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113TH CONGRESS
1ST SESSION

H. R. 2542

[Report No. 113–288, Parts I and II]

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 HOUSE OF REPRESENTATIVES

JUNE 27, 2013

Mr. BACHUS (for himself, Mr. GRAVES of Missouri, Mr. BARROW of Georgia, Mr. MATHESON, Mr. SMITH of Texas, Mr. COBLE, and Mr. ROKITA) 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

DECEMBER 11, 2013

Additional sponsors: Mr. DUNCAN of Tennessee, Mr. HANNA, Mr. HUELSKAMP, Ms. HERRERA BEUTLER, Mr. COLLINS of New York, Mr. CRAMER, Mr. CHABOT, Mr. SMITH of Missouri, Mr. ISSA, Mr. TIPTON, Mr. LUETKEMEYER, Mr. LONG, and Mr. SESSIONS

DECEMBER 11, 2013

Reported from the Committee on the Judiciary with an amendment

[Omit the part struck through in roman and insert the part printed in italic]

DECEMBER 11, 2013

Reported from the Committee on Small Business with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on June 27, 2013]

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 2013”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification and expansion of rules covered by the Regulatory Flexi-
bility Act.
- Sec. 3. Expansion of report of regulatory agenda.
- Sec. 4. Requirements providing for more detailed analyses.
- Sec. 5. Repeal of waiver and delay authority; additional powers of the Chief
Counsel for Advocacy.
- 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. Jurisdiction of court of appeals over rules implementing the Regulatory
Flexibility Act.
- Sec. 10. Establishment and approval of small business concern size standards
by chief counsel for advocacy.
- Sec. 11. Clerical amendments.
- Sec. 12. Agency preparation of guides.

8 **SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-**
 9 **ERED BY THE REGULATORY FLEXIBILITY**
 10 **ACT.**

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

13 “(2) RULE.—The term ‘rule’ has the meaning
 14 given such term in section 551(4) of this title, ex-
 15 cept that such term does not include a rule of par-
 16 ticular (and not general) applicability relating to
 17 rates, wages, corporate or financial structures or re-

1 organizations thereof, prices, facilities, appliances,
 2 services, or allowances therefor or to valuations,
 3 costs or accounting, or practices relating to such
 4 rates, wages, structures, prices, appliances, services,
 5 or allowances.”.

6 (b) INCLUSION OF RULES WITH INDIRECT EF-
 7 FECTS.—Section 601 of title 5, United States Code, is
 8 amended by adding at the end the following new para-
 9 graph:

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

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

15 “(B) any indirect economic effect on small
 16 entities which is reasonably foreseeable and re-
 17 sults from such rule (without regard to whether
 18 small entities will be directly regulated by the
 19 rule).”.

20 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
 21 FECTS.—

22 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
 23 YSIS.—Subsection (c) of section 603 of title 5,
 24 United States Code, is amended by striking the first
 25 sentence and inserting “Each initial regulatory flexi-

1 bility analysis shall also contain a detailed descrip-
2 tion of alternatives to the proposed rule which mini-
3 mize any adverse significant economic impact or
4 maximize any beneficial significant economic impact
5 on small entities.”.

6 (2) FINAL REGULATORY FLEXIBILITY ANAL-
7 YSIS.—The first paragraph (6) of section 604(a) of
8 title 5, United States Code, is amended by striking
9 “minimize the significant economic impact” and in-
10 serting “minimize the adverse significant economic
11 impact or maximize the beneficial significant eco-
12 nomic impact”.

13 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
14 NIZATIONS.—Paragraph (5) of section 601 of title 5,
15 United States Code, is amended by inserting “and tribal
16 organizations (as defined in section 4(l) of the Indian Self-
17 Determination and Education Assistance Act (25 U.S.C.
18 450b(l))),” after “special districts,”.

19 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
20 FORMAL RULEMAKING.—

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

1 (A) by striking “or” after “proposed
2 rule,”; and

3 (B) by inserting “or publishes a revision or
4 amendment to a land management plan,” after
5 “United States,”.

6 (2) FINAL REGULATORY FLEXIBILITY ANAL-
7 YSIS.—Subsection (a) of section 604 of title 5,
8 United States Code, is amended in the first sen-
9 tence—

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

12 (B) by inserting “or adopts a revision or
13 amendment to a land management plan,” after
14 “section 603(a),”.

15 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
16 tion 601 of title 5, United States Code, is amended
17 by adding at the end the following new paragraph:

18 “(10) LAND MANAGEMENT PLAN.—

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

21 “(i) any plan developed by the Sec-
22 retary of Agriculture under section 6 of
23 the Forest and Rangeland Renewable Re-
24 sources Planning Act of 1974 (16 U.S.C.
25 1604); and

1 “(ii) any plan developed by the Sec-
2 retary of the Interior under section 202 of
3 the Federal Land Policy and Management
4 Act of 1976 (43 U.S.C. 1712).

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

8 “(i) in the case of a plan described in
9 subparagraph (A)(i), is made under section
10 6(f)(5) of the Forest and Rangeland Re-
11 newable Resources Planning Act of 1974
12 (16 U.S.C. 1604(f)(5)); or

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

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

20 “(i) in the case of a plan described in
21 subparagraph (A)(i), is made under section
22 6(f)(4) of the Forest and Rangeland Re-
23 newable Resources Planning Act of 1974
24 (16 U.S.C. 1604(f)(4)) and with respect to
25 which the Secretary of Agriculture pre-

1 pares a statement described in section
2 102(2)(C) of the National Environmental
3 Policy Act of 1969 (42 U.S.C.
4 4332(2)(C)); or

5 “(ii) in the case of a plan described in
6 subparagraph (A)(ii), is made under sec-
7 tion 1610.5–5 of title 43, Code of Federal
8 Regulations (or any successor regulation)
9 and with respect to which the Secretary of
10 the Interior prepares a statement described
11 in section 102(2)(C) of the National Envi-
12 ronmental Policy Act of 1969 (42 U.S.C.
13 4332(2)(C)).”.

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

16 (1) IN GENERAL.—Subsection (a) of section
17 603 of title 5, United States Code, is amended by
18 striking the period at the end and inserting “or a
19 recordkeeping requirement, and without regard to
20 whether such requirement is imposed by statute or
21 regulation.”.

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

1 “(7) COLLECTION OF INFORMATION.—The term
2 ‘collection of information’ has the meaning given
3 such term in section 3502(3) of title 44.”.

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

7 “(8) RECORDKEEPING REQUIREMENT.—The
8 term ‘recordkeeping requirement’ has the meaning
9 given such term in section 3502(13) of title 44.”.

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

13 “(4) SMALL ORGANIZATION.—

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

18 “(i) in the case of an enterprise which
19 is described by a classification code of the
20 North American Industrial Classification
21 System, does not exceed the size standard
22 established by the Administrator of the
23 Small Business Administration pursuant to
24 section 3 of the Small Business Act (15

1 U.S.C. 632) for small business concerns
2 described by such classification code; and

3 “(ii) in the case of any other enter-
4 prise, has a net worth that does not exceed
5 \$7,000,000 and has not more than 500
6 employees.

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

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

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

22 Section 602 of title 5, United States Code, is amend-
23 ed—

24 (1) in subsection (a)—

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

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

5 (C) by inserting after paragraph (2) the
6 following:

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

13 (2) in subsection (c), to read as follows:

14 “(c) Each agency shall prominently display a plain
15 language summary of the information contained in the
16 regulatory flexibility agenda published under subsection
17 (a) on its website within 3 days of its publication in the
18 Federal Register. The Office of Advocacy of the Small
19 Business Administration shall compile and prominently
20 display a plain language summary of the regulatory agen-
21 das referenced in subsection (a) for each agency on its
22 website within 3 days of their publication in the Federal
23 Register.”.

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

3 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
4 Subsection (b) of section 603 of title 5, United States
5 Code, is amended 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; and

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

7 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

10 (A) in paragraph (4), by striking “an ex-
11 planation” and inserting “a detailed expla-
12 nation”;

13 (B) in each of paragraphs (4), (5), and the
14 first paragraph (6), by inserting “detailed” be-
15 fore “description”; and

16 (C) by adding at the end the following:

17 “(7) describing any disproportionate economic
18 impact on small entities or a specific class of small
19 entities.”.

20 (2) INCLUSION OF RESPONSE TO COMMENTS ON
21 CERTIFICATION OF PROPOSED RULE.—Paragraph
22 (2) of section 604(a) of title 5, United States Code,
23 is amended by inserting “(or certification of the pro-
24 posed rule under section 605(b))” after “initial reg-
25 ulatory flexibility analysis”.

1 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

2 Subsection (b) of section 604 of title 5, United
3 States Code, is amended to read as follows:

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

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

13 Subsection (a) of section 605 of title 5, United States
14 Code, is amended to read as follows:

15 “(a) A Federal agency shall be treated as satisfying
16 any requirement regarding the content of an agenda or
17 regulatory flexibility analysis under section 602, 603, or
18 604, if such agency provides in such agenda or analysis
19 a cross-reference to the specific portion of another agenda
20 or analysis which is required by any other law and which
21 satisfies such requirement.”.

22 (d) CERTIFICATIONS.—Subsection (b) of section 605
23 of title 5, United States Code, is amended—

24 (1) by inserting “detailed” before “statement”
25 the first place it appears; and

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

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

5 **“§ 607. Quantification requirements**

6 “In complying with sections 603 and 604, an agency
7 shall provide—

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

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

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

17 (a) IN GENERAL.—Section 608 is amended to read
18 as follows:

19 **“§ 608. Additional powers of Chief Counsel for Advo-**
20 **cacy**

21 “(a)(1) Not later than 270 days after the date of the
22 enactment of the Regulatory Flexibility Improvements Act
23 of 2013, the Chief Counsel for Advocacy of the Small
24 Business Administration shall, after opportunity for notice
25 and comment under section 553, issue rules governing

1 agency compliance with this chapter. The Chief Counsel
2 may modify or amend such rules after notice and comment
3 under section 553. This chapter (other than this sub-
4 section) shall not apply with respect to the issuance, modi-
5 fication, and amendment of rules under this paragraph.

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

11 “(b) Notwithstanding any other law, the Chief Coun-
12 sel for Advocacy of the Small Business Administration
13 may intervene in any agency adjudication (unless such
14 agency is authorized to impose a fine or penalty under
15 such adjudication), and may inform the agency of the im-
16 pact that any decision on the record may have on small
17 entities. The Chief Counsel shall not initiate an appeal
18 with respect to any adjudication in which the Chief Coun-
19 sel intervenes under this subsection.

20 “(c) The Chief Counsel for Advocacy may file com-
21 ments in response to any agency notice requesting com-
22 ment, regardless of whether the agency is required to file
23 a general notice of proposed rulemaking under section
24 553.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 611(a)(1) of such title is amended
2 by striking “608(b),”.

3 (2) Section 611(a)(2) of such title is amended
4 by striking “608(b),”.

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

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

8 (B) by striking “(3)(A) A small entity”
9 and inserting the following:

10 “(3) A small entity”.

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

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

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

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

22 “(B) information on the potential adverse and
23 beneficial economic impacts of the proposed rule on
24 small entities and the type of small entities that
25 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 (as defined in section 3502(5) of title 44).

8 “(c) Not later than 15 days after the receipt of such
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 (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (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 such panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency (as de-
9 fined in section 3502(5) of title 44), the Office of Informa-
10 tion and Regulatory Affairs of the Office of Management
11 and Budget.

12 “(2) Such report shall include an assessment of the
13 economic impact of the proposed rule on small entities,
14 including an assessment of the proposed rule’s impact on
15 the cost that small entities pay for energy, and a discus-
16 sion of any alternatives that will minimize adverse signifi-
17 cant economic impacts or maximize beneficial significant
18 economic impacts on small entities.

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

23 “(e) A proposed rule is described by this subsection
24 if the Administrator of the Office of Information and Reg-
25 ulatory Affairs of the Office of Management and Budget,

1 the head of the agency (or the delegatee of the head of
2 the agency), or an independent regulatory agency deter-
3 mines that the proposed rule is likely to result in—

4 “(1) an annual effect on the economy of
5 \$100,000,000 or more;

6 “(2) a major increase in costs or prices for con-
7 sumers, individual industries, Federal, State, or local
8 governments, tribal organizations, or geographic re-
9 gions;

10 “(3) significant adverse effects on competition,
11 employment, investment, productivity, innovation, or
12 on the ability of United States-based enterprises to
13 compete with foreign-based enterprises in domestic
14 and export markets; or

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

17 “(f) Upon application by the agency, the Chief Coun-
18 sel for Advocacy of the Small Business Administration
19 may waive the requirements of subsections (b) through (e)
20 if the Chief Counsel determines that compliance with the
21 requirements of such subsections are impracticable, un-
22 necessary, or contrary to the public interest.”.

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

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

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

2 “(a) Not later than 180 days after the enactment of
3 the Regulatory Flexibility Improvements Act of 2013,
4 each agency shall publish in the Federal Register and
5 place on its website a plan for the periodic review of rules
6 issued by the agency which the head of the agency deter-
7 mines have a significant economic impact on a substantial
8 number of small entities. Such determination shall be
9 made without regard to whether the agency performed an
10 analysis under section 604. The purpose of the review
11 shall be to determine whether such rules should be contin-
12 ued without change, or should be amended or rescinded,
13 consistent with the stated objectives of applicable statutes,
14 to minimize any adverse significant economic impacts or
15 maximize any beneficial significant economic impacts on
16 a substantial number of small entities. Such plan may be
17 amended by the agency at any time by publishing the revi-
18 sion in the Federal Register and subsequently placing the
19 amended plan on the agency’s website.

20 “(b) The plan shall provide for the review of all such
21 agency rules existing on the date of the enactment of the
22 Regulatory Flexibility Improvements Act of 2013 within
23 10 years of the date of publication of the plan in the Fed-
24 eral Register and for review of rules adopted after the date
25 of enactment of the Regulatory Flexibility Improvements
26 Act of 2013 within 10 years after the publication of the

1 final rule in the Federal Register. If the head of the agen-
2 cy determines that completion of the review of existing
3 rules is not feasible by the established date, the head of
4 the agency shall so certify in a statement published in the
5 Federal Register and may extend the review for not longer
6 than 2 years after publication of notice of extension in
7 the Federal Register. Such certification and notice shall
8 be sent to the Chief Counsel for Advocacy of the Small
9 Business Administration and the Congress.

10 “(c) The plan shall include a section that details how
11 an agency will conduct outreach to and meaningfully in-
12 clude small businesses for the purposes of carrying out
13 this section. The agency shall include in this section a plan
14 for how the agency will contact small businesses and gath-
15 er their input on existing agency rules.

16 “(d) Each agency shall annually submit a report re-
17 garding the results of its review pursuant to such plan
18 to the Congress, the Chief Counsel for Advocacy of the
19 Small Business Administration, and, in the case of agen-
20 cies other than independent regulatory agencies (as de-
21 fined in section 3502(5) of title 44) to the Administrator
22 of the Office of Information and Regulatory Affairs of the
23 Office of Management and Budget. Such report shall in-
24 clude the identification of any rule with respect to which
25 the head of the agency made a determination described

1 in paragraph (5) or (6) of subsection (e) and a detailed
2 explanation of the reasons for such determination.

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

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

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

16 “(3) Comments by the Regulatory Enforcement
17 Ombudsman and the Chief Counsel for Advocacy of
18 the Small Business Administration.

19 “(4) The complexity of the rule.

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

24 “(6) The contribution of the rule to the cumu-
25 lative economic impact of all Federal rules on the

1 class of small entities affected by the rule, unless the
2 head of the agency determines that such calculations
3 cannot be made and reports that determination in
4 the annual report required under subsection (d).

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

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

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

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

20 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
21 CACY.—Subsection (b) of section 612 of title 5, United
22 States Code, is amended by inserting before the first pe-
23 riod “or agency compliance with section 601, 603, 604,
24 605(b), 609, or 610”.

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

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

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

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

10 (3) by inserting after paragraph (7) the fol-
11 lowing new paragraph:

12 “(8) all final rules under section 608(a) of title
13 5.”.

14 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
15 section 2341 of title 28, United States Code, is amended—

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

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

20 (3) by adding at the end the following new sub-
21 paragraph:

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

25 (c) AUTHORIZATION TO INTERVENE AND COMMENT
26 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-

1 DURE.—Subsection (b) of section 612 of title 5, United
 2 States Code, is amended by inserting “chapter 5, and
 3 chapter 7,” after “this chapter,”.

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

7 (a) IN GENERAL.—Subparagraph (A) of section
 8 3(a)(2) of the Small Business Act (15 U.S.C.
 9 632(a)(2)(A)) is amended to read as follows:

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

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

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

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

24 “(iii) except in the case of a size
 25 standard prescribed by the Administrator,

1 is approved by the Chief Counsel for Advo-
 2 cacy.”.

3 (c) INDUSTRY VARIATION.—Paragraph (3) of section
 4 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
 5 amended—

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

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

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

14 “~~(6)~~ (9) JUDICIAL REVIEW OF STANDARDS AP-
 15 PROVED BY CHIEF COUNSEL.—In the case of an ac-
 16 tion for judicial review of a rule which includes a
 17 definition or standard approved by the Chief Counsel
 18 for Advocacy under this subsection, the party seek-
 19 ing such review shall be entitled to join the Chief
 20 Counsel as a party in such action.”.

21 **SEC. 11. CLERICAL AMENDMENTS.**

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

24 (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) The heading of section 605 of title 5, United
2 States Code, is amended to read as follows:

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

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

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

“605. Incorporations by reference and certifications.”;

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

“607. Quantification requirements.”;

11 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) Chapter 6 of title 5, United States Code, is
15 amended as follows:

16 (1) In section 603, by striking subsection (d).

17 (2) In section 604(a) by striking the second
18 paragraph (6).

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

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

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

15 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

16 **(a) SHORT TITLE.—This Act may be cited as**
 17 **the “Regulatory Flexibility Improvements Act**
 18 **of 2013”.**

19 **(b) TABLE OF CONTENTS.—The table of con-**
 20 **tents of this Act is as follows:**

Sec. 1. Short title; table of contents.

Sec. 2. Clarification and expansion of rules covered by the
Regulatory Flexibility Act.

Sec. 3. Expansion of report of regulatory agenda.

Sec. 4. Requirements providing for more detailed analyses.

Sec. 5. Repeal of waiver and delay authority; additional pow-
ers of the Chief Counsel for Advocacy.

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 pub-
lication of the final rule.

Sec. 9. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.

Sec. 10. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.

Sec. 11. Clerical amendments.

Sec. 12. Agency preparation of guides.

Sec. 13. GAO report.

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

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

7 “(2) RULE.—The term ‘rule’ has the
8 meaning given such term in section
9 551(4) of this title, except that such term
10 does not include a rule pertaining to the
11 protection of the rights of and benefits
12 for veterans or a rule of particular (and
13 not general) applicability relating to
14 rates, wages, corporate or financial struc-
15 tures or reorganizations thereof, prices,
16 facilities, appliances, services, or allow-
17 ances therefor or to valuations, costs or
18 accounting, or practices relating to such
19 rates, wages, structures, prices, appli-
20 ances, services, or allowances.”.

21 (b) INCLUSION OF RULES WITH INDIRECT EF-
22 FECTS.—Section 601 of title 5, United States

1 Code, is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(9) ECONOMIC IMPACT.—The term ‘eco-
4 nomic impact’ means, with respect to a
5 proposed or final rule—

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

8 “(B) any indirect economic effect
9 (including compliance costs and ef-
10 fects on revenue) on small entities
11 which is reasonably foreseeable and
12 results from such rule (without re-
13 gard to whether small entities will be
14 directly regulated by the rule).”.

15 (c) INCLUSION OF RULES WITH BENEFICIAL
16 EFFECTS.—

17 (1) INITIAL REGULATORY FLEXIBILITY
18 ANALYSIS.—Subsection (c) of section 603 of
19 title 5, United States Code, is amended by
20 striking the first sentence and inserting
21 “Each initial regulatory flexibility anal-
22 ysis shall also contain a detailed descrip-
23 tion of alternatives to the proposed rule
24 which minimize any adverse significant
25 economic impact or maximize any bene-

1 **ficial significant economic impact on**
2 **small entities.”.**

3 **(2) FINAL REGULATORY FLEXIBILITY**
4 **ANALYSIS.—The first paragraph (6) of sec-**
5 **tion 604(a) of title 5, United States Code,**
6 **is amended by striking “minimize the sig-**
7 **nificant economic impact” and inserting**
8 **“minimize the adverse significant eco-**
9 **nomic impact or maximize the beneficial**
10 **significant economic impact”.**

11 **(d) INCLUSION OF RULES AFFECTING TRIBAL**
12 **ORGANIZATIONS.—Paragraph (5) of section 601**
13 **of title 5, United States Code, is amended by**
14 **inserting “and tribal organizations (as de-**
15 **finied in section 4(l) of the Indian Self-Deter-**
16 **mination and Education Assistance Act (25**
17 **U.S.C. 450b(l))),” after “special districts,”.**

18 **(e) INCLUSION OF LAND MANAGEMENT PLANS**
19 **AND FORMAL RULEMAKING.—**

20 **(1) INITIAL REGULATORY FLEXIBILITY**
21 **ANALYSIS.—Subsection (a) of section 603 of**
22 **title 5, United States Code, is amended in**
23 **the first sentence—**

24 **(A) by striking “or” after “pro-**
25 **posed rule,”; and**

1 **(B) by inserting “or publishes a**
2 **revision or amendment to a land**
3 **management plan,” after “United**
4 **States,”.**

5 **(2) FINAL REGULATORY FLEXIBILITY**
6 **ANALYSIS.—Subsection (a) of section 604 of**
7 **title 5, United States Code, is amended in**
8 **the first sentence—**

9 **(A) by striking “or” after “pro-**
10 **posed rulemaking,”; and**

11 **(B) by inserting “or adopts a revi-**
12 **sion or amendment to a land manage-**
13 **ment plan,” after “section 603(a),”.**

14 **(3) LAND MANAGEMENT PLAN DEFINED.—**
15 **Section 601 of title 5, United States Code,**
16 **is amended by adding at the end the fol-**
17 **lowing new paragraph:**

18 **“(10) LAND MANAGEMENT PLAN.—**

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

21 **“(i) any plan developed by the**
22 **Secretary of Agriculture under**
23 **section 6 of the Forest and Range-**
24 **land Renewable Resources Plan-**

1 ning Act of 1974 (16 U.S.C. 1604);
2 and

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

8 “(B) REVISION.—The term ‘revi-
9 sion’ means any change to a land
10 management plan which—

11 “(i) in the case of a plan de-
12 scribed in subparagraph (A)(i), is
13 made under section 6(f)(5) of the
14 Forest and Rangeland Renewable
15 Resources Planning Act of 1974
16 (16 U.S.C. 1604(f)(5)); or

17 “(ii) in the case of a plan de-
18 scribed in subparagraph (A)(ii), is
19 made under section 1610.5–6 of
20 title 43, Code of Federal Regula-
21 tions (or any successor regula-
22 tion).

23 “(C) AMENDMENT.—The term
24 ‘amendment’ means any change to a
25 land management plan which—

1 “(i) in the case of a plan de-
2 scribed in subparagraph (A)(i), is
3 made under section 6(f)(4) of the
4 Forest and Rangeland Renewable
5 Resources Planning Act of 1974
6 (16 U.S.C. 1604(f)(4)) and with re-
7 spect to which the Secretary of
8 Agriculture prepares a statement
9 described in section 102(2)(C) of
10 the National Environmental Pol-
11 icy Act of 1969 (42 U.S.C.
12 4332(2)(C)); or

13 “(ii) in the case of a plan de-
14 scribed in subparagraph (A)(ii), is
15 made under section 1610.5-5 of
16 title 43, Code of Federal Regula-
17 tions (or any successor regula-
18 tion) and with respect to which
19 the Secretary of the Interior pre-
20 pares a statement described in
21 section 102(2)(C) of the National
22 Environmental Policy Act of 1969
23 (42 U.S.C. 4332(2)(C)).”.

1 **(f) INCLUSION OF CERTAIN INTERPRETIVE**
2 **RULES INVOLVING THE INTERNAL REVENUE**
3 **LAWS.—**

4 **(1) IN GENERAL.—**Subsection (a) of sec-
5 **tion 603 of title 5, United States Code, is**
6 **amended by striking the period at the**
7 **end and inserting “or a recordkeeping re-**
8 **quirement, and without regard to wheth-**
9 **er such requirement is imposed by stat-**
10 **ute or regulation.”.**

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

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

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

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

1 has the meaning given such term in sec-
2 tion 3502(13) of title 44.”.

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

6 **“(4) SMALL ORGANIZATION.—**

7 **“(A) IN GENERAL.—The term ‘small**
8 **organization’ means any not-for-prof-**
9 **it enterprise which, as of the issuance**
10 **of the notice of proposed rule-**
11 **making—**

12 **“(i) in the case of an enter-**
13 **prise which is described by a clas-**
14 **sification code of the North Amer-**
15 **ican Industrial Classification Sys-**
16 **tem, does not exceed the size**
17 **standard established by the Ad-**
18 **ministrator of the Small Business**
19 **Administration pursuant to sec-**
20 **tion 3 of the Small Business Act**
21 **(15 U.S.C. 632) for small business**
22 **concerns described by such classi-**
23 **fication code; and**

24 **“(ii) in the case of any other**
25 **enterprise, has a net worth that**

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

3 **“(B) LOCAL LABOR ORGANIZA-**
4 **TIONS.—In the case of any local labor**
5 **organization, subparagraph (A) shall**
6 **be applied without regard to any na-**
7 **tional or international organization**
8 **of which such local labor organiza-**
9 **tion is a part.**

10 **“(C) AGENCY DEFINITIONS.—Sub-**
11 **paragraphs (A) and (B) shall not**
12 **apply to the extent that an agency,**
13 **after consultation with the Office of**
14 **Advocacy of the Small Business Ad-**
15 **ministration and after opportunity**
16 **for public comment, establishes one**
17 **or more definitions for such term**
18 **which are appropriate to the activi-**
19 **ties of the agency and publishes such**
20 **definitions in the Federal Register.”.**

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

22 **Section 602 of title 5, United States Code,**
23 **is amended—**

24 **(1) in subsection (a)—**

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

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

5 (C) by inserting after paragraph
6 (2) the following:

7 “(3) a brief description of the sector
8 of the North American Industrial Classi-
9 fication System that is primarily affected
10 by any rule which the agency expects to
11 propose or promulgate which is likely to
12 have a significant economic impact on a
13 substantial number of small entities;
14 and”; and

15 (2) in subsection (c), to read as fol-
16 lows:

17 “(c) Each agency shall prominently dis-
18 play a plain language summary of the infor-
19 mation contained in the regulatory flexibility
20 agenda published under subsection (a) on its
21 website within 3 days of its publication in the
22 Federal Register. The Office of Advocacy of
23 the Small Business Administration shall com-
24 pile and prominently display a plain language
25 summary of the regulatory agendas ref-

1 erenced in subsection (a) for each agency on
2 its website within 3 days of their publication
3 in the Federal Register.”.

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

6 (a) INITIAL REGULATORY FLEXIBILITY ANAL-
7 YSIS.—Subsection (b) of section 603 of title 5,
8 United States Code, is amended to read as fol-
9 lows:

10 “(b) Each initial regulatory flexibility
11 analysis required under this section shall con-
12 tain a detailed statement—

13 “(1) describing the reasons why ac-
14 tion by the agency is being considered;

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

17 “(3) estimating the number and type
18 of small entities to which the proposed
19 rule will apply;

20 “(4) describing the projected report-
21 ing, recordkeeping, and other compliance
22 requirements of the proposed rule, in-
23 cluding an estimate of the classes of
24 small entities which will be subject to the
25 requirement and the type of professional

1 **skills necessary for preparation of the re-**
2 **port and record;**

3 **“(5) describing all relevant Federal**
4 **rules which may duplicate, overlap, or**
5 **conflict with the proposed rule, or the**
6 **reasons why such a description could not**
7 **be provided;**

8 **“(6) estimating the additional cumu-**
9 **lative economic impact of the proposed**
10 **rule on small entities beyond that already**
11 **imposed on the class of small entities by**
12 **the agency or why such an estimate is**
13 **not available; and**

14 **“(7) describing any disproportionate**
15 **economic impact on small entities or a**
16 **specific class of small entities.”.**

17 **(b) FINAL REGULATORY FLEXIBILITY ANAL-**
18 **YSIS.—**

19 **(1) IN GENERAL.—Section 604(a) of title**
20 **5, United States Code, is amended—**

21 **(A) in paragraph (4), by striking**
22 **“an explanation” and inserting “a de-**
23 **tailed explanation”;**

24 **(B) in each of paragraphs (4), (5),**
25 **and the first paragraph (6), by insert-**

1 ing “detailed” before “description”;
2 and

3 (C) by adding at the end the fol-
4 lowing:

5 “(7) describing any disproportionate
6 economic impact on small entities or a
7 specific class of small entities.”.

8 (2) INCLUSION OF RESPONSE TO COM-
9 MENTS ON CERTIFICATION OF PROPOSED
10 RULE.—Paragraph (2) of section 604(a) of
11 title 5, United States Code, is amended by
12 inserting “(or certification of the pro-
13 posed rule under section 605(b))” after
14 “initial regulatory flexibility analysis”.

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

19 “(b) The agency shall make copies of the
20 final regulatory flexibility analysis available
21 to the public, including placement of the en-
22 tire analysis on the agency’s website, and
23 shall publish in the Federal Register the final
24 regulatory flexibility analysis, or a summary
25 thereof which includes the telephone number,

1 mailing address, and link to the website
2 where the complete analysis may be ob-
3 tained.”.

4 (c) CROSS-REFERENCES TO OTHER ANAL-
5 YSES.—Subsection (a) of section 605 of title 5,
6 United States Code, is amended to read as fol-
7 lows:

8 “(a) A Federal agency shall be treated as
9 satisfying any requirement regarding the con-
10 tent of an agenda or regulatory flexibility
11 analysis under section 602, 603, or 604, if such
12 agency provides in such agenda or analysis a
13 cross-reference to the specific portion of an-
14 other agenda or analysis which is required by
15 any other law and which satisfies such re-
16 quirement.”.

17 (d) CERTIFICATIONS.—Subsection (b) of sec-
18 tion 605 of title 5, United States Code, is
19 amended—

20 (1) by inserting “detailed” before
21 “statement” the first place it appears; and

22 (2) by inserting “and legal” after “fac-
23 tual”.

1 **(e) QUANTIFICATION REQUIREMENTS.—Section**
2 **tion 607 of title 5, United States Code, is**
3 **amended to read as follows:**

4 **“§ 607. Quantification requirements**

5 **“In complying with sections 603 and 604,**
6 **an agency shall provide—**

7 **“(1) a quantifiable or numerical de-**
8 **scription of the effects of the proposed or**
9 **final rule and alternatives to the pro-**
10 **posed or final rule; or**

11 **“(2) a more general descriptive state-**
12 **ment and a detailed statement explaining**
13 **why quantification is not practicable or**
14 **reliable.”.**

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

18 **(a) IN GENERAL.—Section 608 is amended**
19 **to read as follows:**

20 **“§ 608. Additional powers of Chief Counsel for Advo-**
21 **cacy**

22 **“(a)(1) Not later than 270 days after the**
23 **date of the enactment of the Regulatory Flexi-**
24 **bility Improvements Act of 2013, the Chief**
25 **Counsel for Advocacy of the Small Business**

1 Administration shall, after opportunity for
2 notice and comment under section 553, issue
3 rules governing agency compliance with this
4 chapter. The Chief Counsel may modify or
5 amend such rules after notice and comment
6 under section 553. This chapter (other than
7 this subsection) shall not apply with respect
8 to the issuance, modification, and amendment
9 of rules under this paragraph.

10 “(2) An agency shall not issue rules which
11 supplement the rules issued under subsection
12 (a) unless such agency has first consulted
13 with the Chief Counsel for Advocacy to en-
14 sure that such supplemental rules comply
15 with this chapter and the rules issued under
16 paragraph (1).

17 “(b) Notwithstanding any other law, the
18 Chief Counsel for Advocacy of the Small Busi-
19 ness Administration may intervene in any
20 agency adjudication (unless such agency is
21 authorized to impose a fine or penalty under
22 such adjudication), and may inform the agen-
23 cy of the impact that any decision on the
24 record may have on small entities. The Chief
25 Counsel shall not initiate an appeal with re-

1 spect to any adjudication in which the Chief
2 Counsel intervenes under this subsection.

3 “(c) The Chief Counsel for Advocacy may
4 file comments in response to any agency no-
5 tice requesting comment, regardless of wheth-
6 er the agency is required to file a general no-
7 tice of proposed rulemaking under section
8 553.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 611(a)(1) of such title is
11 amended by striking “608(b),”.

12 (2) Section 611(a)(2) of such title is
13 amended by striking “608(b),”.

14 (3) Section 611(a)(3) of such title is
15 amended—

16 (A) by striking subparagraph (B);

17 and

18 (B) by striking “(3)(A) A small en-
19 tity” and inserting the following:

20 “(3) A small entity”.

21 SEC. 6. PROCEDURES FOR GATHERING COMMENTS.

22 Section 609 of title 5, United States Code,
23 is amended by striking subsection (b) and all
24 that follows through the end of the section
25 and inserting the following:

1 “(b)(1) Prior to publication of any pro-
2 posed rule described in subsection (e), an
3 agency making such rule shall notify the
4 Chief Counsel for Advocacy of the Small Busi-
5 ness Administration and provide the Chief
6 Counsel with—

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

11 “(B) information on the potential ad-
12 verse and beneficial economic impacts of
13 the proposed rule on small entities and
14 the type of small entities that might be
15 affected.

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

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

21 “(B) is proposed by an independent
22 regulatory agency (as defined in section
23 3502(5) of title 44).

24 “(c) Not later than 15 days after the re-
25 ceipt of such materials and information under

1 subsection (b), the Chief Counsel for Advo-
2 cacy of the Small Business Administration
3 shall—

4 “(1) identify small entities or rep-
5 resentatives of small entities or a com-
6 bination of both for the purpose of ob-
7 taining advice, input, and recommenda-
8 tions from those persons about the poten-
9 tial economic impacts of the proposed
10 rule and the compliance of the agency
11 with section 603; and

12 “(2) convene a review panel con-
13 sisting of an employee from the Office of
14 Advocacy of the Small Business Adminis-
15 tration, an employee from the agency
16 making the rule, and in the case of an
17 agency other than an independent regu-
18 latory agency (as defined in section
19 3502(5) of title 44), an employee from the
20 Office of Information and Regulatory Af-
21 fairs of the Office of Management and
22 Budget to review the materials and infor-
23 mation provided to the Chief Counsel
24 under subsection (b).

1 “(d)(1) Not later than 60 days after the re-
2 view panel described in subsection (c)(2) is
3 convened, the Chief Counsel for Advocacy of
4 the Small Business Administration shall, after
5 consultation with the members of such panel,
6 submit a report to the agency and, in the case
7 of an agency other than an independent regu-
8 latory agency (as defined in section 3502(5) of
9 title 44), the Office of Information and Regu-
10 latory Affairs of the Office of Management
11 and Budget.

12 “(2) Such report shall include an assess-
13 ment of the economic impact of the proposed
14 rule on small entities, including an assess-
15 ment of the proposed rule’s impact on the cost
16 that small entities pay for energy, an assess-
17 ment of the proposed rule’s impact on start-
18 up costs for small entities, and a discussion of
19 any alternatives that will minimize adverse
20 significant economic impacts or maximize
21 beneficial significant economic impacts on
22 small entities.

23 “(3) Such report shall become part of the
24 rulemaking record. In the publication of the
25 proposed rule, the agency shall explain what

1 actions, if any, the agency took in response to
2 such report.

3 “(e) A proposed rule is described by this
4 subsection if the Administrator of the Office
5 of Information and Regulatory Affairs of the
6 Office of Management and Budget, the head of
7 the agency (or the delegatee of the head of the
8 agency), or an independent regulatory agency
9 determines that the proposed rule is likely to
10 result in—

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

13 “(2) a major increase in costs or
14 prices for consumers, individual indus-
15 tries, Federal, State, or local govern-
16 ments, tribal organizations, or geo-
17 graphic regions;

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

24 “(4) a significant economic impact on
25 a substantial number of small entities.

1 “(f) Upon application by the agency, the
2 Chief Counsel for Advocacy of the Small Busi-
3 ness Administration may waive the require-
4 ments of subsections (b) through (e) if the
5 Chief Counsel determines that compliance
6 with the requirements of such subsections are
7 impracticable, unnecessary, or contrary to
8 the public interest.

9 “(g) A small entity or a representative of
10 a small entity may submit a request that the
11 agency provide a copy of the report prepared
12 under subsection (d) and all materials and in-
13 formation provided to the Chief Counsel for
14 Advocacy of the Small Business Administra-
15 tion under subsection (b). The agency receiv-
16 ing such request shall provide the report, ma-
17 terials and information to the requesting
18 small entity or representative of a small enti-
19 ty not later than 10 business days after receiv-
20 ing such request, except that the agency shall
21 not disclose any information that is prohib-
22 ited from disclosure to the public pursuant to
23 section 552(b) of this title.”.

1 SEC. 7. PERIODIC REVIEW OF RULES.

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

4 “§ 610. Periodic review of rules

5 “(a) Not later than 180 days after the en-
6 actment of the Regulatory Flexibility Im-
7 provements Act of 2013, each agency shall
8 publish in the Federal Register and place on
9 its website a plan for the periodic review of
10 rules issued by the agency which the head of
11 the agency determines have a significant eco-
12 nomic impact on a substantial number of
13 small entities. Such determination shall be
14 made without regard to whether the agency
15 performed an analysis under section 604. The
16 purpose of the review shall be to determine
17 whether such rules should be continued with-
18 out change, or should be amended or re-
19 scinded, consistent with the stated objectives
20 of applicable statutes, to minimize any ad-
21 verse significant economic impacts or maxi-
22 mize any beneficial significant economic im-
23 pacts on a substantial number of small enti-
24 ties. Such plan may be amended by the agency
25 at any time by publishing the revision in the

1 **Federal Register and subsequently placing**
2 **the amended plan on the agency’s website.**

3 **“(b) The plan shall provide for the review**
4 **of all such agency rules existing on the date**
5 **of the enactment of the Regulatory Flexibility**
6 **Improvements Act of 2013 within 10 years of**
7 **the date of publication of the plan in the Fed-**
8 **eral Register and for review of rules adopted**
9 **after the date of enactment of the Regulatory**
10 **Flexibility Improvements Act of 2013 within**
11 **10 years after the publication of the final rule**
12 **in the Federal Register. If the head of the**
13 **agency determines that completion of the re-**
14 **view of existing rules is not feasible by the es-**
15 **tablished date, the head of the agency shall so**
16 **certify in a statement published in the Fed-**
17 **eral Register and may extend the review for**
18 **not longer than 2 years after publication of**
19 **notice of extension in the Federal Register.**
20 **Such certification and notice shall be sent to**
21 **the Chief Counsel for Advocacy of the Small**
22 **Business Administration and the Congress.**

23 **“(c) The plan shall include a section that**
24 **details how an agency will conduct outreach**
25 **to and meaningfully include small businesses**

1 (including small business concerns owned
2 and controlled by women, small business con-
3 cerns owned and controlled by veterans, and
4 small business concerns owned and con-
5 trolled by socially and economically disadvan-
6 taged individuals (as such terms are defined
7 in the Small Business Act)) for the purposes
8 of carrying out this section. The agency shall
9 include in this section a plan for how the
10 agency will contact small businesses and
11 gather their input on existing agency rules.

12 “(d) Each agency shall annually submit a
13 report regarding the results of its review pur-
14 suant to such plan to the Congress, the Chief
15 Counsel for Advocacy of the Small Business
16 Administration, and, in the case of agencies
17 other than independent regulatory agencies
18 (as defined in section 3502(5) of title 44) to the
19 Administrator of the Office of Information
20 and Regulatory Affairs of the Office of Man-
21 agement and Budget. Such report shall in-
22 clude the identification of any rule with re-
23 spect to which the head of the agency made
24 a determination described in paragraph (5) or

1 (6) of subsection (e) and a detailed expla-
2 nation of the reasons for such determination.

3 “(e) In reviewing a rule pursuant to sub-
4 sections (a) through (d), the agency shall
5 amend or rescind the rule to minimize any ad-
6 verse significant economic impact on a sub-
7 stantial number of small entities or dispropor-
8 tionate economic impact on a specific class of
9 small entities, or maximize any beneficial sig-
10 nificant economic impact of the rule on a sub-
11 stantial number of small entities to the great-
12 est extent possible, consistent with the stated
13 objectives of applicable statutes. In amending
14 or rescinding the rule, the agency shall con-
15 sider the following factors:

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

17 “(2) The nature of complaints re-
18 ceived by the agency from small entities
19 concerning the rule.

20 “(3) Comments by the Regulatory En-
21 forcement Ombudsman and the Chief
22 Counsel for Advocacy of the Small Busi-
23 ness Administration.

24 “(4) The complexity of the rule.

1 **“(5) The extent to which the rule**
2 **overlaps, duplicates, or conflicts with**
3 **other Federal rules and, unless the head**
4 **of the agency determines it to be infeasible, State, territorial, and local rules.**

6 **“(6) The contribution of the rule to**
7 **the cumulative economic impact of all**
8 **Federal rules on the class of small enti-**
9 **ties affected by the rule, unless the head**
10 **of the agency determines that such cal-**
11 **culations cannot be made and reports**
12 **that determination in the annual report**
13 **required under subsection (d).**

14 **“(7) The length of time since the rule**
15 **has been evaluated or the degree to**
16 **which technology, economic conditions,**
17 **or other factors have changed in the area**
18 **affected by the rule.**

19 **“(f) The agency shall publish in the Fed-**
20 **eral Register and on its website a list of rules**
21 **to be reviewed pursuant to such plan. The**
22 **agency shall include in the publication a so-**
23 **licitation of public comments on any further**
24 **inclusions or exclusions of rules from the list,**
25 **and shall respond to such comments. Such**

1 publication shall include a brief description
2 of the rule, the reason why the agency deter-
3 mined that it has a significant economic im-
4 pact on a substantial number of small entities
5 (without regard to whether it had prepared a
6 final regulatory flexibility analysis for the
7 rule), and request comments from the public,
8 the Chief Counsel for Advocacy of the Small
9 Business Administration, and the Regulatory
10 Enforcement Ombudsman concerning the en-
11 forcement of the rule.”.

12 SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-
13 QUIREMENTS OF THE REGULATORY FLEXI-
14 BILITY ACT AVAILABLE AFTER PUBLICATION
15 OF THE FINAL RULE.

16 (a) IN GENERAL.—Paragraph (1) of section
17 611(a) of title 5, United States Code, is amend-
18 ed by striking “final agency action” and in-
19 serting “such rule”.

20 (b) JURISDICTION.—Paragraph (2) of such
21 section is amended by inserting “(or which
22 would have such jurisdiction if publication of
23 the final rule constituted final agency action)”
24 after “provision of law,”.

1 (c) **TIME FOR BRINGING ACTION.**—Para-
2 **graph (3) of such section is amended—**

3 (1) **by striking “final agency action”**
4 **and inserting “publication of the final**
5 **rule”; and**

6 (2) **by inserting “, in the case of a rule**
7 **for which the date of final agency action**
8 **is the same date as the publication of the**
9 **final rule,” after “except that”.**

10 (d) **INTERVENTION BY CHIEF COUNSEL FOR**
11 **ADVOCACY.**—Subsection (b) of section 612 of
12 **title 5, United States Code, is amended by in-**
13 **serting before the first period “or agency com-**
14 **pliance with section 601, 603, 604, 605(b), 609,**
15 **or 610”.**

16 **SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES**
17 **IMPLEMENTING THE REGULATORY FLEXI-**
18 **BILITY ACT.**

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

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

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

1 (3) by inserting after paragraph (7)
2 the following new paragraph:

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

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

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

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

13 (3) by adding at the end the following
14 new subparagraph:

15 “(F) the Office of Advocacy of the
16 Small Business Administration, when
17 the final rule is under section 608(a)
18 of title 5.”.

19 (c) AUTHORIZATION TO INTERVENE AND COM-
20 MENT ON AGENCY COMPLIANCE WITH ADMINIS-
21 TRATIVE PROCEDURE.—Subsection (b) of sec-
22 tion 612 of title 5, United States Code, is
23 amended by inserting “chapter 5, and chapter
24 7,” after “this chapter,”.

1 SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-
2 NESS CONCERN SIZE STANDARDS BY CHIEF
3 COUNSEL FOR ADVOCACY.

4 (a) IN GENERAL.—Subparagraph (A) of sec-
5 tion 3(a)(2) of the Small Business Act (15
6 U.S.C. 632(a)(2)(A)) is amended to read as fol-
7 lows:

8 “(A) IN GENERAL.—In addition to
9 the criteria specified in paragraph
10 (1)—

11 “(i) the Administrator may
12 specify detailed definitions or
13 standards by which a business
14 concern may be determined to be
15 a small business concern for pur-
16 poses of this Act or the Small
17 Business Investment Act of 1958;
18 and

19 “(ii) the Chief Counsel for Ad-
20 vocacy may specify such defini-
21 tions or standards for purposes of
22 any other Act.”.

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

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

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

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

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

13 (d) **JUDICIAL REVIEW OF SIZE STANDARDS**
14 **APPROVED BY CHIEF COUNSEL.**—Section 3(a) of
15 the Small Business Act (15 U.S.C. 632(a)) is
16 amended by adding at the end the following
17 new paragraph:

18 “(9) **JUDICIAL REVIEW OF STANDARDS AP-**
19 **PROVED BY CHIEF COUNSEL.**—In the case of
20 an action for judicial review of a rule
21 which includes a definition or standard
22 approved by the Chief Counsel for Advo-
23 cacy under this subsection, the party
24 seeking such review shall be entitled to

1 **join the Chief Counsel as a party in such**
2 **action.”.**

3 **SEC. 11. CLERICAL AMENDMENTS.**

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

6 **(1) in paragraph (1)—**

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

9 **(B) by striking “(1) the term” and**
10 **inserting the following:**

11 **“(1) AGENCY.—The term”;**

12 **(2) in paragraph (3)—**

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

15 **(B) by striking “(3) the term” and**
16 **inserting the following:**

17 **“(3) SMALL BUSINESS.—The term”;**

18 **(3) in paragraph (5)—**

19 **(A) by striking the semicolon at**
20 **the end and inserting a period; and**

21 **(B) by striking “(5) the term” and**
22 **inserting the following:**

23 **“(5) SMALL GOVERNMENTAL JURISDIC-**
24 **TION.—The term”; and**

25 **(4) in paragraph (6)—**

1 (A) by striking “; and” and insert-
2 ing a period; and

3 (B) by striking “(6) the term” and
4 inserting the following:

5 “(6) SMALL ENTITY.—The term”.

6 (b) INCORPORATIONS BY REFERENCE AND
7 CERTIFICATIONS.—The heading of section 605
8 of title 5, United States Code, is amended to
9 read as follows:

10 “§ 605. Incorporations by reference and certifi-
11 cations”.

12 (c) TABLE OF SECTIONS.—The table of sec-
13 tions for chapter 6 of title 5, United States
14 Code, is amended—

15 (1) by striking the item relating to
16 section 605 and inserting the following
17 new item:

 “605. Incorporations by reference and certifications.”;

18 (2) by striking the item relating to
19 section 607 and inserting the following
20 new item:

 “607. Quantification requirements.”;

21 and

22 (3) by striking the item relating to
23 section 608 and inserting the following:

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

1 **(d) OTHER CLERICAL ADENDMENTS TO CHAP-**
2 **TER 6.—Chapter 6 of title 5, United States**
3 **Code, is amended as follows:**

4 **(1) In section 603, by striking sub-**
5 **section (d).**

6 **(2) In section 604(a) by striking the**
7 **second paragraph (6).**

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

9 **Section 212(a)(5) the Small Business Regu-**
10 **latory Enforcement Fairness Act of 1996 (5**
11 **U.S.C. 601 note) is amended to read as follows:**

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

1 small entities. An agency may prepare
2 guides and apply this section with re-
3 spect to a rule or a group of related
4 rules.”.

5 SEC. 13. GAO REPORT.

6 Not later than 90 days after the date of en-
7 actment of this Act, the Comptroller General
8 of the United States shall complete and pub-
9 lish a study that examines whether the Chief
10 Counsel for Advocacy of the Small Business
11 Administration has the capacity and re-
12 sources to carry out the duties of the Chief
13 Counsel under this Act and the amendments
14 made by this Act.

Union Calendar No. 208

113TH CONGRESS
1ST Session

H. R. 2542

[Report No. 113-288, Parts I and II]

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.

DECEMBER 11, 2013

Reported from the Committee on the Judiciary with an amendment

DECEMBER 11, 2013

Reported from the Committee on Small Business with an amendment