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

MARCH 8, 2017

Mr. LANKFORD (for himself, Mr. RISCH, and Mr. GRASSLEY) 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”.

VerDate Sep 11 2014 03:10 Mar 16, 2017 Jkt 069200 PO 00000 Frm 00001 Fmt 6652 Sfmt 6201 E:\BILLS\S584.IS S584SSpencer on DSK4SPTVN1PROD with BILLS
(a) In General.—Section 601(2) of title 5, United States Code, is amended to read as follows:

“(2) RULE.—The term ‘rule’—

“(A) has the meaning given such term in section 551(4) of this title; and

“(B) does not include—

“(i) a rule pertaining to the protection of the rights of and benefits for veterans or part 232 of title 32 of the Code of Federal Regulations (as in effect on July 1, 2014) or any successor provisions thereto; or

“(ii) a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.”.
3
(b) Inclusion of Rules With Indirect Effects.—Section 601 of title 5, United States Code, is amended by adding at the end the following:

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

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

“(B) any indirect economic effect (including compliance costs and effects on revenue) on small entities which is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).”.

(c) Inclusion of Rules With Beneficial Effects.—

(1) Initial Regulatory Flexibility Analysis.—Section 603(c) of title 5, United States Code, is amended by striking the first sentence and inserting “Each initial regulatory flexibility analysis shall also contain a detailed description of alternatives to the proposed rule which minimize any adverse significant economic impact or maximize any beneficial significant economic impact on small entities.”.
(2) Final regulatory flexibility analysis.—Section 604(a) of title 5, United States Code, is amended—

(A) by redesignating the second paragraph designated as paragraph (6) (relating to covered agencies) as paragraph (7); and

(B) in paragraph (6), by striking “minimize the significant economic impact” and inserting “minimize the adverse significant economic impact or maximize the beneficial significant economic impact”.

(d) Inclusion of rules affecting tribal organizations.—Section 601(5) of title 5, United States Code, is amended by inserting “and tribal organizations (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))),” after “special districts,”.

(e) Inclusion of land management plans and formal rule making.—

(1) Initial regulatory flexibility analysis.—Section 603(a) of title 5, United States Code, is amended in the first sentence—

(A) by striking “or” after “proposed rule,”; and
(B) by inserting “or publishes a revision or amendment to a land management plan,” after “United States.”.

(2) Final Regulatory Flexibility Analysis.—Section 604(a) of title 5, United States Code, is amended in the first sentence—

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

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

(3) Land Management Plan Defined.—Section 601 of title 5, United States Code, as amended by subsection (b), is amended by adding at the end the following:

“(10) Land Management Plan.—

“(A) In general.—The term ‘land management plan’ means—

“(i) any plan developed by the Secretary of Agriculture under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); and

“(ii) any plan developed by the Secretary of the Interior under section 202 of

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

“(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’ means any change to a land management plan which—

“(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 Regulations (or any successor regulation), and with respect to which the Secretary of the Interior prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).”.

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

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

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

“(7) COLLECTION OF INFORMATION.—The term ‘collection of information’ has the meaning given the term in section 3502 of title 44.”.
(3) RECORDKEEPING REQUIREMENT.—Section 601(8) of title 5, United States Code, is amended to read as follows:

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

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

“(4) SMALL ORGANIZATION.—

“(A) IN GENERAL.—The term ‘small organization’ means any nonprofit enterprise which, as of the issuance of the notice of proposed rule making—

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

“(ii) in the case of any other enterprise, has a net worth that does not exceed
$7,000,000 and has not more than 500 employees.

“(B) LOCAL LABOR ORGANIZATIONS.—In the case of any local labor organization, sub-
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.—Subpara-
graphs (A) and (B) shall not apply to the ex-
tent that an agency, after consultation with the Office of Advocacy of the Small Business Ad-
ministration and after opportunity for public comment, establishes one or more definitions for such term which are appropriate to the ac-
tivities of the agency and publishes such defini-
tions in the Federal Register.”.

SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.

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

(1) in subsection (a)—

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

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

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

“(c)(1) Not later than 3 days after the date on which an agency publishes a regulatory flexibility agenda in the Federal Register under subsection (a), the agency shall prominently display on the website of the agency a plain language summary of the information contained in the regulatory flexibility agenda.

“(2) The Office of Advocacy of the Small Business Administration shall compile, by agency, and prominently display on the website of the Small Business Administration a plain language summary of each regulatory flexibility agenda published under subsection (a) not later than 3 days after the date of publication in the Federal Register.”.
SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) Initial Regulatory Flexibility Analysis.—
Section 603(b) of title 5, United States Code, is amended to read as follows:

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

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

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

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

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

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

“(6) estimating the additional cumulative economic impact of the proposed rule on small entities...
beyond that already imposed on the class of small entities by the agency or why such an estimate is not available;

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

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

(b) Final Regulatory Flexibility Analysis.—

(1) In general.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (4)—

(i) by inserting “detailed” before “description”; and

(ii) by striking “an explanation” and inserting “a detailed explanation”;

(B) in paragraph (5), by inserting “detailed” before “description”;

(C) in paragraph (6)—

(i) by inserting “detailed” before “description”; and

(ii) by striking “; and” at the end;

(D) in paragraph (7), as so redesignated, by striking the period at the end and inserting “; and”; and
(E) by adding at the end the following:

“(8) a detailed description of any disproportionate economic impact on small entities or a specific class of small entities.”.

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

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

“(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the website of the agency, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.”.

(c) CROSS-REFERENCES TO OTHER ANALYSES.—Section 605(a) of title 5, United States Code, is amended to read as follows:
“(a) A Federal agency shall be treated as satisfying
any requirement regarding the content of a regulatory
flexibility agenda or regulatory flexibility analysis under
section 602, 603, or 604 if the Federal agency provides
in the agenda or analysis a cross-reference to the specific
portion of another agenda or analysis which is required
by any other law and which satisfies the requirement.”.

(d) CERTIFICATIONS.—Section 605(b) of title 5,
United States Code, is amended by striking “statement
providing the factual basis for such certification.” and in-
serting “detailed statement providing the factual and legal
basis for such certification. The detailed statement shall
include an economic assessment or a summary thereof
that is sufficiently detailed to support the certification of
the agency.”.

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

“SEC. 607. QUANTIFICATION REQUIREMENTS.

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

“(1) a quantifiable or numerical description of
the effects of the proposed or final rule and alter-
natives to the proposed or final rule; or
“(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.”.

SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDITIONAL POWERS OF THE CHIEF COUNSEL FOR ADVOCACY.

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

“§ 608. Additional powers of chief counsel for advocacy

“(a)(1) Not later than 270 days after the date of enactment of this section, the Chief Counsel for Advocacy of the Small Business Administration shall, after opportunity for notice and comment under section 553, issue rules governing agency compliance with this chapter. The Chief Counsel may modify or amend such rules after 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) An agency shall not issue rules which supplement the rules issued under subsection (a) unless such 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) Notwithstanding any other 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. The Chief Counsel shall not initiate an appeal with respect to any adjudication in which the Chief Counsel intervenes under this subsection.

“(c) The Chief Counsel for Advocacy may file comments in response to any agency notice requesting comment, regardless of whether the agency is required to file a general notice of proposed rule making under section 553.”.

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

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

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

and

(3) in paragraph (3)—

(A) by striking subparagraph (B); and

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

“(3) A small entity”.

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SEC. 6. PROCEDURES FOR GATHERING COMMENTS.

Section 609 of title 5, United States Code, is amended by striking subsection (b) and all that follows through the end of the section and inserting the following:

“(b)(1) Prior to publication of any proposed rule described in subsection (e), an agency making the rule shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with—

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

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

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

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

“(B) is proposed by an independent regulatory agency.

“(c) Not later than 15 days after the receipt of the materials and information under subsection (b), the Chief Counsel for Advocacy of the Small Business Administration shall—
“(1) identify small entities or representatives of small entities or a combination of both for the purpose of obtaining advice, input, and recommendations from those persons about the potential economic impacts of the proposed rule and the compliance of the agency with section 603; and

“(2) convene a review panel consisting of an employee from the Office of Advocacy of the Small Business Administration, an employee from the agency making the rule, and in the case of an agency other than an independent regulatory agency, an employee from the Office of Information and Regulatory Affairs of the Office of Management and Budget to review the materials and information provided to the Chief Counsel under subsection (b).

“(d)(1) Not later than 60 days after the review panel described in subsection (c)(2) is convened, the Chief Counsel for Advocacy of the Small Business Administration shall, after consultation with the members of the panel, submit a report to the agency and, in the case of an agency other than an independent regulatory agency, the Office of Information and Regulatory Affairs of the Office of Management and Budget.
“(2) Each report described in paragraph (1) shall include an assessment of the economic impact of the proposed rule on small entities, including—

“(A) an assessment of the impact of the proposed rule on the cost that small entities pay for energy;

“(B) an assessment of the impact of the proposed rule on startup costs for small entities; and

“(C) a discussion of any alternatives that will minimize adverse significant economic impacts or maximize beneficial significant economic impacts on small entities.

“(3) Each report described in paragraph (1) shall become part of the rule making record. In the publication of the proposed rule, the agency shall explain what actions, if any, the agency took in response to the report.

“(e) A proposed rule is described by this subsection if the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, the head of the agency (or the delegatee of the head of the agency), or an independent regulatory agency determines that the proposed rule is likely to result in—

“(1) an annual effect on the economy of $100,000,000 or more;
“(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, tribal organizations, or geographic regions;

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

“(4) a significant economic impact on a substantial number of small entities.

“(f) Upon application by the agency, the Chief Counsel for Advocacy of the Small Business Administration may waive the requirements of subsections (b) through (e) if the Chief Counsel determines that compliance with the requirements of such subsections are impracticable, unnecessary, or contrary to the public interest.

“(g) A small entity or a representative of a small entity may submit a request that the agency provide a copy of the report prepared under subsection (d) and all materials and information provided to the Chief Counsel for Advocacy of the Small Business Administration under subsection (b). The agency receiving such request shall provide the report, materials and information to the requesting small entity or representative of a small entity.
not later than 10 business days after receiving such re-
quest, except that the agency shall not disclose any infor-
mation that is prohibited from disclosure to the public
pursuant to section 552(b) of this title.

“(h) In this section, the term ‘independent regulatory
agency’ has the meaning given the term in section 3502
of title 44.”.

SEC. 7. PERIODIC REVIEW OF RULES.

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

“§ 610. Periodic review of rules

“(a) Not later than 180 days after the date of enact-
ment of this section, each agency shall publish in the Fed-
eral Register and place on website of the agency a plan
for the periodic review of rules issued by the agency which
the head of the agency determines have a significant eco-
nomic impact on a substantial number of small entities.
Such determination shall be made without regard to
whether the agency performed an analysis under section
604. The purpose of the review shall be to determine
whether such rules should be continued without change,
or should be amended or rescinded, consistent with the
stated objectives of applicable statutes, to minimize any
adverse significant economic impacts or maximize any
beneficial significant economic impacts on a substantial
number of small entities. Such plan may be amended by
the agency at any time by publishing the revision in the
Federal Register and subsequently placing the amended
plan on the website of the agency.

“(b) The plan shall provide for the review of all such
agency rules existing on the date of enactment of this sec-
tion within 10 years of the date of publication of the plan
in the Federal Register and for review of rules adopted
after the date of enactment of this section within 10 years
after the publication of the final rule in the Federal Reg-
ister. If the head of the agency determines that completion
of the review of existing rules is not feasible by the estab-
lished date, the head of the agency shall so certify in a
statement published in the Federal Register and may ex-
tend the review for not longer than 2 years after publica-
tion of notice of extension in the Federal Register. Such
certification and notice shall be sent to the Chief Counsel
for Advocacy of the Small Business Administration and
the Congress.

“(c) The plan shall include a section that details how
an agency will conduct outreach to and meaningfully in-
clude small businesses (including small business concerns
owned and controlled by women, small business concerns
owned and controlled by veterans, and small business con-
cerns owned and controlled by socially and economically
disadvantaged individuals (as such terms are defined in section 3 and section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 632 and 637(d)(3)(C)))) for the purposes of carrying out this section. The agency shall include in this section a plan for how the agency will contact small businesses and gather their input on existing agency rules.

“(d) Each agency shall annually submit a report regarding the results of its review pursuant to such plan to Congress, the Chief Counsel for Advocacy of the Small Business Administration, and, in the case of agencies other than independent regulatory agencies (as defined in section 3502 of title 44) to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the head of the agency made a determination described in paragraph (5) or (6) of subsection (e) and a detailed explanation of the reasons for such determination.

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

“(1) The continued need for the rule.

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

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

“(4) The complexity of the rule.

“(5) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State, territorial, and local rules.

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

“(7) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.
“(f) Each year, each agency shall publish in the Federal Register and on its website a list of rules to be reviewed pursuant to such plan. The agency shall include in the publication a solicitation of public comments on any further inclusions or exclusions of rules from the list, and shall respond to such comments. Such publication shall include a brief description of the rule, the reason why the agency determined that it has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the public, the Chief Counsel for Advocacy of the Small Business Administration, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.”.

SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT AVAILABLE AFTER PUBLICATION OF THE FINAL RULE.

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

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

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

(3) in paragraph (3)—

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

(B) 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”.

(b) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Section 612(b) 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

(3) by inserting after paragraph (7) the following:
“(8) all final rules under section 608(a) of title 5.”.

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

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

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

(3) by adding at the end the following:

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

(e) **AUTHORIZATION TO INTERVENE AND COMMENT ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCEDURE.**—Section 612(b) of title 5, United States Code, is amended by inserting “chapter 5, and chapter 7,” after “this chapter,.”.

**SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSINESS CONCERN SIZE STANDARDS BY CHIEF COUNSEL FOR ADVOCACY.**

(a) **IN GENERAL.**—Section 3(a)(2)(A) of the Small Business Act (15 U.S.C. 632(a)(2)(A)) is amended to read as follows:

“(A) **IN GENERAL.**—In addition to the criteria specified in paragraph (1)—
“(i) the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for purposes of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.); and

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

(b) Approval by Chief Counsel.—Section 3(a)(2)(C)(iii) of the Small Business Act (15 U.S.C. 632(a)(2)(C)(iii)) is amended to read as follows:

“(iii) except in the case of a size standard prescribed by the Administrator, is approved by the Chief Counsel for Advocacy.”.

(c) Industry Variation.—Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) is amended—

(1) by inserting “or Chief Counsel for Advocacy, as appropriate” before “shall ensure”; and

(2) by inserting “or Chief Counsel for Advocacy” before the period at the end.

(d) Judicial Review of Size Standards Approved by Chief Counsel.—Section 3(a) of the Small
Business Act (15 U.S.C. 632(a)) is amended by adding at the end the following:

“(10) Judicial review of standards approved by chief counsel.—In the case of an action for judicial review of a rule which includes a definition or standard approved by the Chief Counsel for Advocacy under this subsection, the party seeking such review shall be entitled to join the Chief Counsel as a party in such action.”.

SEC. 11. CLERICAL AMENDMENTS.

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

(1) in paragraph (1)—

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

(B) by striking “(1) the term” and inserting the following:

“(1) AGENCY.—The term”;

(2) in paragraph (3)—

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

(B) by striking “(3) the term” and inserting the following:

“(3) SMALL BUSINESS.—The term”;

(3) in paragraph (5)—
(A) by striking the semicolon at the end and inserting a period; and

(B) by striking "(5) the term" and inserting the following:

"(5) SMALL GOVERNMENTAL JURISDICTION.—

The term"; and

(4) in paragraph (6)—

(A) by striking "; and" and inserting a period; and

(B) by striking "(6) the term" and inserting the following:

"(6) SMALL ENTITY.—The term".

(b) INCORPORATIONS BY REFERENCE AND CERTIFICATIONS.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

"SEC. 605. INCORPORATIONS BY REFERENCE AND CERTIFICATIONS.".

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

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

"605. Incorportations by reference and certifications.”.

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

"607. Quantification requirements.”.
(3) By striking the item relating to section 608 and inserting the following:

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

(d) OTHER CLERICAL AMENDMENTS TO CHAPTER 6.—Chapter 6 of title 5, United States Code, is amended—

(1) in section 603(d)—

(A) by striking paragraph (2);

(B) by striking “(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis” and inserting “Each initial regulatory flexibility analysis by an agency”;

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

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

(E) by striking “(C) advice” and inserting “(3) advice”; and

(2) in paragraph (7) of section 604(a), as so redesignated by section 2(e)(2)(A) of this Act, by striking “for a covered agency, as defined in section 609(d)(2),”.

SEC. 12. AGENCY PREPARATION OF GUIDES.

Section 212(a)(5) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended to read as follows:

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

SEC. 13. COMPTROLLER GENERAL REPORT.

Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall complete and publish a study that examines whether the Chief Counsel for Advocacy of the Small Business Administration has the capacity and resources to carry out the duties of the Chief Counsel under this Act and the amendments made by this Act.
SEC. 14. WAIVER OF FINES FOR FIRST-TIME PAPERWORK VIOLATIONS BY SMALL BUSINESSES.

Section 3506 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”), is amended by adding at the end the following:

“(j) SMALL BUSINESSES.—

“(1) DEFINITIONS.—In this subsection:

“(A) FIRST TIME VIOLATION.—The term ‘first-time violation’ means a violation by a small business concern of a requirement regarding collection of information by an agency, where the small business concern has not previously violated any similar requirement regarding collection of information by that same agency during the 5-year period preceding the violation.

“(B) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

“(2) FIRST TIME VIOLATION.—

“(A) IN GENERAL.—Except as provided in paragraph (3), in the case of a first-time violation by a small business concern of a requirement regarding the collection of information by
an agency, the head of the agency shall not im-
pose a civil fine on the small business concern.

“(B) DETERMINATION.—For purposes of
determining whether to impose a civil fine on a
small business concern under subparagraph (A),
the head of an agency shall not take into ac-
count any violation by the small business con-
cern of a requirement regarding collection of in-
formation by another agency.

“(C) EXCEPTION.—An agency may impose
a civil fine on a small business concern for a
first-time violation if the head of the agency de-
determines that—

“(i) the violation has the potential to
cause serious harm to the public interest;

“(ii) failure to impose a civil fine
would impede or interfere with the detec-
tion of criminal activity;

“(iii) the violation is a violation of an
internal revenue law or a law concerning
the assessment or collection of any tax,
debt, revenue, or receipt;

“(iv) the violation was not corrected
on or before the date that is 6 months
after the date on which the small business
concern receives notification of the violation in writing from the agency; or

“(v) except as provided in paragraph (3), the violation presents a danger to the public health or safety.

“(3) DANGER TO PUBLIC HEALTH OR SAFETY.—

“(A) IN GENERAL.—In any case in which the head of an agency determines under paragraph (2)(C)(v) that a violation presents a danger to the public health or safety, the head of the agency may determine not to impose a civil fine on the small business concern if the violation is corrected not later than 24 hours after receipt by the owner of the small business concern of notification of the violation in writing.

“(B) CONSIDERATIONS.—In determining whether to allow a small business concern 24 hours to correct a violation under subparagraph (A), the head of an agency shall take into account all of the facts and circumstances regarding the violation, including—

“(i) the nature and seriousness of the violation, including whether the violation is
technical or inadvertent or involves willful
or criminal conduct;

“(ii) whether the small business con-
cern had made a good faith effort to com-
ply with applicable laws and to remedy the
violation within the shortest practicable pe-
riod of time; and

“(iii) whether the small business con-
cern has obtained a significant economic
benefit from the violation.

“(C) NOTICE TO CONGRESS.—In any case
in which the head of an agency imposes a civil
fine on a small business concern for a violation
that presents a danger to the public health or
safety and does not allow the small business
concern 24 hours to correct the violation under
subparagraph (A), the head of the agency shall
notify Congress regarding the determination
not later than 60 days after the date on which
the civil fine is imposed by the agency.”.

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