

114TH CONGRESS  
1ST SESSION

# S. 1536

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 SENATE OF THE UNITED STATES

JUNE 10, 2015

Mr. VITTER (for himself, Mr. RISCH, Mr. ENZI, Mr. RUBIO, Mrs. ERNST, and Mr. GARDNER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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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.**

4 This Act may be cited as the “Small Business Regu-  
5 latory Flexibility Improvements Act of 2015”.

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 601 of  
5 title 5, United States Code, is amended to read as follows:

6 “(2) RULE.—The term ‘rule’ has the meaning  
7 given such term in section 551(4) of this title, ex-  
8 cept that such term does not include a rule per-  
9 taining to the protection of the rights of and benefits  
10 for veterans or a rule of particular (and not general)  
11 applicability relating to rates, wages, corporate or fi-  
12 nancial structures or reorganizations thereof, prices,  
13 facilities, appliances, services, or allowances therefor  
14 or to valuations, costs or accounting, or practices re-  
15 lating to such rates, wages, structures, prices, facili-  
16 ties, appliances, services, or allowances.”.

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

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

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

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

7           (c) INCLUSION OF RULES WITH BENEFICIAL EF-  
8           FECTS.—

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

18          (2) FINAL REGULATORY FLEXIBILITY ANAL-  
19          YSIS.—The first paragraph designated as paragraph  
20          (6) of section 604(a) of title 5, United States Code,  
21          (relating to minimization of significant economic im-  
22          pacts) is amended by striking “minimize the signifi-  
23          cant economic impact” and inserting “minimize the  
24          adverse significant economic impact or maximize the  
25          beneficial significant economic impact”.

1 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-  
 2 NIZATIONS.—Paragraph (5) of section 601 of title 5,  
 3 United States Code, is amended by inserting “and tribal  
 4 organizations (as defined in section 4(l) of the Indian Self-  
 5 Determination and Education Assistance Act (25 U.S.C.  
 6 450b(l))),” after “special districts,”.

7 (e) INCLUSION OF LAND MANAGEMENT PLANS AND  
 8 FORMAL RULEMAKING.—

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

13 (A) by striking “or” after “proposed  
 14 rule,”; and

15 (B) by inserting “or publishes a revision or  
 16 amendment to a land management plan,” after  
 17 “United States,”.

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

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

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

(3) LAND MANAGEMENT PLAN DEFINED.—Section 601 of title 5, United States Code, as amended by subsection (b), is 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 the 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.—

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

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

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

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

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

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

4               “(4) SMALL ORGANIZATION.—

5                       “(A) IN GENERAL.—The term ‘small orga-  
 6 nization’ means any nonprofit enterprise which,  
 7 as of the issuance of the notice of proposed  
 8 rulemaking—

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

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

22                       “(B) LOCAL LABOR ORGANIZATIONS.—In  
 23 the case of any local labor organization, sub-  
 24 paragraph (A) shall be applied without regard

to any national or international organization of which such local labor organization is a part.

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

(h) DEFINITION OF SMALL GOVERNMENTAL JURISDICTION.—Paragraph (5) of section 601 of title 5, United States Code, is amended to read as follows:

“(5) SMALL GOVERNMENTAL JURISDICTION.—

“(A) IN GENERAL.—The term ‘small governmental jurisdiction’ means the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

“(B) SUBDIVISIONS AND DEPARTMENTS.—Notwithstanding subparagraph (A), a subdivision, department, agency, district, or authority of a State, city, county, town, township, village, school district, or special district described by a

classification code of the North American Industrial Classification System shall be considered to be a small governmental jurisdiction if that subdivision, department, agency, district, or authority, by itself, does not exceed the size standard established by the Administrator of the Small Business Administration pursuant to section 3 of the Small Business Act (15 U.S.C. 632) for small business concerns described by such classification code.

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

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

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

(1) in subsection (a)—

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

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

3 (C) by inserting after paragraph (2) the  
4 following:

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

11 (2) by striking subsection (c) and inserting the  
12 following:

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

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

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

9       (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

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

15           (B) in each of paragraphs (4), (5), and the  
16       first paragraph designated as paragraph (6)  
17       (relating to minimization of significant eco-  
18       nomic impacts), by inserting “detailed” before  
19       “description”;

20           (C) in the first paragraph designated as  
21       paragraph (6) (relating to minimization of sig-  
22       nificant economic impacts), by striking “and”  
23       at the end;

1 (D) in the second paragraph designated as  
2 paragraph (6) (relating to covered agencies), by  
3 striking the period and inserting “; and”;

4 (E) by redesignating the second paragraph  
5 designated as paragraph (6) as paragraph (7);  
6 and

7 (F) by adding at the end the following:

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

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

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

20 “(b) The agency shall make copies of the final regu-  
21 latory flexibility analysis available to the public, including  
22 placement of the entire analysis on the agency’s website,  
23 and shall publish in the Federal Register the final regu-  
24 latory flexibility analysis, or a summary thereof which in-  
25 cludes the telephone number, mailing address, and link to

1 the website where the complete analysis may be ob-  
2 tained.”.

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

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

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

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

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

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

21 **“§ 607. Quantification requirements**

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

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

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

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

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

12 **“§ 608. Additional powers of Chief Counsel for Advo-**  
 13 **cacy**

14 “(a)(1) Not later than 270 days after the date of the  
 15 enactment of the Small Business Regulatory Flexibility  
 16 Improvements Act of 2015, the Chief Counsel for Advo-  
 17 cacy of the Small Business Administration shall, after op-  
 18 portunity for notice and comment under section 553, issue  
 19 rules governing agency compliance with this chapter. The  
 20 Chief Counsel may modify or amend such rules after no-  
 21 tice and comment under section 553. This chapter (other  
 22 than this subsection) shall not apply with respect to the  
 23 issuance, modification, and amendment of rules under this  
 24 paragraph.

1       “(2) An agency shall not issue rules which supple-  
 2       ment the rules issued under paragraph (1) unless such  
 3       agency has first consulted with the Chief Counsel for Ad-  
 4       vocacy to ensure that such supplemental rules comply with  
 5       this chapter and the rules issued under paragraph (1).

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

15      “(c) The Chief Counsel for Advocacy may file com-  
 16      ments in response to any agency notice requesting com-  
 17      ment, regardless of whether the agency is required to file  
 18      a general notice of proposed rulemaking under section  
 19      553.”.

20      (b) ADDITIONAL DUTIES OF OFFICE OF ADVO-  
 21      CACY.—Section 203 of Public Law 94–305 (15 U.S.C.  
 22      634c) is amended—

23               (1) in paragraph (5), by striking “and” at the  
 24      end;

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

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

4 “(7) at the discretion of the Chief Counsel for  
5 Advocacy, comment on regulatory action by an agen-  
6 cy that affects small businesses, without regard to  
7 whether the agency is required to file a notice of  
8 proposed rulemaking under section 553 of title 5,  
9 United States Code, with respect to the action.”.

10 (c) CONFORMING AMENDMENTS.—

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

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

15 (3) Section 611(a)(3) of such title is amend-  
16 ed—

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

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

19 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, is amend-  
23 ed—

24 (1) in subsection (b), by striking “covered agen-  
25 cy” each place it appears and inserting “agency”;

1 (2) by striking subsection (d);

2 (3) by redesignating subsection (e) as sub-  
3 section (d); and

4 (4) in paragraph (1) of subsection (d), as so re-  
5 designated, by striking “covered agency” and insert-  
6 ing “agency”.

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

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

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

11 “(a) Not later than 180 days after the enactment of  
12 this section, each agency shall publish in the Federal Reg-  
13 ister and place on its website a plan for the periodic review  
14 of rules issued by the agency which the head of the agency  
15 determines have a significant economic impact on a sub-  
16 stantial number of small entities. Such determination shall  
17 be made without regard to whether the agency performed  
18 an analysis under section 604. The purpose of the review  
19 shall be to determine whether such rules should be contin-  
20 ued without change, or should be amended or rescinded,  
21 consistent with the stated objectives of applicable statutes,  
22 to minimize any adverse significant economic impacts or  
23 maximize any beneficial significant economic impacts on  
24 a substantial number of small entities. Such plan may be  
25 amended by the agency at any time by publishing the revi-

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

3 “(b) The plan shall provide for—

4 “(1) the review of all such agency rules de-  
5 scribed in subsection (a) existing on the date of the  
6 enactment of this section—

7 “(A) within 10 years of the date of publi-  
8 cation of the plan in the Federal Register; and

9 “(B) every 10 years thereafter; and

10 “(2) the review of all such agency rules de-  
11 scribed in subsection (a) adopted after the date of  
12 enactment of this section—

13 “(A) within 10 years after the publication  
14 of the final rule in the Federal Register; and

15 “(B) every 10 years thereafter.

16 “(c) If the head of the agency determines that com-  
17 pletion of the review of existing rules is not feasible by  
18 the established date, the head of the agency shall so certify  
19 in a statement published in the Federal Register and may  
20 extend the review for not longer than 2 years after publi-  
21 cation of notice of extension in the Federal Register. Such  
22 certification and notice shall be sent to the Chief Counsel  
23 for Advocacy of the Small Business Administration and  
24 the Congress.

1       “(d) The plan shall include a section that details how  
2 an agency will conduct outreach to and meaningfully in-  
3 clude small businesses (including small business concerns  
4 owned and controlled by women, small business concerns  
5 owned and controlled by veterans, and small business con-  
6 cerns owned and controlled by socially and economically  
7 disadvantaged individuals (as such terms are defined in  
8 the Small Business Act)) for the purposes of carrying out  
9 this section. The agency shall include in this section a plan  
10 for how the agency will contact small businesses and gath-  
11 er their input on existing agency rules.

12       “(e) Each agency shall annually submit a report re-  
13 garding the results of its review pursuant to such plan  
14 to the Congress, the Chief Counsel for Advocacy of the  
15 Small Business Administration, and in the case of agen-  
16 cies other than independent regulatory agencies (as de-  
17 fined in section 3502(5) of title 44) to the Administrator  
18 of the Office of Information and Regulatory Affairs of the  
19 Office of Management and Budget. Such report shall in-  
20 clude the identification of any rule with respect to which  
21 the head of the agency made a determination described  
22 in paragraph (5) or (6) of subsection (f) and a detailed  
23 explanation of the reasons for such determination.

24       “(f) In reviewing a rule pursuant to subsections (a)  
25 through (e), the agency shall amend or rescind the rule

1 to minimize any adverse significant economic impact on  
2 a substantial number of small entities or disproportionate  
3 economic impact on a specific class of small entities, or  
4 maximize any beneficial significant economic impact of the  
5 rule on a substantial number of small entities to the great-  
6 est extent possible, consistent with the stated objectives  
7 of applicable statutes. In amending or rescinding the rule,  
8 the agency shall consider—

9 “(1) the continued need for the rule;

10 “(2) the nature of complaints received by the  
11 agency from small entities concerning the rule;

12 “(3) comments by the Regulatory Enforcement  
13 Ombudsman and the Chief Counsel for Advocacy of  
14 the Small Business Administration;

15 “(4) the complexity of the rule;

16 “(5) the extent to which the rule overlaps, du-  
17 plicates, or conflicts with other Federal rules and,  
18 unless the head of the agency determines it to be in-  
19 feasible, State, territorial, and local rules;

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

1 “(7) the length of time since the rule has been  
2 evaluated or the degree to which technology, eco-  
3 nomic conditions, or other factors have changed in  
4 the area affected by the rule; and

5 “(8) the economic impact of the rule, includ-  
6 ing—

7 “(A) the estimated number of small enti-  
8 ties to which the rule will apply;

9 “(B) the estimated number of small entity  
10 jobs that will be lost or created due to the rule;  
11 and

12 “(C) the projected reporting, record-  
13 keeping, and other compliance requirements of  
14 the proposed rule, including—

15 “(i) an estimate of the classes of small  
16 entities that will be subject to the require-  
17 ment; and

18 “(ii) the type of professional skills  
19 necessary for preparation of the report or  
20 record.

21 “(g) Each year, each agency shall publish in the Fed-  
22 eral Register and on its website a list of rules to be re-  
23 viewed pursuant to such plan. The agency shall include  
24 in the publication a solicitation of public comments on any  
25 further inclusions or exclusions of rules from the list, and

1 shall respond to such comments. Such publication shall  
 2 include a brief description of the rule, the reason why the  
 3 agency determined that it has a significant economic im-  
 4 pact on a substantial number of small entities (without  
 5 regard to whether it had prepared a final regulatory flexi-  
 6 bility analysis for the rule), and request comments from  
 7 the public, the Chief Counsel for Advocacy of the Small  
 8 Business Administration, and the Regulatory Enforce-  
 9 ment Ombudsman concerning the enforcement of the rule.

10 “(h)(1) Not later than 6 months after each date de-  
 11 scribed in subsection (b), the Inspector General for each  
 12 agency shall—

13 “(A) determine whether the agency has con-  
 14 ducted the review required under subsection (b) ap-  
 15 propriately; and

16 “(B) notify the head of the agency of—

17 “(i) the results of the determination under  
 18 subparagraph (A); and

19 “(ii) any issues preventing the Inspector  
 20 General from determining that the agency has  
 21 conducted the review under subsection (b) ap-  
 22 propriately.

23 “(2)(A) Not later than 6 months after the date on  
 24 which the head of an agency receives a notice under para-  
 25 graph (1)(B) that the agency has not conducted the review

1 under subsection (b) appropriately, the agency shall ad-  
 2 dress the issues identified in the notice.

3 “(B) Not later than 30 days after the last day of the  
 4 6-month period described in subparagraph (A), the In-  
 5 spector General for an agency that receives a notice de-  
 6 scribed in subparagraph (A) shall—

7 “(i) determine whether the agency has ad-  
 8 dressed the issues identified in the notice; and

9 “(ii) notify Congress if the Inspector General  
 10 determines that the agency has not addressed the  
 11 issues identified in the notice.”.

12 **SEC. 8. JUDICIAL REVIEW TO ALLOW SMALL ENTITIES TO**  
 13 **CHALLENGE PROPOSED REGULATIONS.**

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

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

21 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of  
 22 such section, as amended by section 5(c)(3) of this Act,  
 23 is amended—

1 (1) by striking “such review during the period  
 2 beginning on the date of final agency action” and in-  
 3 serting the following: “such review—

4 “(A) in the case of noncompliance with section  
 5 605(b), before the close of the public comment pe-  
 6 riod; and

7 “(B) in any other case, during the period begin-  
 8 ning on the date of publication of the final rule”;  
 9 and

10 (2) by inserting “, in the case of a rule for  
 11 which the date of final agency action is the same  
 12 date as the publication of the final rule,” after “ex-  
 13 cept that”.

14 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-  
 15 CACY.—Subsection (b) of section 612 of title 5, United  
 16 States Code, is amended by inserting before the first pe-  
 17 riod “or agency compliance with section 601, 604, 605(b),  
 18 609, or 610”.

19 **SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES**  
 20 **IMPLEMENTING THE REGULATORY FLEXI-**  
 21 **BILITY ACT.**

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

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

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

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

5           “(8) all final rules under section 608(a) of title  
6           5.”.

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

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

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

13          (3) by adding at the end the following new sub-  
14          paragraph:

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

18          (c) AUTHORIZATION TO INTERVENE AND COMMENT  
19          ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-  
20          DURE.—Subsection (b) of section 612 of title 5, United  
21          States Code, is amended in the second sentence by insert-  
22          ing “chapter 5, and chapter 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 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 “or Chief Counsel for Advo-  
 5 cacy, as appropriate,” before “shall ensure”; and

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

19 **SEC. 11. CLERICAL AMENDMENTS.**

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

22 (1) in the matter preceding paragraph (1), by  
 23 striking “this chapter—” and inserting “this chap-  
 24 ter:”;

25 (2) 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 (3) 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 (4) 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 (5) in paragraph (6)—

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

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

24 “(6) SMALL ENTITY.—The term”.

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

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

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

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

“605. Incorporations by reference and certifications.”.

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

“607. Quantification requirements.”.

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

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

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

18 (1) in section 603(d)—

19 (A) by striking paragraph (2);

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

1 initial regulatory flexibility analysis by an agen-  
 2 cy”;

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

5 (D) by striking “(B) any” and inserting  
 6 “(2) any”; and

7 (E) by striking “(C) advice” and inserting  
 8 “(3) advice”; and

9 (2) in paragraph (7) of section 604(a), as so re-  
 10 designated by section 4(b)(1)(D) of this Act, by  
 11 striking “for a covered agency, as defined in section  
 12 609(d)(2),”.

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

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

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

1 guides. In developing guides, agencies shall solicit  
 2 input from affected small entities or associations of  
 3 affected small entities. An agency may prepare  
 4 guides and apply this section with respect to a rule  
 5 or a group of related rules.”.

6 **SEC. 13. REPORTING ON ENFORCEMENT ACTIONS RELAT-**  
 7 **ING TO SMALL ENTITIES.**

8 Section 223 of the Small Business Regulatory En-  
 9 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is  
 10 amended—

11 (1) in subsection (a)—

12 (A) by striking “Each agency” and insert-  
 13 ing the following:

14 “(1) ESTABLISHMENT OF POLICY OR PRO-  
 15 GRAM.—Each agency”; and

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

17 “(2) REVIEW OF CIVIL PENALTIES.—Not later  
 18 than 2 years after the date of enactment of the  
 19 Small Business Regulatory Flexibility Improvements  
 20 Act of 2015, and every 2 years thereafter, each  
 21 agency regulating the activities of small entities shall  
 22 review the civil penalties imposed by the agency for  
 23 violations of a statutory or regulatory requirement  
 24 by a small entity to determine whether a reduction  
 25 or waiver of the civil penalties is appropriate.”; and

1 (2) in subsection (c)—

2 (A) by striking “Agencies shall report”  
 3 and all that follows through “the scope” and in-  
 4 serting “Not later than 2 years after the date  
 5 of enactment of the Small Business Regulatory  
 6 Flexibility Improvements Act of 2015, and  
 7 every 2 years thereafter, each agency shall sub-  
 8 mit to the Committee on Small Business and  
 9 Entrepreneurship and the Committee on Home-  
 10 land Security and Governmental Affairs of the  
 11 Senate and the Committee on Small Business  
 12 and the Committee on the Judiciary of the  
 13 House of Representatives a report discussing  
 14 the scope”; and

15 (B) by striking “and the total amount of  
 16 penalty reductions and waivers” and inserting  
 17 “the total amount of penalty reductions and  
 18 waivers, and the results of the most recent re-  
 19 view under subsection (a)(2)”.

20 **SEC. 14. SUSPENSION OF FINES FOR FIRST-TIME PAPER-**  
 21 **WORK VIOLATIONS BY SMALL BUSINESS CON-**  
 22 **CERNS.**

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

1 “(j) SMALL BUSINESSES.—

2 “(1) SMALL BUSINESS CONCERN.—In this sub-  
3 section, the term ‘small business concern’ has the  
4 meaning given that term under section 3 of the  
5 Small Business Act (15 U.S.C. 632).

6 “(2) IN GENERAL.—In the case of a first-time  
7 violation by a small business concern of a require-  
8 ment regarding the collection of information by an  
9 agency, the head of the agency shall not impose a  
10 civil fine on the small business concern unless the  
11 head of the agency determines that—

12 “(A) the violation has the potential to  
13 cause serious harm to the public interest;

14 “(B) failure to impose a civil fine would  
15 impede or interfere with the detection of crimi-  
16 nal activity;

17 “(C) the violation is a violation of an inter-  
18 nal revenue law or a law concerning the assess-  
19 ment or collection of any tax, debt, revenue, or  
20 receipt;

21 “(D) the violation was not corrected on or  
22 before the date that is 6 months after the date  
23 on which the small business concern receives  
24 notification of the violation in writing from the  
25 agency; or

1           “(E) except as provided in paragraph (3),  
 2           the violation presents a danger to the public  
 3           health or safety.

4           “(3) DANGER TO PUBLIC HEALTH OR SAFE-  
 5           TY.—

6           “(A) IN GENERAL.—In any case in which  
 7           the head of an agency determines under para-  
 8           graph (2)(E) that a violation presents a danger  
 9           to the public health or safety, the head of the  
 10          agency may, notwithstanding paragraph (2)(E),  
 11          determine not to impose a civil fine on the  
 12          small business concern if the violation is cor-  
 13          rected not later than 24 hours after receipt by  
 14          the owner of the small business concern of noti-  
 15          fication of the violation in writing.

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

22                 “(i) the nature and seriousness of the  
 23                 violation, including whether the violation is  
 24                 technical or inadvertent or involves willful  
 25                 or criminal conduct;

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

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

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

19                  “(4) LIMITED TO FIRST-TIME VIOLATIONS.—

20                  “(A) IN GENERAL.—This subsection shall  
21                  not apply to any violation by a small business  
22                  concern of a requirement regarding collection of  
23                  information by an agency if the small business  
24                  concern previously violated any requirement re-  
25                  garding collection of information by the agency.

1           “(B) OTHER AGENCIES.—For purposes of  
 2           making a determination under subparagraph  
 3           (A), the head of an agency shall not take into  
 4           account any violation of a requirement regard-  
 5           ing collection of information by another agen-  
 6           cy.”.

7   **SEC. 15. ENSURING THAT AGENCIES CONSIDER SMALL EN-**  
 8                   **TITY IMPACT DURING THE RULEMAKING**  
 9                   **PROCESS.**

10       Section 605(b) of title 5, United States Code, is  
 11   amended—

12           (1) by inserting “(1)” after “(b)”; and

13           (2) by adding at the end the following:

14           “(2) If, after publication of the certification re-  
 15       quired under paragraph (1), the head of the agency  
 16       determines that there will be a significant economic  
 17       impact on a substantial number of small entities, the  
 18       agency shall comply with the requirements of section  
 19       603 before the publication of the final rule, by—

20           “(A) publishing an initial regulatory flexi-  
 21       bility analysis for public comment; or

22           “(B) re-proposing the rule with an initial  
 23       regulatory flexibility analysis.

“(3) The head of an agency may not make a certification relating to a rule under this subsection, unless the head of the agency has determined—

“(A) the average cost of the rule for small entities affected or reasonably presumed to be affected by the rule;

“(B) the number of small entities affected or reasonably presumed to be affected by the rule; and

“(C) the number of affected small entities for which that cost will be significant.

“(4) Before publishing a certification and a statement providing the factual basis for the certification under paragraph (1), the head of an agency shall—

“(A) transmit a copy of the certification and statement to the Chief Counsel for Advocacy of the Small Business Administration; and

“(B) consult with the Chief Counsel for Advocacy of the Small Business Administration on the accuracy of the certification and statement.”.

#### **SEC. 16. COMPTROLLER GENERAL REPORT.**

Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States

1 shall complete and publish a study that examines whether  
2 the Chief Counsel for Advocacy of the Small Business Ad-  
3 ministration has the capacity and resources to carry out  
4 the duties of the Chief Counsel under this Act and the  
5 amendments made by this Act.

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