



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## Information Interchange Bulletin No. 022

# Regulatory Flexibility Act Basics

### What is the Reg Flex Act?

The Regulatory Flexibility Act (Reg Flex Act), [5 U.S.C. §§ 601–612](#), requires agencies to analyze the economic impacts of certain rules on small entities.

### What is a small entity?

“Small entity” means a “small business,” “small organization” (non-profit), or “small governmental jurisdiction” (non-federal government with a population less than 50,000). As a general matter, a small business or organization is one which is “independently owned and operated” and “not dominant in its field” of operation ([5 U.S.C. § 601\(4\)](#), [15 U.S.C. § 632\(a\)\(1\)](#)).

### Which rules does the Reg Flex Act apply to?

The Reg Flex Act applies whenever the Administrative Procedure Act or another law requires an agency to publish a notice of proposed rulemaking (see [IIB-014](#)). It also covers certain Internal Revenue Service interpretive rules.

### Who administers the Reg Flex Act?

The Chief Counsel for Advocacy of the Small Business Administration (Office of Advocacy) monitors agency compliance with the Reg Flex Act, and reports annually on compliance to the President and certain congressional committees ([5 U.S.C. § 612](#)).

### What does the Reg Flex Act require of agencies?

#### Semiannual Regulatory Agendas

Each agency must publish a regulatory agenda in the *Federal Register* in October and April identifying rulemaking proposals that are likely to have a significant economic impact on a substantial number of small entities. The agency must send the agenda to the Chief Counsel for Advocacy for comments and endeavor to notify small entities about the agenda and invite their comments ([5 U.S.C. § 602\(a\)](#)).

#### Regulatory Flexibility Analysis

When an agency proposes a rule that is likely to have a significant economic impact on a substantial number of small entities, it must prepare an initial regulatory flexibility analysis (IRFA) describing the rule’s impact on small entities and any significant alternatives considered. The agency must publish the IRFA in the *Federal Register*, invite public comments, and transmit the IRFA to the Chief Counsel for Advocacy ([5 U.S.C. § 603](#)). The agency must then publish a final RFA if it issues a final rule ([5 U.S.C. § 604](#)).

#### Gathering Comments

Agencies must take steps to ensure that small entities are given an opportunity to participate in rulemakings subject to the Act. The Reg Flex Act describes several techniques agencies might consider using to do so ([5 U.S.C. § 609\(a\)](#)).

#### Additional Rulemaking Requirements for Specific Agencies

The Environmental Protection Agency, Occupational Safety and Health Administration, and Consumer Financial Protection Bureau must follow additional procedures when they issue rules. Before publishing an IRFA, the agency must provide the Chief Counsel for Advocacy with information about the rule’s impact on small entities. The Chief Counsel identifies people to represent small entities and gather advice and recommendations on the proposed rule. The agency must then convene a review panel consisting of agency employees, the Office of Information and Regulatory Affairs, and the Chief Counsel to review and report on agency rulemaking materials and representatives’ comments ([5 U.S.C. § 609](#)).

#### Periodic Review of Rules

Each agency must periodically review any rule that has a significant economic impact on a substantial number of small entities to determine whether to keep the rule or amend or rescind it to minimize impacts on small entities ([5 U.S.C. § 610](#)).

### Who can seek judicial review under the Reg Flex Act?

A small entity that is adversely affected or aggrieved by a final rule subject to the Reg Flex Act can seek judicial review of agency compliance with certain sections of the Act ([5 U.S.C. § 611\(a\)](#)).

#### Additional Resources

[Regulatory Flexibility Act](#), ACUS Admin. Procedure Sourcebook  
[EO 13272](#), Proper Consideration of Small Entities in Agency Rulemaking  
SBA, [A Guide for Government Agencies: How to Comply with the Reg Flex Act](#)  
ACUS Rec. [2021-3](#), Early Input on Regulatory Alternatives  
ACUS Rec. [2021-2](#), Periodic Retrospective Review  
ACUS Rec. [2015-1](#), Promoting Accuracy and Transparency in the Unified Agenda  
ACUS Rec. [2014-5](#), Retrospective Review of Agency Rules  
ACUS Rec. [2012-1](#), Regulatory Analysis Requirements