

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 358
OFFERED BY M. _____**

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Small Business Regu-
3 latory Flexibility Improvements Act of 2023”.

**4 SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-
5 ERED BY THE REGULATORY FLEXIBILITY
6 ACT.**

7 (a) IN GENERAL.—Section 601(2) of title 5, United
8 States Code, is amended to read as follows:

9 “(2) RULE.—The term ‘rule’—

10 “(A) has the meaning given the term in
11 section 551(4); and

12 “(B) does not include—

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

1 “(ii) a rule of particular (and not gen-
2 eral) applicability relating to rates, wages,
3 corporate or financial structures or reorga-
4 nizations thereof, prices, facilities, appli-
5 ances, services, or allowances therefor or to
6 valuations, costs or accounting, or prac-
7 tices relating to such rates, wages, struc-
8 tures, prices, appliances, services, or allow-
9 ances.”.

10 (b) INCLUSION OF RULES WITH INDIRECT EF-
11 fects.—Section 601 of title 5, United States Code, is
12 amended by adding at the end the following:

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

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

18 “(B) any indirect economic effect (includ-
19 ing compliance costs and effects on revenue) on
20 small entities which is reasonably foreseeable
21 and results from such rule (without regard to
22 whether small entities will be directly regulated
23 by the rule).”.

24 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
25 fects.—

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

9 (2) FINAL REGULATORY FLEXIBILITY ANAL-
10 YSIS.—Section 604(a) of title 5, United States Code,
11 is amended—

12 (A) by redesignating the second paragraph
13 designated as paragraph (6) (relating to cov-
14 ered agencies) as paragraph (7); and

15 (B) in paragraph (6), by striking “mini-
16 mize the significant economic impact” and in-
17 serting “minimize the adverse significant eco-
18 nomic impact or maximize the beneficial signifi-
19 cant economic impact”.

20 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
21 NIZATIONS.—Section 601(5) of title 5, United States
22 Code, is amended by inserting “and tribal organizations
23 (as defined in section 4(l) of the Indian Self-Determina-
24 tion and Education Assistance Act (25 U.S.C. 5304(l))),”
25 after “special districts,”.

1 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
2 FORMAL RULE MAKING.—

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

6 (A) by striking “or” after “proposed
7 rule,”; and

8 (B) by inserting “or publishes a revision or
9 amendment to a land management plan,” after
10 “United States,”.

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

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

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

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

23 “(10) LAND MANAGEMENT PLAN.—

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

1 “(i) any plan developed by the Sec-
2 retary of Agriculture under section 6 of
3 the Forest and Rangeland Renewable Re-
4 sources Planning Act of 1974 (16 U.S.C.
5 1604); and

6 “(ii) any plan developed by the Sec-
7 retary of the Interior under section 202 of
8 the Federal Land Policy and Management
9 Act of 1976 (43 U.S.C. 1712).

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

13 “(i) in the case of a plan described in
14 subparagraph (A)(i), is made under section
15 6(f)(5) of the Forest and Rangeland Re-
16 newable Resources Planning Act of 1974
17 (16 U.S.C. 1604(f)(5)); or

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

22 “(C) AMENDMENT.—The term ‘amend-
23 ment’ 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)(4) of the Forest and Rangeland Re-
4 newable Resources Planning Act of 1974
5 (16 U.S.C. 1604(f)(4)) and with respect to
6 which the Secretary of Agriculture pre-
7 pares a statement described in section
8 102(2)(C) of the National Environmental
9 Policy Act of 1969 (42 U.S.C.
10 4332(2)(C)); or

11 “(ii) in the case of a plan described in
12 subparagraph (A)(ii), is made under sec-
13 tion 1610.5–5 of title 43, Code of Federal
14 Regulations (or any successor regulation),
15 and with respect to which the Secretary of
16 the Interior prepares a statement described
17 in section 102(2)(C) of the National Envi-
18 ronmental Policy Act of 1969 (42 U.S.C.
19 4332(2)(C)).”.

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

22 (1) IN GENERAL.—Section 603(a) of title 5,
23 United States Code, is amended by striking the pe-
24 riod at the end and inserting “or a recordkeeping re-
25 quirement, and without regard to whether such rec-

1 ordkeeping requirement is imposed by statute or reg-
2 ulation.”.

3 (2) COLLECTION OF INFORMATION.—Section
4 601(7) of title 5, United States Code, is amended to
5 read as follows:

6 “(7) COLLECTION OF INFORMATION.—The term
7 ‘collection of information’ has the meaning given the
8 term in section 3502 of title 44.”.

9 (3) RECORDKEEPING REQUIREMENT.—Section
10 601(8) of title 5, United States Code, is amended to
11 read as follows:

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

15 (g) DEFINITION OF SMALL ORGANIZATION.—Section
16 601(4) of title 5, United States Code, is amended to read
17 as follows:

18 “(4) SMALL ORGANIZATION.—

19 “(A) IN GENERAL.—The term ‘small orga-
20 nization’ means any nonprofit enterprise which,
21 as of the issuance of a notice of proposed rule-
22 making—

23 “(i) in the case of an enterprise which
24 is described by a classification code of the
25 North American Industrial Classification

1 System, does not exceed the size standard
2 established by the Administrator of the
3 Small Business Administration pursuant to
4 section 3 of the Small Business Act (15
5 U.S.C. 632) for small business concerns
6 described by such classification code; and

7 “(ii) in the case of any other enter-
8 prise, has a net worth that does not exceed
9 \$7,000,000 and has not more than 500
10 employees.

11 “(B) LOCAL LABOR ORGANIZATIONS.—In
12 the case of any local labor organization, sub-
13 paragraph (A) shall be applied without regard
14 to any national or international organization of
15 which such local labor organization is a part.

16 “(C) AGENCY DEFINITIONS.—Subpara-
17 graphs (A) and (B) shall not apply to the ex-
18 tent that an agency, after consultation with the
19 Office of Advocacy of the Small Business Ad-
20 ministration and after opportunity for public
21 comment, establishes one or more definitions
22 for such term which are appropriate to the ac-
23 tivities of the agency and publishes such defini-
24 tions in the Federal Register.”.

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

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

4 (1) in subsection (a)—

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

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

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

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

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

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

24 “(2) The Office of Advocacy of the Small Business
25 Administration shall compile, by agency, and prominently
26 display on the website of the Small Business Administra-

1 tion a plain language summary of each regulatory flexi-
2 bility agenda published under subsection (a) not later than
3 3 days after the date of publication in the Federal Reg-
4 ister.”.

5 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
6 **ANALYSES.**

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

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

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

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

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

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

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

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

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

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

15 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

18 (A) in paragraph (4)—

19 (i) by inserting “detailed” before “de-
20 scription”; and

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

23 (B) in paragraph (5), by inserting “de-
24 tailed” before “description”;

25 (C) in paragraph (6)—

1 (i) by inserting “detailed” before “de-
2 scription”; and

3 (ii) by striking “and” at the end;

4 (D) in paragraph (7), as so redesignated,
5 by striking the period at the end and inserting
6 “; and”; and

7 (E) by adding at the end the following:

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

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

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

20 “(b) The agency shall make copies of the final regu-
21 latory flexibility analysis available to the public, including
22 placement of the entire analysis on the website of the
23 agency, and shall publish in the Federal Register the final
24 regulatory flexibility analysis, or a summary thereof which
25 includes the telephone number, mailing address, and link

1 to the website where the complete analysis may be ob-
2 tained.”.

3 (c) CROSS-REFERENCES TO OTHER ANALYSES.—

4 Section 605(a) of title 5, United States Code, is amended
5 to read as follows:

6 “(a) A Federal agency shall be treated as satisfying
7 any requirement regarding the content of a regulatory
8 flexibility agenda or regulatory flexibility analysis under
9 section 602, 603, or 604 if the Federal agency provides
10 in the agenda or analysis a cross-reference to the specific
11 portion of another agenda or analysis which is required
12 by any other law and which satisfies the requirement.”.

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

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

1 **“§ 607. Quantification requirements**

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

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

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

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

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

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

17 “(a)(1) Not later than 270 days after the date of en-
18 actment of the Small Business Regulatory Flexibility Im-
19 provements Act of 2023, the Chief Counsel for Advocacy
20 of the Small Business Administration shall, after oppor-
21 tunity for notice and comment under section 553, issue
22 rules governing agency compliance with this chapter. The
23 Chief Counsel may modify or amend such rules after no-
24 tice and comment under section 553. This chapter (other
25 than this subsection) shall not apply with respect to the

1 issuance, modification, and amendment of rules under this
2 paragraph.

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

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

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

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

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

1 (2) in paragraph (2), by striking “608(b),”;
2 and
3 (3) in paragraph (3)—
4 (A) by striking subparagraph (B); and
5 (B) by striking “(3)(A) A small entity”
6 and inserting the following:
7 “(3) A small entity”.

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

9 Section 609 of title 5, United States Code, is amend-
10 ed by striking subsections (b) through (e) and inserting
11 the following:

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

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

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

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

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

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

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

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

15 “(2) convene a review panel consisting of an
16 employee from the Office of Advocacy of the Small
17 Business Administration, an employee from the
18 agency making the rule, and, in the case of an agen-
19 cy other than an independent regulatory agency, an
20 employee from the Office of Information and Regu-
21 latory Affairs of the Office of Management and
22 Budget to review the materials and information pro-
23 vided to the Chief Counsel under subsection (b).

24 “(d)(1) Not later than 60 days after the review panel
25 described in subsection (c)(2) is convened, the Chief Coun-

1 sel for Advocacy of the Small Business Administration
2 shall, after consultation with the members of the panel,
3 submit a report to the agency and, in the case of an agen-
4 cy other than an independent regulatory agency, the Office
5 of Information and Regulatory Affairs of the Office of
6 Management and Budget.

7 “(2) Each report described in paragraph (1) shall in-
8 clude an assessment of the economic impact of the pro-
9 posed rule on small entities, including—

10 “(A) an assessment of the impact of the pro-
11 posed rule on the cost that small entities pay for en-
12 ergy;

13 “(B) an assessment of the impact of the pro-
14 posed rule on startup costs for small entities; and

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

19 “(3) Each report described in paragraph (1) shall be-
20 come part of the rulemaking record. In the publication of
21 the proposed rule, the agency shall explain what actions,
22 if any, the agency took in response to the report.

23 “(e) A proposed rule is described by this subsection
24 if the Administrator of the Office of Information and Reg-
25 ulatory Affairs of the Office of Management and Budget,

1 the head of the agency (or the delegatee of the head of
2 the agency), or an independent regulatory agency deter-
3 mines that the proposed rule is likely to result in—

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

6 “(2) a major increase in costs or prices for con-
7 sumers, individual industries, the Federal Govern-
8 ment, State or local governments, tribal organiza-
9 tions, or geographic regions;

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

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

17 “(f) Upon application by the agency, the Chief Coun-
18 sel for Advocacy of the Small Business Administration
19 may waive the requirements of subsections (b) through (e)
20 if the Chief Counsel determines that compliance with the
21 requirements of such subsections is impracticable, unnec-
22 essary, or contrary to the public interest.

23 “(g) A small entity or a representative of a small enti-
24 ty may submit a request that the agency provide a copy
25 of the report prepared under subsection (d) and all mate-

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

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

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

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

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

17 “(a) Not later than 180 days after the date of enact-
18 ment of the Small Business Regulatory Flexibility Im-
19 provements Act of 2023, each agency shall publish in the
20 Federal Register and place on the website of the agency
21 a plan for the periodic review of rules issued by the agency
22 which the head of the agency determines have a significant
23 economic impact on a substantial number of small entities.
24 Such determination shall be made without regard to
25 whether the agency performed an analysis under section

1 604. The purpose of the review shall be to determine
2 whether such rules should be continued without change,
3 or should be amended or rescinded, consistent with the
4 stated objectives of applicable statutes, to minimize any
5 adverse significant economic impacts or maximize any
6 beneficial significant economic impacts on a substantial
7 number of small entities. Such plan may be amended by
8 the agency at any time by publishing the revision in the
9 Federal Register and subsequently placing the amended
10 plan on the website of the agency.

11 “(b) The plan shall provide for the review of all such
12 agency rules existing on the date of enactment of the
13 Small Business Regulatory Flexibility Improvements Act
14 of 2023 within 10 years of the date of publication of the
15 plan in the Federal Register and for review of rules adopt-
16 ed after the date of enactment of the Small Business Reg-
17 ulatory Flexibility Improvements Act of 2023 within 10
18 years after the publication of the final rule in the Federal
19 Register. If the head of the agency determines that com-
20 pletion of the review of existing rules is not feasible by
21 the established date, the head of the agency shall so certify
22 in a statement published in the Federal Register and may
23 extend the review for not longer than 2 years after publi-
24 cation of notice of extension in the Federal Register. Such
25 certification and notice shall be sent to the Chief Counsel

1 for Advocacy of the Small Business Administration and
2 Congress.

3 “(c) The plan shall include a section that details how
4 an agency will conduct outreach to and meaningfully in-
5 clude small businesses (including small business concerns
6 owned and controlled by women, small business concerns
7 owned and controlled by veterans, and small business con-
8 cerns owned and controlled by socially and economically
9 disadvantaged individuals (as such terms are defined in
10 section 3 and section 8(d)(3)(C) of the Small Business Act
11 (15 U.S.C. 632, 637(d)(3)(C))) for the purposes of car-
12 rying out this section. The agency shall include in this sec-
13 tion a plan for how the agency will contact small busi-
14 nesses and gather their input on existing agency rules.

15 “(d) Each agency shall annually submit a report re-
16 garding the results of its review pursuant to such plan
17 to Congress, the Chief Counsel for Advocacy of the Small
18 Business Administration, and, in the case of agencies
19 other than independent regulatory agencies (as defined in
20 section 3502 of title 44), to the Administrator of the Of-
21 fice of Information and Regulatory Affairs of the Office
22 of Management and Budget. Such report shall include the
23 identification of any rule with respect to which the head
24 of the agency made a determination described in para-

1 graph (5) or (6) of subsection (e) and a detailed expla-
2 nation of the reasons for such determination.

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

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

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

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

19 “(4) The complexity of the rule.

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

24 “(6) The contribution of the rule to the cumu-
25 lative economic impact of all Federal rules on the

1 class of small entities affected by the rule, unless the
2 head of the agency determines that such calculations
3 cannot be made and reports that determination in
4 the annual report required under subsection (d).

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

9 “(f) Each year, each agency shall publish in the Fed-
10 eral Register and on its website a list of rules to be re-
11 viewed pursuant to such plan. The agency shall include
12 in the publication a solicitation of public comments on any
13 further inclusions or exclusions of rules from the list and
14 shall respond to such comments. Such publication shall
15 include a brief description of the rule, state the reason
16 why the agency determined that it has a significant eco-
17 nomic impact on a substantial number of small entities
18 (without regard to whether it had prepared a final regu-
19 latory flexibility analysis for the rule), and request com-
20 ments from the public, the Chief Counsel for Advocacy of
21 the Small Business Administration, and the Regulatory
22 Enforcement Ombudsman concerning the enforcement of
23 the rule.”.

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

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

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

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

13 (3) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amended by inserting “chapter 5, and chapter 7,” after
2 “this chapter,”.

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

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

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

11 “(i) the Administrator may specify de-
12 tailed definitions or standards by which a
13 business concern may be determined to be
14 a small business concern for purposes of
15 this Act or the Small Business Investment
16 Act of 1958 (15 U.S.C. 661 et seq.); and

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

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

23 “(iii) except in the case of a size
24 standard prescribed by the Administrator,

1 is approved by the Chief Counsel for Advoca-
2 cacy.”.

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

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

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

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

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

20 **SEC. 11. CLERICAL AMENDMENTS.**

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

23 (1) in paragraph (1)—

24 (A) by striking the semicolon at the end
25 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 certifi-**
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 amend-
14 ed—

15 (1) in section 603(d)—

16 (A) by striking paragraph (2);

17 (B) by striking “(1) For a covered agency,
18 as defined in section 609(d)(2), each initial reg-
19 ulatory flexibility analysis” and inserting “Each
20 initial regulatory flexibility analysis by an agen-
21 cy”;

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

1 (D) by striking “(B) any significant” and
2 inserting “(2) any significant”; and
3 (E) by striking “(C) advice” and inserting
4 “(3) advice”; and
5 (2) in paragraph (7) of section 604(a), as so re-
6 designated by section 2(c)(2)(A) of this Act, by
7 striking “for a covered agency, as defined in section
8 609(d)(2),”.

9 **SEC. 12. 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.”.

3 **SEC. 13. COMPTROLLER GENERAL REPORT.**

4 Not later than 90 days after the date of enactment
5 of this Act, the Comptroller General of the United States
6 shall complete and publish a study that examines whether
7 the Chief Counsel for Advocacy of the Small Business Ad-
8 ministration has the capacity and resources to carry out
9 the duties of the Chief Counsel under this Act and the
10 amendments made by this Act.

11 **SEC. 14. WAIVER OF FINES FOR FIRST-TIME PAPERWORK**
12 **VIOLATIONS BY SMALL BUSINESSES.**

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

16 “(j) SMALL BUSINESSES.—

17 “(1) DEFINITIONS.—In this subsection:

18 “(A) FIRST-TIME VIOLATION.—The term
19 ‘first-time violation’ means a violation by a
20 small business concern of a requirement regard-
21 ing collection of information by an agency,
22 where the small business concern has not pre-
23 viously violated any similar requirement regard-
24 ing collection of information by that same agen-

1 cy during the 5-year period preceding the viola-
2 tion.

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

7 “(2) FIRST-TIME VIOLATION.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (C), in the case of a first-time
10 violation by a small business concern of a re-
11 quirement regarding the collection of informa-
12 tion by an agency, the head of the agency shall
13 not impose a civil fine on the small business
14 concern.

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

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

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

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

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

10 “(iv) the violation was not corrected
11 on or before the date that is 6 months
12 after the date on which the small business
13 concern receives notification of the viola-
14 tion in writing from the agency; or

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

18 “(3) DANGER TO PUBLIC HEALTH OR SAFE-
19 TY.—

20 “(A) IN GENERAL.—In any case in which
21 the head of an agency determines under para-
22 graph (2)(C)(v) that a violation presents a dan-
23 ger to the public health or safety, the head of
24 the agency may determine not to impose a civil
25 fine on the small business concern if the viola-

1 tion is corrected not later than 24 hours after
2 receipt by the owner of the small business con-
3 cern of notification of the violation in writing.

4 “(B) CONSIDERATIONS.—In determining
5 whether to allow a small business concern 24
6 hours to correct a violation under subparagraph
7 (A), the head of an agency shall take into ac-
8 count all of the facts and circumstances regard-
9 ing the violation, including—

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

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

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

22 “(C) NOTICE TO CONGRESS.—In any case
23 in which the head of an agency imposes a civil
24 fine on a small business concern for a violation
25 that presents a danger to the public health or

1 safety and does not allow the small business
2 concern 24 hours to correct the violation under
3 subparagraph (A), the head of the agency shall
4 notify Congress regarding the determination
5 not later than 60 days after the date on which
6 the civil fine is imposed by the agency.”.

