

115TH CONGRESS
1ST SESSION

H. R. 33

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

JANUARY 3, 2017

Mr. CHABOT (for himself, Mr. GOODLATTE, Mr. MARINO, Mrs. RADEWAGEN, Mr. KNIGHT, Mr. CUELLAR, Mr. GRAVES of Missouri, Mr. SESSIONS, Mr. KING of Iowa, Mr. KELLY of Mississippi, Mr. TIPTON, Mr. CURBELO of Florida, Mr. HULTGREN, and Mr. LUETKEMEYER) 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 Flexibility Improvements Act of 2017”.

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

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

6 “(2) RULE.—The term ‘rule’ has the meaning
7 given such term in section 551(4) of this title, ex-
8 cept that such term does not include—

9 “(A) a rule pertaining to the protection of
10 the rights of and benefits for veterans or part
11 232 of title 32 of the Code of Federal Regula-
12 tions (as in effect on July 1, 2014) or any suc-
13 cessor provisions thereto; or

14 “(B) a rule of particular (and not general)
15 applicability relating to rates, wages, corporate
16 or financial structures or reorganizations there-
17 of, prices, facilities, appliances, services, or al-
18 lowances therefor or to valuations, costs or ac-
19 counting, or practices relating to such rates,
20 wages, structures, prices, appliances, services,
21 or allowances.”.

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

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 such 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 such 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.—Subsection (c) of section 603 of title 5,
16 United States Code, is amended by striking the first
17 sentence and inserting “Each initial regulatory flexi-
18 bility analysis shall also contain a detailed descrip-
19 tion of alternatives to the proposed rule which mini-
20 mize any adverse significant economic impact or
21 maximize any beneficial significant economic impact
22 on small entities.”.

23 (2) FINAL REGULATORY FLEXIBILITY ANAL-
24 YSIS.—The first paragraph (6) of section 604(a) of
25 title 5, United States Code, is amended by striking

1 “minimize the significant economic impact” and in-
2 serting “minimize the adverse significant economic
3 impact or maximize the beneficial significant eco-
4 nomic impact”.

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

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

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

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.—Subsection (a) of section 604 of title 5,
24 United States Code, is amended in the first sen-
25 tence—

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, is amended
8 by adding at the end the following new paragraph:

9 “(10) LAND MANAGEMENT PLAN.—

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

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

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

21 “(B) REVISION.—The term ‘revision’
22 means any change to a land management plan
23 which—

24 “(i) in the case of a plan described in
25 subparagraph (A)(i), is made under section

1 6(f)(5) of the Forest and Rangeland Re-
2 newable Resources Planning Act of 1974
3 (16 U.S.C. 1604(f)(5)); or

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

8 “(C) AMENDMENT.—The term ‘amend-
9 ment’ means any change to a land management
10 plan which—

11 “(i) in the case of a plan described in
12 subparagraph (A)(i), is made under section
13 6(f)(4) of the Forest and Rangeland Re-
14 newable Resources Planning Act of 1974
15 (16 U.S.C. 1604(f)(4)) and with respect to
16 which the Secretary of Agriculture pre-
17 pares a statement described in section
18 102(2)(C) of the National Environmental
19 Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)); or

21 “(ii) in the case of a plan described in
22 subparagraph (A)(ii), is made under sec-
23 tion 1610.5–5 of title 43, Code of Federal
24 Regulations (or any successor regulation),
25 and with respect to which the Secretary of

1 the Interior prepares a statement described
2 in section 102(2)(C) of the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C.
4 4332(2)(C)).”.

5 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
6 INVOLVING THE INTERNAL REVENUE LAWS.—

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

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

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

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

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

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

4 “(4) SMALL ORGANIZATION.—

5 “(A) IN GENERAL.—The term ‘small orga-
6 nization’ means any not-for-profit enterprise
7 which, as of the issuance of the notice of pro-
8 posed rulemaking—

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

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

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

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

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

SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.

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

(1) in subsection (a)—

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

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

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

“(3) a brief description of the sector of the North American Industrial Classification System that is primarily affected by any rule which the agency expects to propose or promulgate which is

1 likely to have a significant economic impact on a
2 substantial number of small entities; and”; and

3 (2) in subsection (c), to read as follows:

4 “(c) Each agency shall prominently display a plain
5 language summary of the information contained in the
6 regulatory flexibility agenda published under subsection
7 (a) on its website within 3 days of its publication in the
8 Federal Register. The Office of Advocacy of the Small
9 Business Administration shall compile and prominently
10 display a plain language summary of the regulatory agen-
11 das referenced in subsection (a) for each agency on its
12 website within 3 days of their publication in the Federal
13 Register.”.

14 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
15 **ANALYSES.**

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

19 “(b) Each initial regulatory flexibility analysis re-
20 quired under this section shall contain a detailed state-
21 ment—

22 “(1) describing the reasons why action by the
23 agency is being considered;

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

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

3 “(4) describing the projected reporting, record-
4 keeping, and other compliance requirements of the
5 proposed rule, including an estimate of the classes of
6 small entities which will be subject to the require-
7 ment and the type of professional skills necessary
8 for preparation of the report and record;

9 “(5) describing all relevant Federal rules which
10 may duplicate, overlap, or conflict with the proposed
11 rule, or the reasons why such a description could not
12 be provided;

13 “(6) estimating the additional cumulative eco-
14 nomic impact of the proposed rule on small entities
15 beyond that already imposed on the class of small
16 entities by the agency or why such an estimate is
17 not available;

18 “(7) describing any disproportionate economic
19 impact on small entities or a specific class of small
20 entities; and

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

23 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

1 (A) in paragraph (4), by striking “an ex-
2 planation” and inserting “a detailed expla-
3 nation”;

4 (B) in each of paragraphs (4), (5), and the
5 first paragraph (6), by inserting “detailed” be-
6 fore “description”;

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

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

11 (E) by redesignating the second paragraph
12 (6) as paragraph (7); and

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

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

17 (2) INCLUSION OF RESPONSE TO COMMENTS ON
18 CERTIFICATION OF PROPOSED RULE.—Paragraph
19 (2) of section 604(a) of title 5, United States Code,
20 is amended by inserting “(or certification of the pro-
21 posed rule under section 605(b))” after “initial reg-
22 ulatory flexibility analysis”.

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

1 “(b) The agency shall make copies of the final regu-
2 latory flexibility analysis available to the public, including
3 placement of the entire analysis on the agency’s website,
4 and shall publish in the Federal Register the final regu-
5 latory flexibility analysis, or a summary thereof which in-
6 cludes the telephone number, mailing address, and link to
7 the website where the complete analysis may be ob-
8 tained.”.

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

12 “(a) A Federal agency shall be treated as satisfying
13 any requirement regarding the content of an agenda or
14 regulatory flexibility analysis under section 602, 603, or
15 604, if such agency provides in such agenda or analysis
16 a cross-reference to the specific portion of another agenda
17 or analysis which is required by any other law and which
18 satisfies such requirement.”.

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

- 21 (1) by inserting “detailed” before “statement”
22 the first place it appears; and
23 (2) by inserting “and legal” after “factual”.

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

4 **“§ 607. Quantification requirements**

5 “In complying with sections 603 and 604, an agency
 6 shall provide—

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

10 “(2) a more general descriptive statement and
 11 a detailed statement explaining why quantification is
 12 not practicable or reliable.”.

13 **SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**
 14 **TIONAL POWERS OF THE CHIEF COUNSEL**
 15 **FOR ADVOCACY.**

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

18 **“§ 608. Additional powers of Chief Counsel for Advoca-**
 19 **cacy**

20 “(a)(1) Not later than 270 days after the date of the
 21 enactment of this section, the Chief Counsel for Advocacy
 22 of the Small Business Administration shall, after oppor-
 23 tunity for notice and comment under section 553, issue
 24 rules governing agency compliance with this chapter. The
 25 Chief Counsel may modify or amend such rules after no-

1 tice and comment under section 553. This chapter (other
2 than this subsection) shall not apply with respect to the
3 issuance, modification, and amendment of rules under this
4 paragraph.

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

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

19 “(c) The Chief Counsel for Advocacy may file com-
20 ments in response to any agency notice requesting com-
21 ment, regardless of whether the agency is required to file
22 a general notice of proposed rulemaking under section
23 553.”.

24 (b) CONFORMING AMENDMENTS.—

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

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

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

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

8 (B) by striking “(3)(A) A small entity”
9 and inserting the following:

10 “(3) A small entity”.

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

12 Section 609 of title 5, United States Code, is amend-
13 ed by striking subsection (b) and all that follows through
14 the end of the section and inserting the following:

15 “(b)(1) Prior to publication of any proposed rule de-
16 scribed in subsection (e), an agency making such rule shall
17 notify the Chief Counsel for Advocacy of the Small Busi-
18 ness Administration and provide the Chief Counsel with—

19 “(A) all materials prepared or utilized by the
20 agency in making the proposed rule, including the
21 draft of the proposed rule; and

22 “(B) information on the potential adverse and
23 beneficial economic impacts of the proposed rule on
24 small entities and the type of small entities that
25 might be affected.

1 “(2) An agency shall not be required under para-
2 graph (1) to provide the exact language of any draft if
3 the rule—

4 “(A) relates to the internal revenue laws of the
5 United States; or

6 “(B) is proposed by an independent regulatory
7 agency (as defined in section 3502(5) of title 44).

8 “(c) Not later than 15 days after the receipt of such
9 materials and information under subsection (b), the Chief
10 Counsel for Advocacy of the Small Business Administra-
11 tion shall—

12 “(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and

18 “(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and in the case of an agen-
22 cy other than an independent regulatory agency (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).

3 “(d)(1) Not later than 60 days after the review panel
4 described in subsection (c)(2) is convened, the Chief Coun-
5 sel for Advocacy of the Small Business Administration
6 shall, after consultation with the members of such panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency (as de-
9 fined in section 3502(5) of title 44), the Office of Informa-
10 tion and Regulatory Affairs of the Office of Management
11 and Budget.

12 “(2) Such report shall include an assessment of the
13 economic impact of the proposed rule on small entities,
14 including an assessment of the proposed rule’s impact on
15 the cost that small entities pay for energy, an assessment
16 of the proposed rule’s impact on startup costs for small
17 entities, and a discussion of any alternatives that will min-
18 imize adverse significant economic impacts or maximize
19 beneficial significant economic impacts on small entities.

20 “(3) Such report shall become part of the rulemaking
21 record. In the publication of the proposed rule, the agency
22 shall explain what actions, if any, the agency took in re-
23 sponse to such report.

24 “(e) A proposed rule is described by this subsection
25 if the Administrator of the Office of Information and Reg-

1 ulatory Affairs of the Office of Management and Budget,
2 the head of the agency (or the delegatee of the head of
3 the agency), or an independent regulatory agency deter-
4 mines that the proposed rule is likely to result in—

5 “(1) an annual effect on the economy of \$100
6 million 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) Upon application by the agency, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may waive the requirements of subsections (b) through (e)
21 if the Chief Counsel determines that compliance with the
22 requirements of such subsections are impracticable, un-
23 necessary, or contrary to the public interest.

24 “(g) A small entity or a representative of a small enti-
25 ty may submit a request that the agency provide a copy

1 of the report prepared under subsection (d) and all mate-
 2 rials and information provided to the Chief Counsel for
 3 Advocacy of the Small Business Administration under
 4 subsection (b). The agency receiving such request shall
 5 provide the report, materials and information to the re-
 6 questing small entity or representative of a small entity
 7 not later than 10 business days after receiving such re-
 8 quest, except that the agency shall not disclose any infor-
 9 mation that is prohibited from disclosure to the public
 10 pursuant to section 552(b) of this title.”.

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

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

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

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

1 to minimize any adverse significant economic impacts or
2 maximize any beneficial significant economic impacts on
3 a substantial number of small entities. Such plan may be
4 amended by the agency at any time by publishing the revi-
5 sion in the Federal Register and subsequently placing the
6 amended plan on the agency’s website.

7 “(b) The plan shall provide for the review of all such
8 agency rules existing on the date of the enactment of this
9 section within 10 years of the date of publication of the
10 plan in the Federal Register and for review of rules adopt-
11 ed after the date of enactment of this section within 10
12 years after the publication of the final rule in the Federal
13 Register. If the head of the agency determines that com-
14 pletion of the review of existing rules is not feasible by
15 the established date, the head of the agency shall so certify
16 in a statement published in the Federal Register and may
17 extend the review for not longer than 2 years after publi-
18 cation of notice of extension in the Federal Register. Such
19 certification and notice shall be sent to the Chief Counsel
20 for Advocacy of the Small Business Administration and
21 the Congress.

22 “(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 the Small Business Act)) for the purposes of carrying out
5 this section. The agency shall include in this section a plan
6 for how the agency will contact small businesses and gath-
7 er their input on existing agency rules.

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

20 “(e) In reviewing a rule pursuant to subsections (a)
21 through (d), the agency shall amend or rescind the rule
22 to minimize any adverse significant economic impact on
23 a substantial number of small entities or disproportionate
24 economic impact on a specific class of small entities, or
25 maximize any beneficial significant economic impact of the

1 rule on a substantial number of small entities to the great-
2 est extent possible, consistent with the stated objectives
3 of applicable statutes. In amending or rescinding the rule,
4 the agency shall consider the following factors:

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

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

8 “(3) Comments by the Regulatory Enforcement
9 Ombudsman and the Chief Counsel for Advocacy of
10 the Small Business Administration.

11 “(4) The complexity of the rule.

12 “(5) The extent to which the rule overlaps, du-
13 plicates, or conflicts with other Federal rules and,
14 unless the head of the agency determines it to be in-
15 feasible, State, territorial, and local rules.

16 “(6) The contribution of the rule to the cumu-
17 lative economic impact of all Federal rules on the
18 class of small entities affected by the rule, unless the
19 head of the agency determines that such calculations
20 cannot be made and reports that determination in
21 the annual report required under subsection (d).

22 “(7) The length of time since the rule has been
23 evaluated or the degree to which technology, eco-
24 nomic conditions, or other factors have changed in
25 the area affected by the rule.

1 “(f) Each year, each agency shall publish in the Fed-
 2 eral Register and on its website a list of rules to be re-
 3 viewed pursuant to such plan. The agency shall include
 4 in the publication a solicitation of public comments on any
 5 further inclusions or exclusions of rules from the list, and
 6 shall respond to such comments. Such publication shall
 7 include a brief description of the rule, the reason why the
 8 agency determined that it has a significant economic im-
 9 pact on a substantial number of small entities (without
 10 regard to whether it had prepared a final regulatory flexi-
 11 bility analysis for the rule), and request comments from
 12 the public, the Chief Counsel for Advocacy of the Small
 13 Business Administration, and the Regulatory Enforce-
 14 ment Ombudsman concerning the enforcement of the
 15 rule.”.

16 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
 17 **QUIREMENTS OF THE REGULATORY FLEXI-**
 18 **BILITY ACT AVAILABLE AFTER PUBLICATION**
 19 **OF THE FINAL RULE.**

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

23 (b) JURISDICTION.—Paragraph (2) of such section is
 24 amended by inserting “(or which would have such jurisdic-

tion if publication of the final rule constituted final agency action)” after “provision of law,”.

(c) TIME FOR BRINGING ACTION.—Paragraph (3) of such section is amended—

(1) by striking “final agency action” and inserting “publication of the final rule”; and

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

(d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting before the first period “or agency compliance with section 601, 603, 604, 605(b), 609, or 610”.

SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES IMPLEMENTING THE REGULATORY FLEXIBILITY ACT.

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

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

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

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

3 “(8) all final rules under section 608(a) of title
4 5.”.

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

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

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

11 (3) by adding at the end the following new sub-
12 paragraph:

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

16 (c) AUTHORIZATION TO INTERVENE AND COMMENT
17 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
18 DURE.—Subsection (b) of section 612 of title 5, United
19 States Code, is amended by inserting “chapter 5, and
20 chapter 7,” after “this chapter,”.

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

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

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

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

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

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

21 “(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
 2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
 3 amended—

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

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

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

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

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

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

22 (1) in paragraph (1)—

23 (A) by striking the semicolon at the end
 24 and inserting a period; and

1 (B) by striking “(1) the term” and insert-
 2 ing the following:

3 “(1) AGENCY.—The term”;

4 (2) in paragraph (3)—

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

7 (B) by striking “(3) the term” and insert-
 8 ing the following:

9 “(3) SMALL BUSINESS.—The term”;

10 (3) in paragraph (5)—

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

13 (B) by striking “(5) the term” and insert-
 14 ing the following:

15 “(5) SMALL GOVERNMENTAL JURISDICTION.—
 16 The term”; and

17 (4) in paragraph (6)—

18 (A) by striking “; and” and inserting a pe-
 19 riod; and

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

22 “(6) SMALL ENTITY.—The term”.

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

1 **“§ 605. Incorporations by reference and certi-**
 2 **cations”.**

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

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

“605. Incorporations by reference and certifications.”.

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

“607. Quantification requirements.”.

10 (3) By striking the item relating to section 608
 11 and inserting the following:

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

12 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
 13 6.—Chapter 6 of title 5, United States Code, is amended
 14 in section 603(d)—

15 (1) by striking paragraph (2);

16 (2) by striking “(1) For a covered agency,” and
 17 inserting “For a covered agency,”;

18 (3) by striking “(A) any” and inserting “(1)
 19 any”;

20 (4) by striking “(B) any” and inserting “(2)
 21 any”; and

22 (5) by striking “(C) advice” and inserting “(3)
 23 advice”.

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

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

5 “(5) AGENCY PREPARATION OF GUIDES.—The
6 agency shall, in its sole discretion, taking into ac-
7 count the subject matter of the rule and the lan-
8 guage of relevant statutes, ensure that the guide is
9 written using sufficiently plain language likely to be
10 understood by affected small entities. Agencies may
11 prepare separate guides covering groups or classes of
12 similarly affected small entities and may cooperate
13 with associations of small entities to distribute such
14 guides. In developing guides, agencies shall solicit
15 input from affected small entities or associations of
16 affected small entities. An agency may prepare
17 guides and apply this section with respect to a rule
18 or a group of related rules.”.

19 **SEC. 13. COMPTROLLER GENERAL REPORT.**

20 Not later than 90 days after the date of enactment
21 of this Act, the Comptroller General of the United States
22 shall complete and publish a study that examines whether
23 the Chief Counsel for Advocacy of the Small Business Ad-
24 ministration has the capacity and resources to carry out

- 1 the duties of the Chief Counsel under this Act and the
- 2 amendments made by this Act.

