

**Calendar No. 342**

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION  
**S. 942**

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**A BILL**

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.

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MARCH 6, 1996

Reported with an amendment

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**IN THE SENATE OF THE UNITED STATES**

JUNE 16 (legislative day, JUNE 5), 1995

Mr. BOND (for himself, Mr. DOMENICI, Mr. WARNER, Mrs. HUTCHISON, Mr. BURNS, Mr. FRIST, Mr. COVERDELL, Mr. DOLE, Mr. LUGAR, Mr. GRAMS, Mr. LOTT, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Small Business

MARCH 6, 1996

Reported by Mr. BOND, with an amendment

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

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**A BILL**

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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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Small Business Regulatory Fairness Act of 1995”.

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

Sec. 1. Short title; table of contents.  
Sec. 2. Purposes.

**TITLE I—REGULATORY SIMPLIFICATION AND VOLUNTARY COMPLIANCE**

Sec. 101. Definitions.  
Sec. 102. Compliance guides.  
Sec. 103. No action letter.  
Sec. 104. Voluntary self-audits.  
Sec. 105. Defense to enforcement actions.

**TITLE II—SMALL BUSINESS RESPONSIVENESS OF COVERED AGENCIES**

Sec. 201. Small business and agriculture ombudsman.  
Sec. 202. Small business regulatory fairness boards.  
Sec. 203. Services provided by small business development centers.

**TITLE III—FINANCIAL ACCOUNTABILITY OF COVERED AGENCIES RELATING TO FEES AND EXPENSES**

Sec. 301. Administrative proceedings.  
Sec. 302. Judicial proceedings.

8 **SEC. 2. PURPOSES.**

9 The purposes of this Act are—

10 (1) to change the relationship between regu-  
11 lators and small entities;

1           (2) to ameliorate the concern of small entities  
2 regarding the effects of arbitrary Federal regulatory  
3 enforcement actions on small entities;

4           (3) to increase the comprehensibility of Federal  
5 regulations affecting small entities;

6           (4) to make Federal regulators accountable for  
7 their actions; and

8           (5) to provide small entities with a meaningful  
9 opportunity for the redress of arbitrary enforcement  
10 actions by Federal regulators.

11 **TITLE I—REGULATORY SIM-**  
12 **PLIFICATION AND VOL-**  
13 **UNTARY COMPLIANCE**

14 **SEC. 101. DEFINITIONS.**

15 For purposes of this title, the following definitions  
16 shall apply:

17           (1) **COMPLIANCE GUIDE.**—The term “compli-  
18 ance guide” means a publication made by a covered  
19 agency under section 102(a).

20           (2) **COVERED AGENCY.**—The term “covered  
21 agency” has the same meaning as in section 30(a)  
22 of the Small Business Act (as added by section 201  
23 of this Act).

24           (3) **NO ACTION LETTER.**—The term “no action  
25 letter” means a written determination from a cov-

1       ered agency stating that, based on a no action re-  
2       quest submitted to the agency by a small entity, the  
3       agency will not take enforcement action against the  
4       small entity under the rules of the covered agency.

5           (4) NO ACTION REQUEST.—The term “no ac-  
6       tion request” means a written correspondence sub-  
7       mitted by a small entity to a covered agency—

8           (A) stating a set of facts; and

9           (B) requesting a determination by the  
10       agency of whether the agency would take an en-  
11       forcement action against the small entity based  
12       on such facts and the application of any rule of  
13       the agency.

14          (5) RULE.—The term “rule” has the same  
15       meaning as in section 601(2) of title 5, United  
16       States Code.

17          (6) SMALL ENTITY.—The term “small entity”  
18       has the same meaning as in section 601(6) of title  
19       5, United States Code.

20          (7) SMALL BUSINESS CONCERN.—The term  
21       “small business concern” has the same meaning as  
22       in section 3 of the Small Business Act.

23          (8) VOLUNTARY SELF-AUDIT.—The term “vol-  
24       untary self-audit” means an audit, assessment, or

1 review of any operation, practice, or condition of a  
2 small entity that—

3 (A) is initiated by an officer, employee, or  
4 agent of the small entity; and

5 (B) is not required by law.

6 **SEC. 102. COMPLIANCE GUIDES.**

7 (a) COMPLIANCE GUIDE.—

8 (1) PUBLICATION.—If a covered agency is re-  
9 quired to prepare a regulatory flexibility analysis for  
10 a rule or group of related rules under section 603  
11 of title 5, United States Code, the agency shall pub-  
12 lish a compliance guide for such rule or group of re-  
13 lated rules.

14 (2) REQUIREMENTS.—Each compliance guide  
15 published under paragraph (1) shall—

16 (A) contain a summary description of the  
17 rule or group of related rules;

18 (B) contain a citation to the location of the  
19 complete rule or group of related rules in the  
20 Federal Register;

21 (C) provide notice to small entities of the  
22 requirements under the rule or group of related  
23 rules and explain the actions that a small entity  
24 is required to take to comply with the rule or  
25 group of related rules;

1           (D) be written in a manner to be under-  
2           stood by the average owner or manager of a  
3           small entity; and

4           (E) be updated as required to reflect  
5           changes in the rule.

6           (b) DISSEMINATION.—

7           (1) IN GENERAL.—Each covered agency shall  
8           establish a system to ensure that compliance guides  
9           required under this section are published, dissemi-  
10          nated, and made easily available to small entities.

11          (2) SMALL BUSINESS DEVELOPMENT GEN-  
12          TERS.—In carrying out this subsection, each covered  
13          agency shall provide sufficient numbers of compli-  
14          ance guides to small business development centers  
15          for distribution to small businesses concerns under  
16          section 21(c)(3)(R) of the Small Business Act (as  
17          added by section 202 of this Act).

18          (c) LIMITATION ON ENFORCEMENT.—

19          (1) IN GENERAL.—No covered agency may  
20          bring an enforcement action in any Federal court or  
21          in any Federal administrative proceeding against a  
22          small entity to enforce a rule for which a compliance  
23          guide is not published and disseminated by the cov-  
24          ered agency as required under this section.

1           ~~(2) EFFECTIVE DATES.~~—This subsection shall  
2 take effect—

3           ~~(A)~~ 1 year after the date of the enactment  
4 of this Act with regard to a final regulation in  
5 effect on the date of the enactment of this Act;  
6 and

7           ~~(B)~~ on the date of the enactment of this  
8 Act with regard to a regulation that takes effect  
9 as a final regulation after such date of enact-  
10 ment.

11 **SEC. 103. NO ACTION LETTER.**

12       ~~(a) APPLICATION.~~—This section applies to all covered  
13 agencies, except—

14           ~~(1)~~ the Federal Trade Commission;

15           ~~(2)~~ the Equal Employment Opportunity Com-  
16 mission; and

17           ~~(3)~~ the Consumer Product Safety Commission.

18       ~~(b) ISSUANCE OF NO ACTION LETTER.~~—Not later  
19 than 90 days after the date on which a covered agency  
20 receives a no action request, the agency shall—

21           ~~(1)~~ make a determination regarding whether to  
22 grant the no action request, deny the no action re-  
23 quest, or seek further information regarding the no  
24 action request; and



1           (2) if the agency makes a determination under  
 2           paragraph (1) to grant the no action request, issue  
 3           a no action letter and transmit the letter to the re-  
 4           questing small entity.

5           (c) **RELIANCE ON NO ACTION LETTER OR COMPLI-**  
 6 **ANCE GUIDE.**—In any enforcement action brought by a  
 7 covered agency in any Federal court, or Federal adminis-  
 8 trative proceeding against a small entity, the small entity  
 9 shall have a complete defense to any allegation of non-  
 10 compliance or violation of a rule if the small entity affirm-  
 11 atively pleads and proves by a preponderance of the evi-  
 12 dence that the act or omission constituting the alleged  
 13 noncompliance or violation was taken in good faith with  
 14 and in reliance on—

15           (1) a no action letter from that agency; or  
 16           (2) a compliance guide of the applicable rule  
 17           published by the agency under section 102(a).

18 **SEC. 104. VOLUNTARY SELF-AUDITS.**

19           (a) **INADMISSIBILITY OF EVIDENCE AND LIMITATION**  
 20 **ON DISCOVERY.**—The evidence described in subsection  
 21 (b)—

22           (1) shall not be admissible, unless agreed to by  
 23           the small entity, in any enforcement action brought  
 24           against a small entity by a Federal agency in any  
 25           Federal—

1                   (A) court; or

2                   (B) administrative proceeding; and

3                   (2) may not be the subject of discovery in any  
4 enforcement action brought against a small entity by  
5 a Federal agency in any Federal—

6                   (A) court; or

7                   (B) administrative proceeding.

8           (b) APPLICATION.—For purposes of subsection (a),  
9 the evidence described in this subsection is—

10           (1) a voluntary self-audit made in good faith;  
11 and

12           (2) any report, finding, opinion, or any other  
13 oral or written communication made in good faith  
14 relating to such voluntary self-audit.

15           (c) EXCEPTIONS.—Subsection (a) shall not apply if—

16           (1) the act or omission that forms the basis of  
17 the enforcement action is a violation of criminal law;  
18 or

19           (2) the voluntary self-audit or the report, find-  
20 ing, opinion, or other oral or written communication  
21 was prepared for the purpose of avoiding disclosure  
22 of information required for an investigative, adminis-  
23 trative, or judicial proceeding that, at the time of  
24 preparation, was imminent or in progress.

1 **SEC. 105. DEFENSE TO ENFORCEMENT ACTIONS.**

2 (a) **IN GENERAL.**—No covered agency may impose a  
3 fine or penalty on a small entity if the small entity proves  
4 by a preponderance of the evidence that—

5 (1) the covered agency rule is vague or ambigu-  
6 ous; and

7 (2) the interpretation by the small entity of the  
8 rule is reasonable considering the rule and any appli-  
9 cable compliance guide.

10 (b) **INTERPRETATION OF RULE.**—In determining  
11 whether the interpretation of a rule by a small entity is  
12 reasonable, no deference shall be given to any interpreta-  
13 tion of the rule by the agency that is not included in a  
14 compliance guide.

15 **TITLE II—SMALL BUSINESS RE-**  
16 **SPONSIVENESS OF COVERED**  
17 **AGENCIES**

18 **SEC. 201. SMALL BUSINESS AND AGRICULTURE OMBUDS-**  
19 **MAN.**

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

22 (1) by redesignating section 30 as section 31;  
23 and

24 (2) by inserting after section 29 the following  
25 new section:

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

2 “(a) DEFINITIONS.—For purposes of this section, the  
3 following definitions shall apply:

4 “(1) BOARD.—The term ‘Board’ means a Small  
5 Business Regulatory Fairness Board established  
6 under subsection (c).

7 “(2) COVERED AGENCY.—The term ‘covered  
8 agency’ means any agency that, as of the date of en-  
9 actment of the Small Business Regulatory Fairness  
10 Act of 1995, has promulgated any rule for which a  
11 regulatory flexibility analysis was required under  
12 section 605 of title 5, United States Code, and any  
13 other agency that promulgates any such rule, as of  
14 the date of such promulgation.

15 “(3) OMBUDSMAN.—The term ‘ombudsman’  
16 means a Regional Small Business and Agriculture  
17 Ombudsman designated under subsection (b).

18 “(4) REGION.—The term ‘region’ means any  
19 area for which the Administrator has established a  
20 regional office of the Administration pursuant to  
21 section 4(a).

22 “(5) RULE.—The term ‘rule’ has the same  
23 meaning as in section 601(2) of title 5, United  
24 States Code.

25 “(b) OMBUDSMAN.—

1           “(1) IN GENERAL.—Not later than 180 days  
2 after the date of enactment of the Small Business  
3 Regulatory Fairness Act of 1995, the Administrator  
4 shall designate in each region a senior employee of  
5 the Administration to serve as the Regional Small  
6 Business and Agriculture Ombudsman in accordance  
7 with this subsection.

8           “(2) DUTIES.—Each ombudsman designated  
9 under paragraph (1) shall—

10           “(A) on a confidential basis, solicit and re-  
11 ceive comments from small business concerns  
12 regarding the enforcement activities of covered  
13 agencies;

14           “(B) based on comments received under  
15 subparagraph (A), annually assign and publish  
16 a small business responsiveness rating to each  
17 covered agency;

18           “(C) publish periodic reports compiling the  
19 comments received under subparagraph (A);

20           “(D) coordinate the activities of the Small  
21 Business Regulatory Fairness Board estab-  
22 lished under subsection (c); and

23           “(E) establish a toll-free telephone number  
24 to receive comments from small business con-  
25 cerns under subparagraph (A).”.

1 **SEC. 202. SMALL BUSINESS REGULATORY FAIRNESS**  
 2 **BOARDS.**

3 Section 30 of the Small Business Act (as added by  
 4 section 201 of this Act) is amended by adding at the end  
 5 the following new subsection:

6 “(e) **SMALL BUSINESS REGULATORY FAIRNESS**  
 7 **BOARDS.**—

8 “(1) **IN GENERAL.**—Not later than 180 days  
 9 after the date of enactment of the Small Business  
 10 Regulatory Fairness Act of 1995, the Administrator  
 11 shall establish in each region a Small Business Reg-  
 12 ulatory Fairness Board in accordance with this sub-  
 13 section.

14 “(2) **DUTIES.**—Each Board established under  
 15 paragraph (1) shall—

16 “(A) advise the ombudsman on matters of  
 17 concern to small business concerns relating to  
 18 the enforcement activities of covered agencies;

19 “(B) conduct investigations into enforce-  
 20 ment activities by covered agencies with respect  
 21 to small business concerns;

22 “(C) issue advisory findings and rec-  
 23 ommendations regarding the enforcement activi-  
 24 ties of covered agencies with respect to small  
 25 business concerns;

1           ~~“(D) review and approve, prior to publica-~~  
2           ~~tion—~~

3           ~~“(i) each small business responsive-~~  
4           ~~ness rating assigned under subsection~~  
5           ~~(b)(2)(B); and~~

6           ~~“(ii) each periodic report prepared~~  
7           ~~under subsection (b)(2)(C); and~~

8           ~~“(E) prepare written opinions regarding~~  
9           ~~the reasonableness and understandability of~~  
10          ~~rules issued by covered agencies.~~

11          ~~“(3) MEMBERSHIP.—Each Board shall consist~~  
12          ~~of—~~

13                 ~~“(A) 1 member appointed by the Presi-~~  
14                 ~~dent;~~

15                 ~~“(B) 1 member appointed by the Speaker~~  
16                 ~~of the House of Representatives;~~

17                 ~~“(C) 1 member appointed by the Minority~~  
18                 ~~Leader of the House of Representatives;~~

19                 ~~“(D) 1 member appointed by the Majority~~  
20                 ~~Leader of the Senate; and~~

21                 ~~“(E) 1 member appointed by the Minority~~  
22                 ~~Leader of the Senate.~~

23          ~~“(4) PERIOD OF APPOINTMENT; VACANCIES.—~~

24                 ~~“(A) PERIOD OF APPOINTMENT.—~~

1           “(i) ~~PRESIDENTIAL APPOINTEES.—~~  
 2           Each member of the Board appointed  
 3           under subparagraph (A) of paragraph (2)  
 4           shall be appointed for a term of 3 years,  
 5           except that the initial member appointed  
 6           under such subparagraph shall be ap-  
 7           pointed for a term of 1 year.

8           “(ii) ~~HOUSE OF REPRESENTATIVES~~  
 9           ~~APPOINTEES.—~~Each member of the Board  
 10          appointed under subparagraph (B) or (C)  
 11          of paragraph (2) shall be appointed for a  
 12          term of 3 years, except that the initial  
 13          members appointed under such subpara-  
 14          graphs shall each be appointed for a term  
 15          of 2 years.

16          “(iii) ~~SENATE APPOINTEES.—~~Each  
 17          member of the Board appointed under sub-  
 18          paragraph (D) or (E) of paragraph (2)  
 19          shall be appointed for a term of 3 years.

20          “(B) ~~VACANCIES.—~~Any vacancy on the  
 21          Board—

22                         “(i) shall not affect the powers of the  
 23                         Board; and



1           “(ii) shall be filled in the same man-  
2           ner and under the same terms and condi-  
3           tions as the original appointment.

4           “(5) CHAIRPERSON.—The Board shall select a  
5           Chairperson from among the members of the Board.

6           “(6) MEETINGS.—

7           “(A) IN GENERAL.—The Board shall meet  
8           at the call of the Chairperson.

9           “(B) INITIAL MEETING.—Not later than  
10          90 days after the date on which all members of  
11          the Board have been appointed, the Board shall  
12          hold its first meeting.

13          “(7) QUORUM.—A majority of the members of  
14          the Board shall constitute a quorum for the conduct  
15          of business, but a lesser number may hold hearings.

16          “(8) POWERS OF THE BOARD.—

17          “(A) HEARINGS.—The Board or, at its di-  
18          rection, any subcommittee or member of the  
19          Board, may, for the purpose of carrying out the  
20          provisions of this section—

21                  “(i) hold such hearings, sit and act at  
22                  such times and places, take such testi-  
23                  mony, receive such evidence, administer  
24                  such oaths; and

1           “(ii) require, by subpoena or other-  
2           wise, the attendance and testimony of such  
3           witnesses and the production of such  
4           books, records, correspondence, memo-  
5           randa, papers, documents, tapes, and ma-  
6           terials as the Board or such subcommittee  
7           or member considers advisable.

8           “(B) ISSUANCE AND ENFORCEMENT OF  
9           SUBPOENAS.—

10           “(i) ISSUANCE.—Each subpoena is-  
11           sued pursuant to subparagraph (A) shall  
12           bear the signature of the Chairperson and  
13           shall be served by any person or class of  
14           persons designated by the Chairperson for  
15           that purpose.

16           “(ii) ENFORCEMENT.—

17           “(I) IN GENERAL.—In the case  
18           of contumacy or failure to obey a sub-  
19           poena issued under subparagraph (A),  
20           the United States district court for  
21           the judicial district in which the sub-  
22           poenaed person resides, is served, or  
23           may be found may issue an order re-  
24           quiring such person to appear at any  
25           designated place to testify or to

1 produce documentary or other evi-  
2 dence.

3 “(H) CONTEMPT OF COURT.—

4 Any failure to obey the order of the  
5 court issued under subclause (I) may  
6 be punished by the court as a con-  
7 tempt of that court.

8 “(C) WITNESS ALLOWANCES AND FEES.—

9 Section 1821 of title 28, United States Code,  
10 shall apply to witnesses requested or subpoe-  
11 naed to appear at any hearing of the Board.  
12 The per diem and mileage allowances for any  
13 witness shall be paid from funds available to  
14 pay the expenses of the Board.

15 “(D) INFORMATION FROM FEDERAL AGEN-

16 CHES.—Upon the request of the Chairperson,  
17 the Board may secure directly from the head  
18 any Federal department or agency such infor-  
19 mation as the Board considers necessary to  
20 carry out the provisions of this section.

21 “(E) POSTAL SERVICES.—The Board may

22 use the United States mails in the same man-  
23 ner and under the same conditions as other de-  
24 partments and agencies of the Federal Govern-  
25 ment.

1           “(F) DONATIONS.—The Board may ac-  
2           cept, use, and dispose of donations of services  
3           or property.

4           “(9) BOARD PERSONNEL MATTERS.—

5           “(A) COMPENSATION.—Members of the  
6           Board shall serve without compensation.

7           “(B) TRAVEL EXPENSES.—Members of the  
8           Board shall be allowed travel expenses, includ-  
9           ing per diem in lieu of subsistence, at rates au-  
10          thorized for employees of agencies under sub-  
11          chapter I of chapter 57 of title 5, United States  
12          Code, while away from their homes or regular  
13          places of business in the performance of serv-  
14          ices for the Board.”.

15 **SEC. 203. SERVICES PROVIDED BY SMALL BUSINESS DE-**  
16 **VELOPMENT CENTERS.**

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

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

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

23           (3) by inserting immediately after subpara-  
24          graph (P) the following new subparagraphs:

1           “(Q) providing assistance to small business  
2 concerns regarding regulatory requirements, in-  
3 cluding providing training with respect to cost-  
4 effective regulatory compliance;

5           “(R) developing informational publications,  
6 establishing resource centers of reference mate-  
7 rials, and distributing compliance guides pub-  
8 lished under section 102(a) of the Small Busi-  
9 ness Regulatory Fairness Act of 1995 to small  
10 business concerns; and

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

18 **TITLE III—FINANCIAL ACCOUNT-**  
19 **ABILITY OF COVERED AGEN-**  
20 **CIES RELATING TO FEES AND**  
21 **EXPENSES**

22 **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

23       Section 504 of title 5, United States Code, is amend-  
24 ed—

25           (1) in subsection (b)(1)(B)—

1           (A) by striking “, or (ii)” and inserting “,  
2           (ii)”;

3           (B) by striking the semicolon at the end of  
4           the subparagraph and inserting the following:  
5           “, or (iii) a small entity as such term is defined  
6           in subsection (g)(1)(D);” and

7           (2) by adding at the end the following new sub-  
8           section:

9           “(g)(1) For purposes of this subsection, the term—  
10           “(A) ‘covered agency’ has the same meaning as  
11           in section 30(a) of the Small Business Act;

12           “(B) ‘fees and other expenses’ has the same  
13           meaning as in subsection (b)(1)(A), except that—

14           “(i) clause (ii) of such subparagraph (A)  
15           shall not apply; and

16           “(ii) attorney’s fees shall not be awarded  
17           at a rate of pay in excess of \$150 per hour un-  
18           less the adjudicative party determines that re-  
19           gional costs or other special factors justify a  
20           higher fee;

21           “(C) ‘prevailing small entity’—

22           “(i) means a small entity that raised a suc-  
23           cessful defense to an agency enforcement action  
24           by a covered agency in an adversary adjudica-  
25           tion; and

1           “(ii) includes a small entity that is a party  
2           in an adversary adjudication in which the adju-  
3           dicative officer orders a corrective action or  
4           penalty against the small entity that is less bur-  
5           densome than the corrective action or penalty  
6           initially sought or demanded by the covered  
7           agency; and

8           “(D) ‘small entity’ has the same meaning as in  
9           section 601(6).

10          “(2) For the purpose of making a finding of whether  
11          an award under subsection (a)(1) is unjust, in any case  
12          in which fees and other expenses would be awarded to a  
13          prevailing small entity as a prevailing party—

14               “(A) the adjudicative officer of the agency shall  
15               not consider whether the position of the agency was  
16               substantially justified; and

17               “(B) special circumstances shall be limited to  
18               circumstances in which—

19                       “(i) the matters in the adversary adjudica-  
20                       tion are matters for which there is little or no  
21                       legal precedent; or

22                       “(ii) findings of fact or conclusions of law  
23                       are based on inconsistent interpretations of ap-  
24                       plicable law by different courts.

1       “(3) If a prevailing small entity is awarded fees and  
 2 other expenses as a prevailing party under subsection  
 3 (a)(1), such fees and other expenses shall include all fees  
 4 and expenses incurred by the small entity in appearing  
 5 in any proceeding the purpose of which is to determine  
 6 the amount of fees and other expenses.

7       “(4) Fees and other expenses awarded to a prevailing  
 8 small entity as a prevailing party under this section shall  
 9 be paid by the covered agency from funds made available  
 10 to the agency by appropriation or from fees or other  
 11 amounts charged to the public if authorized by law. A cov-  
 12 ered agency may not increase any such fee or amount  
 13 charged for the purpose of paying fees and other expenses  
 14 awarded to a prevailing small entity as a prevailing party  
 15 under this section.”.

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

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

19               (1) in subsection (d)(2)(B)—

20                       (A) by striking “, or (ii)” and inserting  
 21                       “, (ii)”; and

22                       (B) by striking the semicolon at the end of  
 23                       the subparagraph and inserting the following:  
 24                       “, or (iii) a small entity as defined under sub-  
 25                       section (g)(1)(D);” and



1           (2) by adding at the end the following new sub-  
2 section:

3           “(g)(1) For purposes of this subsection, the term—

4           “(A) ‘covered agency’ has the same meaning as  
5 in section 30(a) of the Small Business Act;

6           “(B) ‘fees and other expenses’ has the same  
7 meaning as in subsection (d)(2)(A), except that—

8           “(i) clause (ii) of such subparagraph (A)  
9 shall not apply; and

10           “(ii) attorney’s fees shall not be awarded  
11 at a rate of pay in excess of \$150 per hour un-  
12 less the court determines that regional costs or  
13 other special factors justify a higher fee;

14           “(C) ‘prevailing small entity’—

15           “(i) means a small entity that raised a suc-  
16 cessful defense to an agency enforcement action  
17 by a covered agency in a civil action; and

18           “(ii) includes a small entity that is a party  
19 in a civil action in which the court orders a cor-  
20 rective action or penalty against the small en-  
21 tity that is less burdensome than the corrective  
22 action or penalty initially sought or demanded  
23 by the covered agency; and

24           “(D) ‘small entity’ has the same meaning as  
25 the term ‘small entity’ in section 601(6) of title 5.

1       “(2) For the purpose of making a finding of whether  
2 an award under subsection (d)(1)(A) is unjust, in any case  
3 in which fees and other expenses would be awarded to a  
4 prevailing small entity as a prevailing party—

5           “(A) the court shall not consider whether the  
6 position of the United States was substantially justi-  
7 fied; and

8           “(B) special circumstances shall be limited to  
9 circumstances in which—

10           “(i) the matters in the civil action are mat-  
11 ters for which there is little or no legal prece-  
12 dent; or

13           “(ii) findings of fact or conclusions of law  
14 are based on inconsistent interpretations of ap-  
15 plicable law by different courts.

16       “(3) If a prevailing small entity is awarded fees and  
17 other expenses as a prevailing party under subsection  
18 (d)(1)(A), such fees and expenses shall include all fees and  
19 expenses incurred by the small entity in appearing in any  
20 proceeding the purpose of which is to determine the  
21 amount of fees and other expenses.

22       “(4) Fees and other expenses awarded to a prevailing  
23 small entity as a prevailing party under this section shall  
24 be paid by the covered agency from funds made available  
25 to the agency by appropriation or from fees or other

1 amounts charged to the public if authorized by law. A cov-  
2 ered agency may not increase any such fee or amount  
3 charged for the purpose of paying fees and other expenses  
4 awarded to a prevailing small entity as a prevailing party  
5 under this section.”.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Small Business Regu-*  
8 *latory Enforcement Fairness Act of 1996”.*

9 **SEC. 2. FINDINGS.**

10 *Congress finds that—*

11 *(1) a vibrant and growing small business sector*  
12 *is critical to creating jobs in a dynamic economy;*

13 *(2) small businesses bear a disproportionate*  
14 *share of regulatory costs and burdens;*

15 *(3) fundamental changes that are needed in the*  
16 *regulatory and enforcement culture of federal agencies*  
17 *to make agencies more responsive to small business*  
18 *can be made without compromising the statutory mis-*  
19 *sions of the agencies;*

20 *(4) three of the top recommendations of the*  
21 *White House Conference on Small Business involve*  
22 *reforms to the way government regulations are devel-*  
23 *oped and enforced, and reductions in government pa-*  
24 *perwork requirements;*

1           (5) *the requirements of the Regulatory Flexibility*  
2 *Act have too often been ignored by government agen-*  
3 *cies, resulting in greater regulatory burdens on small*  
4 *entities than necessitated by statute; and*

5           (6) *small entities should be given the opportunity*  
6 *to seek judicial review of agency actions required by*  
7 *the Regulatory Flexibility Act.*

8 **SEC. 3. PURPOSES.**

9 *The purposes of this Act are—*

10           (1) *to implement certain recommendations of the*  
11 *1995 White House Conference on Small Business re-*  
12 *garding the development and enforcement of Federal*  
13 *regulations;*

14           (2) *to provide for judicial review of the Regu-*  
15 *latory Flexibility Act;*

16           (3) *to encourage the effective participation of*  
17 *small businesses in the Federal regulatory process;*

18           (4) *to simplify the language of Federal regula-*  
19 *tions affecting small businesses;*

20           (5) *to develop more accessible sources of informa-*  
21 *tion on regulatory and reporting requirements for*  
22 *small businesses;*

23           (6) *to create a more cooperative regulatory envi-*  
24 *ronment among agencies and small businesses that is*  
25 *less punitive and more solution-oriented; and*

1           (7) to make Federal regulators more accountable  
 2           for their enforcement actions by providing small enti-  
 3           ties with a meaningful opportunity for redress of ex-  
 4           cessive enforcement activities.

5 **SEC. 4. EFFECTIVE DATE.**

6           This Act shall become effective on the date 90 days  
 7 after enactment.

8                           **TITLE I—REGULATORY**  
 9           **COMPLIANCE SIMPLIFICATION**

10 **SEC. 101. DEFINITIONS.**

11           For purposes of this Act—

12                   (1) the terms “rule” and “small entity” have the  
 13 same meanings as in section 601 of title 5, United  
 14 States Code;

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

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

19 **SEC. 102. COMPLIANCE GUIDES.**

20           (a) **COMPLIANCE GUIDE.**—For each rule or group of  
 21 related rules for which an agency is required to prepare  
 22 a final regulatory flexibility analysis under section 604 of  
 23 title 5, United States Code, the agency shall publish one  
 24 or more guides to assist small entities in complying with  
 25 the rule, and shall designate such publications as “small

1 *entity compliance guides*”. *The guides shall explain the ac-*  
2 *tions a small entity is required to take to comply with a*  
3 *rule or group of rules. The agency shall, in its sole discre-*  
4 *tion, ensure that the guide is written using sufficiently*  
5 *plain language to be understood by affected small entities.*  
6 *Agencies may prepare separate guides covering groups or*  
7 *classes of similarly affected small entities, and may cooper-*  
8 *ate with associations of small entities to develop and dis-*  
9 *tribute such guides.*

10 (b) *SINGLE SOURCE OF INFORMATION.*—*Agencies shall*  
11 *cooperate to make available to small entities through a sin-*  
12 *gle source of information, the small entity compliance*  
13 *guides and all other available information on statutory and*  
14 *regulatory requirements affecting small entities.*

15 (c) *LIMITATION ON JUDICIAL REVIEW.*—*Except as*  
16 *provided by this subsection, an agency’s designation of a*  
17 *small entity compliance guide shall not be subject to judi-*  
18 *cial review. In any civil or administrative action against*  
19 *a small entity for a violation occurring after the effective*  
20 *date of this section, the content of the small business guide*  
21 *may be considered as evidence of the reasonableness or ap-*  
22 *propriateness of any proposed fines, penalties or damages.*

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

24 (a) *IN GENERAL.*—*Whenever appropriate in the inter-*  
25 *est of administering statutes and regulations within the ju-*

1 jurisdiction of an agency, it shall be the practice of the agency  
 2 to answer inquiries by small entities concerning informa-  
 3 tion on and advice about compliance with such statutes and  
 4 regulations, interpreting and applying the law to specific  
 5 sets of facts supplied by the small entity. In any civil or  
 6 administrative action against a small entity, guidance pro-  
 7 vided by an agency to a small entity may be considered  
 8 as evidence of the reasonableness or appropriateness of any  
 9 proposed fines, penalties or damages imposed on such small  
 10 entity.

11 (b) PROGRAM.—Each agency shall establish a program  
 12 for issuing guidance in response to such inquiries no later  
 13 than 1 year after enactment of this section, utilizing exist-  
 14 ing functions and personnel of the agency to the extent prac-  
 15 ticable.

16 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT**  
 17 **CENTERS.**

18 Section 21(c)(3) of the Small Business Act (15 U.S.C.  
 19 648(c)(3)) is amended—

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

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

24 (3) by inserting after subparagraph (P) the fol-  
 25 lowing new subparagraphs:

1           “(Q) providing assistance to small business con-  
2           cerns regarding regulatory requirements, including  
3           providing training with respect to cost-effective regu-  
4           latory compliance;

5           “(R) developing informational publications, es-  
6           tablishing resource centers of reference materials, and  
7           distributing compliance guides published under sec-  
8           tion 102(a) of the Small Business Regulatory En-  
9           forcement Fairness Act of 1996 to small business con-  
10          cerns; and

11          “(S) developing programs to provide confidential  
12          onsite assessments and recommendations regarding  
13          regulatory compliance to small business concerns and  
14          assisting small business concerns in analyzing the  
15          business development issues associated with regulatory  
16          implementation and compliance measures.”.

17   **SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.**

18          *The Manufacturing Technology Centers and other*  
19          *similar extension centers administered by the National In-*  
20          *stitute of Standards and Technology of the Department of*  
21          *Commerce shall, as appropriate, provide the assistance re-*  
22          *garding regulatory requirements, develop and distribute in-*  
23          *formation and guides and develop the programs to provide*  
24          *confidential onsite assessments and recommendations re-*



1 *garding regulatory compliance described in Section 104 of*  
 2 *this Act.*

3 ***TITLE II—REGULATORY***  
 4 ***ENFORCEMENT REFORMS***

5 ***SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCE-***  
 6 ***MENT OMBUDSMAN.***

7 *The Small Business Act (15 U.S.C. 631 et seq.) is*  
 8 *amended—*

9 *(1) by redesignating section 30 as section 31;*  
 10 *and*

11 *(2) by inserting after section 29 the following*  
 12 *new section:*

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

14 *“(a) DEFINITIONS.—For purposes of this section, the*  
 15 *term—*

16 *“(1) ‘Board’ means a Regional Small Business*  
 17 *Regulatory Fairness Board established under sub-*  
 18 *section (c); and*

19 *“(2) ‘Ombudsman’ means the Small Business*  
 20 *and Agriculture Regulatory Enforcement Ombudsman*  
 21 *designated under subsection (b).*

22 ***“(b) SBA ENFORCEMENT OMBUDSMAN.—***

23 *“(1) Not later than 180 days after the date of en-*  
 24 *actment of this section, the Administration shall des-*  
 25 *ignate a Small Business and Agriculture Regulatory*

1       *Enforcement Ombudsman utilizing existing personnel*  
2       *to the extent practicable. Other agencies shall assist*  
3       *the Ombudsman and take actions as necessary to en-*  
4       *sure compliance with the requirements of this section.*  
5       *Nothing in this section is intended to replace or di-*  
6       *minish the activities of any Ombudsman or similar*  
7       *office in any other agency.*

8               “(2) *The Ombudsman shall—*

9                       “(A) *work with each agency with regulatory*  
10                      *authority over small businesses to ensure that*  
11                      *small business concerns that receive or are sub-*  
12                      *ject to an audit, on-site inspection, compliance*  
13                      *assistance effort, or other enforcement related*  
14                      *communication or contact by agency personnel*  
15                      *are provided with a confidential means to com-*  
16                      *ment on and rate the performance of such per-*  
17                      *sonnel;*

18                      “(B) *establish means to solicit and receive*  
19                      *comments from small business concerns regard-*  
20                      *ing actions by agency employees conducting com-*  
21                      *pliance or enforcement related activities with re-*  
22                      *spect to the small business concern, and main-*  
23                      *tain the identity of the person and small busi-*  
24                      *ness concern making such comments on a con-*  
25                      *fidential basis; and*

1           “(C) based on comments received from small  
2           business concerns and the Boards, annually re-  
3           port to Congress and affected agencies concerning  
4           the enforcement activities of agency personnel in-  
5           cluding a rating of the responsiveness to small  
6           business of the various regional and program of-  
7           fices and personnel of each agency; and

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

12          “(c) *REGIONAL SMALL BUSINESS REGULATORY FAIR-*  
13 *NESS BOARDS.*—

14           “(1) Not later than 180 days after the date of en-  
15          actment of this section, the Administration shall es-  
16          tablish a Small Business Regulatory Fairness Board  
17          in each regional office of the Small Business Adminis-  
18          tration.

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

21           “(A) meet at least annually to advise the  
22          Ombudsman on matters of concern to small busi-  
23          nesses relating to the enforcement activities of  
24          agencies;

1           “(B) report to the Ombudsman on instances  
2           of excessive enforcement actions of agencies  
3           against small business concerns including any  
4           findings or recommendations of the Board as to  
5           agency enforcement policy or practice; and

6           “(C) prior to publication, provide comment  
7           on the annual report of the Ombudsman pre-  
8           pared under subsection (b).

9           “(3) Each Board shall consist of five members  
10          appointed by the Administration, after receiving the  
11          recommendations of the chair and ranking minority  
12          member of the Small Business Committees of the  
13          House and Senate.

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

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

19          “(6) A majority of the members of the Board  
20          shall constitute a quorum for the conduct of business,  
21          but a lesser number may hold hearings.

22          “(d) POWERS OF THE BOARDS.—

23          “(1) The Board may hold such hearings and col-  
24          lect such information as appropriate for carrying out  
25          this section.

1           “(2) *The Board may use the United States mails*  
2           *in the same manner and under the same conditions*  
3           *as other departments and agencies of the Federal Gov-*  
4           *ernment.*

5           “(3) *The Board may accept donations of services*  
6           *necessary to conduct its business.*

7           “(4) *Members of the Board shall serve without*  
8           *compensation, provided that, members of the Board*  
9           *shall be allowed travel expenses, including per diem*  
10           *in lieu of subsistence, at rates authorized for employ-*  
11           *ees of agencies under subchapter I of chapter 57 of*  
12           *title 5, United States Code, while away from their*  
13           *homes or regular places of business in the perform-*  
14           *ance of services for the Board.”.*

15   **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT**

16                   **ACTIONS.**

17           (a) *IN GENERAL.*—*Each agency regulating the activi-*  
18           *ties of small entities shall establish a policy or program*  
19           *to provide for the reduction, and under appropriate cir-*  
20           *cumstances for the waiver, of civil penalties for violations*  
21           *of a statutory or regulatory requirement by a small entity.*

22           (b) *CONDITIONS AND EXCEPTIONS.*—*Policies or pro-*  
23           *grams established under this section may contain condi-*  
24           *tions or exceptions such as—*

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

3           (2) *limiting the applicability to violations dis-*  
 4           *covered by the small entity through participation in*  
 5           *a compliance assistance or audit program operated or*  
 6           *supported by the agency or a State, or through a com-*  
 7           *pliance audit resulting in disclosure of the violation;*

8           (3) *exempting small entities that have been sub-*  
 9           *ject to multiple enforcement actions by the agency;*

10          (4) *exempting violations involving willful or*  
 11          *criminal conduct; and*

12          (5) *exempting violations that pose serious health,*  
 13          *safety or environmental threats or risk of serious in-*  
 14          *jury.*

15           **TITLE III—EQUAL ACCESS TO**  
 16           **JUSTICE ACT AMENDMENTS**

17           **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

18           Section 504(b)(1) of title 5, United States Code, is  
 19           amended—

20           (1) *by striking “\$75” in subparagraph (A) and*  
 21           *inserting “\$125”;*

22           (2) *by striking “, or (ii)” in subparagraph (B)*  
 23           *and inserting “, (ii)”;*

1           (3) at the end of subparagraph (B), by striking  
2           “;” and inserting the following: “, or (iii) a small en-  
3           tity as defined in section 601;”;

4           (4) by striking “; and” in subparagraph (D) and  
5           inserting “;”; and

6           (5) by adding at the end the following new sub-  
7           paragraphs:

8           “(F) ‘prevailing party’ includes a small entity  
9           with respect to claims in an adversary adjudication  
10          brought by an agency (1) that the small entity has  
11          raised a successful defense to, or (2) with respect to  
12          which the decision of the adjudicative officer is sub-  
13          stantially less than that sought by the agency in the  
14          adversary adjudication, provided that such small en-  
15          tity has not committed a willful violation of the law  
16          or otherwise acted in bad faith, and

17          “(G) in an adversary adjudication brought by  
18          an agency against a small entity, in the determina-  
19          tion whether the position of the agency, including any  
20          citation, assessment, fine, penalty or demand for set-  
21          tlement sought by the agency, is ‘substantially justi-  
22          fied’ only if the agency demonstrates that such posi-  
23          tion does not substantially exceed the decision of the  
24          adjudicative officer in the adversary adjudication,

1        *and the position of the agency is consistent with agency*  
2        *policy.”.*

3        **SEC. 302. JUDICIAL PROCEEDINGS.**

4        *Section 2412 of title 28, United States Code, is amend-*  
5        *ed in paragraph (d)(2)—*

6                *(1) by striking “\$75” in subparagraph (A) and*  
7                *inserting “\$125”;*

8                *(2) by striking “, or (ii)” in subparagraph (B)*  
9                *and inserting “, (ii)”;*

10               *(3) by striking “; and” subparagraph (G) and*  
11               *inserting “;”*

12               *(4) in subparagraph (H)—*

13               *(i) after “prevailing party,” by inserting “in-*  
14               *cludes a small entity with respect to a claim in*  
15               *a civil action brought by the United States (1)*  
16               *that the small entity has raised a successful de-*  
17               *fense to, or (2) with respect to which the final*  
18               *judgement in the action is substantially less than*  
19               *that sought by the United States, provided that*  
20               *such small entity has not committed a willful*  
21               *violation of the law or otherwise acted in bad*  
22               *faith, and”;* and

23               *(ii) at the end of the subparagraph, by*  
24               *striking the period and inserting “; and”;* and



1           (5) by adding at the end the following new sub-  
2           paragraph:

3           “(I) In a civil action brought by the United  
4           States against a small entity, a position of the United  
5           States, including any citation, assessment, fine, pen-  
6           alty or demand for settlement sought by an agency,  
7           is “substantially justified” only if the United States  
8           demonstrates that such position does not substantially  
9           exceed the value of the final judgement in the action,  
10          and the position of the United States is consistent  
11          with agency policy.”.

12                           **TITLE IV—REGULATORY**  
13           **FLEXIBILITY ACT AMENDMENTS**

14   **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

15           (a) *INITIAL REGULATORY FLEXIBILITY ANALYSIS.*—

16   Section 603(a) of title 5, United States Code, is amended—

17           (1) by inserting after “proposed rule”, the phrase  
18           “; or publishes a notice of interpretive rule making of  
19           general applicability for any proposed interpretive  
20           rule”; and

21           (2) by inserting at the end of the subsection, the  
22           following new sentence: “In the case of interpretive  
23           rule making involving the internal revenue laws of  
24           the United States, this section applies only to regula-  
25           tions as that term is used in section 7805 of the Inter-

1        *nal Revenue Code of 1986 that impose a record keep-*  
2        *ing, reporting or paperwork requirement on small en-*  
3        *tities.”.*

4        *(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Sec-*  
5        *tion 604 of title 5, United States Code, is amended—*

6                *(1) in subsection (a) to read as follows:*

7                *“(a) When an agency promulgates a final rule under*  
8        *section 553 of this title, after being required by that section*  
9        *or any other law to publish a general notice of proposed*  
10        *rulemaking, or otherwise publishing an initial regulatory*  
11        *flexibility analysis, the agency shall prepare a final regu-*  
12        *latory flexibility analysis. Each final regulatory flexibility*  
13        *analysis shall contain—*

14                *“(1) a succinct statement of the need for, and ob-*  
15        *jectives of, the rule;*

16                *“(2) a summary of the issues raised by the pub-*  
17        *lic comments in response to the initial regulatory*  
18        *flexibility analysis, a summary of the assessment of*  
19        *the agency of such issues, and a statement of any*  
20        *changes made in the proposed rule as a result of such*  
21        *comments;*

22                *“(3) a description of, and an estimate of the*  
23        *number of, small entities to which the rule will apply*  
24        *or an explanation of why no such estimate is avail-*  
25        *able;*

1           “(4) a description of the projected reporting,  
2           record keeping and other compliance requirements of  
3           the rule, including an estimate of the classes of small  
4           entities which will be subject to the requirement and  
5           the type of professional skills necessary for prepara-  
6           tion of the report or record; and

7           “(5) a description of the steps the agency has  
8           taken to minimize the significant economic impact on  
9           small entities consistent with the stated objectives of  
10          applicable statutes, including a statement of the fac-  
11          tual policy, and legal reasons for selecting the alter-  
12          native adopted in the final rule and why each one of  
13          the other significant alternatives to the rule consid-  
14          ered by the agency was rejected.”; and

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

18   **SEC. 402. JUDICIAL REVIEW.**

19          Section 611 of title 5, United States Code, is amended  
20          to read as follows:

21   **“§611. Judicial review**

22          “(a)(1) For any rule subject to this chapter, a small  
23          entity that is adversely affected or aggrieved by agency ac-  
24          tion is entitled to judicial review of agency compliance with

1 *the requirements of this chapter, except the requirements of*  
2 *sections 602, 603, 609 and 612.*

3       “(2) *Each court having jurisdiction to review such rule*  
4 *for compliance with section 553 of this title or under any*  
5 *other provision of law shall have jurisdiction to review any*  
6 *claims of noncompliance with this chapter, except the re-*  
7 *quirements of sections 602, 603, 609 and 612.*

8       “(3)(A) *A small entity may seek such review during*  
9 *the period beginning on the date of final agency action and*  
10 *ending one year later, except that where a provision of law*  
11 *requires that an action challenging a final agency action*  
12 *be commenced before the expiration of such one year period,*  
13 *such lesser period shall apply to a petition for judicial re-*  
14 *view under this section.*

15       “(B) *In the case where an agency delays the issuance*  
16 *of a final regulatory flexibility analysis pursuant to section*  
17 *608(b) of this chapter, a petition for judicial review under*  
18 *this section shall be filed not later than—*

19               “(i) *one year after the date the analysis is made*  
20 *available to the public, or*

21               “(ii) *where a provision of law requires that an*  
22 *action challenging a final agency regulation be com-*  
23 *menced before the expiration of the one year period,*  
24 *the number of days specified in such provision of law*

1        *that is after the date the analysis is made available*  
2        *to the public.*

3        *“(4) If the court determines, on the basis of the rule-*  
4        *making record, that the agency action under this chapter*  
5        *was arbitrary, capricious, an abuse of discretion or other-*  
6        *wise not in accordance with the law, the court shall order*  
7        *the agency to take corrective action consistent with this*  
8        *chapter, which may include—*

9                *“(A) remanding the rule to the agency, or*

10                *“(B) deferring the enforcement of the rule*  
11        *against small entities, unless the court finds good*  
12        *cause for continuing the enforcement of the rule pend-*  
13        *ing the completion of the corrective action.*

14        *“(5) Nothing in this subsection shall be construed to*  
15        *limit the authority of any court to stay the effective date*  
16        *of any rule or provision thereof under any other provision*  
17        *of law or to grant any other relief in addition to the re-*  
18        *quirements of this section.*

19        *“(b) In an action for the judicial review of a rule, the*  
20        *regulatory flexibility analysis for such rule, including an*  
21        *analysis prepared or corrected pursuant to paragraph*  
22        *(a)(4), shall constitute part of the entire record of agency*  
23        *action in connection with such review.*

24        *“(c) Except as otherwise required by this chapter, the*  
25        *court shall apply the same standards of judicial review that*

1 *govern the review of agency findings under the statute*  
2 *granting the agency authority to conduct a rule making.*

3       “(d) *Compliance or noncompliance by an agency with*  
4 *the provisions of this chapter shall be subject to judicial re-*  
5 *view only in accordance with this section.*

6       “(e) *Nothing in this section bars judicial review of any*  
7 *other impact statement or similar analysis required by any*  
8 *other law if judicial review of such statement or analysis*  
9 *is otherwise permitted by law.”.*

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

11       “(a) *Section 605(b) of title 5, United States Code, is*  
12 *amended to read as follows:*

13       “(b) *Sections 603 and 604 of this title shall not apply*  
14 *to any proposed or final rule if the head of the agency cer-*  
15 *tifies that the rule will not, if promulgated, have a signifi-*  
16 *cant economic impact on a substantial number of small en-*  
17 *tities. If the head of the agency makes a certification under*  
18 *the preceding sentence, the agency shall publish such certifi-*  
19 *cation in the Federal Register, at the time of publication*  
20 *of general notice of proposed rule making for the rule or*  
21 *at the time of publication of the final rule, along with a*  
22 *statement providing the factual and legal reasons for such*  
23 *certification. The agency shall provide such certification*  
24 *and statement to the Chief Counsel for Advocacy of the*  
25 *Small Business Administration.”.*

1       (b) Section 612 of title 5, United States Code, is  
2 amended—

3           (1) in subsection (a), by striking “the committees  
4 on the Judiciary of the Senate and the House of Rep-  
5 resentatives, the Select Committee on Small Business  
6 of the Senate, and the Committee on Small Business  
7 of the House of Representatives” and inserting “the  
8 Committees on the Judiciary and Small Business of  
9 the Senate and House of Representatives”.

10          (2) in subsection (b), by striking “his views with  
11 respect to the” and inserting in lieu thereof, “his or  
12 her views with respect to compliance with this chap-  
13 ter, the adequacy of the rulemaking record and the”.

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

15       (a) *SMALL BUSINESS OUTREACH AND INTERAGENCY*  
16 *COORDINATION*.—Section 609 of title 5, United States Code,  
17 is amended—

18           (1) before “techniques,” by inserting “the reason-  
19 able use of”;

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

23           (3) by designating the current text as subsection  
24 (a); and

25           (4) by adding the following new subsection:

1       “(b) *Prior to publication of an initial regulatory flexi-*  
2 *bility analysis—*

3               “(1) *an agency shall notify the Chief Counsel for*  
4 *Advocacy of the Small Business Administration and*  
5 *provide the Chief Counsel with information on the po-*  
6 *tential impacts of the proposed rule on small entities*  
7 *and the type of small entities that might be affected;*

8               “(2) *the Chief Counsel shall identify individuals*  
9 *representative of affected small entities for the pur-*  
10 *pose of obtaining advice and recommendations from*  
11 *those individuals about the potential impacts of the*  
12 *proposed rule;*

13               “(3) *the agency shall convene a review panel for*  
14 *such rule consisting wholly of full time federal em-*  
15 *ployees of the office within the agency responsible for*  
16 *carrying out the proposed rule, the Office of Informa-*  
17 *tion and Regulatory Affairs within the Office of Man-*  
18 *agement and Budget, and the Chief Counsel;*

19               “(4) *the panel shall review any material the*  
20 *agency has prepared in connection with this chapter,*  
21 *collect advice and recommendations of the small en-*  
22 *tity representatives identified by the agency after con-*  
23 *sultation with the Chief Counsel, on issues related to*  
24 *subsection 603(b), paragraphs (3), (4) and (5);*



1           “(5) the review panel shall report on the com-  
2           ments of the small entity representatives and its find-  
3           ings as to issues related to subsection 603(b), para-  
4           graphs (3), (4) and (5), provided that such report  
5           shall be made public as part of the rulemaking record;  
6           and

7           “(6) where appropriate, the agency shall modify  
8           the proposed rule or the decision on whether an ini-  
9           tial regulatory flexibility analysis is required.

10          “(c) Prior to publication of a final regulatory flexibil-  
11          ity analysis—

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

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

23           “(3) the review panel shall report on the com-  
24           ments of the small entity representatives and its find-  
25           ings as to issues related to subsection 604(a), para-

1        *graphs (3), (4) and (5), provided that such report*  
 2        *shall be made public as part of the rulemaking record;*  
 3        *and*

4                *“(4) where appropriate, the agency shall modify*  
 5        *the final rule or the decision on whether a final regu-*  
 6        *latory flexibility analysis is required.*

7                *“(d) An agency may in its discretion apply subsections*  
 8        *(b) and (c) to rules that the agency intends to certify under*  
 9        *subsection 605(b), but the agency believes may have a great-*  
 10        *er than de minimis impact on a substantial number of*  
 11        *small entities.”.*

12        *(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—*  
 13        *Not later than 30 days after the date of enactment of this*  
 14        *Act, the head of each agency that has conducted a final reg-*  
 15        *ulatory flexibility analysis shall designate a small business*  
 16        *advocacy chairperson using existing personnel to the extent*  
 17        *possible, to be responsible for implementing this section and*  
 18        *to act as permanent chair of the agency’s review panels es-*  
 19        *tablished pursuant to this section.*

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