

112TH CONGRESS  
1ST SESSION

# S. 1938

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.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2011

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

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## 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Regulatory Flexibility Improvements Act of 2011”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Clarification and expansion of rules covered by the Regulatory Flexibility Act.

- Sec. 3. Expansion of report of regulatory agenda.  
 Sec. 4. Requirements providing for more detailed analyses.  
 Sec. 5. Repeal of waiver and delay authority; Additional powers of the Chief Counsel for Advocacy.  
 Sec. 6. Procedures for gathering comments.  
 Sec. 7. Periodic review of rules.  
 Sec. 8. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.  
 Sec. 9. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.  
 Sec. 10. Clerical amendments.  
 Sec. 11. Agency preparation of guides.

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 a rule of par-  
 9 ticular (and not general) applicability relating to  
 10 rates, wages, corporate or financial structures or re-  
 11 organizations thereof, prices, facilities, appliances,  
 12 services, or allowances therefor or to valuations,  
 13 costs or accounting, or practices relating to such  
 14 rates, wages, structures, prices, appliances, services,  
 15 or allowances.”.

16 (b) INCLUSION OF RULES WITH INDIRECT EF-  
 17 FECTS.—Section 601 of title 5, United States Code, is  
 18 amended by adding at the end the following new para-  
 19 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 on small  
7 entities that is reasonably foreseeable and re-  
8 sults from such rule (without regard to whether  
9 small entities will be directly regulated by the  
10 rule).”.

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

13           (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
14 YSIS.—Subsection (c) of section 603 of title 5,  
15 United States Code, is amended by striking the first  
16 sentence and inserting “Each initial regulatory flexi-  
17 bility analysis shall also contain a detailed descrip-  
18 tion of alternatives to the proposed rule which mini-  
19 mize any adverse significant economic impact or  
20 maximize any beneficial significant economic impact  
21 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), by striking “minimize the significant

1 economic impact” and inserting “minimize the ad-  
 2 verse significant economic impact or maximize the  
 3 beneficial significant economic impact”.

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

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

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 Interior under section 202 of the  
19 Federal Land Policy and Management Act  
20 of 1976 (43 U.S.C. 1712).

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

1           “(i) in the case of a plan described in  
2           subparagraph (A)(i), is made under section  
3           6(f)(5) of the Forest and Rangeland Re-  
4           newable Resources Planning Act of 1974  
5           (16 U.S.C. 1604(f)(5)); or

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

10          “(C) AMENDMENT.—The term ‘amend-  
11          ment’, when used with respect to a land man-  
12          agement plan, means any change to a land  
13          management plan which—

14               “(i) in the case of a plan described in  
15               subparagraph (A)(i), is made under section  
16               6(f)(4) of the Forest and Rangeland Re-  
17               newable Resources Planning Act of 1974  
18               (16 U.S.C. 1604(f)(4)) and with respect to  
19               which the Secretary of Agriculture pre-  
20               pares a statement described in section  
21               102(2)(C) of the National Environmental  
22               Policy Act of 1969 (42 U.S.C.  
23               4332(2)(C)); or

24               “(ii) in the case of a plan described in  
25               subparagraph (A)(ii), is made under sec-

1                   tion 1610.5–5 of title 43, Code of Federal  
2                   Regulations (or any successor regulation)  
3                   and with respect to which the Secretary of  
4                   the Interior prepares a statement described  
5                   in section 102(2)(C) of the National Envi-  
6                   ronmental Policy Act of 1969 (42 U.S.C.  
7                   4332(2)(C)).”.

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

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

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

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

22           (3) RECORDKEEPING REQUIREMENT.—Para-  
23           graph (8) of section 601 of title 5, United States  
24           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 not-for-profit enterprise  
10 that, as of the issuance of the notice of pro-  
11 posed 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, has a net worth that does not exceed  
23 \$7,000,000 and has not more than 500  
24 employees.



1           “(B) LOCAL LABOR ORGANIZATIONS.—In  
2           the case of any local labor organization, sub-  
3           paragraph (A) shall be applied without regard  
4           to any national or international organization of  
5           which such local labor organization is a part.

6           “(C) AGENCY DEFINITIONS.—Subpara-  
7           graphs (A) and (B) shall not apply to the ex-  
8           tent that an agency, after consultation with the  
9           Office of Advocacy of the Small Business Ad-  
10          ministration and after opportunity for public  
11          comment, establishes one or more definitions  
12          for such term which are appropriate to the ac-  
13          tivities of the agency and publishes such defini-  
14          tions in the Federal Register.”.

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

16          Section 602 of title 5, United States Code, is amend-  
17 ed—

18           (1) in subsection (a)—

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

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

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

1           “(3) a brief description of the sector of the  
2           North American Industrial Classification System  
3           that is primarily affected by any rule which the  
4           agency expects to propose or promulgate which is  
5           likely to have a significant economic impact on a  
6           substantial number of small entities; and”;

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

8           “(c) Not later than 3 days after the date on which  
9           an agency publishes a regulatory flexibility agenda in the  
10          Federal Register under subsection (a), the agency shall  
11          prominently display a plain language summary of the in-  
12          formation contained in the regulatory flexibility agenda on  
13          the website of the agency. The Office of Advocacy of the  
14          Small Business Administration shall compile and promi-  
15          nently display plain language summaries of each regu-  
16          latory flexibility agenda published under subsection (a) on  
17          the website of the Office of Advocacy, not later than 3  
18          days after the date on which the agency publishes the reg-  
19          ulatory flexibility agenda the Federal Register.”.

20       **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**  
21                               **ANALYSES.**

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

1       “(b) Each initial regulatory flexibility analysis re-  
2       quired under this section shall contain a detailed state-  
3       ment—

4               “(1) describing the reasons why action by the  
5       agency is being considered;

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

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

10              “(4) describing the projected reporting, record-  
11       keeping, and other compliance requirements of the  
12       proposed rule, including an estimate of the classes of  
13       small entities which will be subject to the require-  
14       ment and the type of professional skills necessary  
15       for preparation of the report and record;

16              “(5) describing all relevant Federal rules which  
17       may duplicate, overlap, or conflict with the proposed  
18       rule, or the reasons why such a description could not  
19       be provided;

20              “(6) estimating the additional cumulative eco-  
21       nomic impact of the proposed rule on small entities  
22       beyond that already imposed on the class of small  
23       entities by the agency or why such an estimate is  
24       not available; and

1           “(7) describing any disproportionate economic  
2 impact on small entities or a specific class of small  
3 entities.”.

4           (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

7           (A) in paragraph (4), by striking “an ex-  
8 planation” and inserting “a detailed expla-  
9 nation”;

10           (B) in each of paragraphs (4), (5), and the  
11 first paragraph designated as paragraph (6), by  
12 inserting “detailed” before “description”; and

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

14           “(7) a description any disproportionate eco-  
15 nomic impact on small entities or a specific class of  
16 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 by making the entire analysis available on the website of  
4 the agency, and shall publish in the Federal Register the  
5 final regulatory flexibility analysis, or a summary thereof  
6 which includes the telephone number, mailing address, and  
7 link to the website where the complete analysis may be  
8 obtained.”.

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, in the second  
21 sentence, by striking “statement providing the factual”  
22 and inserting “detailed statement providing the factual  
23 and legal”.

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 Advo-**  
 19 **cacy**

20 “(a)(1) Not later than 270 days after the date of the  
 21 enactment of the Regulatory Flexibility Improvements Act  
 22 of 2011, the Chief Counsel for Advocacy of the Small  
 23 Business Administration shall, after opportunity for notice  
 24 and comment under section 553, issue rules governing  
 25 agency compliance with this chapter. The Chief Counsel

1 may modify or amend such rules after notice and comment  
2 under section 553. This chapter (other than this sub-  
3 section) shall not apply with respect to the issuance, modi-  
4 fication, or amendment of rules under this 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 of the Small Business Administration to ensure  
9 that such supplemental rules comply with this chapter and  
10 the rules issued under paragraph (1).

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

20       “(c) The Chief Counsel for Advocacy of the Small  
21 Business Administration may file comments in response  
22 to any agency notice requesting comment, regardless of  
23 whether the agency is required to file a general notice of  
24 proposed rulemaking under section 553.”.

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

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

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

5 and

6 (3) in paragraph (3)—

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), the agency making such rule  
17 shall notify the Chief Counsel for Advocacy of the Small  
18 Business Administration and provide the Chief Counsel  
19 for Advocacy with—

20 “(A) all materials prepared or utilized by the  
21 agency in making the proposed rule, including the  
22 draft of the proposed rule, except as provided in  
23 paragraph (2); and

24 “(B) information on the potential adverse and  
25 beneficial economic impacts of the proposed rule on



1 small entities and the type of small entities that  
2 might be affected.

3 “(2) An agency may provide a summary of any draft  
4 if the rule—

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

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

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

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

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

1       fairs of the Office of Management and Budget to re-  
2       view the materials and information provided to the  
3       Chief Counsel for Advocacy of the Small Business  
4       Administration under subsection (b).

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

14      “(2) Such report shall include an assessment of the  
15      economic impact of the proposed rule on small entities,  
16      including an assessment of the proposed rule’s impact on  
17      the cost that small entities pay for energy, and a discus-  
18      sion of any alternatives that will minimize adverse signifi-  
19      cant economic impacts or maximize beneficial significant  
20      economic impacts on small entities.

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

1       “(e) A proposed rule is described by this subsection  
2 if the Administrator of the Office of Information and Reg-  
3 ulatory Affairs of the Office of Management and Budget,  
4 the head of the agency (or the delegatee of the head of  
5 the agency), or an independent regulatory agency deter-  
6 mines that the proposed rule is likely to result in—

7           “(1) an annual effect on the economy of  
8       \$100,000,000 or more;

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

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

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

20       “(f) Upon application by the agency, the Chief Coun-  
21       sel for Advocacy of the Small Business Administration  
22       may waive the requirements of subsections (b) through (e)  
23       if the Chief Counsel for Advocacy of the Small Business  
24       Administration determines that compliance with the re-

1 requirements of such subsections are impracticable, unnec-  
2 essary, or contrary to the public interest.”.

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

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

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

7 “(a) Not later than 180 days after the enactment of  
8 the Regulatory Flexibility Improvements Act of 2011,  
9 each agency shall publish in the Federal Register and  
10 make available on the website of the agency a plan for  
11 the periodic review of rules issued by the agency which  
12 the head of the agency determines have a significant eco-  
13 nomic impact on a substantial number of small entities.  
14 Such determination shall be made without regard to  
15 whether the agency performed an analysis under section  
16 604. The purpose of the review shall be to determine  
17 whether such rules should be continued without change,  
18 or should be amended or rescinded, consistent with the  
19 stated objectives of applicable statutes, to minimize any  
20 adverse significant economic impacts or maximize any  
21 beneficial significant economic impacts on a substantial  
22 number of small entities. Such plan may be amended by  
23 the agency at any time by publishing the revision in the  
24 Federal Register and subsequently making the amended  
25 plan available on the website of the agency.

1       “(b) The plan shall provide for the review of all such  
2 agency rules existing on the date of the enactment of the  
3 Regulatory Flexibility Improvements Act of 2011 within  
4 10 years of the date of publication of the plan in the Fed-  
5 eral Register and for review of rules adopted after the date  
6 of enactment of the Regulatory Flexibility Improvements  
7 Act of 2011 within 10 years after the publication of the  
8 final rule in the Federal Register. If the head of the agen-  
9 cy determines that completion of the review of existing  
10 rules is not feasible by the established date, the head of  
11 the agency shall so certify in a statement published in the  
12 Federal Register and may extend the review for not longer  
13 than 2 years after publication of notice of extension in  
14 the Federal Register. Such certification and notice shall  
15 be sent to the Chief Counsel for Advocacy of the Small  
16 Business Administration and the Congress.

17       “(c) The plan shall include a section that details how  
18 an agency will conduct outreach to and meaningfully in-  
19 clude small entities for the purposes of carrying out this  
20 section. The agency shall include in this section a plan  
21 for how the agency will contact small entities and gather  
22 their input on existing agency rules.

23       “(d) Each agency shall annually submit a report re-  
24 garding the results of its review pursuant to such plan  
25 to the Congress, the Chief Counsel for Advocacy of the

1 Small Business Administration, and, in the case of agen-  
2 cies other than independent regulatory agencies (as de-  
3 fined in section 3502(5) of title 44) to the Administrator  
4 of the Office of Information and Regulatory Affairs of the  
5 Office of Management and Budget. Such report shall in-  
6 clude the identification of any rule with respect to which  
7 the head of the agency made a determination described  
8 in paragraph (5) or (6) of subsection (e) and a detailed  
9 explanation of the reasons for such determination.

10 “(e) In reviewing a rule pursuant to subsections (a)  
11 through (d), the agency shall amend or rescind the rule  
12 to minimize any adverse significant economic impact on  
13 a substantial number of small entities or disproportionate  
14 economic impact on a specific class of small entities, or  
15 maximize any beneficial significant economic impact of the  
16 rule on a substantial number of small entities to the great-  
17 est extent possible, consistent with the stated objectives  
18 of applicable statutes. In amending or rescinding the rule,  
19 the agency shall consider the following factors:

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

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

23 “(3) Comments by the Regulatory Enforcement  
24 Ombudsman and the Chief Counsel for Advocacy of  
25 the Small Business Administration.

1           “(4) The complexity of the rule.

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

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

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

16          “(f) The agency shall publish in the Federal Register  
17          and on the website of the agency a list of rules to be re-  
18          viewed pursuant to such plan. Such publication shall in-  
19          clude a brief description of the rule, the reason why the  
20          agency determined that the rule has a significant economic  
21          impact on a substantial number of small entities (without  
22          regard to whether it had prepared a final regulatory flexi-  
23          bility analysis for the rule), and request comments from  
24          the public, the Chief Counsel for Advocacy of the Small  
25          Business Administration, and the Regulatory Enforce-

1 ment Ombudsman concerning the enforcement of the  
2 rule.”.

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

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

10 (b) JURISDICTION.—Paragraph (2) of section 611(a)  
11 of title 5, United States Code, is amended by inserting  
12 “(or which would have such jurisdiction if publication of  
13 the final rule constituted final agency action)” after “pro-  
14 vision of law,”.

15 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of  
16 section 611(a) of title 5, United States Code, is amend-  
17 ed—

18 (1) by striking “final agency action” and insert-  
19 ing “publication of the final rule”; and

20 (2) by inserting “, in the case of a rule for  
21 which the date of final agency action is the same  
22 date as the publication of the final rule,” after “ex-  
23 cept that”.

24 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United  
25



1 States Code, is amended by inserting before the first pe-  
 2 riod “or agency compliance with section 601, 603, 604,  
 3 605(b), 609, or 610”.

4 **SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES**  
 5 **IMPLEMENTING THE REGULATORY FLEXI-**  
 6 **BILITY ACT.**

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

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

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

13 (3) by inserting after paragraph (7) the fol-  
 14 lowing new paragraph:

15 “(8) all final rules under section 608(a) of title  
 16 5.”.

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

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

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

23 (3) by adding at the end the following new sub-  
 24 paragraph:

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

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

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

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

12                 (1) in paragraph (1)—

13                         (A) by striking the semicolon at the end  
14                         and inserting a period; and

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

17                                 “(1) AGENCY.—The term”;

18                 (2) in paragraph (3)—

19                         (A) by striking the semicolon at the end  
20                         and inserting a period; and

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

23                                 “(3) SMALL BUSINESS.—The term”;

24                 (3) in paragraph (5)—

1 (A) by striking the semicolon at the end  
2 and inserting a period; and

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

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

7 (4) in paragraph (6)—

8 (A) by striking “; and” and inserting a pe-  
9 riod; and

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

12 “(6) SMALL ENTITY.—The term”.

13 (b) SECTION 605.—The heading of section 605 of  
14 title 5, United States Code, is amended to read as follows:

15 “§ 605. **Incorporations by reference and certifi-**  
16 **cations”.**

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

19 (1) by striking the item relating to section 605  
20 and inserting the following new item:

“605. Incorporations by reference and certifications.”;

21 (2) by striking the item relating to section 607  
22 and inserting the following new item:

“607. Quantification requirements.”;

23 and

1           (3) by striking the item relating to section 608  
2           and inserting the following:

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

3           (d) OTHER AMENDMENTS.—Chapter 6 of title 5,  
4 United States Code, is amended—

5           (1) in section 603, by striking subsection (d);  
6           and

7           (2) in section 604(a) by striking the second  
8           paragraph designated as paragraph (6).

9 **SEC. 11. AGENCY PREPARATION OF GUIDES.**

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

13           “(5) AGENCY PREPARATION OF GUIDES.—The  
14          agency shall, in its sole discretion, taking into ac-  
15          count the subject matter of the rule and the lan-  
16          guage of relevant statutes, ensure that the guide is  
17          written using sufficiently plain language likely to be  
18          understood by affected small entities. Agencies may  
19          prepare separate guides covering groups or classes of  
20          similarly affected small entities and may cooperate  
21          with associations of small entities to distribute such  
22          guides. In developing guides, agencies shall solicit  
23          input from affected small entities or associations of  
24          affected small entities. An agency may prepare

- 1 guides and apply this section with respect to a rule
- 2 or a group of related rules.”.

○