

104TH CONGRESS  
2D SESSION

# S. 942

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 1996

Referred to the Committee on the Judiciary, and in addition to the Committees on Small Business, and Rules, 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

---

## AN ACT

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, 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 Enforcement Fairness Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) a vibrant and growing small business sector  
4 is critical to creating jobs in a dynamic economy;

5 (2) small businesses bear a disproportionate  
6 share of regulatory costs and burdens;

7 (3) fundamental changes that are needed in the  
8 regulatory and enforcement culture of Federal agen-  
9 cies to make agencies more responsive to small busi-  
10 ness can be made without compromising the statu-  
11 tory missions of the agencies;

12 (4) three of the top recommendations of the  
13 White House Conference on Small Business involve  
14 reforms to the way Government regulations are de-  
15 veloped and enforced, and reductions in Government  
16 paperwork requirements;

17 (5) the requirements of the Regulatory Flexibil-  
18 ity Act have too often been ignored by Government  
19 agencies, resulting in greater regulatory burdens on  
20 small entities than necessitated by statute; and

21 (6) small entities should be given the oppor-  
22 tunity to seek judicial review of agency actions re-  
23 quired by the Regulatory Flexibility Act.

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are—

1           (1) to implement certain recommendations of  
2           the 1995 White House Conference on Small Busi-  
3           ness regarding the development and enforcement of  
4           Federal regulations;

5           (2) to provide for judicial review of the Regu-  
6           latory Flexibility Act;

7           (3) to encourage the effective participation of  
8           small businesses in the Federal regulatory process;

9           (4) to simplify the language of Federal regula-  
10          tions affecting small businesses;

11          (5) to develop more accessible sources of infor-  
12          mation on regulatory and reporting requirements for  
13          small businesses;

14          (6) to create a more cooperative regulatory en-  
15          vironment among agencies and small businesses that  
16          is less punitive and more solution-oriented; and

17          (7) to make Federal regulators more account-  
18          able for their enforcement actions by providing small  
19          entities with a meaningful opportunity for redress of  
20          excessive enforcement activities.

21 **SEC. 4. EFFECTIVE DATE.**

22          This Act shall become effective on the date 90 days  
23          after enactment, except that the amendments made by  
24          title IV of this Act shall not apply to interpretive rules

1 for which a notice of proposed rulemaking was published  
2 prior to the date of enactment.

3 **TITLE I—REGULATORY**  
4 **COMPLIANCE SIMPLIFICATION**

5 **SEC. 101. DEFINITIONS.**

6 For purposes of this Act—

7 (1) the terms “rule” and “small entity” have  
8 the same meanings as in section 601 of title 5, Unit-  
9 ed States Code;

10 (2) the term “agency” has the same meaning as  
11 in section 551 of title 5, United States Code; and

12 (3) the term “small entity compliance guide”  
13 means a document designated as such by an agency.

14 **SEC. 102. COMPLIANCE GUIDES.**

15 (a) COMPLIANCE GUIDE.—For each rule or group of  
16 related rules for which an agency is required to prepare  
17 a final regulatory flexibility analysis under section 604 of  
18 title 5, United States Code, the agency shall publish one  
19 or more guides to assist small entities in complying with  
20 the rule, and shall designate such publications as “small  
21 entity compliance guides”. The guides shall explain the ac-  
22 tions a small entity is required to take to comply with a  
23 rule or group of rules. The agency shall, in its sole discre-  
24 tion, taking into account the subject matter of the rule  
25 and the language of relevant statutes, ensure that the

1 guide is written using sufficiently plain language likely to  
2 be understood by affected small entities. Agencies may  
3 prepare separate guides covering groups or classes of simi-  
4 larly affected small entities, and may cooperate with asso-  
5 ciations of small entities to develop and distribute such  
6 guides.

7 (b) **COMPREHENSIVE SOURCE OF INFORMATION.**—  
8 Agencies shall cooperate to make available to small enti-  
9 ties through comprehensive sources if information, the  
10 small entity compliance guides and all other available in-  
11 formation on statutory and regulatory requirements af-  
12 fecting small entities.

13 (c) **LIMITATION ON JUDICIAL REVIEW.**—An agency’s  
14 small entity compliance guide shall not be subject to judi-  
15 cial review, except that in any civil or administrative ac-  
16 tion against a small entity for a violation occurring after  
17 the effective date of this section, the content of the small  
18 entity compliance guide may be considered as evidence of  
19 the reasonableness or appropriateness of any proposed  
20 fines, penalties or damages.

21 **SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.**

22 (a) **GENERAL.**—Whenever appropriate in the interest  
23 of administering statutes and regulations within the juris-  
24 diction of an agency, it shall be the practice of the agency  
25 to answer inquiries by small entities concerning informa-

1 tion on and advice about compliance with such statutes  
 2 and regulations, interpreting and applying the law to spe-  
 3 cific sets of facts supplied by the small entity. In any civil  
 4 or administrative action against a small entity, guidance  
 5 given by an agency applying the law to facts provided by  
 6 the small entity may be considered as evidence of the rea-  
 7 sonableness or appropriateness of any proposed fines, pen-  
 8 alties or damages sought against such small entity.

9 (b) PROGRAM.—Each agency regulating the activities  
 10 of small entities shall establish a program for responding  
 11 to such inquiries no later than 1 year after enactment of  
 12 this section, utilizing existing functions and personnel of  
 13 the agency to the extent practicable.

14 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT**  
 15 **CENTERS.**

16 Section 21(c)(3) of the Small Business Act (15  
 17 U.S.C. 648(c)(3)) is amended—

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

20 (2) in subparagraph (P), by striking the period  
 21 at the end and inserting a semicolon; and

22 (3) by inserting after subparagraph (P) the fol-  
 23 lowing new subparagraphs:

24 “(Q) providing assistance to small business  
 25 concerns regarding regulatory requirements, in-

1 including providing training with respect to cost-  
2 effective regulatory compliance;

3 “(R) developing informational publications,  
4 establishing resource centers of reference mate-  
5 rials, and distributing compliance guides pub-  
6 lished under section 102(a) of the Small Busi-  
7 ness Regulatory Enforcement Fairness Act of  
8 1996 to small business concerns; and

9 “(S) developing programs to provide con-  
10 fidential onsite assessments and recommenda-  
11 tions regarding regulatory compliance to small  
12 business concerns and assisting small business  
13 concerns in analyzing the business development  
14 issues associated with regulatory implementa-  
15 tion and compliance measures.”.

16 **SEC. 105. MANUFACTURING TECHNOLOGY CENTERS AND**  
17 **PROGRAMS ESTABLISHED UNDER SECTION**  
18 **507 OF THE CLEAN AIR ACT AMENDMENTS OF**  
19 **1990.**

20 (a) GENERAL.—The Manufacturing Technology Cen-  
21 ters and other similar extension centers administered by  
22 the National Institute of Standards and Technology of the  
23 Department of Commerce shall, as appropriate, provide  
24 the assistance regarding regulatory requirements, develop  
25 and distribute information and guides and develop the

1 programs to provide confidential onsite assessments and  
2 recommendations regarding regulatory compliance to the  
3 same extent as provided for in section 104 of this Act with  
4 respect to Small Business Development Centers.

5 (b) SECTION 507 PROGRAMS.—Nothing in this Act  
6 in any way limits the authority and operation of the small  
7 business stationary source technical and environmental  
8 compliance assistance programs established under section  
9 507 of the Clean Air Act Amendments of 1990.

10 **SEC. 106. COOPERATION ON GUIDANCE.**

11 Agencies may, to the extent resources are available  
12 and where appropriate, in cooperation with the States, de-  
13 velop guides that fully integrate requirements of both Fed-  
14 eral and State regulations where regulations within an  
15 agency’s area of interest at the Federal and State levels  
16 impact small businesses. Where regulations vary among  
17 the States, separate guides may be created for separate  
18 States in cooperation with State agencies.

19 **TITLE II—REGULATORY**  
20 **ENFORCEMENT REFORMS**

21 **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCE-**  
22 **MENT OMBUDSMAN.**

23 The Small Business Act (15 U.S.C. 631 et seq.) is  
24 amended—



1 (1) by redesignating section 30 as section 31;

2 and

3 (2) by inserting after section 29 the following

4 new section:

5 **“SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

6 “(a) DEFINITIONS.—For purposes of this section, the

7 term—

8 “(1) “Board” means a Regional Small Business  
9 Regulatory Fairness Board established under sub-  
10 section (c); and

11 “(2) “Ombudsman” means the Small Business  
12 and Agriculture Regulatory Enforcement Ombuds-  
13 man designated under subsection (b).

14 “(b) SBA ENFORCEMENT OMBUDSMAN.—

15 “(1) Not later than 180 days after the date of  
16 enactment of this section, the Administration shall  
17 designate a Small Business and Agriculture Regu-  
18 latory Enforcement Ombudsman utilizing personnel  
19 of the Small Business Administration to the extent  
20 practicable. Other agencies shall assist the Ombuds-  
21 man and take actions as necessary to ensure compli-  
22 ance with the requirements of this section. Nothing  
23 in this section is intended to replace or diminish the  
24 activities of any Ombudsman or similar office in any  
25 other agency.

1           “(2) The Ombudsman shall—

2                   “(A) work with each agency with regu-  
3                   latory authority over small businesses to ensure  
4                   that small business concerns that receive or are  
5                   subject to an audit, onsite inspection, compli-  
6                   ance assistance effort, or other enforcement re-  
7                   lated communication or contact by agency per-  
8                   sonnel are provided with a means to comment  
9                   on the enforcement activity conducted by such  
10                  personnel;

11                  “(B) establish means to receive comments  
12                  from small business concerns regarding actions  
13                  by agency employees conducting compliance or  
14                  enforcement activities with respect to the small  
15                  business concern, means to refer comments to  
16                  the Inspector General of the affected agency in  
17                  the appropriate circumstances, and otherwise  
18                  seek to maintain the identity of the person and  
19                  small business concern making such comments  
20                  on a confidential basis to the same extent as  
21                  employee identities are protected under section  
22                  7 of the Inspector General Act of 1978 (5  
23                  U.S.C. App.);

24                  “(C) based on substantiated comments re-  
25                  ceived from small business concerns and the

1           Boards, annually report to Congress and af-  
2           fected agencies evaluating the enforcement ac-  
3           tivities of agency personnel including a rating of  
4           the responsiveness to small business of the var-  
5           ious regional and program offices of each agen-  
6           cy;

7                   “(D) coordinate and report annually on the  
8           activities, findings, and recommendations of the  
9           Boards to the Administration and to the heads  
10          of affected agencies; and

11                   “(E) provide the affected agency with an  
12          opportunity to comment on draft reports pre-  
13          pared under paragraph (C) and include a sec-  
14          tion of the final report in which the affected  
15          agency may make such comments as are not  
16          addressed by the Ombudsman in revisions to  
17          the draft.

18          “(c) REGIONAL SMALL BUSINESS REGULATORY  
19          FAIRNESS BOARDS.—

20                   “(1) Not later than 180 days after the date of  
21          enactment of this section, the Administration shall  
22          establish a Small Business Regulatory Fairness  
23          Board in each regional office of the Small Business  
24          Administration.

1           “(2) Each Board established under paragraph  
2 (1) shall—

3                   “(A) meet at least annually to advise the  
4           Ombudsman on matters of concern to small  
5           businesses relating to the enforcement activities  
6           of agencies;

7                   “(B) report to the Ombudsman on sub-  
8           stantiated instances of excessive enforcement  
9           actions of agencies against small business con-  
10          cerns including any findings or recommenda-  
11          tions of the Board as to agency enforcement  
12          policy or practice; and

13                   “(C) prior to publication, provide comment  
14          on the annual report of the Ombudsman pre-  
15          pared under subsection (b).

16           “(3) Each Board shall consist of five members  
17          appointed by the Administration, who are owners or  
18          operators of small entities, after receiving the rec-  
19          ommendations of the chair and ranking minority  
20          member of the Committees on Small Business of the  
21          House of Representatives and the Senate.

22           “(4) Members of the Board shall serve for  
23          terms of three years or less.

1           “(5) The Administration shall select a chair  
2           from among the members of the Board who shall  
3           serve for not more than 2 years as chair.

4           “(6) A majority of the members of the Board  
5           shall constitute a quorum for the conduct of busi-  
6           ness, but a lesser number may hold hearings.

7           “(d) POWERS OF THE BOARDS.—

8           “(1) The Board may hold such hearings and  
9           collect such information as appropriate for carrying  
10          out this section.

11          “(2) The Board may use the United States  
12          mails in the same manner and under the same con-  
13          ditions as other departments and agencies of the  
14          Federal Government.

15          “(3) The Board may accept donations of serv-  
16          ices necessary to conduct its business: *Provided*,  
17          That the donations and their sources are disclosed  
18          by the Board.

19          “(4) Members of the Board shall serve without  
20          compensation: *Provided*, That members of the Board  
21          shall be allowed travel expenses, including per diem  
22          in lieu of subsistence, at rates authorized for em-  
23          ployees of agencies under subchapter I of chapter 57  
24          of title 5, United States Code, while away from their

1 homes or regular places of business in the perform-  
2 ance of services for the Board.”.

3 **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT**  
4 **ACTIONS.**

5 (a) IN GENERAL.—Each agency regulating the activi-  
6 ties of small entities shall establish a policy or program  
7 within 1 year of enactment of this section to provide for  
8 the reduction, and under appropriate circumstances for  
9 the waiver, of civil penalties for violations of a statutory  
10 or regulatory requirement by a small entity. Under appro-  
11 priate circumstances, an agency may consider ability to  
12 pay in determining penalty assessments on small entities.

13 (b) CONDITIONS AND EXCLUSIONS.—Subject to the  
14 requirements or limitations of other statutes, policies or  
15 programs established under this section shall contain con-  
16 ditions or exclusions which may include, but shall not be  
17 limited to—

18 (1) requiring the small entity to correct the vio-  
19 lation within a reasonable correction period;

20 (2) limiting the applicability to violations dis-  
21 covered by the small entity through participation in  
22 a compliance assistance or audit program operated  
23 or supported by the agency or a State;

24 (3) excluding small entities that have been sub-  
25 ject to multiple enforcement actions by the agency;

1 (4) excluding violations involving willful or  
2 criminal conduct;

3 (5) excluding violations that pose serious  
4 health, safety or environmental threats; and

5 (6) requiring a good faith effort to comply with  
6 the law.

7 (c) REPORTING.—Agencies shall report to Congress  
8 no later than 2 years from the effective date on the scope  
9 of their program or policy, the number of enforcement ac-  
10 tions against small entities that qualified or failed to qual-  
11 ify for the program or policy, and the total amount of pen-  
12 alty reductions and waivers.

## 13 **TITLE III—EQUAL ACCESS TO** 14 **JUSTICE ACT AMENDMENTS**

### 15 **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

16 Section 504 of title 5, United States Code, is amend-  
17 ed—

18 (1) in subsection (b), by striking “\$75” in sub-  
19 paragraph (b)(1) and inserting “\$125”; and

20 (2) in subsection (a) by adding the following  
21 new paragraph:

22 “(4) In an adversary adjudication brought by  
23 an agency, an adjudicative officer of the agency shall  
24 award attorney’s fees and other expenses to a party  
25 or a small entity, as defined in section 601, if the

1 decision of the adjudicative officer is disproportion-  
2 ately less favorable to the agency than an express  
3 demand by the agency, unless the party or small en-  
4 tity has committed a willful violation of law or other-  
5 wise acted in bad faith, or special circumstances  
6 make an award of attorney’s fees unjust. For pur-  
7 poses of this paragraph, an ‘express demand’ shall  
8 not include a recitation by the agency of the maxi-  
9 mum statutory penalty (A) in the administrative  
10 complaint, or (B) elsewhere when accompanied by an  
11 express demand for a lesser amount. Fees and ex-  
12 penses awarded under this paragraph may not be  
13 paid from the claims and judgments account of the  
14 Treasury from funds appropriated pursuant to sec-  
15 tion 1304 of title 31, United States Code.”.

16 **SEC. 302. JUDICIAL PROCEEDINGS.**

17 Section 2412 of title 28, United States Code, is  
18 amended—

19 (1) in paragraph (d), by striking “\$75” in sub-  
20 paragraph (2)(A) and inserting “\$125”; and

21 (2) in paragraph (d)(1) by adding the following  
22 new subparagraph:

23 “(D) In a civil action brought by the Unit-  
24 ed States, a court shall award attorney’s fees  
25 and other expenses to a party or a small entity,



1 as defined in section 601 of title 5, United  
2 States Code, if the judgment finally obtained by  
3 the United States is disproportionately less fa-  
4 vorable to the United States than an express  
5 demand by the United States, unless the party  
6 or small entity has committed a willful violation  
7 of law or otherwise acted in bad faith, or special  
8 circumstances make an award of attorney’s fees  
9 unjust. For purposes of this subparagraph, an  
10 ‘express demand’ shall not include a recitation  
11 of the maximum statutory penalty (i) in the  
12 complaint, or (ii) elsewhere when accompanied  
13 by an express demand for a lesser amount. Fees  
14 and expenses awarded under this subparagraph  
15 may not be paid from the claims and judgments  
16 account of the Treasury from funds appro-  
17 priated pursuant to section 1304 of title 31,  
18 United States Code.”.

19 **TITLE IV—REGULATORY**  
20 **FLEXIBILITY ACT AMENDMENTS**

21 **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

22 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
23 Section 603(a) of title 5, United States Code, is amend-  
24 ed—

1           (1) by inserting after “proposed rule”, the  
2           phrase “, or publishes a notice of proposed rule-  
3           making for an interpretive rule involving the internal  
4           revenue laws of the United States”; and

5           (2) by inserting at the end of the subsection,  
6           the following new sentence: “In the case of an inter-  
7           pretive rule involving the internal revenue laws of  
8           the United States, this chapter applies to interpre-  
9           tive rules published in the Federal Register for codi-  
10          fication in the Code of Federal Regulations, but only  
11          to the extent that such interpretive rules impose on  
12          small entities a collection of information require-  
13          ments, as defined in the Paperwork Reduction Act  
14          of 1995.”.

15          (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—  
16          Section 604 of title 5, United States Code, is amended—

17                 (1) in subsection (a) to read as follows:

18                 “(a) When an agency promulgates a final rule under  
19                 section 553 of this title, after being required by that sec-  
20                 tion or any other law to publish a general notice of pro-  
21                 posed rulemaking, or is otherwise required to publish an  
22                 initial regulatory flexibility analysis, the agency shall pre-  
23                 pare a final regulatory flexibility analysis. Each final regu-  
24                 latory flexibility analysis shall contain—

1           “(1) a succinct statement of the need for, and  
2 objectives of, the rule;

3           “(2) a summary of the significant issues raised  
4 by the public comments in response to the initial  
5 regulatory flexibility analysis, a summary of the as-  
6 sessment of the agency of such issues, and a state-  
7 ment of any changes made in the proposed rule as  
8 a result of such comments;

9           “(3) a description of and an estimate of the  
10 number of small entities to which the rule will apply  
11 or an explanation of why no such estimate is avail-  
12 able;

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

19           “(5) a description of the steps the agency has  
20 taken to minimize the significant economic impact  
21 on small entities consistent with the stated objectives  
22 of applicable statutes, including a statement of the  
23 factual, policy, and legal reasons for selecting the al-  
24 ternative adopted in the final rule and why each one  
25 of the other significant alternatives to the rule con-

1       sidered by the agency which affect the impact on  
2       small business was rejected.”; and

3               (2) in subsection (b), by striking “at the time”  
4       and all that follows and inserting “such analysis or  
5       a summary thereof.”.

6       **SEC. 402. JUDICIAL REVIEW.**

7       Section 611 of title 5, United States Code, is amend-  
8       ed to read as follows:

9       **“§ 611. Judicial review**

10       “(a)(1) For any rule subject to this chapter, a small  
11       entity that is adversely affected or aggrieved by final agen-  
12       cy action is entitled to judicial review of agency compliance  
13       with the requirements of this chapter, except the require-  
14       ments of sections 602, 603, 609 and 612.

15       “(2) Each court having jurisdiction to review such  
16       rule for compliance with section 553 of this title or under  
17       any other provision of law shall have jurisdiction to review  
18       any claims of noncompliance with this chapter, except the  
19       requirements of sections 602, 603, 609 and 612.

20       “(3)(A) A small entity may seek such review during  
21       the period beginning on the date of final agency action  
22       and ending one year later, except that where a provision  
23       of law requires that an action challenging a final agency  
24       action be commenced before the expiration of one year,

1 such lesser period shall apply to a petition for judicial re-  
2 view under this section.

3 “(B) In the case where an agency delays the issuance  
4 of a final regulatory flexibility analysis pursuant to section  
5 608(b) of this chapter, a petition for judicial review under  
6 this section shall be filed not later than—

7 “(i) one year after the date the analysis is made  
8 available to the public, or

9 “(ii) where a provision of law requires that an  
10 action challenging a final agency regulation be com-  
11 menced before the expiration of the one year period,  
12 the number of days specified in such provision of law  
13 that is after the date the analysis is made available  
14 to the public.

15 “(4) If the court determines, on the basis of the rule-  
16 making record, that the final agency action under this  
17 chapter was arbitrary, capricious, an abuse of discretion  
18 or otherwise not in accordance with the law, the court  
19 shall order the agency to take corrective action consistent  
20 with this chapter, which may include—

21 “(A) remanding the rule to the agency, and

22 “(B) deferring the enforcement of the rule against  
23 small entities, unless the court finds good cause for con-  
24 tinuing the enforcement of the rule pending the completion  
25 of the corrective action.

1       “(5) Nothing in this subsection shall be construed to  
2 limit the authority of any court to stay the effective date  
3 of any rule or provision thereof under any other provision  
4 of law or to grant any other relief in addition to the re-  
5 quirements of this section.

6       “(b) In an action for the judicial review of a rule,  
7 the regulatory flexibility analysis for such rule, including  
8 an analysis prepared or corrected pursuant to paragraph  
9 (a)(4), shall constitute part of the entire record of agency  
10 action in connection with such review.

11       “(c) Except as otherwise required by this chapter, the  
12 court shall apply the same standards of judicial review  
13 that govern the review of agency findings under the stat-  
14 ute granting the agency authority to conduct a rule-  
15 making.

16       “(d) Compliance or noncompliance by an agency with  
17 the provisions of this chapter shall be subject to judicial  
18 review only in accordance with this section.

19       “(e) Nothing in this section bars judicial review of  
20 any other impact statement or similar analysis required  
21 by any other law if judicial review of such statement or  
22 analysis is otherwise permitted by law.”.

23 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

24       (a) Section 605(b) of title 5, United States Code, is  
25 amended to read as follows:

1       “(b) Sections 603 and 604 of this title shall not apply  
2 to any proposed or final rule if the head of the agency  
3 certifies that the rule will not, if promulgated, have a sig-  
4 nificant economic impact on a substantial number of small  
5 entities. If the head of the agency makes a certification  
6 under the preceding sentence, the agency shall publish  
7 such certification in the Federal Register, at the time of  
8 publication of general notice of proposed rulemaking for  
9 the rule or at the time of publication of the final rule,  
10 along with a statement providing the factual and legal rea-  
11 sons for such certification. The agency shall provide such  
12 certification and statement to the Chief Counsel for Advo-  
13 cacy of the Small Business Administration.”.

14       (b) Section 612 of title 5, United States Code, is  
15 amended—

16           (1) in subsection (a), by striking “the commit-  
17 tees on the Judiciary of the Senate and the House  
18 of Representatives, the Select Committee on Small  
19 Business of the Senate, and the Committee on Small  
20 Business of the House of Representatives” and in-  
21 serting “the Committees on the Judiciary and Small  
22 Business of the Senate and House of Representa-  
23 tives”.

24           (2) in subsection (b), by striking “his views  
25 with respect to the” and inserting in lieu thereof,

1 “his or her views with respect to compliance with  
2 this chapter, the adequacy of the rulemaking record  
3 with respect to small entities and the”.

4 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

5 (a) SMALL BUSINESS OUTREACH AND INTERAGENCY  
6 COORDINATION.—Section 609 of title 5, United States  
7 Code, is amended—

8 (1) before “techniques,” by inserting “the rea-  
9 sonable use of”;

10 (2) in paragraph (4), after “entities”, by insert-  
11 ing “including soliciting and receiving comments  
12 over computer networks”;

13 (3) by designating the current text as sub-  
14 section (a); and

15 (4) by adding the following new subsection:

16 “(b) Prior to publication of an initial regulatory flexi-  
17 bility analysis which a covered agency is required to con-  
18 duct by this chapter—

19 “(1) a covered agency shall notify the Chief  
20 Counsel for Advocacy of the Small Business Admin-  
21 istration and provide the Chief Counsel with infor-  
22 mation on the potential impacts of the proposed rule  
23 on small entities and the type of small entities that  
24 might be affected;



1           “(2) not later than 15 days after the date of re-  
2 receipt of the materials described in paragraph (1),  
3 the Chief Counsel shall identify individuals rep-  
4 resentative of affected small entities for the purpose  
5 of obtaining advice and recommendations from those  
6 individuals about the potential impacts of the pro-  
7 posed rule;

8           “(3) the agency shall convene a review panel for  
9 such rule consisting wholly of full-time Federal em-  
10 ployees of the office within the agency responsible  
11 for carrying out the proposed rule, the Office of In-  
12 formation and Regulatory Affairs within the Office  
13 of Management and Budget, and the Chief Counsel;

14           “(4) the panel shall review any material the  
15 agency has prepared in connection with this chapter,  
16 including any draft proposed rule, collect advice and  
17 recommendations of the small entity representatives  
18 identified by the agency after consultation with the  
19 Chief Counsel, on issues related to subsections  
20 603(b), paragraphs (3), (4) and (5) and 603(c);

21           “(5) not later than 60 days after the date a  
22 covered agency convenes a review panel pursuant to  
23 paragraph (3), the review panel shall report on the  
24 comments of the small entity representatives and its  
25 findings as to issues related to subsections 603(b),

1 paragraphs (3), (4) and (5) and 603(c): *Provided*,  
2 That such report shall be made public as part of the  
3 rulemaking record; and

4 “(6) where appropriate, the agency shall modify  
5 the proposed rule, the initial regulatory flexibility  
6 analysis or the decision on whether an initial regu-  
7 latory flexibility analysis is required.

8 “(c) Prior to publication of a final regulatory flexibil-  
9 ity analysis that a covered agency is required by this chap-  
10 ter to conduct—

11 “(1) an agency shall reconvene the review panel  
12 established under paragraph (b)(3), or if no initial  
13 regulatory flexibility analysis was published, under-  
14 take the actions described in paragraphs (b) (1)  
15 through (3);

16 “(2) the panel shall review any material the  
17 agency has prepared in connection with this chapter,  
18 including any draft rule, collect the advice and rec-  
19 ommendations of the small entity representatives  
20 identified by the agency after consultation with the  
21 Chief Counsel, on issues related to subsection  
22 604(a), paragraphs (3), (4) and (5);

23 “(3) not later than 15 days after the date a  
24 covered agency convenes a review panel pursuant to  
25 paragraph (1), the review panel shall report on the

1        comments of the small entity representatives and its  
2        findings as to issues related to subsection 604(a),  
3        paragraphs (3), (4) and (5): *Provided*, That such re-  
4        port shall be made public as part of the rulemaking  
5        record; and

6            “(4) where appropriate, the agency shall modify  
7        the final rule, the final regulatory flexibility analysis  
8        or the decision on whether a final regulatory flexibil-  
9        ity analysis is required.

10        “(d) An agency may in its discretion apply sub-  
11        sections (b) and (c) to rules that the agency intends to  
12        certify under subsection 605(b), but the agency believes  
13        may have a greater than de minimis impact on a substan-  
14        tial number of small entities.

15        “(e) For purposes of this section, the term ‘covered  
16        agency’ means the Environmental Protection Agency and  
17        the Occupational Health and Safety Administration of the  
18        Department of Labor.

19        “(f) The Chief Counsel for Advocacy, in consultation  
20        with the individuals identified in paragraph (b)(2) and  
21        with the Administrator of the Office of Information and  
22        Regulatory Affairs within the Office of Management and  
23        Budget, may waive the requirements of paragraphs (b)(3),  
24        (b)(4), and (b)(5), and subsection (c) by including in the  
25        rulemaking record a written finding, with reasons there-

1 for, that those requirements would not advance the effec-  
2 tive participation of small entities in the rulemaking proc-  
3 ess. For purposes of this subsection, the factors to be con-  
4 sidered in making such a finding are as follows—

5           “(1) in developing a proposed rule, the extent  
6           to which the covered agency consulted with individ-  
7           uals representative of affected small entities with re-  
8           spect to the potential impacts of the rule and took  
9           such concerns into consideration; or in developing a  
10          final rule, the extent to which the covered agency  
11          took into consideration the comments filed by the in-  
12          dividuals identified in paragraph (b)(2);

13           “(2) special circumstances requiring prompt is-  
14          suanance of the rule; and

15           “(3) whether the requirements of subsection (b)  
16          or (c) would provide the individuals identified in  
17          subsection (b)(2) with a competitive advantage rel-  
18          ative to other small entities.”.

19          (b) **SMALL BUSINESS ADVOCACY CHAIRPERSONS.**—  
20 Not later than 30 days after the date of enactment of this  
21 Act, the head of each agency that has conducted a final  
22 regulatory flexibility analysis shall designate a small busi-  
23 ness advocacy chairperson using existing personnel to the  
24 extent possible, to be responsible for implementing this

1 section and to act as permanent chair of the agency’s re-  
 2 view panels established pursuant to this section.

3           **TITLE V—CONGRESSIONAL**  
 4                                   **REVIEW**

5 **SEC. 501. SHORT TITLE.**

6           This title may be cited as the “Congressional Review  
 7 Act of 1996”.

8 **SEC. 502. FINDING.**

9           The Congress finds that effective steps for improving  
 10 the efficiency and proper management of Government op-  
 11 erations will be promoted if a moratorium on the effective-  
 12 ness of certain significant final rules is imposed in order  
 13 to provide Congress an opportunity for review.

14 **SEC. 503. MORATORIUM ON REGULATIONS; CONGRES-**  
 15                                   **SIONAL REVIEW.**

16           (a) REPORTING AND REVIEW OF REGULATIONS.—

17                   (1) REPORTING TO CONGRESS AND THE COMP-  
 18                   TROLLER GENERAL.—

19                           (A) Before a rule can take effect as a final  
 20                           rule, the Federal agency promulgating such rule  
 21                           shall submit to each House of the Congress and  
 22                           to the Comptroller General a report contain-  
 23                           ing—

24                                   (i) a copy of the rule;

1 (ii) a concise general statement relat-  
2 ing to the rule; and

3 (iii) the proposed effective date of the  
4 rule.

5 (B) The Federal agency promulgating the  
6 rule shall make available to each House of Con-  
7 gress and the Comptroller General, upon re-  
8 quest—

9 (i) a complete copy of the cost-benefit  
10 analysis of the rule, if any;

11 (ii) the agency's actions relevant to  
12 section 603, section 604, section 605, sec-  
13 tion 607, and section 609 of Public Law  
14 96-354;

15 (iii) the agency's actions relevant to  
16 title II, section 202, section 203, section  
17 204, and section 205 of Public Law 104-  
18 4; and

19 (iv) any other relevant information or  
20 requirements under any other Act and any  
21 relevant Executive Orders, such as Execu-  
22 tive Order 12866.

23 (C) Upon receipt, each House shall provide  
24 copies to the Chairman and Ranking Member of  
25 each committee with jurisdiction.

1           (2) REPORTING BY THE COMPTROLLER GEN-  
2           ERAL.—

3           (A) The Comptroller General shall provide  
4           a report on each significant rule to the commit-  
5           tees of jurisdiction to each House of the Con-  
6           gress by the end of 12 calendar days after the  
7           submission or publication date as provided in  
8           section 504(b)(2). The report of the Comptrol-  
9           ler General shall include an assessment of the  
10          agency's compliance with procedural steps re-  
11          quired by subparagraph (B) (i) through (iv).

12          (B) Federal agencies shall cooperate with  
13          the Comptroller General by providing informa-  
14          tion relevant to the Comptroller General's re-  
15          port under paragraph (2)(A) of this section.

16          (3) EFFECTIVE DATE OF SIGNIFICANT  
17          RULES.—A significant rule relating to a report sub-  
18          mitted under paragraph (1) shall take effect as a  
19          final rule, the latest of—

20                 (A) the later of the date occurring 45 days  
21                 after the date on which—

22                         (i) the Congress receives the report  
23                         submitted under paragraph (1); or

24                         (ii) the rule is published in the Fed-  
25                         eral Register;

1 (B) if the Congress passes a joint resolu-  
2 tion of disapproval described under section 504  
3 relating to the rule, and the President signs a  
4 veto of such resolution, the earlier date—

5 (i) on which either House of Congress  
6 votes and fails to override the veto of the  
7 President; or

8 (ii) occurring 30 session days after  
9 the date on which the Congress received  
10 the veto and objections of the President; or

11 (C) the date the rule would have otherwise  
12 taken effect, if not for this section (unless a  
13 joint resolution of disapproval under section  
14 504 is enacted).

15 (4) EFFECTIVE DATE FOR OTHER RULES.—Ex-  
16 cept for a significant rule, a rule shall take effect as  
17 otherwise provided by law after submission to Con-  
18 gress under paragraph (1).

19 (5) FAILURE OF JOINT RESOLUTION OF DIS-  
20 APPROVAL.—Notwithstanding the provisions of para-  
21 graph (3), the effective date of a rule shall not be  
22 delayed by operation of this title beyond the date on  
23 which either House of Congress votes to reject a  
24 joint resolution of disapproval under section 504.



1 (b) TERMINATION OF DISAPPROVED RULEMAKING.—  
2 A rule shall not take effect (or continue) as a final rule,  
3 if the Congress passes a joint resolution of disapproval de-  
4 scribed under section 504.

5 (c) PRESIDENTIAL WAIVER AUTHORITY.—

6 (1) PRESIDENTIAL DETERMINATIONS.—Not-  
7 withstanding any other provision of this section (ex-  
8 cept subject to paragraph (3)), a rule that would not  
9 take effect by reason of this title may take effect, if  
10 the President makes a determination under para-  
11 graph (2) and submits written notice of such deter-  
12 mination to the Congress.

13 (2) GROUNDS FOR DETERMINATIONS.—Para-  
14 graph (1) applies to a determination made by the  
15 President by Executive order that the rule should  
16 take effect because such rule is—

17 (A) necessary because of an imminent  
18 threat to health or safety or other emergency;

19 (B) necessary for the enforcement of crimi-  
20 nal laws; or

21 (C) necessary for national security.

22 (3) WAIVER NOT TO AFFECT CONGRESSIONAL  
23 DISAPPROVALS.—An exercise by the President of the  
24 authority under this subsection shall have no effect

1 on the procedures under section 504 or the effect of  
2 a joint resolution of disapproval under this section.

3 (d) TREATMENT OF RULES ISSUED AT END OF CON-  
4 GRESS.—

5 (1) ADDITIONAL OPPORTUNITY FOR REVIEW.—

6 In addition to the opportunity for review otherwise  
7 provided under this title, in the case of any rule that  
8 is published in the Federal Register (as a rule that  
9 shall take effect as a final rule) during the period  
10 beginning on the date occurring 60 days before the  
11 date the Congress adjourns sine die through the  
12 date on which the succeeding Congress first con-  
13 venes, section 504 shall apply to such rule in the  
14 succeeding Congress.

15 (2) TREATMENT UNDER SECTION 504.—

16 (A) In applying section 504 for purposes of  
17 such additional review, a rule described under  
18 paragraph (1) shall be treated as though—

19 (i) such rule were published in the  
20 Federal Register (as a rule that shall take  
21 effect as a final rule) on the 15th session  
22 day after the succeeding Congress first  
23 convenes; and

1 (ii) a report on such rule were submit-  
2 ted to Congress under subsection (a)(1) on  
3 such date.

4 (B) Nothing in this paragraph shall be  
5 construed to affect the requirement under sub-  
6 section (a)(1) that a report must be submitted  
7 to Congress before a final rule can take effect.

8 (3) ACTUAL EFFECTIVE DATE NOT AF-  
9 FECTED.—A rule described under paragraph (1)  
10 shall take effect as a final rule as otherwise provided  
11 by law (including other subsections of this section).

12 (e) TREATMENT OF RULES ISSUED BEFORE THIS  
13 TITLE.—

14 (1) OPPORTUNITY FOR CONGRESSIONAL RE-  
15 VIEW.—The provisions of section 504 shall apply to  
16 any significant rule that is published in the Federal  
17 Register (as a rule that shall take effect as a final  
18 rule) during the period beginning on March 1, 1996,  
19 through the date on which this title takes effect.

20 (2) TREATMENT UNDER SECTION 504.—In ap-  
21 plying section 504 for purposes of Congressional re-  
22 view, a rule described under paragraph (1) shall be  
23 treated as though—

24 (A) such rule were published in the Fed-  
25 eral Register (as a rule that shall take effect as

1 a final rule) on the date of the enactment of  
2 this Act; and

3 (B) a report on such rule were submitted  
4 to Congress under subsection (a)(1) on such  
5 date.

6 (3) ACTUAL EFFECTIVE DATE NOT AF-  
7 FECTED.—The effectiveness of a rule described  
8 under paragraph (1) shall be as otherwise provided  
9 by law, unless the rule is made of no force or effect  
10 under section 504.

11 (f) NULLIFICATION OF RULES DISAPPROVED BY  
12 CONGRESS.—Any rule that takes effect and later is made  
13 of no force or effect by the enactment of a joint resolution  
14 under section 504 shall be treated as though such rule  
15 had never taken effect.

16 (g) NO INFERENCE TO BE DRAWN WHERE RULES  
17 NOT DISAPPROVED.—If the Congress does not enact a  
18 joint resolution of disapproval under section 504, no court  
19 or agency may infer any intent of the Congress from any  
20 action or inaction of the Congress with regard to such  
21 rule, related statute, or joint resolution of disapproval.

22 **SEC. 504. CONGRESSIONAL DISAPPROVAL PROCEDURE.**

23 (a) JOINT RESOLUTION DEFINED.—For purposes of  
24 this section, the term “joint resolution” means only a joint  
25 resolution introduced during the period beginning on the

1 date on which the report referred to in section 503(a) is  
2 received by Congress and ending 45 days thereafter, the  
3 matter after the resolving clause of which is as follows:  
4 “That Congress disapproves the rule submitted by the  
5 \_\_\_\_\_ relating to \_\_\_\_\_, and such rule shall have no force  
6 or effect.”. (The blank spaces being appropriately filled  
7 in.)

8 (b) REFERRAL.—

9 (1) IN GENERAL.—A resolution described in  
10 paragraph (1) shall be referred to the committees in  
11 each House of Congress with jurisdiction. Such a  
12 resolution may not be reported before the eighth day  
13 after its submission or publication date.

14 (2) SUBMISSION DATE.—For purposes of this  
15 subsection the term “submission or publication  
16 date” means the later of the date on which—

17 (A) the Congress receives the report sub-  
18 mitted under section 503(a)(1); or

19 (B) the rule is published in the Federal  
20 Register.

21 (c) DISCHARGE.—If the committee to which is re-  
22 ferred a resolution described in subsection (a) has not re-  
23 ported such resolution (or an identical resolution) at the  
24 end of 20 calendar days after the submission or publica-  
25 tion date defined under subsection (b)(2), such committee

1 may be discharged from further consideration of such res-  
2 olution in the Senate upon a petition supported in writing  
3 by 30 Members of the Senate and in the House upon a  
4 petition supported in writing by one-fourth of the Mem-  
5 bers duly sworn and chosen or by motion of the Speaker  
6 supported by the Minority Leader, and such resolution  
7 shall be placed on the appropriate calendar of the House  
8 involved.

9 (d) FLOOR CONSIDERATION.—

10 (1) IN GENERAL.—When the committee to  
11 which a resolution is referred has reported, or when  
12 a committee is discharged (under subsection (c))  
13 from further consideration of, a resolution described  
14 in subsection (a), it is at any time thereafter in  
15 order (even though a previous motion to the same  
16 effect has been disagreed to) for a motion to proceed  
17 to the consideration of the resolution, and all points  
18 of order against the resolution (and against consid-  
19 eration of resolution) are waived. The motion is not  
20 subject to amendment, or to a motion to postpone,  
21 or to a motion to proceed to the consideration of  
22 other business. A motion to reconsider the vote by  
23 which the motion is agreed to or disagreed to shall  
24 not be in order. If a motion to proceed to the consid-  
25 eration of the resolution is agreed to, the resolution

1 shall remain the unfinished business of the respec-  
2 tive House until disposed of.

3 (2) DEBATE.—Debate on the resolution, and on  
4 all debatable motions and appeals in connection  
5 therewith, shall be limited to not more than 10  
6 hours, which shall be divided equally between those  
7 favoring and those opposing the resolution. A motion  
8 further to limit debate is in order and not debatable.  
9 An amendment to, or a motion to postpone, or a mo-  
10 tion to proceed to the consideration of other busi-  
11 ness, or a motion to recommit the resolution is not  
12 in order.

13 (3) FINAL PASSAGE.—Immediately following  
14 the conclusion of the debate on a resolution de-  
15 scribed in subsection (a), and a single quorum call  
16 at the conclusion of the debate if requested in ac-  
17 cordance with the rules of the appropriate House,  
18 the vote on final passage of the resolution shall  
19 occur.

20 (4) APPEALS.—Appeals from the decisions of  
21 the Chair relating to the application of the rules of  
22 the Senate or the House of Representatives, as the  
23 case may be, to the procedure relating to a resolu-  
24 tion described in subsection (a) shall be decided  
25 without debate.

1 (e) TREATMENT IF OTHER HOUSE HAS ACTED.—If,  
2 before the passage by one House of a resolution of that  
3 House described in subsection (a), that House receives  
4 from the other House a resolution described in subsection  
5 (a), then the following procedures shall apply:

6 (1) NONREFERRAL.—The resolution of the  
7 other House shall not be referred to a committee.

8 (2) FINAL PASSAGE.—With respect to a resolu-  
9 tion described in subsection (a) of the House receiv-  
10 ing the resolution—

11 (A) the procedure in that House shall be  
12 the same as if no resolution had been received  
13 from the other House; but

14 (B) the vote on final passage shall be on  
15 the resolution of the other House.

16 (f) CONSTITUTIONAL AUTHORITY.—This section is  
17 enacted by Congress—

18 (1) as an exercise of the rulemaking power of  
19 the Senate and House of Representatives, respec-  
20 tively, and as such it is deemed a part of the rules  
21 of each House, respectively, but applicable only with  
22 respect to the procedure to be followed in that  
23 House in the case of a resolution described in sub-  
24 section (a), and it supersedes other rules only to the  
25 extent that it is inconsistent with such rules; and





1 in section 551(1) of title 5, United States Code (re-  
2 lating to administrative procedure).

3 (2) SIGNIFICANT RULE.—The term “significant  
4 rule”—

5 (A) means any final rule that the Adminis-  
6 trator of the Office of Information and Regu-  
7 latory Affairs within the Office of Management  
8 and Budget finds—

9 (i) has an annual effect on the econ-  
10 omy of \$100,000,000 or more or adversely  
11 affects in a material way the economy, a  
12 sector of the economy, productivity, com-  
13 petition, jobs, the environment, public  
14 health or safety, or State, local, or tribal  
15 governments or communities;

16 (ii) creates a serious inconsistency or  
17 otherwise interferes with an action taken  
18 or planned by another agency;

19 (iii) materially alters the budgetary  
20 impact of entitlement, grants, user fees, or  
21 loan programs or the rights and obliga-  
22 tions of recipients thereof; or

23 (iv) raises novel legal or policy issues  
24 arising out of legal mandates, the Presi-

1           dent’s priorities, or the principles set forth  
2           in Executive Order 12866; and

3           (B) shall not include any rule promulgated  
4           under the Telecommunications Act of 1996 and  
5           the amendments made by such Act.

6           (3) FINAL RULE.—The term “final rule” means  
7           any final rule or interim final rule. As used in this  
8           paragraph, “rule” has the meaning given such term  
9           by section 551 of title 5, United States Code, except  
10          that such term does not include any rule of particu-  
11          lar applicability including a rule that approves or  
12          prescribes for the future rates, wages, prices, serv-  
13          ices, or allowances therefor, corporate or financial  
14          structures, reorganizations, mergers, or acquisitions  
15          thereof, or accounting practices or disclosures bear-  
16          ing on any of the foregoing or any rule of agency or-  
17          ganization, personnel, procedure, practice or any  
18          routine matter.

19 **SEC. 507. JUDICIAL REVIEW.**

20          No determination, finding, action, or omission under  
21          this title shall be subject to judicial review.

22 **SEC. 508. APPLICABILITY; SEVERABILITY.**

23          (a) APPLICABILITY.—This title shall apply notwith-  
24          standing any other provision of law.

1 (b) SEVERABILITY.—If any provision of this title, or  
2 the application of any provision of this title to any person  
3 or circumstance, is held invalid, the application of such  
4 provision to other persons or circumstances, and the re-  
5 mainder of this title, shall not be affected thereby.

6 **SEC. 509. EXEMPTION FOR MONETARY POLICY.**

7 Nothing in this title shall apply to rules that concern  
8 monetary policy proposed or implemented by the Board  
9 of Governors of the Federal Reserve System or the Fed-  
10 eral Open Market Committee.

11 **SEC. 510. EXEMPTION FOR HUNTING AND FISHING.**

12 Nothing in this title shall apply to rules that estab-  
13 lish, modify, open, close, or conduct a regulatory program  
14 for a commercial, recreational, or subsistence activity re-  
15 lating to hunting, fishing, or camping.

16 **SEC. 511. EFFECTIVE DATE.**

17 This title shall take effect on the date of the enact-  
18 ment of this Act and shall apply to any rule that takes  
19 effect as a final rule on or after such effective date.

Passed the Senate March 19, 1996.

Attest: KELLY D. JOHNSTON,  
*Secretary.*