

119TH CONGRESS
2D SESSION

S. _____

To amend chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. SCOTT of Florida introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Regu-
5 latory Flexibility Improvements Act”.

1 **SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-**
2 **ERED BY THE REGULATORY FLEXIBILITY**
3 **ACT.**

4 (a) IN GENERAL.—Section 601(2) of title 5, United
5 States Code, is amended to read as follows:

6 “(2) RULE.—The term ‘rule’—

7 “(A) has the meaning given the term in
8 section 551; and

9 “(B) does not include—

10 “(i) a rule pertaining to the protection
11 of the rights of and benefits for veterans
12 or part 232 of title 32, Code of Federal
13 Regulations (as in effect on July 1, 2014),
14 or any successor provisions thereto; or

15 “(ii) a rule of particular (and not gen-
16 eral) applicability relating to rates, wages,
17 corporate or financial structures or reorga-
18 nizations thereof, prices, facilities, appli-
19 ances, services, or allowances therefor or to
20 valuations, costs or accounting, or prac-
21 tices relating to such rates, wages, struc-
22 tures, prices, appliances, services, or allow-
23 ances.”.

24 (b) INCLUSION OF RULES WITH INDIRECT EF-
25 FECTS.—Section 601 of title 5, United States Code, is
26 amended by adding at the end the following:

1 “(9) ECONOMIC IMPACT.—The term ‘economic
2 impact’ means, with respect to a proposed or final
3 rule—

4 “(A) any direct economic effect on small
5 entities of such rule; and

6 “(B) any indirect economic effect (includ-
7 ing compliance costs and effects on revenue) on
8 small entities which is reasonably foreseeable
9 and results from such rule (without regard to
10 whether small entities will be directly regulated
11 by the rule).”.

12 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
13 FECTS.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Section 603(c) of title 5, United States Code,
16 is amended by striking the first sentence and insert-
17 ing “Each initial regulatory flexibility analysis shall
18 also contain a detailed description of alternatives to
19 the proposed rule which minimize any adverse sig-
20 nificant economic impact or maximize any beneficial
21 significant economic impact on small entities.”.

22 (2) FINAL REGULATORY FLEXIBILITY ANAL-
23 YSIS.—Section 604(a) of title 5, United States Code,
24 is amended—

1 (A) by redesignating the second paragraph
2 designated as paragraph (6) (relating to cov-
3 ered agencies) as paragraph (7); and

4 (B) in paragraph (6), by striking “mini-
5 mize the significant economic impact” and in-
6 serting “minimize the adverse significant eco-
7 nomic impact or maximize the beneficial signifi-
8 cant economic impact”.

9 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
10 NIZATIONS.—Section 601(5) of title 5, United States
11 Code, is amended by striking “or special districts” and
12 inserting “, special districts, or Tribal organizations (as
13 defined in section 4(l) of the Indian Self-Determination
14 and Education Assistance Act (25 U.S.C. 5304(l))),”.

15 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
16 FORMAL RULE MAKING.—

17 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
18 YSIS.—Section 603(a) of title 5, United States Code,
19 is amended in the first sentence—

20 (A) by striking “or” after “proposed
21 rule,”; and

22 (B) by inserting “or publishes a revision or
23 amendment to a land management plan,” after
24 “United States,”.

1 (2) FINAL REGULATORY FLEXIBILITY ANAL-
2 YSIS.—Section 604(a) of title 5, United States Code,
3 is amended in the first sentence—

4 (A) by striking “or” after “proposed rule-
5 making,”; and

6 (B) by inserting “or adopts a revision or
7 amendment to a land management plan,” after
8 “section 603(a),”.

9 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
10 tion 601 of title 5, United States Code, as amended
11 by subsections (a) and (b), is amended by adding at
12 the end the following:

13 “(10) LAND MANAGEMENT PLAN.—

14 “(A) IN GENERAL.—The term ‘land man-
15 agement plan’ means—

16 “(i) any plan developed by the Sec-
17 retary of Agriculture under section 6 of
18 the Forest and Rangeland Renewable Re-
19 sources Planning Act of 1974 (16 U.S.C.
20 1604); and

21 “(ii) any plan developed by the Sec-
22 retary of the Interior under section 202 of
23 the Federal Land Policy and Management
24 Act of 1976 (43 U.S.C. 1712).

1 “(B) REVISION.—The term ‘revision’
2 means any change to a land management plan
3 which—

4 “(i) in the case of a plan described in
5 subparagraph (A)(i), is made under section
6 6(f)(5) of the Forest and Rangeland Re-
7 newable Resources Planning Act of 1974
8 (16 U.S.C. 1604(f)(5)); or

9 “(ii) in the case of a plan described in
10 subparagraph (A)(ii), is made under sec-
11 tion 1610.5–6 of title 43, Code of Federal
12 Regulations (or any successor regulation).

13 “(C) AMENDMENT.—The term ‘amend-
14 ment’ means any change to a land management
15 plan which—

16 “(i) in the case of a plan described in
17 subparagraph (A)(i), is made under section
18 6(f)(4) of the Forest and Rangeland Re-
19 newable Resources Planning Act of 1974
20 (16 U.S.C. 1604(f)(4)) and with respect to
21 which the Secretary of Agriculture pre-
22 pares a statement described in section
23 102(2)(C) of the National Environmental
24 Policy Act of 1969 (42 U.S.C.
25 4332(2)(C)); or

1 “(ii) in the case of a plan described in
2 subparagraph (A)(ii), is made under sec-
3 tion 1610.5–5 of title 43, Code of Federal
4 Regulations (or any successor regulation),
5 and with respect to which the Secretary of
6 the Interior prepares a statement described
7 in section 102(2)(C) of the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C.
9 4332(2)(C)).”.

10 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
11 INVOLVING THE INTERNAL REVENUE LAWS.—

12 (1) IN GENERAL.—Section 603(a) of title 5,
13 United States Code, as amended by subsection (e),
14 is amended by striking the period at the end and in-
15 serting “or a recordkeeping requirement, and with-
16 out regard to whether such recordkeeping require-
17 ment is imposed by statute or regulation.”.

18 (2) COLLECTION OF INFORMATION.—Section
19 601(7) of title 5, United States Code, is amended to
20 read as follows:

21 “(7) COLLECTION OF INFORMATION.—The term
22 ‘collection of information’ has the meaning given the
23 term in section 3502 of title 44.”.

1 (3) RECORDKEEPING REQUIREMENT.—Section
2 601(8) of title 5, United States Code, is amended to
3 read as follows:

4 “(8) RECORDKEEPING REQUIREMENT.—The
5 term ‘recordkeeping requirement’ has the meaning
6 given the term in section 3502 of title 44.”.

7 (g) DEFINITION OF SMALL ORGANIZATION.—Section
8 601(4) of title 5, United States Code, is amended to read
9 as follows:

10 “(4) SMALL ORGANIZATION.—

11 “(A) IN GENERAL.—The term ‘small orga-
12 nization’ means any nonprofit enterprise which,
13 as of the issuance of a notice of proposed rule-
14 making—

15 “(i) in the case of an enterprise which
16 is described by a classification code of the
17 North American Industrial Classification
18 System, does not exceed the size standard
19 established by the Administrator of the
20 Small Business Administration pursuant to
21 section 3 of the Small Business Act (15
22 U.S.C. 632) for small business concerns
23 described by such classification code; and

24 “(ii) in the case of any other enter-
25 prise, has a net worth that does not exceed

1 \$7,000,000 and has not more than 500
2 employees.

3 “(B) LOCAL LABOR ORGANIZATIONS.—In
4 the case of any local labor organization, sub-
5 paragraph (A) shall be applied without regard
6 to any national or international organization of
7 which such local labor organization is a part.

8 “(C) AGENCY DEFINITIONS.—Subpara-
9 graphs (A) and (B) shall not apply to the ex-
10 tent that an agency, after consultation with the
11 Office of Advocacy of the Small Business Ad-
12 ministration and after opportunity for public
13 comment, establishes one or more definitions
14 for such term which are appropriate to the ac-
15 tivities of the agency and publishes such defini-
16 tions in the Federal Register.”.

17 **SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.**

18 Section 602 of title 5, United States Code, is amend-
19 ed—

20 (1) in subsection (a)—

21 (A) in paragraph (2), by striking “, and”
22 at the end and inserting a semicolon;

23 (B) by redesignating paragraph (3) as
24 paragraph (4); and

1 (C) by inserting after paragraph (2) the
2 following:

3 “(3) a brief description of the sector of the
4 North American Industrial Classification System
5 that is primarily affected by any rule which the
6 agency expects to propose or promulgate which is
7 likely to have a significant economic impact on a
8 substantial number of small entities; and”; and

9 (2) by amending subsection (c) to read as fol-
10 lows:

11 “(c)(1) Not later than 3 business days after the date
12 on which an agency publishes a regulatory flexibility agen-
13 da in the Federal Register under subsection (a), the agen-
14 cy shall prominently display on the website of the agency
15 a plain language summary of the information contained
16 in the regulatory flexibility agenda.

17 “(2) The Office of Advocacy of the Small Business
18 Administration shall compile, by agency, and prominently
19 display on the website of the Small Business Administra-
20 tion a plain language summary of each regulatory flexi-
21 bility agenda published under subsection (a) not later than
22 3 business days after the date of publication in the Fed-
23 eral Register.”.

1 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
2 **ANALYSES.**

3 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
4 Section 603(b) of title 5, United States Code, is amended
5 to read as follows:

6 “(b) Each initial regulatory flexibility analysis re-
7 quired under this section shall contain a detailed state-
8 ment—

9 “(1) describing the reasons why action by the
10 agency is being considered;

11 “(2) describing the objectives of, and legal basis
12 for, the proposed rule;

13 “(3) estimating the number and type of small
14 entities to which the proposed rule will apply;

15 “(4) describing the projected reporting, record-
16 keeping, and other compliance requirements of the
17 proposed rule, including an estimate of the classes of
18 small entities which will be subject to the require-
19 ment and the type of professional skills necessary
20 for preparation of the report and record;

21 “(5) describing all relevant Federal rules which
22 may duplicate, overlap, or conflict with the proposed
23 rule, or the reasons why such a description could not
24 be provided;

25 “(6) estimating the additional cumulative eco-
26 nomic impact of the proposed rule on small entities

1 beyond that already imposed on the class of small
2 entities by the agency or why such an estimate is
3 not available;

4 “(7) describing any disproportionate economic
5 impact on small entities or a specific class of small
6 entities; and

7 “(8) describing any impairment of the ability of
8 small entities to have access to credit.”.

9 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

10 (1) IN GENERAL.—Section 604(a) of title 5,
11 United States Code, as amended by section 2, is
12 amended—

13 (A) in paragraph (4)—

14 (i) by inserting “detailed” before “de-
15 scription”; and

16 (ii) by striking “an explanation” and
17 inserting “a detailed explanation”;

18 (B) in paragraph (5), by inserting “de-
19 tailed” before “description”;

20 (C) in paragraph (6)—

21 (i) by inserting “detailed” before “de-
22 scription”; and

23 (ii) by striking “and” at the end;

1 (D) in paragraph (7), as so redesignated
2 by section 2(c)(2)(A), by striking the period at
3 the end and inserting “; and”; and

4 (E) by adding at the end the following:

5 “(8) a detailed description of any dispropor-
6 tionate economic impact on small entities or a spe-
7 cific class of small entities.”.

8 (2) INCLUSION OF RESPONSE TO COMMENTS ON
9 CERTIFICATION OF PROPOSED RULE.—Section
10 604(a)(2) of title 5, United States Code, is amended
11 by inserting “(or certification of the proposed rule
12 under section 605(b))” after “initial regulatory flexi-
13 bility analysis”.

14 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—
15 Section 604(b) of title 5, United States Code, is
16 amended to read as follows:

17 “(b) The agency shall make copies of the final regu-
18 latory flexibility analysis available to the public, including
19 placement of the entire analysis on the website of the
20 agency, and shall publish in the Federal Register the final
21 regulatory flexibility analysis, or a summary thereof which
22 includes the telephone number, mailing address, and link
23 to the website where the complete analysis may be ob-
24 tained.”.

1 (c) CROSS-REFERENCES TO OTHER ANALYSES.—

2 Section 605(a) of title 5, United States Code, is amended
3 to read as follows:

4 “(a) A Federal agency shall be treated as satisfying
5 any requirement regarding the content of a regulatory
6 flexibility agenda or regulatory flexibility analysis under
7 section 602, 603, or 604 if the Federal agency provides
8 in the agenda or analysis a cross-reference to the specific
9 portion of another agenda or analysis which is required
10 by any other law and which satisfies the requirement.”.

11 (d) CERTIFICATIONS.—Section 605(b) of title 5,
12 United States Code, is amended by striking “statement
13 providing the factual basis for such certification.” and in-
14 serting “detailed statement providing the factual and legal
15 basis for such certification. The detailed statement shall
16 include an economic assessment or a summary thereof
17 that is sufficiently detailed to support the certification of
18 the agency.”.

19 (e) QUANTIFICATION REQUIREMENTS.—Section 607
20 of title 5, United States Code, is amended to read as fol-
21 lows:

22 **“§ 607. Quantification requirements**

23 “In complying with sections 603 and 604, an agency
24 shall provide—

1 “(1) a quantifiable or numerical description of
2 the effects of the proposed or final rule and alter-
3 natives to the proposed or final rule; or

4 “(2) a more general descriptive statement and
5 a detailed statement explaining why quantification is
6 not practicable or reliable.”.

7 **SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**
8 **TIONAL POWERS OF THE CHIEF COUNSEL**
9 **FOR ADVOCACY.**

10 (a) IN GENERAL.—Section 608 of title 5, United
11 States Code, is amended to read as follows:

12 **“§ 608. Additional powers of Chief Counsel for Advoc-**
13 **acy**

14 “(a) IN GENERAL.—

15 “(1) ISSUANCE OF RULES.—Not later than 270
16 days after the date of enactment of the Small Busi-
17 ness Regulatory Flexibility Improvements Act, the
18 Chief Counsel for Advocacy of the Small Business
19 Administration shall, after opportunity for notice
20 and comment under section 553, issue rules gov-
21 erning agency compliance with this chapter. The
22 Chief Counsel may modify or amend such rules after
23 notice and comment under section 553. This chapter
24 (other than this subsection) shall not apply with re-

1 spect to the issuance, modification, and amendment
2 of rules under this paragraph.

3 “(2) PROHIBITION.—An agency shall not issue
4 rules which supplement the rules issued under para-
5 graph (1) unless such agency has first consulted
6 with the Chief Counsel for Advocacy to ensure that
7 the supplemental rules comply with this chapter and
8 the rules issued under paragraph (1).

9 “(b) INTERVENTION IN AGENCY ADJUDICATION.—
10 Notwithstanding any other law, the Chief Counsel for Ad-
11 vocacy of the Small Business Administration may inter-
12 vene in any agency adjudication (unless such agency is au-
13 thorized to impose a fine or penalty under such adjudica-
14 tion) and may inform the agency of the impact that any
15 decision on the record may have on small entities. The
16 Chief Counsel for Advocacy shall not initiate an appeal
17 with respect to any adjudication in which the Chief Coun-
18 sel for Advocacy intervenes under this subsection.

19 “(c) COMMENTS.—The Chief Counsel for Advocacy
20 may file comments in response to any agency notice re-
21 questing comment, regardless of whether the agency is re-
22 quired to file a general notice of proposed rule making
23 under section 553.”.

24 (b) CONFORMING AMENDMENTS.—Section 611(a) of
25 title 5, United States Code, is amended—

- 1 (1) in paragraph (1), by striking “608(b),”;
2 (2) in paragraph (2), by striking “608(b),”;
3 and
4 (3) in paragraph (3)—
5 (A) by striking subparagraph (B); and
6 (B) by striking “(3)(A) A small entity”
7 and inserting the following:
8 “(3) A small entity”.

9 **SEC. 6. PROCEDURES FOR GATHERING COMMENTS.**

10 Section 609 of title 5, United States Code, is amend-
11 ed by striking subsections (b) through (e) and inserting
12 the following:

13 “(b)(1) Prior to publication of any proposed rule de-
14 scribed in subsection (e), an agency making the rule shall
15 notify the Chief Counsel for Advocacy of the Small Busi-
16 ness Administration and provide the Chief Counsel with—

17 “(A) all materials prepared or utilized by the
18 agency in making the proposed rule, including the
19 draft of the proposed rule; and

20 “(B) information on the potential adverse and
21 beneficial economic impacts of the proposed rule on
22 small entities and the type of small entities that
23 might be affected.

1 “(2) An agency shall not be required under para-
2 graph (1) to provide the exact language of any draft if
3 the rule—

4 “(A) relates to the internal revenue laws of the
5 United States; or

6 “(B) is proposed by an independent regulatory
7 agency.

8 “(c) Not later than 15 days after the receipt of the
9 materials and information under subsection (b), the Chief
10 Counsel for Advocacy of the Small Business Administra-
11 tion shall—

12 “(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and

18 “(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and, in the case of an agen-
22 cy other than an independent regulatory agency, an
23 employee from the Office of Information and Regu-
24 latory Affairs of the Office of Management and
25 Budget to review the materials and information pro-

1 vided to the Chief Counsel for Advocacy under sub-
2 section (b).

3 “(d)(1) Not later than 60 days after the review panel
4 described in subsection (c)(2) is convened, the Chief Coun-
5 sel for Advocacy of the Small Business Administration
6 shall, after consultation with the members of the panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency, the Office
9 of Information and Regulatory Affairs of the Office of
10 Management and Budget.

11 “(2) Each report described in paragraph (1) shall in-
12 clude an assessment of the economic impact of the pro-
13 posed rule on small entities, including—

14 “(A) an assessment of the impact of the pro-
15 posed rule on the cost that small entities pay for en-
16 ergy;

17 “(B) an assessment of the impact of the pro-
18 posed rule on startup costs for small entities; and

19 “(C) a discussion of any alternatives that will
20 minimize adverse significant economic impacts or
21 maximize beneficial significant economic impacts on
22 small entities.

23 “(3) Each report described in paragraph (1) shall be-
24 come part of the rulemaking record. In the publication of

1 the proposed rule, the agency shall explain what actions,
2 if any, the agency took in response to the report.

3 “(e) A proposed rule is described by this subsection
4 if the Administrator of the Office of Information and Reg-
5 ulatory Affairs of the Office of Management and Budget,
6 the head of the agency (or the delegate of the head of
7 the agency), or an independent regulatory agency deter-
8 mines that the proposed rule is likely to result in—

9 “(1) an annual effect on the economy of
10 \$100,000,000 or more;

11 “(2) a major increase in costs or prices for con-
12 sumers, individual industries, the Federal Govern-
13 ment, State or local governments, Tribal organiza-
14 tions, or geographic regions;

15 “(3) significant adverse effects on competition,
16 employment, investment, productivity, innovation, or
17 the ability of United States-based enterprises to
18 compete with foreign-based enterprises in domestic
19 and export markets; or

20 “(4) a significant economic impact on a sub-
21 stantial number of small entities.

22 “(f) Upon application by the agency, the Chief Coun-
23 sel for Advocacy of the Small Business Administration
24 may waive the requirements of subsections (b) through (e)
25 if the Chief Counsel for Advocacy determines that compli-

1 ance with the requirements of such subsections is imprac-
2 ticable, unnecessary, or contrary to the public interest.

3 “(g) A small entity or a representative of a small enti-
4 ty may submit a request that the agency provide a copy
5 of the report prepared under subsection (d) and all mate-
6 rials and information provided to the Chief Counsel for
7 Advocacy of the Small Business Administration under
8 subsection (b). The agency receiving such request shall
9 provide the report, materials, and information to the re-
10 questing small entity or the representative of the small
11 entity not later than 10 business days after receiving such
12 request, except that the agency shall not disclose any in-
13 formation that is prohibited from disclosure to the public
14 pursuant to section 552(b) of this title.

15 “(h) In this section, the term ‘independent regulatory
16 agency’ has the meaning given the term in section 3502
17 of title 44.”.

18 **SEC. 7. PERIODIC REVIEW OF RULES.**

19 Section 610 of title 5, United States Code, is amend-
20 ed to read as follows:

21 **“§ 610. Periodic review of rules**

22 “(a) Not later than 180 days after the date of enact-
23 ment of the Small Business Regulatory Flexibility Im-
24 provements Act, each agency shall publish in the Federal
25 Register and place on the website of the agency a plan

1 for the periodic review of rules issued by the agency which
2 the head of the agency determines have a significant eco-
3 nomic impact on a substantial number of small entities.
4 Such determination shall be made without regard to
5 whether the agency performed an analysis under section
6 604. The purpose of the review shall be to determine
7 whether such rules should be continued without change,
8 or should be amended or rescinded, consistent with the
9 stated objectives of applicable statutes, to minimize any
10 adverse significant economic impacts or maximize any
11 beneficial significant economic impacts on a substantial
12 number of small entities. Such plan may be amended by
13 the agency at any time by publishing the revision in the
14 Federal Register and subsequently placing the amended
15 plan on the website of the agency.

16 “(b) The plan shall provide for the review of all such
17 agency rules existing on the date of enactment of the
18 Small Business Regulatory Flexibility Improvements Act
19 not later than 10 years after the date of publication of
20 the plan in the Federal Register and for review of rules
21 adopted after the date of enactment of the Small Business
22 Regulatory Flexibility Improvements Act not later than 10
23 years after the publication of the final rule in the Federal
24 Register. If the head of the agency determines that com-
25 pletion of the review of existing rules is not feasible by

1 the established date, the head of the agency shall so certify
2 in a statement published in the Federal Register and may
3 extend the review for not longer than 2 years after publi-
4 cation of notice of extension in the Federal Register. Such
5 certification and notice shall be sent to the Chief Counsel
6 for Advocacy of the Small Business Administration and
7 Congress.

8 “(c) The plan shall include a section that details how
9 an agency will conduct outreach to and meaningfully in-
10 clude small businesses (including small business concerns
11 owned and controlled by women, small business concerns
12 owned and controlled by veterans, and small business con-
13 cerns owned and controlled by socially and economically
14 disadvantaged individuals (as such terms are defined in
15 section 3 and section 8(d)(3)(C) of the Small Business Act
16 (15 U.S.C. 632, 637(d)(3)(C)))) for the purposes of car-
17 rying out this section. The agency shall include in this sec-
18 tion a plan for how the agency will contact small busi-
19 nesses and gather their input on existing agency rules.

20 “(d) Each agency shall annually submit a report re-
21 garding the results of its review pursuant to such plan
22 to Congress, the Chief Counsel for Advocacy of the Small
23 Business Administration, and, in the case of agencies
24 other than independent regulatory agencies (as defined in
25 section 3502 of title 44), to the Administrator of the Of-

1 fice of Information and Regulatory Affairs of the Office
2 of Management and Budget. Such report shall include the
3 identification of any rule with respect to which the head
4 of the agency made a determination described in para-
5 graph (5) or (6) of subsection (e) and a detailed expla-
6 nation of the reasons for such determination.

7 “(e) In reviewing a rule pursuant to subsections (a)
8 through (d), the agency shall amend or rescind the rule
9 to minimize any adverse significant economic impact on
10 a substantial number of small entities or disproportionate
11 economic impact on a specific class of small entities, or
12 maximize any beneficial significant economic impact of the
13 rule on a substantial number of small entities to the great-
14 est extent possible, consistent with the stated objectives
15 of applicable statutes. In amending or rescinding the rule,
16 the agency shall consider the following factors:

17 “(1) The continued need for the rule.

18 “(2) The nature of complaints received by the
19 agency from small entities concerning the rule.

20 “(3) Comments by the Regulatory Enforcement
21 Ombudsman and the Chief Counsel for Advocacy of
22 the Small Business Administration.

23 “(4) The complexity of the rule.

24 “(5) The extent to which the rule overlaps, du-
25 plicates, or conflicts with other Federal rules and,

1 unless the head of the agency determines it to be in-
2 feasible, State, territorial, and local rules.

3 “(6) The contribution of the rule to the cumu-
4 lative economic impact of all Federal rules on the
5 class of small entities affected by the rule, unless the
6 head of the agency determines that such calculations
7 cannot be made and reports that determination in
8 the annual report required under subsection (d).

9 “(7) The length of time since the rule has been
10 evaluated or the degree to which technology, eco-
11 nomic conditions, or other factors have changed in
12 the area affected by the rule.

13 “(f) Each year, each agency shall publish in the Fed-
14 eral Register and on its website a list of rules to be re-
15 viewed pursuant to such plan. The agency shall include
16 in the publication a solicitation of public comments on any
17 further inclusions or exclusions of rules from the list and
18 shall respond to such comments. Such publication shall
19 include a brief description of the rule, state the reason
20 why the agency determined that it has a significant eco-
21 nomic impact on a substantial number of small entities
22 (without regard to whether it had prepared a final regu-
23 latory flexibility analysis for the rule), and request com-
24 ments from the public, the Chief Counsel for Advocacy of
25 the Small Business Administration, and the Regulatory

1 Enforcement Ombudsman concerning the enforcement of
2 the rule.”.

3 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
4 **QUIREMENTS OF THE REGULATORY FLEXI-**
5 **BILITY ACT AVAILABLE AFTER PUBLICATION**
6 **OF THE FINAL RULE.**

7 (a) IN GENERAL.—Section 611(a) of title 5, United
8 States Code, as amended by section 5, is amended—

9 (1) in paragraph (1), by striking “final agency
10 action” and inserting “such rule”;

11 (2) in paragraph (2), by inserting “(or which
12 would have such jurisdiction if publication of the
13 final rule constituted final agency action)” after
14 “provision of law,”; and

15 (3) in paragraph (3)—

16 (A) by striking “final agency action” and
17 inserting “publication of the final rule”; and

18 (B) by inserting “, in the case of a rule for
19 which the date of final agency action is the
20 same date as the publication of the final rule,”
21 after “except that”.

22 (b) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
23 CACY.—Section 612(b) of title 5, United States Code, is
24 amended by inserting before the first period “or agency

1 compliance with section 602, 603, 604, 605(b), 609, or
2 610”.

3 **SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES**
4 **IMPLEMENTING THE REGULATORY FLEXI-**
5 **BILITY ACT.**

6 (a) IN GENERAL.—Section 2342 of title 28, United
7 States Code, is amended—

8 (1) in paragraph (6), by striking “and” at the
9 end;

10 (2) in paragraph (7), by striking the period at
11 the end and inserting “; and”; and

12 (3) by inserting after paragraph (7) the fol-
13 lowing:

14 “(8) all final rules under section 608(a) of title
15 5.”.

16 (b) CONFORMING AMENDMENTS.—Section 2341(3)
17 of title 28, United States Code, is amended—

18 (1) in subparagraph (D), by striking “and” at
19 the end;

20 (2) in subparagraph (E), by striking the period
21 at the end and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(F) the Office of Advocacy of the Small
24 Business Administration, when the final rule is
25 under section 608(a) of title 5.”.

1 (c) AUTHORIZATION TO INTERVENE AND COMMENT
2 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
3 DURE.—Section 612(b) of title 5, United States Code, is
4 amended by inserting “chapter 5, and chapter 7,” after
5 “this chapter,”.

6 **SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
7 **NESS CONCERN SIZE STANDARDS BY CHIEF**
8 **COUNSEL FOR ADVOCACY.**

9 (a) IN GENERAL.—Section 3(a)(2)(A) of the Small
10 Business Act (15 U.S.C. 632(a)(2)(A)) is amended to read
11 as follows:

12 “(A) IN GENERAL.—In addition to the cri-
13 teria specified in paragraph (1)—

14 “(i) the Administrator may specify de-
15 tailed definitions or standards by which a
16 business concern may be determined to be
17 a small business concern for purposes of
18 this Act or the Small Business Investment
19 Act of 1958 (15 U.S.C. 661 et seq.); and

20 “(ii) the Chief Counsel for Advocacy
21 may specify such definitions or standards
22 for purposes of any other Act.”.

23 (b) APPROVAL BY CHIEF COUNSEL.—Section
24 3(a)(2)(C)(iii) of the Small Business Act (15 U.S.C.
25 632(a)(2)(C)(iii)) is amended to read as follows:

1 “(iii) except in the case of a size
2 standard prescribed by the Administrator,
3 is approved by the Chief Counsel for Advo-
4 cacy.”.

5 (c) INDUSTRY VARIATION.—Section 3(a)(3) of the
6 Small Business Act (15 U.S.C. 632(a)(3)) is amended—

7 (1) by inserting “or the Chief Counsel for Advo-
8 cacy, as appropriate,” before “shall ensure”; and

9 (2) by inserting “or the Chief Counsel for Advo-
10 cacy” before the period at the end.

11 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
12 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
13 Business Act (15 U.S.C. 632(a)) is amended by adding
14 at the end the following:

15 “(10) JUDICIAL REVIEW OF STANDARDS AP-
16 PROVED BY CHIEF COUNSEL.—In the case of an ac-
17 tion for judicial review of a rule which includes a
18 definition or standard approved by the Chief Counsel
19 for Advocacy under this subsection, the party seek-
20 ing such review shall be entitled to join the Chief
21 Counsel for Advocacy as a party in such action.”.

22 **SEC. 11. CLERICAL AMENDMENTS.**

23 (a) DEFINITIONS.—Section 601 of title 5, United
24 States Code, is amended—

25 (1) in paragraph (1)—

1 (A) by striking the semicolon at the end
2 and inserting a period; and

3 (B) by striking “(1) the term” and insert-
4 ing the following:

5 “(1) AGENCY.—The term”;

6 (2) in paragraph (3)—

7 (A) by striking the semicolon at the end
8 and inserting a period; and

9 (B) by striking “(3) the term” and insert-
10 ing the following:

11 “(3) SMALL BUSINESS.—The term”;

12 (3) in paragraph (5)—

13 (A) by striking the semicolon at the end
14 and inserting a period; and

15 (B) by striking “(5) the term” and insert-
16 ing the following:

17 “(5) SMALL GOVERNMENTAL JURISDICTION.—

18 The term”; and

19 (4) in paragraph (6)—

20 (A) by striking “; and” and inserting a pe-
21 riod; and

22 (B) by striking “(6) the term” and insert-
23 ing the following:

24 “(6) SMALL ENTITY.—The term”.

1 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
2 CATIONS.—The heading of section 605 of title 5, United
3 States Code, is amended to read as follows:

4 **“§ 605. Incorporations by reference and certifi-**
5 **cations”.**

6 (c) TABLE OF SECTIONS.—The table of sections for
7 chapter 6 of title 5, United States Code, is amended—

8 (1) by striking the item relating to section 605
9 and inserting the following new item:

“605. Incorporations by reference and certifications.”;

10 (2) by striking the item relating to section 607
11 and inserting the following new item:

“607. Quantification requirements.”; and

12 (3) by striking the item relating to section 608
13 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy.”.

14 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
15 6.—Chapter 6 of title 5, United States Code, is amend-
16 ed—

17 (1) in section 603(d)—

18 (A) by striking paragraph (2);

19 (B) by striking “(1) For a covered agency,
20 as defined in section 609(d)(2), each initial reg-
21 ulatory flexibility analysis” and inserting “Each
22 initial regulatory flexibility analysis by an agen-
23 cy”;

1 (C) by striking “(A) any” and inserting
2 “(1) any”;

3 (D) by striking “(B) any significant” and
4 inserting “(2) any significant”; and

5 (E) by striking “(C) advice” and inserting
6 “(3) advice”; and

7 (2) in paragraph (7) of section 604(a), as so re-
8 designated by section 2(c)(2)(A), by striking “for a
9 covered agency, as defined in section 609(d)(2),”.

10 **SEC. 12. AGENCY PREPARATION OF GUIDES.**

11 Section 212(a)(5) the Small Business Regulatory En-
12 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
13 amended to read as follows:

14 “(5) AGENCY PREPARATION OF GUIDES.—The
15 agency shall, in its sole discretion, taking into ac-
16 count the subject matter of the rule and the lan-
17 guage of relevant statutes, ensure that the guide is
18 written using sufficiently plain language likely to be
19 understood by affected small entities. Agencies may
20 prepare separate guides covering groups or classes of
21 similarly affected small entities and may cooperate
22 with associations of small entities to distribute such
23 guides. In developing guides, agencies shall solicit
24 input from affected small entities or associations of
25 affected small entities. An agency may prepare

1 guides and apply this section with respect to a rule
2 or a group of related rules.”.

3 **SEC. 13. COMPTROLLER GENERAL REPORT.**

4 Not later than 90 days after the date of enactment
5 of this Act, the Comptroller General of the United States
6 shall complete and publish a study that examines whether
7 the Chief Counsel for Advocacy of the Small Business Ad-
8 ministration has the capacity and resources to carry out
9 the duties of the Chief Counsel under this Act and the
10 amendments made by this Act.

11 **SEC. 14. WAIVER OF FINES FOR FIRST-TIME PAPERWORK**
12 **VIOLATIONS BY SMALL BUSINESSES.**

13 Section 3506 of title 44, United States Code (com-
14 monly referred to as the “Paperwork Reduction Act”), is
15 amended by adding at the end the following:

16 “(j) SMALL BUSINESSES.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) FIRST-TIME VIOLATION.—The term
19 ‘first-time violation’ means a violation by a
20 small business concern of a requirement regard-
21 ing collection of information by an agency,
22 where the small business concern has not pre-
23 viously violated any similar requirement regard-
24 ing collection of information by that same agen-

1 cy during the 5-year period preceding the viola-
2 tion.

3 “(B) SMALL BUSINESS CONCERN.—The
4 term ‘small business concern’ has the meaning
5 given the term in section 3 of the Small Busi-
6 ness Act (15 U.S.C. 632).

7 “(2) FIRST-TIME VIOLATION.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (C), in the case of a first-time
10 violation by a small business concern of a re-
11 quirement regarding the collection of informa-
12 tion by an agency, the head of the agency shall
13 not impose a civil fine on the small business
14 concern.

15 “(B) DETERMINATION.—For purposes of
16 determining whether to impose a civil fine on a
17 small business concern under subparagraph (A),
18 the head of an agency shall not take into ac-
19 count any violation by the small business con-
20 cern of a requirement regarding collection of in-
21 formation by another agency.

22 “(C) EXCEPTION.—An agency may impose
23 a civil fine on a small business concern for a
24 first-time violation if the head of the agency de-
25 termines that—

1 “(i) the violation has the potential to
2 cause serious harm to the public interest;

3 “(ii) failure to impose a civil fine
4 would impede or interfere with the detec-
5 tion of criminal activity;

6 “(iii) the violation is a violation of an
7 internal revenue law or a law concerning
8 the assessment or collection of any tax,
9 debt, revenue, or receipt;

10 “(iv) the violation was not corrected
11 on or before the date that is 6 months
12 after the date on which the small business
13 concern receives notification of the viola-
14 tion in writing from the agency; or

15 “(v) except as provided in paragraph
16 (3), the violation presents a danger to the
17 public health or safety.

18 “(3) DANGER TO PUBLIC HEALTH OR SAFE-
19 TY.—

20 “(A) IN GENERAL.—In any case in which
21 the head of an agency determines under para-
22 graph (2)(C)(v) that a violation presents a dan-
23 ger to the public health or safety, the head of
24 the agency may determine not to impose a civil
25 fine on the small business concern if the viola-

1 tion is corrected not later than 24 hours after
2 receipt by the owner of the small business con-
3 cern of notification of the violation in writing.

4 “(B) CONSIDERATIONS.—In determining
5 whether to allow a small business concern 24
6 hours to correct a violation under subparagraph
7 (A), the head of an agency shall take into ac-
8 count all of the facts and circumstances regard-
9 ing the violation, including—

10 “(i) the nature and seriousness of the
11 violation, including whether the violation is
12 technical or inadvertent or involves willful
13 or criminal conduct;

14 “(ii) whether the small business con-
15 cern had made a good faith effort to com-
16 ply with applicable laws and to remedy the
17 violation within the shortest practicable pe-
18 riod of time; and

19 “(iii) whether the small business con-
20 cern has obtained a significant economic
21 benefit from the violation.

22 “(C) NOTICE TO CONGRESS.—In any case
23 in which the head of an agency imposes a civil
24 fine on a small business concern for a violation
25 that presents a danger to the public health or

1 safety and does not allow the small business
2 concern 24 hours to correct the violation under
3 subparagraph (A), the head of the agency shall
4 notify Congress regarding the determination
5 not later than 60 days after the date on which
6 the civil fine is imposed by the agency.”.