

Small Business Regulatory Enforcement Fairness Act of 1996

(P.L. 104-121)

The Small Business Regulatory Enforcement Fairness Act of 1996 was signed by President Clinton on March 29, 1996, at which time it became Public Law No. 104-121. That law, provides regulatory protections to small business entities and also contains an important congressional review provision, which requires agency submission of regulations to Congress before they may go into effect, thereby permitting Congress the opportunity to review such regulations and to overturn problematic rules by a joint resolution of Congress.

The following summary of the Small Business Regulatory Enforcement Fairness Act of 1996 comes from the Thomas Internet website of the Library of Congress (<http://thomas.loc.gov>).

Small Business Regulatory Enforcement Fairness Act of 1996

Title II: Small Business Regulatory Fairness

- Subtitle A: Regulatory Compliance Simplification
- Subtitle B: Regulatory Enforcement Reforms
- Subtitle C: Equal Access to Justice Act Amendments
- Subtitle D: Regulatory Flexibility Act Amendments
- Subtitle E: Congressional Review

Title II: Small Business Regulatory Fairness - Small Business Regulatory Enforcement Fairness Act of 1996

Subtitle A: Regulatory Compliance Simplification

- States that for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities (businesses) in complying.
- Designates such publications as small entity compliance guides.
- Requires such guides to be provided through comprehensive sources of information.
- Limits judicial review with respect to the designation of such guides.

(Sec. 213)

- Provides that, whenever appropriate, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with statutes and regulations.
- Requires each agency regulating the activities of small entities to establish a program for responding to such inquiries within one year after enactment of this Act.

- Requires each such agency to report to specified congressional committees on the scope and achievements of such program.

(Sec. 214)

- Amends the Small Business Act to require small business development centers to provide information to small businesses concerning regulatory requirements and to develop informational publications, establish resource centers, and distribute compliance guides.

(Sec. 215)

- Authorizes agencies to develop guides that fully integrate requirements of both Federal and State regulations where regulations within such agency's area of interest impact small entities.

Subtitle B: Regulatory Enforcement Reforms

- Requires the Small Business Administration (SBA) to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman to:
 - (1) ensure that small businesses that receive an audit, inspection, or other enforcement action are given a confidential means to comment on such enforcement activity;
 - (2) establish means to receive comments from small businesses regarding enforcement actions;
 - (3) report annually to the Congress on such comments; and
 - (4) provide the affected agency with an opportunity to comment.
- Directs the SBA to establish a Small Business Regulatory Fairness Board (Board) in each SBA regional office.
- Requires each Board to:
 - (1) meet at least annually and report to the Ombudsman on instances of excessive enforcement actions taken against small businesses; and
 - (2) consist of owners, operators, or officers of small entities.

(Sec. 223)

- Requires each agency regulating the activities of small entities to establish, within one year of enactment of this Act, a policy or program to provide for the reduction and possible waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity.
- Requires each such agency to report to specified congressional committees concerning the implementation of its program or policy.

Subtitle C: Equal Access to Justice Act Amendments

- Amends Federal provisions concerning administrative and judicial proceedings to:
 - (1) require the award of defense fees and costs in an adjudication or action in which the demand of a regulatory agency against a small entity is found to be substantially excessive and unreasonable; and
 - (2) increase from \$75 to \$125 the authorized hourly rate of attorney fees that may be awarded in such proceedings.

Subtitle D: Regulatory Flexibility Act Amendments

- Amends the Regulatory Flexibility Act to:
 - (1) require initial and final regulatory analyses for proposed and final interpretative rules involving the internal revenue laws; and
 - (2) require final regulatory analyses to include information on the number of small entities affected, the compliance requirements imposed, and the steps taken by the agency to minimize the significant economic impact on small entities.

(Sec. 242)

- Revises judicial review procedures for small entities adversely affected or aggrieved by agency regulatory actions or requirements.

(Sec. 243)

- Requires the statement published with an agency's certification that a rule will not have a significant economic impact on a substantial number of small entities to provide the factual basis for such certification.

(Sec. 244)

- Revises procedures concerning the gathering of comments on regulatory rules to allow the solicitation and reception of comments over computer networks.
- Provides that, prior to publication of an initial regulatory flexibility analysis of a rule, the Environmental Protection Agency and the Occupational Safety and Health Administration shall provide, through the Chief Counsel for Advocacy of the SBA, notice and information to small entities concerning the potential impacts of such rule.
- Requires each such agency to convene a review panel to review the rule, collect advice and recommendations from small entities identified to be affected by such rule, and report on such comments and other issues raised.
- Requires such report to be made public as part of the rulemaking record.
- Authorizes the Chief Counsel to waive the review panel requirements of this section if the Chief Counsel finds that such requirements would not advance the effective participation of small entities in the rulemaking process.
- Requires the head of each agency that has conducted a final regulatory flexibility analysis to designate a small business advocacy chairperson to be responsible for implementing this section and to act as permanent chair of the agency's review panels established under this section.

Subtitle E: Congressional Review

- Provides that before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of Congress and the Comptroller General a report containing:
 - (1) a copy of the rule;
 - (2) a concise general statement relating to the rule, including whether such rule is a major rule; and

- (3) the proposed effective date of the rule.
- Requires such agency to submit to the Comptroller General and make available to each House of Congress certain other relevant information, including a cost-benefit analysis of the rule.
- Directs the Comptroller General to report on each major rule to the committees of jurisdiction of each House of Congress.
- Prohibits:
 - (1) a rule from taking effect if the Congress passes a joint resolution of disapproval under procedures prescribed in this Act; or
 - (2) a disapproved rule from being reissued in substantially the same form.
- Makes a major rule effective as a final rule on the latest of:
 - (1) the latter of the date 60 days after the Congress receives the report on such rule or the rule is published in the Federal Register;
 - (2) the earlier of the date on which either House of Congress fails to override a presidential veto of a joint resolution disapproving the rule or the date occurring 30 session days after the Congress received the veto; or
 - (3) the date the rule would have otherwise taken effect.
- Allows a rule to take effect notwithstanding such time requirements if the President determines, and notifies the Congress in writing, that the rule should take effect because such rule is:
 - (1) necessary because of an imminent threat to health or safety or other emergency;
 - (2) necessary for the enforcement of criminal laws;
 - (3) necessary for national security; or
 - (4) issued pursuant to any statute implementing an international trade agreement.
- Outlines the procedure for the congressional treatment of rules issued 60 days or earlier before the Congress adjourns a session.
- Provides transition rules for rules issued before enactment of this title.
- Provides congressional rule disapproval procedures.
- Defines "major rule" for purposes of this section as a rule having an annual economic effect of \$100 million or more, resulting in a major increase in costs or prices, or having a significant adverse effect on competition, employment, investment, productivity or the ability of U.S. companies to compete with foreign companies.
- Provides that, in the case of any deadline for or relating to any rule which does not take effect because of the enactment of a congressional joint resolution, such deadline is extended until 12 months after the enactment date of such resolution.
- Prohibits judicial review of determinations made under this title.
- States that the congressional review procedures of this title shall not apply to rules that concern monetary policy proposed or implemented by the Federal Reserve System or Federal Open Market Committee.
- Allows the promulgating Federal agency to determine the effective date for any rule:

- (1) that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping;
or
- (2) for which an agency finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest.