

108TH CONGRESS  
1ST SESSION

# H. R. 2345

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. MANZULLO (for himself, Mr. OSE, Mr. PENCE, and Mr. TERRY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Regulatory Flexibility Improvements Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Clarification and expansion of rules covered by the Regulatory Flexibility Act.
- Sec. 4. Requirements providing for more detailed analyses.
- Sec. 5. Repeal of procedure for waiver and delay.
- Sec. 6. Procedures for gathering comments.
- Sec. 7. Periodic review of rules.
- Sec. 8. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
- Sec. 9. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.
- Sec. 10. Additional powers of the Chief Counsel for Advocacy.
- Sec. 11. Clerical amendments.

### 3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) A vibrant and growing small business sector  
 6 is critical to creating jobs in a dynamic economy.

7 (2) Regulations designed for application to  
 8 large-scale entities have been applied uniformly to  
 9 small businesses and other small entities even  
 10 though the problems sought to be solved by such  
 11 regulations are not usually caused by these small  
 12 businesses and other small entities.

13 (3) Uniform Federal regulatory and reporting  
 14 requirements in many instances have imposed on  
 15 small entities unnecessary and disproportionately  
 16 burdensome demands, including legal, accounting,  
 17 and consulting costs.

18 (4) Since 1980 Federal agencies have been re-  
 19 quired to recognize and take account of the dif-

1       ferences in the scale and resources of regulated enti-  
2       ties but have failed to do so.

3           (5) Alternative regulatory approaches that do  
4       not conflict with the stated objectives of the statutes  
5       the regulations seek to implement may be available  
6       and may minimize the significant economic impact  
7       of regulations on small businesses and other small  
8       entities.

9           (6) Federal agencies have failed to analyze and  
10      uncover less costly alternative regulatory approaches,  
11      despite the fact that the chapter 6 of title 5, United  
12      States Code (commonly known as the Regulatory  
13      Flexibility Act) requires them to do so.

14          (7) Federal agencies continue to interpret chap-  
15      ter 6 of title 5, United States Code, in a manner  
16      that permits them to avoid their analytical respon-  
17      sibilities.

18          (8) The existing oversight of the compliance of  
19      Federal agencies with the analytical requirements to  
20      assess regulatory impacts on small businesses and  
21      other small entities and obtain input from the Chief  
22      Counsel for Advocacy has not sufficiently modified  
23      the Federal agency regulatory culture.

24          (9) Significant changes are needed in the meth-  
25      ods by which Federal agencies develop and analyze

1 regulations, receive input from affected entities, and  
2 develop regulatory alternatives that will lessen the  
3 burden or maximize the benefits of final rules to  
4 small businesses and other small entities.

5 (10) It is the intention of the Congress to  
6 amend chapter 6 of title 5, United States Code, to  
7 ensure that all impacts, including foreseeable indi-  
8 rect effects, of proposed and final rules are consid-  
9 ered by agencies during the rulemaking process and  
10 that the agencies assess a full range of alternatives  
11 that will limit adverse economic consequences or en-  
12 hance economic benefits.

13 (11) Federal agencies should be capable of as-  
14 sessing the impact of proposed and final rules with-  
15 out delaying the regulatory process or impinging on  
16 the ability of Federal agencies to fulfill their statu-  
17 tory mandates.

18 **SEC. 3. CLARIFICATION AND EXPANSION OF RULES COV-**  
19 **ERED BY THE REGULATORY FLEXIBILITY**  
20 **ACT.**

21 (a) IN GENERAL.—Paragraph (2) of section 601 of  
22 title 5, United States Code, is amended to read as follows:

23 “(2) RULE.—The term ‘rule’ has the meaning  
24 given such term in section 551(4) of this title, ex-  
25 cept that—

“(A) such term includes any rule of general applicability governing grants to State and local governments for which the agency provides an opportunity for notice and comment; and

“(B) such term does not include a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.”.

(b) INCLUSION OF RULES WITH INDIRECT EFFECTS.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:

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

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

“(B) any indirect economic effect on small entities which is reasonably foreseeable and results from such rule (without regard to whether

1           small entities will be directly regulated by the  
2           rule).”.

3       (c) INCLUSION OF RULES WITH BENEFICIAL EF-  
4       FECTS.—

5           (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
6       YSIS.—Subsection (c) of section 603 of title 5,  
7       United States Code, is amended by striking the first  
8       sentence and inserting “Each initial regulatory flexi-  
9       bility analysis shall also contain a detailed descrip-  
10      tion of alternatives to the proposed rule which mini-  
11      mize any significant adverse economic impact or  
12      maximize any significant beneficial economic impact  
13      on small entities.”.

14          (2) FINAL REGULATORY FLEXIBILITY ANAL-  
15      YSIS.—Paragraph (5) of section 604(a) of title 5,  
16      United States Code, is amended by striking “mini-  
17      mize the significant economic impact” and inserting  
18      “minimize the significant adverse economic impact  
19      or maximize the significant beneficial economic im-  
20      pact”.

21      (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-  
22      NIZATIONS.—Paragraph (5) of section 601 of title 5,  
23      United States Code, is amended by inserting “and tribal  
24      organizations (as defined in section 4(l) of the Indian Self-

1 Determination and Education Assistance Act (25 U.S.C.  
2 450b(l))),” after “special districts,”.

3 (e) INCLUSION OF LAND MANAGEMENT PLANS AND  
4 FORMAL RULEMAKING.—

5 (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
6 YSIS.—Subsection (a) of section 603 of title 5,  
7 United States Code, is amended in the first sen-  
8 tence—

9 (A) by striking “or” after “proposed  
10 rule,”; and

11 (B) by inserting “publishes a revision or  
12 amendment to a land management plan, or  
13 issues a proposed rule made on the record after  
14 opportunity for an agency hearing,” after  
15 “United States,”.

16 (2) FINAL REGULATORY FLEXIBILITY ANAL-  
17 YSIS.—Subsection (a) of section 604 of title 5,  
18 United States Code, is amended in the first sen-  
19 tence—

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

22 (B) by inserting “, adopts a revision or  
23 amendment to a land management plan, or  
24 issues a final rule made on the record after op-

portunity for an agency hearing,” after “section 603(a),”.

(3) LAND MANAGEMENT PLAN DEFINED.—Section 601 of title 5, United States Code (as amended by subsection (b)), is further amended by adding at the end the following new paragraph:

“(10) LAND MANAGEMENT PLAN.—

“(A) IN GENERAL.—The term ‘land management plan’ means—

“(i) any plan developed by the Secretary of Agriculture under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); and

“(ii) any plan developed by the Secretary of Interior under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

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

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(5) of the Forest and Rangeland Re-



newable Resources Planning Act of 1974  
(16 U.S.C. 1604(f)(5)); or

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

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

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

“(ii) in the case of a plan described in  
subparagraph (A)(ii), is made under sec-  
tion 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

1 in section 102(2)(C) of the National Envi-  
2 ronmental Policy Act of 1969 (42 U.S.C.  
3 4332(2)(C)).”.

4 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES  
5 INVOLVING THE INTERNAL REVENUE LAWS WHICH IM-  
6 POSE RECORDKEEPING REQUIREMENTS, ETC.—

7 (1) IN GENERAL.—Subsection (a) of section  
8 603 of title 5, United States Code, is amended by  
9 striking the period at the end and inserting “or a  
10 recordkeeping requirement, and without regard to  
11 whether such requirement is imposed by statute or  
12 regulation.”.

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

16 “(7) COLLECTION OF INFORMATION.—The term  
17 ‘collection of information’ has the meaning given  
18 such term in section 3502(3) of title 44, United  
19 States Code.”.

20 (3) RECORDKEEPING REQUIREMENT.—Para-  
21 graph (8) of section 601 of title 5, United States  
22 Code, is amended to read as follows:

23 “(8) RECORDKEEPING REQUIREMENT.—The  
24 term ‘recordkeeping requirement’ has the meaning

1       given such term in section 3502(13) of title 44,  
2       United States Code.”.

3       (g) DEFINITION OF SMALL ORGANIZATION.—Para-  
4 graph (4) of section 601 of title 5, United States Code,  
5 is amended to read as follows:

6               “(4) SMALL ORGANIZATION.—

7                       “(A) IN GENERAL.—The term ‘small orga-  
8                       nization’ means any not-for-profit enterprise  
9                       which, as of the issuance of the notice of pro-  
10                      posed rulemaking—

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

20                      “(ii) in the case of any other enter-  
21                      prise, has a net worth that does not exceed  
22                      \$7,000,000 and has not more than 500  
23                      employees.

24                      “(B) LOCAL LABOR ORGANIZATIONS.—In  
25                      the case of any local labor organization, sub-

paragraph (A) shall be applied without regard to any national or international organization of which such local labor organization is a part.

“(C) PROFESSIONAL AND TRADE ASSOCIATIONS.—In the case of any professional or trade association, subparagraph (A) shall be applied without regard to the net worth or number of employees of any member of such association.

“(D) AGENCY DEFINITIONS.—Subparagraphs (A), (B), and (C) shall not apply to the extent that an agency establishes, after opportunity for public comment, one or more definitions for such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”.

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

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

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

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

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

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

7           “(4) describing the projected reporting, record-  
8           keeping, and other compliance requirements of the  
9           proposed rule, including an estimate of the classes of  
10          small entities which will be subject to the require-  
11          ment and the type of professional skills necessary  
12          for preparation of the report and record;

13          “(5) describing all relevant Federal rules which  
14          may duplicate, overlap, or conflict with the proposed  
15          rule, or the reasons why such a description could not  
16          be provided; and

17          “(6) estimating the additional cumulative eco-  
18          nomic impact of the proposed rule on small entities  
19          beyond that already imposed on the class of small  
20          entities by the agency or why such an estimate is  
21          not available.”.

22          (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

23                 (1) IN GENERAL.—

1 (A) Paragraph (1) of section 604(a) of  
2 title 5, United States Code, is amended by  
3 striking “succinct”.

4 (B) Paragraph (2) of such section is  
5 amended by striking “summary” each place it  
6 appears and inserting “statement”.

7 (C) Paragraph (3) of such section is  
8 amended by striking “an explanation” and in-  
9 serting “a detailed explanation”.

10 (D) Paragraphs (3), (4), and (5) of such  
11 section are each amended by inserting “de-  
12 tailed” before “description”.

13 (2) INCLUSION OF RESPONSE TO COMMENTS ON  
14 CERTIFICATION OF PROPOSED RULE.—Paragraph  
15 (2) of section 604(a) of title 5, United States Code,  
16 is amended by inserting “(or certification of the pro-  
17 posed rule under section 605(b))” after “initial reg-  
18 ulatory flexibility analysis”.

19 (3) INCLUSION OF RESPONSE TO COMMENTS  
20 FILED BY CHIEF COUNSEL FOR ADVOCACY.—Sub-  
21 section (a) of section 604 of title 5, United States  
22 Code, is amended by redesignating paragraphs (3),  
23 (4), and (5) as paragraphs (4), (5), and (6), respec-  
24 tively, and inserting after paragraph (2) the fol-  
25 lowing new paragraph:

1           “(3) the agency’s response to any comments  
2       filed by the Chief Counsel for Advocacy in response  
3       to the proposed rule, and a detailed statement of  
4       any changes made to the proposed rule in the final  
5       rule as a result of such comments;”.

6           (4) PUBLICATION OF ANALYSIS ON WEBSITE,  
7       ETC.—Subsection (b) of section 604 of title 5,  
8       United States Code, is amended to read as follows:

9       “(b) The agency shall make copies of the final regu-  
10      latory flexibility analysis available to the public, including  
11      placement of the entire analysis on the agency’s website,  
12      and shall publish in the Federal Register the final regu-  
13      latory flexibility analysis, or a summary thereof which in-  
14      cludes the telephone number, mailing address, and link to  
15      the website where the complete analysis may be ob-  
16      tained.”.

17       (c) CROSS-REFERENCES TO OTHER ANALYSES.—  
18      Subsection (a) of section 605 of title 5, United States  
19      Code, is amended to read as follows:

20       “(a) A Federal agency shall be treated as satisfying  
21      any requirement regarding the content of an agenda or  
22      regulatory flexibility analysis under section 602, 603, or  
23      604, if such agency provides in such agenda or analysis  
24      a cross-reference to the specific portion of another agenda

1 or analysis which is required by any other law and which  
2 satisfies such requirement.”.

3 (d) CERTIFICATIONS.—Subsection (b) of such section  
4 is amended—

5 (1) by inserting “detailed” before “statement”;  
6 and

7 (2) by inserting “and legal” after “factual”.

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

11 **“§ 607. Quantification requirements**

12 “In complying with sections 603 and 604, an agency  
13 shall provide—

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

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

20 **SEC. 5. REPEAL OF PROCEDURE FOR WAIVER AND DELAY.**

21 (a) IN GENERAL.—Title 5, United States Code, is  
22 amended by striking section 608.

23 (b) CONFORMING AMENDMENTS.—



1           (1) Paragraphs (1) and (2) of section 611(a) of  
 2           title 5, United States Code, are each amended by  
 3           striking “608(b),”.

4           (2) Paragraph (3) of such section is amended—

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 subsection (b) and all that follows and in-  
 12          serting the following new subsections:

13          “(b)(1) Prior to publication of any proposed rule de-  
 14          scribed in subsection (e), the agency making such rule  
 15          shall notify the Chief Counsel for Advocacy and provide  
 16          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.

24          “(2) An agency shall not be required under para-  
 25          graph (1) to provide the exact language of any draft of

1 a proposed rule relating to the internal revenue laws of  
2 the United States or implementing the Communications  
3 Act of 1934.

4 “(c) Not later than 15 days after the receipt of such  
5 information, the Chief Counsel for Advocacy shall—

6 “(1) identify small entities or representatives of  
7 small entities or a combination of both for the pur-  
8 pose of obtaining advice, input, and recommenda-  
9 tions from those persons about the potential eco-  
10 nomic impacts of the proposed rule and the compli-  
11 ance of the agency with section 603 or section  
12 605(b) of this title; and

13 “(2) convene a review panel consisting of an  
14 employee from the Office of Advocacy, an employee  
15 from the agency making the rule, and an employee  
16 from the Office of Information and Regulatory Af-  
17 fairs of the Office of Management and Budget to re-  
18 view the information provided to the Chief Counsel  
19 under subsection (b).

20 “(d)(1) Not later than 60 days after the review panel  
21 described in subsection (c)(2) is convened, the Chief Coun-  
22 sel for Advocacy shall, after consultation with the mem-  
23 bers of such panel, submit a report to the agency and the  
24 Office of Information and Regulatory Affairs of the Office  
25 of Management and Budget.

1       “(2) Such report shall include an assessment of the  
2 impact of the proposed rule on small entities and a discus-  
3 sion of any alternatives that will minimize adverse eco-  
4 nomic impacts or maximize beneficial economic impacts on  
5 small entities.

6       “(3) Such report shall become part of the rulemaking  
7 record. In the publication of the proposed rule, the agency  
8 shall explain what actions, if any, the agency took in re-  
9 sponse to such report.

10       “(e) A proposed rule is described by this subsection  
11 if the Administrator of the Office of Information and Reg-  
12 ulatory Affairs of the Office of Management and Budget,  
13 the Administrator of the Environmental Protection Agen-  
14 cy, the Assistant Secretary of the Occupational Safety and  
15 Health Administration, the Commissioner of the Internal  
16 Revenue Service, the Administrator of the Centers for  
17 Medicare & Medicaid Services, or the Federal Communica-  
18 tions Commission determines that the proposed rule is  
19 likely to result in—

20               “(1) an annual effect on the economy of  
21 \$100,000,000 or more;

22               “(2) a major increase in costs or prices for con-  
23 sumers, individual industries, Federal, State, or local  
24 governments, tribal organizations, or geographic re-  
25 gions;

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

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

8           “(f) Upon application by the agency, the Chief Coun-  
9           sel for Advocacy may waive the requirements of sub-  
10          sections (b) through (e) if the Chief Counsel determines  
11          that compliance with the requirements of such subsections  
12          are impracticable, unnecessary, or contrary to the public  
13          interest.”.

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

15          Section 610 of title 5, United States Code is amended  
16          to read as follows:

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

18          “(a) Not later than 180 days after the enactment of  
19          the Regulatory Flexibility Improvements Act of 2002,  
20          each agency shall publish in the Federal Register and  
21          place on its website a plan for the periodic review of rules  
22          issued by the agency which the head of the agency deter-  
23          mines has a significant economic impact on a substantial  
24          number of small entities. Such determination shall be  
25          made without regard to whether the agency performed an

1 analysis under section 604. The purpose of the review  
2 shall be to determine whether such rules should be contin-  
3 ued without change, or should be amended or rescinded,  
4 consistent with the stated objectives of applicable statutes,  
5 to minimize any significant adverse economic impacts or  
6 maximize any significant beneficial economic impacts on  
7 a substantial number of small entities. Such plan may be  
8 amended by the agency at any time by publishing the revi-  
9 sion in the Federal Register and subsequently placing the  
10 amended plan on the agency's website.

11       “(b) The plan shall provide for the review of all such  
12 agency rules existing on the date of the enactment of the  
13 Regulatory Flexibility Improvements Act of 2002 within  
14 10 years of the date of publication of the plan in the Fed-  
15 eral Register and for review of rules adopted after the date  
16 of enactment of the Regulatory Flexibility Improvements  
17 Act of 2002 within 10 years after the publication of the  
18 final rule in the Federal Register. If the head of the agen-  
19 cy determines that completion of the review of existing  
20 rules is not feasible by the established date, the head of  
21 the agency shall so certify in a statement published in the  
22 Federal Register and may extend the review for not longer  
23 than 2 years after publication of notice of extension in  
24 the Federal Register. Such certification and notice shall

1 be sent to the Chief Counsel for Advocacy and the Con-  
2 gress.

3 “(c) Each agency shall annually submit a report re-  
4 garding the results of its review pursuant to such plan  
5 to the Congress and, in the case of agencies other than  
6 independent regulatory agencies (as defined in section  
7 3502(5) of title 44, United States Code) to the Adminis-  
8 trator of the Office of Information and Regulatory Affairs  
9 of the Office of Management and Budget. Such report  
10 shall include the identification of any rule with respect to  
11 which the head of the agency made a determination de-  
12 scribed in paragraph (5) or (6) of subsection (d) and a  
13 detailed explanation of the reasons for such determination.

14 “(d) In reviewing rules under such plan, the agency  
15 shall consider the following factors:

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

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

19 “(3) Comments by the Regulatory Enforcement  
20 Ombudsman and the Chief Counsel for Advocacy.

21 “(4) The complexity of the rule.

22 “(5) The extent to which the rule overlaps, du-  
23 plicates, or conflicts with other Federal rules and,  
24 unless the head of the agency determines it to be in-  
25 feasible, State and local rules.

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

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

11          “(e) The agency shall publish in the Federal Register  
12          and on its website a list of rules to be reviewed pursuant  
13          to such plan. Such publication shall include a brief de-  
14          scription of the rule, the reason why the agency deter-  
15          mined that it has a significant economic impact on a sub-  
16          stantial number of small entities (without regard to wheth-  
17          er it had prepared a final regulatory flexibility analysis  
18          for the rule), and request comments from the public, the  
19          Chief Counsel for Advocacy, and the Regulatory Enforce-  
20          ment Ombudsman concerning the enforcement of the  
21          rule.”.

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

5 (a) IN GENERAL.—Paragraph (1) of section 611(a)  
6 of title 5, United States Code, is amended by striking  
7 “final agency action” and inserting “such rule”.

8 (b) JURISDICTION.—Paragraph (2) of such section is  
9 amended by inserting “(or which would have such jurisdic-  
10 tion if publication of the final rule constituted final agency  
11 action)” after “provision of law,”.

12 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of  
13 such section (as amended by section 5(b)(2)) is amend-  
14 ed—

15 (1) by striking “final agency action” and insert-  
16 ing “publication of the final rule”; and

17 (2) by inserting “, in the case of a rule for  
18 which the date of final agency action is the same  
19 date as the publication of the final rule,” after “ex-  
20 cept that”.

21 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-  
22 CACY.—Subsection (b) of section 612 of title 5, United  
23 States Code, is amended by inserting before the first pe-  
24 riod “or agency compliance with section 601, 604, 605(b),  
25 609, or 610”.



1 **SEC. 9. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**  
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**  
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section  
5 3(a)(2) of the Small Business Act (15 U.S.C.  
6 632(a)(2)(A)) is amended to read as follows:

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

9 “(i) the Administrator may specify de-  
10 tailed definitions or standards by which a  
11 business concern may be determined to be  
12 a small business concern for purposes of  
13 this Act or the Small Business Investment  
14 Act of 1958; and

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

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of  
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.  
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 “(iii) except in the case of a size  
22 standard prescribed by the Administrator,  
23 is approved by the Chief Counsel for Advo-  
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section  
 2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is  
 3 amended—

4 (1) by inserting “and Chief Counsel for Advoca-  
 5 cacy” before “shall ensure”; and

6 (2) by inserting “or Chief Counsel for Advoca-  
 7 cacy” before the period at the end.

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

12 “(4) JUDICIAL REVIEW OF STANDARDS APPROVED BY  
 13 CHIEF COUNSEL.—In the case of an action for judicial re-  
 14 view of a rule which includes a definition or standard ap-  
 15 proved by the Chief Counsel for Advocacy under this sub-  
 16 section, the party seeking such review shall be entitled to  
 17 join the Chief Counsel as a party in such action.”.

18 **SEC. 10. ADDITIONAL POWERS OF THE CHIEF COUNSEL**  
 19 **FOR ADVOCACY.**

20 (a) IN GENERAL.—Chapter 6 of title 5, United  
 21 States Code, is amended by adding at the end the fol-  
 22 lowing new section:

1   **“§ 613. Additional powers of Chief Counsel for Advo-**  
2                           **cacy**

3           “(a)(1) Not later than 270 days after the date of the  
4 enactment of the Regulatory Flexibility Improvements Act  
5 of 2002, the Chief Counsel for Advocacy shall, after oppor-  
6 tunity for notice and comment under section 553, issue  
7 rules governing agency compliance with this chapter. The  
8 Chief Counsel may modify or amend such rules after no-  
9 tice and comment under section 553. This chapter (other  
10 than this subsection and section 614) shall not apply with  
11 respect to the issuance, modification, and amendment of  
12 rules under this paragraph.

13           “(2) An agency shall not issue rules which supple-  
14 ment the rules issued under subsection (a) unless such  
15 agency has first consulted with the Chief Counsel for Ad-  
16 vocacy to ensure that such supplemental rules comply with  
17 this chapter and the rules issued under paragraph (1).

18           “(b) Notwithstanding any other law, the Chief Coun-  
19 sel for Advocacy may intervene in any adjudication before  
20 any Federal agency (unless such agency is authorized to  
21 impose a fine or penalty under such adjudication), and  
22 may inform the agency of the impact that any decision  
23 on the record may have on small entities. The Chief Coun-  
24 sel shall not initiate an appeal with respect to any adju-  
25 dication in which the Chief Counsel intervenes under this  
26 subsection.

1       “(c) The Chief Counsel for Advocacy may file com-  
 2       ments in response to any agency notice requesting com-  
 3       ment, regardless of whether the agency is required to file  
 4       a general notice of proposed rulemaking under section  
 5       553.”.

6       (b) JURISDICTION OF COURT OF APPEALS OVER  
 7       RULES IMPLEMENTING THE REGULATORY FLEXIBILITY  
 8       ACT.—

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

11               (A) in paragraph (6), by striking “and” at  
 12       the end;

13               (B) in paragraph (7), by striking the pe-  
 14       riod at the end and inserting “; and”; and

15               (C) by adding at the end the following new  
 16       paragraph:

17               “(8) all final rules under section 613(a) of title  
 18       5, United States Code.”.

19       (2) CONFORMING AMENDMENTS.—Paragraph  
 20       (3) of section 2341 of title 28, United States Code,  
 21       is amended—

22               (A) in subparagraph (D), by striking  
 23       “and” at the end;

24               (B) in subparagraph (E), by striking the  
 25       period at the end and inserting “; and”; and

1 (C) by adding at the end the following new  
 2 subparagraph:

3 “(F) the Office of Advocacy of the Small  
 4 Business Administration, when the final rule is  
 5 under section 613(a) of title 5, United States  
 6 Code.”.

7 (c) AUTHORIZATION TO INTERVENE AND COMMENT  
 8 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-  
 9 DURE.—Subsection (b) of section 612 of title 5, United  
 10 States Code, is amended by inserting “chapter 5, and  
 11 chapter 7,” after “this chapter,”.

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

13 (a) Section 601 of title 5, United States Code, is  
 14 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) The heading of section 605 of title 5, United  
16 States Code, is amended to read as follows:

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

19 (c) The table of sections for chapter 6 of title 5,  
20 United States Code, is amended—

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

“605. Incorporations by reference and certifications.”;

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

“607. Quantification requirements.”;

- 1           (3) by striking the item relating to section 608;  
2       and  
3           (4) by inserting at the end the following new  
4       item:

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

