

110TH CONGRESS  
1ST SESSION

# H. R. 4458

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 2007

Mr. ELLSWORTH (for himself, Ms. VELÁZQUEZ, Ms. CLARKE, Mr. CUELLAR, Mr. HIGGINS, Ms. HIRONO, Mr. JOHNSON of Georgia, Ms. MOORE of Wisconsin, Mr. SESTAK, and Mr. SHULER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Regu-  
5 latory Improvement Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Small businesses are frequently the source  
4 of new products, methods, and innovations.

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

7 (3) Regulations designed for application to  
8 large-scale entities have been applied uniformly to  
9 small businesses and other small entities.

10 (4) Uniform Federal regulatory and reporting  
11 requirements in many instances have imposed on  
12 small businesses and other small entities dispro-  
13 portionately burdensome demands, including legal, ac-  
14 counting, and consulting costs.

15 (5) Since 1980, Federal agencies have been re-  
16 quired to recognize and take account of the dif-  
17 ferences in the scale and resources of regulated enti-  
18 ties but have failed to do so.

19 (6) Alternative regulatory approaches that do  
20 not conflict with the stated objectives of the statutes  
21 the regulations seek to implement may be available  
22 and may minimize the significant economic impact  
23 of regulations on small businesses and other small  
24 entities.

25 (7) Federal agencies have failed to analyze and  
26 uncover less costly alternative regulatory approaches,

1 despite the fact that the chapter 6 of title 5, United  
2 States Code (commonly known as the Regulatory  
3 Flexibility Act), requires them to do so.

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

8 (9) Significant changes are needed in the meth-  
9 ods by which Federal agencies develop and analyze  
10 regulations, receive input from affected entities, and  
11 develop regulatory alternatives that will lessen the  
12 burden or maximize the benefits of final rules to  
13 small businesses and other small entities.

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

22 (11) Federal agencies should be capable of as-  
23 sessing the impact of proposed and final rules with-  
24 out delaying the regulatory process or impinging on

1 the ability of Federal agencies to fulfill their statu-  
2 tory mandates.

3 **SEC. 3. CLARIFICATION AND EXPANSION OF RULES COV-**  
4 **ERED BY THE REGULATORY FLEXIBILITY**  
5 **ACT.**

6 Section 601 of title 5, United States Code, is amend-  
7 ed by adding at the end the following new paragraph:

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

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

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

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

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

23 “(b) Each initial regulatory flexibility analysis re-  
24 quired under this section shall contain a detailed state-  
25 ment describing—

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

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

5 “(3) the type of small entities to which the pro-  
6 posed rule will apply;

7 “(4) the number of small entities to which the  
8 proposed rule will apply or why such estimate is not  
9 available;

10 “(5) the projected reporting, recordkeeping, and  
11 other compliance requirements of the proposed rule,  
12 including an estimate of the classes of small entities  
13 which will be subject to the requirement, the costs,  
14 and the type of professional skills necessary to com-  
15 ply with the rule; and

16 “(6) all relevant Federal rules which may dupli-  
17 cate, overlap, or conflict with the proposed rule, or  
18 the reasons why such a description could not be pro-  
19 vided.”.

20 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

21 (1) Paragraph (1) of section 604(a) of title 5,  
22 United States Code, is amended by striking “suc-  
23 cinct”.

1           (2) Paragraph (3) of such section is amended  
2       by striking “an explanation” and inserting “a de-  
3       tailed explanation”.

4           (3) Paragraph (4) of such section is amended  
5       to read as follows:

6           “(4) a description of the projected reporting,  
7       recordkeeping, and other compliance requirements of  
8       the rule, including an estimate of the classes of  
9       small entities which will be subject to the require-  
10      ment, the costs, and the type of professional skills  
11      necessary to comply with the rule; and”.

12       (c) CERTIFICATION OF NO IMPACT.—Subsection (b)  
13   of section 605 of title 5, United States Code, is amended  
14   by inserting “detailed” before “statement” both places  
15   such term appears.

16   **SEC. 5. PERIODIC REVIEW OF RULES.**

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

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

20       “(a) Not later than 180 days after the enactment of  
21   the Small Business Regulatory Improvement Act, each  
22   agency shall publish in the Federal Register and place on  
23   its website a plan for the periodic review of rules issued  
24   by the agency which the head of the agency determines  
25   have a significant economic impact on a substantial num-

1 ber of small entities. Such determination shall be made  
2 without regard to whether the agency performed an anal-  
3 ysis under section 604. The purpose of the review shall  
4 be to determine whether such rules should be continued  
5 without change, or should be amended or rescinded, con-  
6 sistent with the stated objectives of applicable statutes, to  
7 minimize significant economic impacts on a substantial  
8 number of small entities. Such plan may be amended by  
9 the agency at any time by publishing the revision in the  
10 Federal Register and subsequently placing the amended  
11 plan on the agency's website.

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

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

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

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

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

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

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

21 “(4) The complexity of the rule.

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



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

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

16   **SEC. 6. CHANGES TO THE REGULATORY FLEXIBILITY ACT**  
17                   **TO COMPORT WITH EXECUTIVE ORDER 13272.**

18          (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
19          Section 603 of title 5, United States Code, is amended  
20          by adding at the end the following:

21          “(d) An agency shall notify the Chief Counsel for Ad-  
22          vocacy of the Small Business Administration of any draft  
23          rules that may have a significant economic impact on a  
24          substantial number of small entities either—

1           “(1) when the agency submits a draft rule to  
2           the Office of Information and Regulatory Affairs at  
3           the Office of Management and Budget, if submission  
4           is required; or

5           “(2) if no submission to the Office of Informa-  
6           tion and Regulatory Affairs is so required, at a rea-  
7           sonable time prior to publication of the rule by the  
8           agency.”.

9           (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

10           (1) INCLUSION OF RESPONSE TO COMMENTS ON  
11           CERTIFICATION OF PROPOSED RULE.—Paragraph  
12           (2) of section 604(a) of title 5, United States Code,  
13           is amended by inserting after “initial regulatory  
14           flexibility analysis” the following: “(or certification  
15           of the proposed rule under section 605(b))”.

16           (2) INCLUSION OF RESPONSE TO COMMENTS  
17           FILED BY CHIEF COUNSEL FOR ADVOCACY.—Sub-  
18           section (a) of section 604 of title 5, United States  
19           Code, is amended by redesignating paragraphs (3)  
20           through (5) as (4) through (6), respectively, and by  
21           inserting after paragraph (2) the following:

22           “(3) the agency’s response to any comments  
23           filed by the Chief Counsel for Advocacy of the Small  
24           Business Administration in response to the proposed  
25           rule, and a detailed statement of any changes made

- 1 to the proposed rule in the final rule as a result of
- 2 such comments;”.

○