

116TH CONGRESS
1ST SESSION

S. 1120

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

APRIL 10, 2019

Mr. LANKFORD (for himself, Mr. GRASSLEY, Mr. RISCH, Mr. ROBERTS, and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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(4); 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 inserting “and tribal organizations
 12 (as defined in section 4(l) of the Indian Self-Determina-
 13 tion and Education Assistance Act (25 U.S.C. 5304(l))),”
 14 after “special districts,”.

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 subsection (b), is amended by adding at the end
 12 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

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

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

(1) IN GENERAL.—Section 603(a) of title 5, United States Code, is amended by striking the period at the end and inserting “or a recordkeeping requirement, and without regard to whether such recordkeeping requirement is imposed by statute or regulation.”.

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

“(7) COLLECTION OF INFORMATION.—The term ‘collection of information’ has the meaning given the 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) in subsection (c), to read as follows:

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

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

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

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

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

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

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (4)—

(i) by inserting “detailed” before “description”; and

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

(B) in paragraph (5), by inserting “detailed” before “description”;

(C) in paragraph (6)—

(i) by inserting “detailed” before “description”; and

(ii) by striking “and” at the end;

(D) in paragraph (7), as so redesignated, by striking the period at the end and inserting “; and”; and

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

2 “(8) a detailed description of any dispropor-
3 tionate economic impact on small entities or a spe-
4 cific class of small entities.”.

5 (2) INCLUSION OF RESPONSE TO COMMENTS ON
6 CERTIFICATION OF PROPOSED RULE.—Section
7 604(a)(2) of title 5, United States Code, is amended
8 by inserting “(or certification of the proposed rule
9 under section 605(b))” after “initial regulatory flexi-
10 bility analysis”.

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

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

22 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
23 Section 605(a) of title 5, United States Code, is amended
24 to read as follows:

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

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

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

19 **“§ 607. Quantification requirements**

20 “‘In complying with sections 603 and 604, an agency
 21 shall provide—

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

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

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

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

9 **“§ 608. Additional powers of Chief Counsel for Advo-**
 10 **cacy**

11 “(a)(1) Not later than 270 days after the date of en-
 12 actment of the Small Business Regulatory Flexibility Im-
 13 provements Act, the Chief Counsel for Advocacy of the
 14 Small Business Administration shall, after opportunity for
 15 notice and comment under section 553, issue rules gov-
 16 erning agency compliance with this chapter. The Chief
 17 Counsel may modify or amend such rules after notice and
 18 comment under section 553. This chapter (other than this
 19 subsection) shall not apply with respect to the issuance,
 20 modification, and amendment of rules under this para-
 21 graph.

22 “(2) An agency shall not issue rules which supple-
 23 ment the rules issued under paragraph (1) unless such
 24 agency has first consulted with the Chief Counsel for Ad-

1 vocacy to ensure that the supplemental rules comply with
 2 this chapter and the rules issued under paragraph (1).

3 “(b) Notwithstanding any other law, the Chief Coun-
 4 sel for Advocacy of the Small Business Administration
 5 may intervene in any agency adjudication (unless such
 6 agency is authorized to impose a fine or penalty under
 7 such adjudication) and may inform the agency of the im-
 8 pact that any decision on the record may have on small
 9 entities. The Chief Counsel shall not initiate an appeal
 10 with respect to any adjudication in which the Chief Coun-
 11 sel intervenes under this subsection.

12 “(c) The Chief Counsel for Advocacy may file com-
 13 ments in response to any agency notice requesting com-
 14 ment, regardless of whether the agency is required to file
 15 a general notice of proposed rule making under section
 16 553.”.

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

19 (1) in paragraph (1), by striking “608(b),”;

20 (2) in paragraph (2), by striking “608(b),”;

21 and

22 (3) in paragraph (3)—

23 (A) by striking subparagraph (B); and

24 (B) by striking “(3)(A) A small entity”

25 and inserting the following:

1 “(3) A small entity”.

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

3 Section 609 of title 5, United States Code, is amend-
4 ed by striking subsection (b) and all that follows through
5 the end of the section and inserting the following:

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

10 “(A) all materials prepared or utilized by the
11 agency in making the proposed rule, including the
12 draft of the proposed rule; and

13 “(B) information on the potential adverse and
14 beneficial economic impacts of the proposed rule on
15 small entities and the type of small entities that
16 might be affected.

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

20 “(A) relates to the internal revenue laws of the
21 United States; or

22 “(B) is proposed by an independent regulatory
23 agency.

24 “(c) Not later than 15 days after the receipt of the
25 materials and information under subsection (b), the Chief

1 Counsel for Advocacy of the Small Business Administra-
2 tion shall—

3 “(1) identify small entities or representatives of
4 small entities or a combination of both for the pur-
5 pose of obtaining advice, input, and recommenda-
6 tions from those persons about the potential eco-
7 nomic impacts of the proposed rule and the compli-
8 ance of the agency with section 603; and

9 “(2) convene a review panel consisting of an
10 employee from the Office of Advocacy of the Small
11 Business Administration, an employee from the
12 agency making the rule, and, in the case of an agen-
13 cy other than an independent regulatory agency, an
14 employee from the Office of Information and Regu-
15 latory Affairs of the Office of Management and
16 Budget to review the materials and information pro-
17 vided to the Chief Counsel under subsection (b).

18 “(d)(1) Not later than 60 days after the review panel
19 described in subsection (c)(2) is convened, the Chief Coun-
20 sel for Advocacy of the Small Business Administration
21 shall, after consultation with the members of the panel,
22 submit a report to the agency and, in the case of an agen-
23 cy other than an independent regulatory agency, the Office
24 of Information and Regulatory Affairs of the Office of
25 Management and Budget.

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

4 “(A) an assessment of the impact of the pro-
5 posed rule on the cost that small entities pay for en-
6 ergy;

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

9 “(C) a discussion of any alternatives that will
10 minimize adverse significant economic impacts or
11 maximize beneficial significant economic impacts on
12 small entities.

13 “(3) Each report described in paragraph (1) shall be-
14 come part of the rulemaking record. In the publication of
15 the proposed rule, the agency shall explain what actions,
16 if any, the agency took in response to the report.

17 “(e) A proposed rule is described by this subsection
18 if the Administrator of the Office of Information and Reg-
19 ulatory Affairs of the Office of Management and Budget,
20 the head of the agency (or the delegatee of the head of
21 the agency), or an independent regulatory agency deter-
22 mines that the proposed rule is likely to result in—

23 “(1) an annual effect on the economy of
24 \$100,000,000 or more;

1 “(2) a major increase in costs or prices for con-
2 sumers, individual industries, the Federal Govern-
3 ment, State or local governments, tribal organiza-
4 tions, or geographic regions;

5 “(3) significant adverse effects on competition,
6 employment, investment, productivity, innovation, or
7 the ability of United States-based enterprises to
8 compete with foreign-based enterprises in domestic
9 and export markets; or

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

12 “(f) Upon application by the agency, the Chief Coun-
13 sel for Advocacy of the Small Business Administration
14 may waive the requirements of subsections (b) through (e)
15 if the Chief Counsel determines that compliance with the
16 requirements of such subsections is impracticable, unnec-
17 essary, or contrary to the public interest.

18 “(g) A small entity or a representative of a small enti-
19 ty may submit a request that the agency provide a copy
20 of the report prepared under subsection (d) and all mate-
21 rials and information provided to the Chief Counsel for
22 Advocacy of the Small Business Administration under
23 subsection (b). The agency receiving such request shall
24 provide the report, materials, and information to the re-
25 questing small entity or representative of a small entity

1 not later than 10 business days after receiving such re-
 2 quest, except that the agency shall not disclose any infor-
 3 mation that is prohibited from disclosure to the public
 4 pursuant to section 552(b) of this title.

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

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

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

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

12 “(a) Not later than 180 days after the date of enact-
 13 ment of the Small Business Regulatory Flexibility Im-
 14 provements Act, each agency shall publish in the Federal
 15 Register and place on the website of the agency a plan
 16 for the periodic review of rules issued by the agency which
 17 the head of the agency determines have a significant eco-
 18 nomic impact on a substantial number of small entities.
 19 Such determination shall be made without regard to
 20 whether the agency performed an analysis under section
 21 604. The purpose of the review shall be to determine
 22 whether such rules should be continued without change,
 23 or should be amended or rescinded, consistent with the
 24 stated objectives of applicable statutes, to minimize any
 25 adverse significant economic impacts or maximize any

1 beneficial significant economic impacts on a substantial
2 number of small entities. Such plan may be amended by
3 the agency at any time by publishing the revision in the
4 Federal Register and subsequently placing the amended
5 plan on the website of the agency.

6 “(b) The plan shall provide for the review of all such
7 agency rules existing on the date of enactment of the
8 Small Business Regulatory Flexibility Improvements Act
9 within 10 years of the date of publication of the plan in
10 the Federal Register and for review of rules adopted after
11 the date of enactment of the Small Business Regulatory
12 Flexibility Improvements Act within 10 years after the
13 publication of the final rule in the Federal Register. If
14 the head of the agency determines that completion of the
15 review of existing rules is not feasible by the established
16 date, the head of the agency shall so certify in a statement
17 published in the Federal Register and may extend the re-
18 view for not longer than 2 years after publication of notice
19 of extension in the Federal Register. Such certification
20 and notice shall be sent to the Chief Counsel for Advocacy
21 of the Small Business Administration and Congress.

22 “(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 section 3 and section 8(d)(3)(C) of the Small Business Act
5 (15 U.S.C. 632, 637(d)(3)(C))) for the purposes of car-
6 rying out this section. The agency shall include in this sec-
7 tion a plan for how the agency will contact small busi-
8 nesses and gather their input on existing agency rules.

9 “(d) Each agency shall annually submit a report re-
10 garding the results of its review pursuant to such plan
11 to Congress, the Chief Counsel for Advocacy of the Small
12 Business Administration, and, in the case of agencies
13 other than independent regulatory agencies (as defined in
14 section 3502 of title 44), to the Administrator of the Of-
15 fice of Information and Regulatory Affairs of the Office
16 of Management and Budget. Such report shall include the
17 identification of any rule with respect to which the head
18 of the agency made a determination described in para-
19 graph (5) or (6) of subsection (e) and a detailed expla-
20 nation of the reasons for such determination.

21 “(e) In reviewing a rule pursuant to subsections (a)
22 through (d), the agency shall amend or rescind the rule
23 to minimize any adverse significant economic impact on
24 a substantial number of small entities or disproportionate
25 economic impact on a specific class of small entities, or

1 maximize any beneficial significant economic impact of the
2 rule on a substantial number of small entities to the great-
3 est extent possible, consistent with the stated objectives
4 of applicable statutes. In amending or rescinding the rule,
5 the agency shall consider the following factors:

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

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

9 “(3) Comments by the Regulatory Enforcement
10 Ombudsman and the Chief Counsel for Advocacy of
11 the Small Business Administration.

12 “(4) The complexity of the rule.

13 “(5) The extent to which the rule overlaps, du-
14 plicates, or conflicts with other Federal rules and,
15 unless the head of the agency determines it to be in-
16 feasible, State, territorial, and local rules.

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

23 “(7) The length of time since the rule has been
24 evaluated or the degree to which technology, eco-

1 nomic conditions, or other factors have changed in
 2 the area affected by the rule.

3 “(f) Each year, each agency shall publish in the Fed-
 4 eral Register and on its website a list of rules to be re-
 5 viewed pursuant to such plan. The agency shall include
 6 in the publication a solicitation of public comments on any
 7 further inclusions or exclusions of rules from the list and
 8 shall respond to such comments. Such publication shall
 9 include a brief description of the rule, state the reason
 10 why the agency determined that it has a significant eco-
 11 nomic impact on a substantial number of small entities
 12 (without regard to whether it had prepared a final regu-
 13 latory flexibility analysis for the rule), and request com-
 14 ments from the public, the Chief Counsel for Advocacy of
 15 the Small Business Administration, and the Regulatory
 16 Enforcement Ombudsman concerning the enforcement of
 17 the rule.”.

18 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
 19 **QUIREMENTS OF THE REGULATORY FLEXI-**
 20 **BILITY ACT AVAILABLE AFTER PUBLICATION**
 21 **OF THE FINAL RULE.**

22 (a) IN GENERAL.—Section 611(a) of title 5, United
 23 States Code, is amended—

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

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

(3) in paragraph (3)—

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

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

(b) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Section 612(b) of title 5, United States Code, is amended by inserting before the first period “or agency compliance with section 601, 603, 604, 605(b), 609, or 610”.

SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES IMPLEMENTING THE REGULATORY FLEXIBILITY ACT.

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

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

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

1 (3) by inserting after paragraph (7) the fol-
 2 lowing:

3 “(8) all final rules under section 608(a) of title
 4 5.”.

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

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

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

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

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

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

20 **SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
 21 **NESS CONCERN SIZE STANDARDS BY CHIEF**
 22 **COUNSEL FOR ADVOCACY.**

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

“(A) IN GENERAL.—In addition to the criteria specified in paragraph (1)—

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

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

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

“(iii) except in the case of a size standard prescribed by the Administrator, is approved by the Chief Counsel for Advocacy.”.

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

(1) by inserting “or Chief Counsel for Advocacy, as appropriate,” before “shall ensure”; and

(2) by inserting “or Chief Counsel for Advocacy” before the period at the end.

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

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

12 **SEC. 11. CLERICAL AMENDMENTS.**

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

15 (1) in paragraph (1)—

16 (A) by striking the semicolon at the end
 17 and inserting a period; and

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

20 “(1) AGENCY.—The term”;

21 (2) in paragraph (3)—

22 (A) by striking the semicolon at the end
 23 and inserting a period; and

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

1 “(3) SMALL BUSINESS.—The term”;

2 (3) in paragraph (5)—

3 (A) by striking the semicolon at the end
4 and inserting a period; and

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

7 “(5) SMALL GOVERNMENTAL JURISDICTION.—
8 The term”; and

9 (4) in paragraph (6)—

10 (A) by striking “; and” and inserting a pe-
11 riod; and

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

14 “(6) SMALL ENTITY.—The term”.

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

18 **“§ 605. Incorporations by reference and certifi-**
19 **cations”.**

20 (c) TABLE OF SECTIONS.—The table of sections for
21 chapter 6 of title 5, United States Code, is amended as
22 follows:

23 (1) By striking the item relating to section 605
24 and inserting the following new item:

“605. Incorporations by reference and certifications.”.

1 (2) By striking the item relating to section 607
2 and inserting the following new item:

“607. Quantification requirements.”.

3 (3) By striking the item relating to section 608
4 and inserting the following:

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

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

8 (1) in section 603(d)—

9 (A) by striking paragraph (2);

10 (B) by striking “(1) For a covered agency,
11 as defined in section 609(d)(2), each initial reg-
12 ulatory flexibility analysis” and inserting “Each
13 initial regulatory flexibility analysis by an agen-
14 cy”;

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

17 (D) by striking “(B) any” and inserting
18 “(2) any”; and

19 (E) by striking “(C) advice” and inserting
20 “(3) advice”; and

21 (2) in paragraph (7) of section 604(a), as so re-
22 designated by section 2(e)(2)(A) of this Act, by
23 striking “for a covered agency, as defined in section
24 609(d)(2),”.

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

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

5 “(5) AGENCY PREPARATION OF GUIDES.—The
6 agency shall, in its sole discretion, taking into ac-
7 count the subject matter of the rule and the lan-
8 guage of relevant statutes, ensure that the guide is
9 written using sufficiently plain language likely to be
10 understood by affected small entities. Agencies may
11 prepare separate guides covering groups or classes of
12 similarly affected small entities and may cooperate
13 with associations of small entities to distribute such
14 guides. In developing guides, agencies shall solicit
15 input from affected small entities or associations of
16 affected small entities. An agency may prepare
17 guides and apply this section with respect to a rule
18 or a group of related rules.”.

19 **SEC. 13. COMPTROLLER GENERAL REPORT.**

20 Not later than 90 days after the date of enactment
21 of this Act, the Comptroller General of the United States
22 shall complete and publish a study that examines whether
23 the Chief Counsel for Advocacy of the Small Business Ad-
24 ministration has the capacity and resources to carry out
25 the duties of the Chief Counsel under this Act and the
26 amendments made by this Act.

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

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

6 “(j) SMALL BUSINESSES.—

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

8 “(A) FIRST-TIME VIOLATION.—The term
 9 ‘first-time violation’ means a violation by a
 10 small business concern of a requirement regard-
 11 ing collection of information by an agency,
 12 where the small business concern has not pre-
 13 viously violated any similar requirement regard-
 14 ing collection of information by that same agen-
 15 cy during the 5-year period preceding the viola-
 16 tion.

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

21 “(2) FIRST-TIME VIOLATION.—

22 “(A) IN GENERAL.—Except as provided in
 23 subparagraph (C), in the case of a first-time
 24 violation by a small business concern of a re-
 25 quirement regarding the collection of informa-
 26 tion by an agency, the head of the agency shall

1 not impose a civil fine on the small business
2 concern.

3 “(B) DETERMINATION.—For purposes of
4 determining whether to impose a civil fine on a
5 small business concern under subparagraph (A),
6 the head of an agency shall not take into ac-
7 count any violation by the small business con-
8 cern of a requirement regarding collection of in-
9 formation by another agency.

10 “(C) EXCEPTION.—An agency may impose
11 a civil fine on a small business concern for a
12 first-time violation if the head of the agency de-
13 termines that—

14 “(i) the violation has the potential to
15 cause serious harm to the public interest;

16 “(ii) failure to impose a civil fine
17 would impede or interfere with the detec-
18 tion of criminal activity;

19 “(iii) the violation is a violation of an
20 internal revenue law or a law concerning
21 the assessment or collection of any tax,
22 debt, revenue, or receipt;

23 “(iv) the violation was not corrected
24 on or before the date that is 6 months
25 after the date on which the small business

1 concern receives notification of the viola-
 2 tion in writing from the agency; or

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

6 “(3) DANGER TO PUBLIC HEALTH OR SAFE-
 7 TY.—

8 “(A) IN GENERAL.—In any case in which
 9 the head of an agency determines under para-
 10 graph (2)(C)(v) that a violation presents a dan-
 11 ger to the public health or safety, the head of
 12 the agency may determine not to impose a civil
 13 fine on the small business concern if the viola-
 14 tion is corrected not later than 24 hours after
 15 receipt by the owner of the small business con-
 16 cern of notification of the violation in writing.

17 “(B) CONSIDERATIONS.—In determining
 18 whether to allow a small business concern 24
 19 hours to correct a violation under subparagraph
 20 (A), the head of an agency shall take into ac-
 21 count all of the facts and circumstances regard-
 22 ing the violation, including—

23 “(i) the nature and seriousness of the
 24 violation, including whether the violation is

1 technical or inadvertent or involves willful
2 or criminal conduct;

3 “(ii) whether the small business con-
4 cern had made a good faith effort to com-
5 ply with applicable laws and to remedy the
6 violation within the shortest practicable pe-
7 riod of time; and

8 “(iii) whether the small business con-
9 cern has obtained a significant economic
10 benefit from the violation.

11 “(C) NOTICE TO CONGRESS.—In any case
12 in which the head of an agency imposes a civil
13 fine on a small business concern for a violation
14 that presents a danger to the public health or
15 safety and does not allow the small business
16 concern 24 hours to correct the violation under
17 subparagraph (A), the head of the agency shall
18 notify Congress regarding the determination
19 not later than 60 days after the date on which
20 the civil fine is imposed by the agency.”.

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