mail directly from the agency seeking comments on the rule and enclosing a copy of it (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)).

Constitutionality

Is it constitutional under the equal protection clause of the fourteenth amendment to create a classification in the law based solely on the size of regulated entities? Legal precedents indicate that the answer is yes, if they are reasonable.

In deliberating on the question of whether a classification is justified, the Supreme Court must decide whether the classification has a valid public purpose underlying it.

In several cases, laws have been upheld which expressly exempted small businesses from certain regulations. The Court upheld an Arkansas law which exempted mining companies with ten or fewer employees from a complex process which linked the amount of coal mined to a determination of miner's wages **McLean v. Arkansas,** 211 U.S. 539 (1909). The Court later also upheld a state unemployment compensation act which exempted certain classes of small employers, **Carmichael v. Southern Coal Co.,** 301 U.S. 495 (1937).

In numerous instances in the past, the Court has had opportunities to find size of business an unconstitutional classification, but has not done so.

Justification for the Act is deeply rooted in a list of public purposes set forth in Section 2. Its purpose is given as fitting regulations and information requirements to the scale of the regulated. Failure to apply such flexibility to Federal regulations is found to have:

- Adversely affected competition.
- Discouraged innovation.
- Restricted productivity.
- Created entry barriers to many industries.
- Discouraged commercialization of inventions.
- Resulted in the inefficient use of Federal agency resources and Federal actions inconsistent with sound health, environmental safety and economic policy.
- Contributed to the steady decline of the small business market share.
- In any future action under the Act, it is the reasonableness of these public purposes which the court must ultimately determine.

Emerging Small Business Law

targets.

Our system of government has endured because it embodies a durable self-righting mechanism that corrects transitory excesses and enthusiasms. There is always the risk, however, that the pendulum will be too slow or too late to help those being injured in specific controversies. It now has swung decisively enough, however, to prevent permanent damage to the small business sector, or to other small entities.

REGULATORY FLEXIBILITY ACT

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

"§ 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 5 USC 553.

"(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.

"§ 603. Initial regulatory flexibility analysis

Public comment. 5 USC 553.

"(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.

Publication in Federal Register. Transmittal to SBA.

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.

"(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

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

5 USC 610.

"(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.

Plan, publication in Federal Register.

"(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,

Consideration factors.

tees 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.

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.

Office of Advocacy

In his capacity of Chief Counsel for Advocacy, Milton D. Stewart, is charged under Public Law 94-305 with the responsibility of protecting and promoting the interests of the small business sector of the American economy. The Office of Advocacy has primary functions in the following areas:

1. Ombudsman Services
Practical assistance for small business concerns, particularly those regarding Federal regulations and paperwork.

2. Interagency Policy Afairs
Represents small businesses' viewpoints directly to other Federal agencies which are proposing or implementing regulations.

Monitors Federal agencies' actions and works to amend their policies when those policies have an adverse effect on small business.

3. Economic Research
Coordinates and surveys government statistics regarding small businesses.

Developing its own data base to bring uniformity to the accumulation and analysis of small business data.

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