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MEMORANDUM

TO: T. Jeremy Gunn
FROM: Laura Denk
DATE: June 6, 1995
RE: ARRB Compliance with Regulatory Flexibility Act and Paperwork Reduction Act
FILE NO: 3.__. __

I have reviewed portions of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 [**check cite**] and the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.* [**check cite**] to evaluate the accuracy of the “boilerplate” statements in the ARRB’s proposed filings in the Federal Register (attached).

Regulatory Flexibility Act

In its proposed Sunshine Act rule, the ARRB certifies that, if adopted, the rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared pursuant to the Regulatory Flexibility Act at 5 U.S.C. § 605(b).

The Regulatory Flexibility Act (RFA) requires that all agencies, as part of the rulemaking process, must conduct a “regulatory flexibility analysis” for any rule that has a “significant economic impact on a substantial number of small entities.” 5 U.S.C. § 605(b). The flexibility analysis must discuss how a rule will affect small entities, describe “significant alternatives” that would “minimize any significant economic impact of the rule on small

entities,” and explain “why each one of such alternatives was rejected.” 5 U.S.C. § 604(a)(3).¹

An agency need not perform the regulatory flexibility analysis “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.” The certifying agency must publish the certification in its Notice of Proposed Rule and include “a succinct statement explaining the reasons for such certification.” 5 U.S.C. § 605(b).

In enacting the RFA, Congress was concerned with the high costs of compliance with uniform regulations to small businesses. Congress viewed those costs as relatively more burdensome to small businesses than their larger counterparts, and believed this disproportion could have anticompetitive effects. [cite Leg. His.] The RFA directs agencies to carefully consider compliance costs to small businesses by conducting regulatory flexibility analyses. An agency may properly certify that no regulatory flexibility analysis is necessary when it determines that its proposed rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. The D.C. Circuit has held that Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small business in any stratum of the national economy. Mid-Tex Elec. Co-Op., Inc. v. F.E.R.C., 773 F.2d 327 (D.C. Cir. 1985).

¹See, Mid-Tex Elec. Co-Op., Inc. v. F.E.R.C., 773 F.2d 327 (D.C. Cir. 1985), for a concise explanation of agency responsibilities under the RFA.