

114TH CONGRESS
1ST SESSION

S. 426

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 SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Ms. AYOTTE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

6 “(2) RULE.—The term ‘rule’—

7 “(A) has the meaning given such term in
 8 section 551(4); and

9 “(B) does not include—

10 “(i) a rule pertaining to the protection
 11 of the rights of or benefits for veterans; or

12 “(ii) a rule of particular (and not gen-
 13 eral) applicability relating to—

14 “(I) rates, wages, corporate or fi-
 15 nancial structures or reorganizations
 16 thereof, prices, facilities, appliances,
 17 services, or allowances therefor; or

18 “(II) valuations, costs or ac-
 19 counting, or practices relating to
 20 rates, wages, structures, prices, facili-
 21 ties, appliances, services, or allow-
 22 ances described in subclause (I).”.

23 (b) INCLUSION OF RULES WITH INDIRECT EF-
 24 FECTS.—Section 601 of title 5, United States Code, is
 25 amended by adding at the end the following:

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

4 “(A) any direct economic effect on small
5 entities of the rule; and

6 “(B) any indirect economic effect (includ-
7 ing compliance costs and effects on revenue) on
8 small entities which is reasonably foreseeable
9 and results from the rule (without regard to
10 whether small entities will be directly regulated
11 by the rule).”.

12 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
13 FECTS.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Section 603(c) of title 5, United States Code,
16 is amended by striking the first sentence and insert-
17 ing “Each initial regulatory flexibility analysis shall
18 also contain a detailed description of alternatives to
19 the proposed rule which minimize any adverse sig-
20 nificant economic impact or maximize any beneficial
21 significant economic impact on small entities.”.

22 (2) FINAL REGULATORY FLEXIBILITY ANAL-
23 YSIS.—Section 604(a) of title 5, United States Code,
24 is amended, in the first paragraph designated as
25 paragraph (6) (relating to minimization of signifi-

1 cant economic impacts), by striking “minimize the
 2 significant economic impact” and inserting “mini-
 3 mize the adverse significant economic impact or
 4 maximize the beneficial significant economic im-
 5 pact”.

6 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
 7 NIZATIONS.—Section 601(5) of title 5, United States
 8 Code, is amended by striking “special districts,” and in-
 9 serting “special districts and tribal organizations (as de-
 10 fined in section 4(l) of the Indian Self-Determination and
 11 Education Assistance Act (25 U.S.C. 450b(l)))”.

12 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
 13 FORMAL RULEMAKING.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
 15 YSIS.—Section 603(a) of title 5, United States Code,
 16 is amended in the first sentence—

17 (A) by striking “or” after “proposed
 18 rule,”; and

19 (B) by inserting “or publishes a revision or
 20 amendment to a land management plan,” after
 21 “United States,”.

22 (2) FINAL REGULATORY FLEXIBILITY ANAL-
 23 YSIS.—Section 604(a) of title 5, United States Code,
 24 is amended in the first sentence—

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

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

6 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
7 tion 601 of title 5, United States Code, as amended
8 by subsection (b), is amended by adding at the end
9 the following:

10 “(10) LAND MANAGEMENT PLAN.—

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

13 “(i) any plan developed by the Sec-
14 retary of Agriculture under section 6 of
15 the Forest and Rangeland Renewable Re-
16 sources Planning Act of 1974 (16 U.S.C.
17 1604); and

18 “(ii) any plan developed by the Sec-
19 retary of the Interior under section 202 of
20 the Federal Land Policy and Management
21 Act of 1976 (43 U.S.C. 1712).

22 “(B) REVISION.—The term ‘revision’, re-
23 lating to a land management plan, means any
24 change that—

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

“(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–6 of title 43, Code of Federal Regulations (or any successor regulation).

“(C) AMENDMENT.—The term ‘amendment’, relating to a land management plan, means any change that—

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(4) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(4)) and with respect to which the Secretary of Agriculture prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); or

“(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–5 of title 43, Code of Federal

1 Regulations (or any successor regulation)
 2 and with respect to which the Secretary of
 3 the Interior prepares a statement described
 4 in section 102(2)(C) of the National Envi-
 5 ronmental Policy Act of 1969 (42 U.S.C.
 6 4332(2)(C)).”.

7 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
 8 INVOLVING THE INTERNAL REVENUE LAWS.—

9 (1) IN GENERAL.—Section 603(a) of title 5,
 10 United States Code, is amended by striking the pe-
 11 riod at the end and inserting “or a recordkeeping re-
 12 quirement, and without regard to whether such re-
 13 quirement is imposed under the internal revenue
 14 laws directly or under the interpretative rules.”.

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

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

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

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

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

7 “(4) SMALL ORGANIZATION.—

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

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

21 “(ii) in the case of any other enter-
 22 prise—

23 “(I) has a net worth that does
 24 not exceed \$7,000,000; and

1 “(II) has not more than 500 em-
 2 ployees.

3 “(B) LOCAL LABOR ORGANIZATIONS.—In
 4 the case of any local labor organization (as de-
 5 fined in section 2 of the National Labor Rela-
 6 tions Act (29 U.S.C. 152)), subparagraph (A)
 7 shall be applied without regard to any national
 8 or international organization of which such local
 9 labor organization is a part.

10 “(C) AGENCY DEFINITIONS.—Subpara-
 11 graphs (A) and (B) shall not apply to the ex-
 12 tent that an agency, after consultation with the
 13 Office of Advocacy of the Small Business Ad-
 14 ministration and after opportunity for public
 15 comment—

16 “(i) establishes 1 or more definitions
 17 for the term ‘small organization’ which are
 18 appropriate to the activities of the agency;
 19 and

20 “(ii) publishes such definitions in the
 21 Federal Register.”.

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

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

25 (1) in subsection (a)—

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

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

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

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

13 (2) by striking subsection (c) and inserting the
14 following:

15 “(c) Not later than 3 days after the date on which
16 an agency publishes a regulatory flexibility agenda under
17 subsection (a) in the Federal Register—

18 “(1) the agency shall prominently display a
19 plain language summary of the information con-
20 tained in the regulatory flexibility agenda on the
21 website of the agency; and

22 “(2) the Office of Advocacy of the Small Busi-
23 ness Administration shall prominently display a
24 plain language summary of the regulatory agenda on

1 the website of the Office, as part of a compilation
2 of such summaries.”.

3 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
4 **ANALYSES.**

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

8 “(b) Each initial regulatory flexibility analysis re-
9 quired under this section shall contain a detailed state-
10 ment—

11 “(1) describing the reasons why action by the
12 agency is being considered;

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

15 “(3) estimating the number and type of small
16 entities to which the proposed rule will apply;

17 “(4) describing the projected reporting, record-
18 keeping, and other compliance requirements of the
19 proposed rule, including an estimate of the classes of
20 small entities which will be subject to the require-
21 ment and the type of professional skills necessary
22 for preparation of the report and record;

23 “(5) describing all relevant Federal rules which
24 may duplicate, overlap, or conflict with the proposed

1 rule, or the reasons why such a description could not
2 be provided;

3 “(6) estimating the additional cumulative eco-
4 nomic impact of the proposed rule on small entities
5 beyond that already imposed on the class of small
6 entities by the agency or why such an estimate is
7 not available;

8 “(7) describing any disproportionate economic
9 impact on small entities or a specific class of small
10 entities; and

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

13 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

16 (A) in paragraph (4), by striking “an ex-
17 planation” and inserting “a detailed expla-
18 nation”;

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

24 (C) in the first paragraph designated as
25 paragraph (6) (relating to minimization of sig-

1 nificant economic impacts), by striking “and”
 2 at the end;

3 (D) in the second paragraph (6), by strik-
 4 ing the period and inserting “; and”;

5 (E) by redesignating the second paragraph
 6 designated as paragraph (6) (relating to cov-
 7 ered agencies) as paragraph (7); and

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

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

12 (2) INCLUSION OF RESPONSE TO COMMENTS ON
 13 CERTIFICATION OF PROPOSED RULE.—Section
 14 604(a)(2) of title 5, United States Code, is amended
 15 by inserting “(or certification of the proposed rule
 16 under section 605(b))” after “initial regulatory flexi-
 17 bility analysis”.

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

21 “(b) An agency shall—

22 “(1) make copies of each final regulatory flexi-
 23 bility analysis available to the public, including
 24 placement of the entire analysis on the website of
 25 the agency; and

1 “(2) publish in the Federal Register the final
2 regulatory flexibility analysis, or a summary thereof
3 which includes the telephone number, mailing ad-
4 dress, and link to the website where the complete
5 analysis may be obtained.”.

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

9 “(a) An agency shall be considered to have satisfied
10 any requirement regarding the content of an agenda or
11 regulatory flexibility analysis under section 602, 603, or
12 604, if the agency provides in the agenda or analysis a
13 cross-reference to the specific portion of another agenda
14 or analysis which is required by any other law and which
15 satisfies the requirement.”.

16 (d) CERTIFICATIONS.—Section 605(b) of title 5,
17 United States Code, is amended—

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

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

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

1 **“§ 607. Quantification requirements**

2 “In complying with sections 603 and 604, an agency
3 shall provide—

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

7 “(2) a more general descriptive statement and
8 a detailed statement explaining why quantification is
9 not practicable or reliable.”.

10 **SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**
11 **TIONAL POWERS OF THE CHIEF COUNSEL**
12 **FOR ADVOCACY.**

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

15 **“§ 608. Additional powers of Chief Counsel for Advo-**
16 **cacy**

17 “(a) RULES GOVERNING AGENCY COMPLIANCE.—

18 “(1) IN GENERAL.—Not later than 270 days
19 after the date of the enactment of the Small Busi-
20 ness Regulatory Flexibility Improvements Act of
21 2015, the Chief Counsel for Advocacy of the Small
22 Business Administration shall, after opportunity for
23 notice and comment under section 553, issue rules
24 governing agency compliance with this chapter. The
25 Chief Counsel may modify or amend such rules after
26 notice and comment under section 553. This chapter

(other than this subsection) shall not apply with respect to the issuance, modification, and amendment of rules under this paragraph.

“(2) LIMITATION ON SUPPLEMENTAL RULES.—

An agency may not issue rules which supplement the rules issued under paragraph (1) unless the agency has first consulted with the Chief Counsel for Advocacy to ensure that the supplemental rules comply with this chapter and the rules issued under paragraph (1).

“(b) INTERVENTION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Chief Counsel for Advocacy of the Small Business Administration may intervene in any agency adjudication (unless such agency is authorized to impose a fine or penalty under such adjudication), and may inform the agency of the impact that any decision on the record may have on small entities.

“(2) LIMITATION.—The Chief Counsel shall not initiate an appeal with respect to any adjudication in which the Chief Counsel intervenes under this subsection.

“(c) RESPONSE TO AGENCY NOTICES.—The Chief Counsel for Advocacy may file comments in response to

1 any agency notice requesting comment, regardless of
 2 whether the agency is required to file a general notice of
 3 proposed rulemaking under section 553.”.

4 (b) CONFORMING AMENDMENTS.—Section 611(a) of
 5 title 5, United States Code, is amended—

6 (1) in paragraph (1), by striking “608(b),”;

7 (2) in paragraph (2), by striking “608(b),”;

8 and

9 (3) in paragraph (3)—

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

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

12 and inserting “(3) A small entity”.

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

14 Section 609 of title 5, United States Code, is amend-
 15 ed—

16 (1) in subsection (a), by inserting “IN GEN-
 17 ERAL.—” before “When any rule is promulgated”;

18 and

19 (2) by striking subsection (b) and all that fol-
 20 lows and inserting the following:

21 “(b) INFORMATION TO CHIEF COUNSEL.—

22 “(1) IN GENERAL.—Before publishing a pro-
 23 posed rule described in subsection (e), the agency
 24 issuing the rule shall notify the Chief Counsel for

1 Advocacy of the Small Business Administration and
2 provide the Chief Counsel with—

3 “(A) all materials prepared or used by the
4 agency in preparing the proposed rule, includ-
5 ing the draft of the proposed rule; and

6 “(B) information on the potential adverse
7 and beneficial economic impacts of the proposed
8 rule on small entities and the type of small enti-
9 ties that might be affected.

10 “(2) EXCEPTION.—An agency shall not be re-
11 quired under paragraph (1) to provide the exact lan-
12 guage of any draft if—

13 “(A) the rule relates to the internal rev-
14 enue laws of the United States; or

15 “(B) the agency issuing the rule is an
16 independent regulatory agency (as defined in
17 section 3502(5) of title 44).

18 “(c) CHIEF COUNSEL ACTION.—Not later than 15
19 days after the receipt of materials and information under
20 subsection (b), the Chief Counsel for Advocacy of the
21 Small Business Administration shall—

22 “(1) identify small entities or representatives of
23 small entities or a combination of both for the pur-
24 pose of obtaining advice, input, and recommenda-
25 tions from those persons about—

1 “(A) the potential economic impacts of the
2 proposed rule; and

3 “(B) the compliance of the agency with
4 section 603; and

5 “(2) convene a review panel to review the mate-
6 rials and information provided to the Chief Counsel
7 under subsection (b), which shall consist of—

8 “(A) an employee from the Office of Advo-
9 cacy of the Small Business Administration;

10 “(B) an employee from the agency issuing
11 the rule; and

12 “(C) in the case of an agency other than
13 an independent regulatory agency (as defined in
14 section 3502(5) of title 44), an employee from
15 the Office of Information and Regulatory Af-
16 fairs of the Office of Management and Budget.

17 “(d) REPORT.—

18 “(1) IN GENERAL.—Not later than 60 days
19 after the review panel described in subsection (c)(2)
20 is convened, the Chief Counsel for Advocacy of the
21 Small Business Administration shall, after consulta-
22 tion with the members of the review panel, submit
23 a report to—

24 “(A) the agency; and

1 “(B) in the case of an agency other than
 2 an independent regulatory agency (as defined in
 3 section 3502(5) of title 44), the Office of Infor-
 4 mation and Regulatory Affairs of the Office of
 5 Management and Budget.

6 “(2) CONTENTS.—Each report under para-
 7 graph (1) shall include—

8 “(A) an assessment of the economic impact
 9 of the proposed rule on small entities, including
 10 an assessment of the proposed rule’s impact on
 11 the cost that small entities pay for energy;

12 “(B) an assessment of the impact of the
 13 proposed rule on start-up costs for small enti-
 14 ties; and

15 “(C) a discussion of any alternatives that
 16 will minimize adverse significant economic im-
 17 pacts or maximize beneficial significant eco-
 18 nomic impacts on small entities.

19 “(3) TREATMENT OF REPORTS.—Each report
 20 under paragraph (1) shall become part of the rule-
 21 making record. In the publication of the proposed
 22 rule, the agency shall explain what actions, if any,
 23 the agency took in response to the report.

24 “(e) RULES COVERED.—A proposed rule described in
 25 this subsection is a proposed rule that the Administrator

1 of the Office of Information and Regulatory Affairs of the
2 Office of Management and Budget, the head of the agen-
3 cy, or an independent regulatory agency determines is like-
4 ly to result in—

5 “(1) an annual effect on the economy of
6 \$100,000,000 or more;

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

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

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

18 “(f) WAIVER AUTHORITY.—Upon application by an
19 agency, the Chief Counsel for Advocacy of the Small Busi-
20 ness Administration may waive the requirements of sub-
21 sections (b) through (e) if the Chief Counsel determines
22 that compliance with the requirements of such subsections
23 are impracticable, unnecessary, or contrary to the public
24 interest.

25 “(g) REQUESTS FOR REPORTS.—

1 “(1) IN GENERAL.—A small entity or a rep-
 2 resentative of a small entity may submit a request
 3 that the agency provide a copy of the report pre-
 4 pared under subsection (d) and all materials and in-
 5 formation provided to the Chief Counsel for Advo-
 6 cacy of the Small Business Administration under
 7 subsection (b).

8 “(2) PRODUCTION.—Not later than 10 business
 9 days after receiving a request under paragraph (1),
 10 an agency shall provide the report, materials, and
 11 information requested to the small entity or rep-
 12 resentative of a small entity making the request, ex-
 13 cept that the agency shall not disclose any informa-
 14 tion that is prohibited from disclosure to the public
 15 pursuant to section 552(b).”.

16 **SEC. 7. 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) DEFINITIONS.—In this section—

21 “(1) the term ‘covered rule’ means a rule issued
 22 by an agency that the head of the agency determines
 23 has a significant economic impact on a substantial
 24 number of small entities, which shall be determined

1 without regard to whether the agency performed an
 2 analysis under section 604; and

3 “(2) the term ‘plan’ means a plan for the peri-
 4 odic review of covered rules developed under sub-
 5 section (b)(1).

6 “(b) DEVELOPMENT OF PLAN FOR PERIODIC RE-
 7 VIEW.—

8 “(1) IN GENERAL.—Not later than 180 days
 9 after the date of enactment of the Small Business
 10 Regulatory Flexibility Improvements Act of 2015,
 11 each agency shall develop, publish in the Federal
 12 Register, and place on the website of the agency a
 13 plan for the periodic review of the covered rules of
 14 the agency.

15 “(2) PURPOSE.—The purpose of a plan shall be
 16 to determine whether the covered rules of the agency
 17 should be continued without change, or should be
 18 amended or rescinded, consistent with the stated ob-
 19 jectives of applicable statutes, to minimize any ad-
 20 verse significant economic impacts or maximize any
 21 beneficial significant economic impacts on a substan-
 22 tial number of small entities.

23 “(3) REVISIONS.—A plan may be amended by
 24 an agency at any time by publishing the revision in

1 the Federal Register and placing the amended plan
2 on the website of the agency.

3 “(c) PLAN REQUIREMENTS.—

4 “(1) DEADLINES.—A plan shall—

5 “(A) except as provided in paragraph (2),
6 provide for the review of all covered rules of the
7 agency in effect on the date of the enactment
8 of the Small Business Regulatory Flexibility
9 Improvements Act of 2015 by not later than 10
10 years after the date of publication of the initial
11 plan in the Federal Register; and

12 “(B) provide for the review of each covered
13 rule of the agency adopted after the date of en-
14 actment of the Small Business Regulatory
15 Flexibility Improvements Act of 2015 by not
16 later than 10 years after the date of publication
17 of the final rule in the Federal Register.

18 “(2) EXTENSION OF INITIAL DEADLINE.—If
19 the head of an agency determines that completion of
20 the review of covered rules described in paragraph
21 (1)(A) is not feasible by date described in such para-
22 graph, not later than the date described in such
23 paragraph, the head of the agency—

24 “(A) shall publish in the Federal Register
25 and submit to Congress and the Chief Counsel

1 for Advocacy a statement certifying the deter-
2 mination of the head of the agency; and

3 “(B) may extend the period for completing
4 the review for not longer than 2 years after
5 publication of notice of extension in the Federal
6 Register.

7 “(d) INCLUSION OF SMALL BUSINESSES.—A plan
8 shall detail how an agency will—

9 “(1) conduct outreach to and meaningfully in-
10 clude small businesses (including small business con-
11 cerns owned and controlled by women, small busi-
12 ness concerns owned and controlled by veterans, and
13 small business concerns owned and controlled by so-
14 cially and economically disadvantaged individuals (as
15 such terms are defined in the Small Business Act
16 (15 U.S.C. 631 et seq.))) for the purposes of car-
17 rying out this section; and

18 “(2) contact small businesses and gather their
19 input on covered rules of the agency.

20 “(e) REPORTING.—Each agency shall annually sub-
21 mit to Congress, the Chief Counsel for Advocacy of the
22 Small Business Administration, and, in the case of agen-
23 cies other than independent regulatory agencies (as de-
24 fined in section 3502(5) of title 44) to the Administrator
25 of the Office of Information and Regulatory Affairs of the

1 Office of Management and Budget a report regarding the
 2 results of the review of the agency under the plan of the
 3 agency, which shall include the identification of any cov-
 4 ered rule with respect to which the head of the agency
 5 made a determination described in subparagraph (E) or
 6 (F) of subsection (f)(2) and a detailed explanation of the
 7 reasons for such determination.

8 “(f) AMENDMENT OR RECESSIOIN OF RULES.—

9 “(1) IN GENERAL.—In reviewing a covered rule
 10 under subsections (b) through (e), an agency shall
 11 amend or rescind the covered rule to minimize any
 12 adverse significant economic impact on a substantial
 13 number of small entities or disproportionate eco-
 14 nomic impact on a specific class of small entities, or
 15 maximize any beneficial significant economic impact
 16 of the rule on a substantial number of small entities
 17 to the greatest extent possible, consistent with the
 18 stated objectives of applicable statutes.

19 “(2) FACTORS.—In amending or rescinding a
 20 covered rule, an agency shall consider—

21 “(A) the continued need for the covered
 22 rule;

23 “(B) the nature of complaints received by
 24 the agency from small entities concerning the
 25 covered rule;

1 “(C) comments by the Regulatory Enforce-
 2 ment Ombudsman and the Chief Counsel for
 3 Advocacy of the Small Business Administration;

4 “(D) the complexity of the covered rule;

5 “(E) the extent to which the covered rule
 6 overlaps, duplicates, or conflicts with other Fed-
 7 eral rules and, unless the head of the agency
 8 determines it to be infeasible, State, territorial,
 9 and local rules;

10 “(F) the contribution of the covered rule to
 11 the cumulative economic impact of all Federal
 12 rules on the class of small entities affected by
 13 the covered rule, unless the head of the agency
 14 determines that such calculations cannot be
 15 made and includes a discussion of that deter-
 16 mination in the annual report required under
 17 subsection (e); and

18 “(G) the length of time since the covered
 19 rule has been evaluated or the degree to which
 20 technology, economic conditions, or other fac-
 21 tors have changed in the area affected by the
 22 covered rule.

23 “(g) RULES TO BE REVIEWED.—Each year, each
 24 agency shall—

1 “(1) publish in the Federal Register and on the
2 website of the agency a list of covered rules to be
3 reviewed pursuant to the plan of the agency, which
4 shall include—

5 “(A) a solicitation of public comments on
6 any further inclusions or exclusions of rules
7 from the list; and

8 “(B) a brief description of—

9 “(i) the covered rule; and

10 “(ii) the reason why the agency deter-
11 mined that the covered rule has a signifi-
12 cant economic impact on a substantial
13 number of small entities;

14 “(2) request comments from the public, the
15 Chief Counsel for Advocacy of the Small Business
16 Administration, and the Regulatory Enforcement
17 Ombudsman concerning the enforcement of the cov-
18 ered rule; and

19 “(3) respond to any comments received under
20 paragraph (1) or (2).”.

1 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
 2 **QUIREMENTS OF THE REGULATORY FLEXI-**
 3 **BILITY ACT AVAILABLE AFTER PUBLICATION**
 4 **OF THE FINAL RULE.**

5 (a) IN GENERAL.—Section 611(a) of title 5, United
 6 States Code, is amended—

7 (1) in paragraph (1), by striking “final agency
 8 action” and inserting “such rule”;

9 (2) in paragraph (2), by inserting “(or which
 10 would have such jurisdiction if publication of the
 11 final rule constituted final agency action)” after
 12 “provision of law,”; and

13 (3) in paragraph (3)—

14 (A) by striking “final agency action” the
 15 first place it appears and inserting “publication
 16 of the final rule”; and

17 (B) by inserting “, in the case of a rule for
 18 which the date of final agency action is the
 19 same date as the publication of the final rule,”
 20 after “except that”.

21 (b) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
 22 CACY.—Section 612(b) of title 5, United States Code, is
 23 amended by inserting before the first period “or agency
 24 compliance with section 601, 603, 604, 605(b), 609, or
 25 610”.

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

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

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

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

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

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

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

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

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

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

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

24 (c) AUTHORIZATION TO INTERVENE AND COMMENT
 25 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
 26 DURE.—Section 612(b) of title 5, United States Code, is

1 amended, in the second sentence, by inserting “chapter
2 5, and chapter 7,” after “this chapter,”.

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

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

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

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

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

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

23 “(iii) is approved—

24 “(I) by the Administrator; or

1 “(II) in the case of a size stand-
 2 ard that is not prescribed by the Ad-
 3 ministrator, by the Chief Counsel for
 4 Advocacy.”.

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

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

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

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

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

22 **SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.**

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

1 (1) in the matter preceding paragraph (1), by
 2 striking “this chapter—” and inserting “this chap-
 3 ter.”;

4 (2) in paragraph (1)—

5 (A) by striking the semicolon at the end
 6 and inserting a period; and

7 (B) by striking “(1) the term” and insert-
 8 ing “(1) AGENCY.—The term”;

9 (3) in paragraph (3)—

10 (A) by striking the semicolon at the end
 11 and inserting a period; and

12 (B) by striking “(3) the term” and insert-
 13 ing “(3) SMALL BUSINESS.—The term”;

14 (4) in paragraph (5)—

15 (A) by striking the semicolon at the end
 16 and inserting a period; and

17 (B) by striking “(5) the term” and insert-
 18 ing “(5) SMALL GOVERNMENTAL JURISDIC-
 19 TION.—The term”;

20 (5) in paragraph (6)—

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

23 (B) by striking “(6) the term” and insert-
 24 ing “(6) SMALL ENTITY.—The term”; and

25 (6) by adding at the end the following:

1 “(11) COVERED AGENCY.—The term ‘covered
2 agency’ means—

3 “(A) the Environmental Protection Agen-
4 cy;

5 “(B) the Consumer Financial Protection
6 Bureau of the Federal Reserve System; and

7 “(C) the Occupational Safety and Health
8 Administration of the Department of Labor.”.

9 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
10 CATIONS.—Section 605 of title 5, United States Code, is
11 amended, in the heading, by striking “**Avoidance of**
12 **duplicative or unnecessary analyses**” and in-
13 serting “**Incorporations by reference and cer-**
14 **tifications**”.

15 (c) TABLE OF SECTIONS.—The table of sections for
16 chapter 6 of title 5, United States Code, is amended—

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

“605. Incorporations by reference and certifications.”;

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

“607. Quantification requirements.”;

21 and

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

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

1 (d) OTHER CONFORMING AMENDMENTS.—

2 (1) Section 603(d) title 5, United States Code,
3 is amended—

4 (A) by striking paragraph (2);

5 (B) by striking “(1) For a covered agency,
6 as defined in section 609(d)(2),” and inserting
7 “For a covered agency,”;

8 (C) by striking “(A) any” and inserting
9 “(1) any”;

10 (D) by striking “(B) any” and inserting
11 “(2) any”; and

12 (E) by striking “(C) advice” and inserting
13 “(3) advice”.

14 (2) Section 604(a)(7) of title 5, United States
15 Code, as redesignated by section 4(b)(1)(E), is
16 amended by striking “, as defined in section
17 609(d)(2),”

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

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

22 “(5) AGENCY PREPARATION OF GUIDES.—The
23 agency shall, in its sole discretion, taking into ac-
24 count the subject matter of the rule and the lan-
25 guage of relevant statutes, ensure that the guide is

1 written using sufficiently plain language likely to be
2 understood by affected small entities. Agencies may
3 prepare separate guides covering groups or classes of
4 similarly affected small entities and may cooperate
5 with associations of small entities to distribute such
6 guides. In developing guides, agencies shall solicit
7 input from affected small entities or associations of
8 affected small entities. An agency may prepare
9 guides and apply this section with respect to a rule
10 or a group of related rules.”.

11 **SEC. 13. COMPTROLLER GENERAL REPORT.**

12 Not later than 90 days after the date of enactment
13 of this Act, the Comptroller General of the United States
14 shall complete and publish a study that examines whether
15 the Chief Counsel for Advocacy of the Small Business Ad-
16 ministration has the capacity and resources to carry out
17 the duties of the Chief Counsel under this Act and the
18 amendments made by this Act.

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