

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1163
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 “Prove It Act”.

3 SEC. 2. INITIAL REGULATORY FLEXIBILITY ANALYSIS.

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

6 (1) in section 603(b)—

7 (A) in paragraph (5), by striking the pe-
8 riod at the end and inserting “; and”; and

9 (B) by adding at the end the following:

10 “(6) where feasible, any reasonably foreseeable
11 potential indirect costs the proposed rule may im-
12 pose on small entities, including small entities
13 that—

14 “(A) purchase products or services from,
15 sell products or services to, or otherwise con-
16 duct business with entities directly regulated by
17 the rule;

1 “(B) are directly regulated by other gov-
2 ernmental entities as a result of the rule; or

3 “(C) are not directly regulated by the
4 agency as a result of the rule but are otherwise
5 subject to other agency rules as a result of the
6 rule.”;

7 (2) in section 605(b), by striking “The agency”
8 and inserting “Not later than 10 days after com-
9 pleting the certification described in this subsection,
10 the agency”; and

11 (3) by inserting after section 605 the following:

12 **“§ 605A. Review procedures relating to initial regu-
13 latory flexibility analysis certifications**

14 “(a) FILING A PETITION TO REVIEW AGENCY CER-
15 TIFICATION OF A PROPOSED RULE.—

16 “(1) IN GENERAL.—Any small entity, group of
17 small entities, or organization representing the inter-
18 ests of small entities may petition the Chief Counsel
19 for Advocacy of the Small Business Administration
20 (in this section referred to as the ‘Chief Counsel’) to
21 review a certification published under section 605(b)
22 that a proposed rule will not, if promulgated, have
23 a significant economic impact on a substantial num-
24 ber of small entities.

25 “(2) FORM.—The Chief Counsel shall—

1 “(A) determine the method, timing, and
2 form of disseminating a petition described in
3 paragraph (1); and

4 “(B) display the information described in
5 subparagraph (A) on the website of the Office
6 of Advocacy of the Small Business Administra-
7 tion in a conspicuous manner.

8 “(3) CONTENTS.—Each petition described in
9 paragraph (1) with respect to a certification pub-
10 lished under section 605(b) for a proposed rule shall
11 clearly and concisely—

12 “(A) specify the name of the petitioner and
13 a telephone number, a mailing address, and an
14 email address that the Chief Counsel may use
15 to communicate with the petitioner;

16 “(B) if the petitioner is an organization,
17 provide additional identifying information, as
18 applicable, including the organizational or cor-
19 porate status of the petitioner, the State of in-
20 corporation of the petitioner, the registered
21 agent of the petitioner, the interest of the peti-
22 tioner in representing small entities affected by
23 the proposed rule and the certification at issue,
24 and the name and authority of the individual

1 who signed the petition on behalf of the organi-
2 zational or corporate petitioner;

3 “(C) present the specific problems or
4 issues that the petitioner believes should be ad-
5 dressed or considered through a review of the
6 certification, such as—

7 “(i) any specific circumstances in
8 which the determination of the certification
9 that the proposed rule will not, if promul-
10 gated, have a significant economic impact
11 on a substantial number of small entities is
12 incorrect, incomplete, or inadequate; or

13 “(ii) why the proposed rule would, if
14 promulgated, have a significant economic
15 impact on a substantial number of small
16 entities;

17 “(D) cite, enclose, or reference any rel-
18 evant and non-protected or confidential tech-
19 nical, scientific, or other data or information
20 supporting any assertion of the problems or
21 issues with the certification;

22 “(E) present a proposed solution to the
23 problems or issues raised in the petition, includ-
24 ing potential regulatory or compliance alter-
25 natives to the proposed rule;

1 “(F) provide an analysis, discussion, or ar-
2 gument that explains how the proposed solution
3 described in subparagraph (E) solves the prob-
4 lems or issues raised in the petition; and

5 “(G) cite, enclose, or reference any other
6 publicly available data or information sup-
7 porting the proposed solution described in sub-
8 paragraph (E).

9 “(b) CONSULTATION.—

10 “(1) IN GENERAL.—Any entity or organization
11 desiring to file a petition under subsection (a) may
12 request a consultation with the Chief Counsel before
13 or after filing the petition.

14 “(2) FORM.—The Chief Counsel shall—

15 “(A) determine the method, timing, and
16 form of requesting a consultation with the Chief
17 Counsel under paragraph (1); and

18 “(B) display the information described in
19 subparagraph (A) on the website of the Office
20 of Advocacy of the Small Business Administra-
21 tion in a conspicuous manner.

22 “(3) LIMITATIONS ON ASSISTANCE.—In any
23 consultation regarding a petition under paragraph
24 (1), the Chief Counsel—

25 “(A) may only—

1 “(i) describe the process for filing,
2 docketing, tracking, closing, amending,
3 withdrawing, and resolving the petition;
4 and

5 “(ii) assist the petitioner to clarify the
6 petition so that the Chief Counsel is able
7 to understand the issues of concern to the
8 petitioner; and

9 “(B) may not advise a petitioner on wheth-
10 er the petition should be amended or with-
11 drawn.

12 “(c) PRIMA FACIE REVIEW.—

13 “(1) IN GENERAL.—Upon receipt of a petition
14 filed under this section with respect to the certifi-
15 cation of a proposed rule, the Chief Counsel shall
16 make an initial prima facie determination on the
17 merit of the issues raised in the petition as to the
18 properness of the certification and whether the pro-
19 posed rule in question would, if promulgated, have
20 a significant economic impact on a substantial num-
21 ber of small entities.

22 “(2) NO FURTHER REVIEW.—If, following the
23 prima facie review of a petition under paragraph (1),
24 the Chief Counsel determines that the issues raised
25 in the petition do not merit further review by the

1 Chief Counsel, the Chief Counsel shall, not later
2 than 10 days after receipt of the petition, inform the
3 petitioner of that determination and the matter shall
4 be closed.

5 “(3) FURTHER REVIEW.—If, following the
6 prima facie review of a petition under paragraph (1),
7 the Chief Counsel determines that the issues raised
8 in the petition do merit further review by the Chief
9 Counsel, the Chief Counsel shall, not later than 10
10 days after receipt of the petition, inform the peti-
11 tioner and the agency that promulgated the pro-
12 posed rule that the Chief Counsel shall conduct a
13 full review of the certification and proposed rule to
14 which the petition relates under subsection (d).

15 “(d) FULL REVIEW.—

16 “(1) CONSIDERATIONS; MEETING.—In con-
17 ducting a full review under this subsection with re-
18 spect to the certification made under section 605(b),
19 the Chief Counsel shall—

20 “(A) consider—

21 “(i) whether the agency that promul-
22 gated the proposed rule correctly deter-
23 mined which small entities will be affected
24 by the proposed rule;

1 “(ii) whether the agency considered
2 adequate economic data to assess whether
3 the proposed rule will have a significant
4 impact on a substantial number of small
5 entities; and

6 “(iii) the economic implications of the
7 proposed rule; and

8 “(B) convene a virtual or in-person meet-
9 ing between the Chief Counsel, the petitioner,
10 representatives of the agency that promulgated
11 the proposed rule who are determined appro-
12 priate by the Chief Counsel, and the Adminis-
13 trator of the Office of Information and Regu-
14 latory Affairs to—

15 “(i) provide positions and support for
16 those positions regarding the certification
17 of the proposed rule; and

18 “(ii) allow the Chief Counsel to ask
19 questions as the Chief Counsel determines
20 necessary to make a final determination as
21 to the validity of the certification.

22 “(2) PUBLICATION.—Not later than 30 days
23 after the date on which the Chief Counsel begins a
24 full review of a certification made with respect to a
25 proposed rule under paragraph (1), the Chief Coun-

1 sel shall submit to the petitioner and the agency that
2 promulgated the proposed rule, and publish in the
3 Federal Register and on the website of the Office of
4 Advocacy of the Small Business Administration, the
5 results of the review conducted under paragraph (1).

6 “(3) REQUIREMENT TO PERFORM ANALYSES.—

7 If, after a full review of a certification made with re-
8 spect to a proposed rule under paragraph (1), the
9 Chief Counsel determines that the proposed rule
10 will, if promulgated, have a significant economic im-
11 pact on a substantial number of small entities, the
12 agency that promulgated the proposed rule shall per-
13 form an initial regulatory flexibility analysis and a
14 final regulatory flexibility analysis for the proposed
15 rule under sections 603 and 604, respectively.

16 “(4) PENALTY.—If an agency fails to attend
17 the required meeting under paragraph (1)(B) or in
18 any other way fails to assist the Chief Counsel in a
19 full review under paragraph (1) with respect to a
20 proposed rule of the agency, as determined by the
21 Chief Counsel, the final rule shall not apply to small
22 entities.

23 “(5) JUDICIAL REVIEW.—For purposes of judi-
24 cial review under chapter 7 of this title, a certifi-
25 cation made by an agency under section 605(b) for

1 which a petition is filed under subsection (a) shall
2 be considered final agency action as of the date on
3 which the Chief Counsel—

4 “(A) makes a determination under sub-
5 section (c)(2) that the issues raised in the peti-
6 tion do not merit further review; or

7 “(B) publishes the results of a full review
8 of the certification under paragraph (1).”.

9 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
10 The table of sections for chapter 6 of title 5, United States
11 Code, is amended by inserting after the item relating to
12 section 605 the following:

 “605A. Review procedures relating to initial regulatory flexibility analysis certifi-
 cations.”.

13 **SEC. 3. PUBLICATION OF GUIDANCE.**

14 Section 609 of title 5, United States Code, is amend-
15 ed by adding at the end the following:

16 “(f) With respect to any rule that an agency deter-
17 mines is likely to have a significant economic impact on
18 a substantial number of small entities, the head of the
19 agency shall, on regulations.gov or any similar internet
20 website—

21 “(1) publish all guidance documents and other
22 relevant documents, as determined by the agency,
23 including any updated guidance documents that set
24 forth interpretations of the rule; and

1 “(2) allow for comments on the documents de-
2 scribed in paragraph (1) to ensure that small enti-
3 ties may access and provide feedback on those docu-
4 ments.”.

5 **SEC. 4. REVIEW PROCEDURES FOR SECTION 610 PERIODIC**
6 **REVIEW OF RULES.**

7 (a) IN GENERAL.—Section 610 of title 5, United
8 States Code, is amended—

9 (1) in subsection (b)—

10 (A) in the matter preceding paragraph (1),
11 by striking “the following factors”;

12 (B) in paragraph (4), by striking “and” at
13 the end;

14 (C) in paragraph (5), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (D) by adding at the end the following:

17 “(6) any indirect costs described in the initial
18 regulatory flexibility analysis under section
19 603(b)(6), and any other indirect costs that may
20 have arisen during the 10-year period described in
21 subsection (a).”; and

22 (2) by adding at the end the following:

23 “(d) If an agency fails to conduct a review of a rule
24 as required under this section within the 10-year period
25 described in subsection (a)—

1 “(1) the Chief Counsel for Advocacy of the
2 Small Business Administration shall notify the agen-
3 cy that the rule has ceased to be effective;

4 “(2) the agency shall publish in the Federal
5 Register a notification that the rule has ceased to be
6 effective, and solicit comments for why the rule
7 should be reinstated; and

8 “(3) if, based on the comments received under
9 paragraph (2), the agency determines that the rule
10 should be reinstated—

11 “(A) the agency shall have 180 days begin-
12 ning on the date of that determination to com-
13 plete the review of the rule under this section;
14 and

15 “(B) upon completion of the review under
16 subparagraph (A), the rule shall be reinstated,
17 notwithstanding the notice and comment rule-
18 making procedures under section 553 of this
19 title.”.

20 (b) APPLICATION.—The amendment made by sub-
21 section (a)(2) shall apply with respect to any final rule
22 issued by an agency—

23 (1) during the 5-year period preceding the date
24 of enactment of this Act; or

1 (2) on or after the date of enactment of this
2 Act.

3 **SEC. 5. NO ADDITIONAL FUNDS.**

4 No additional funds are authorized to be appro-
5 priated for the purpose of carrying out this Act or the
6 amendments made by this Act.

