

104TH CONGRESS
1ST SESSION

S. 1350

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 18), 1995

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, 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 Fair
5 Treatment Act of 1995”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—REGULATORY SIMPLIFICATION AND VOLUNTARY
COMPLIANCE

- Sec. 101. Definitions.
Sec. 102. Compliance guides.
Sec. 103. No action letter.
Sec. 104. Voluntary self-audits.

TITLE II—MISCELLANEOUS PROVISIONS

- Sec. 201. Performance measures.
Sec. 202. Grace period for correction of violations of Environmental Protection
Agency regulations.
Sec. 203. Waiver of punitive fines for small entities.

1 **TITLE I—REGULATORY SIM-**
2 **PLIFICATION AND VOL-**
3 **UNTARY COMPLIANCE**

4 **SEC. 101. DEFINITIONS.**

5 For purposes of this Act, the following definitions
6 shall apply:

7 (1) **COMPLIANCE GUIDE.**—The term “compli-
8 ance guide” means a publication made by a covered
9 agency under section 102(a).

10 (2) **COVERED AGENCY.**—The term “covered
11 agency” means any agency that, on the date of en-
12 actment of this Act, has promulgated any rule for
13 which a regulatory flexibility analysis was required
14 under section 605 of title 5, United States Code,
15 and any other agency that promulgates any such
16 rule, as of the date of enactment of this Act.

17 (3) **NO ACTION LETTER.**—The term “no action
18 letter” means a written determination from a cov-
19 ered agency stating that, based on a no action re-

1 quest submitted to the agency by a small entity, the
2 agency will not take enforcement action against the
3 small entity under the rules of the covered agency.

4 (4) NO ACTION REQUEST.—The term “no ac-
5 tion request” means a written correspondence sub-
6 mitted by a small entity to a covered agency—

7 (A) stating a set of facts; and

8 (B) requesting a determination by the
9 agency of whether the agency would take an en-
10 forcement action against the small entity based
11 on such facts and the application of any rule of
12 the agency.

13 (5) RULE.—The term “rule” has the same
14 meaning as in section 601(2) of title 5, United
15 States Code.

16 (6) SMALL ENTITY.—The term “small entity”
17 has the same meaning as in section 601(6) of title
18 5, United States Code.

19 (7) SMALL BUSINESS CONCERN.—The term
20 “small business concern” has the same meaning as
21 in section 3 of the Small Business Act.

22 (8) VOLUNTARY SELF-AUDIT.—The term “vol-
23 untary self-audit” means an audit, assessment, or
24 review of any operation, practice, or condition of a
25 small entity that—

1 (A) is initiated by an officer, employee, or
2 agent of the small entity; and

3 (B) is not required by law.

4 **SEC. 102. COMPLIANCE GUIDES.**

5 (a) COMPLIANCE GUIDE.—

6 (1) PUBLICATION.—If a covered agency is re-
7 quired to prepare a regulatory flexibility analysis for
8 a rule or group of related rules under section 603
9 of title 5, United States Code, the agency shall pub-
10 lish a compliance guide for such rule or group of re-
11 lated rules.

12 (2) REQUIREMENTS.—Each compliance guide
13 published under paragraph (1) shall—

14 (A) contain a summary description of the
15 rule or group of related rules;

16 (B) contain a citation to the location of the
17 complete rule or group of related rules in the
18 Federal Register;

19 (C) provide notice to small entities of the
20 requirements under the rule or group of related
21 rules and explain the actions that a small entity
22 is required to take to comply with the rule or
23 group of related rules;

1 (D) be written in a manner to be under-
2 stood by the average owner or manager of a
3 small entity; and

4 (E) be updated as required to reflect
5 changes in the rule.

6 (b) DISSEMINATION.—

7 (1) IN GENERAL.—Each covered agency shall
8 establish a system to ensure that compliance guides
9 required under this section are published, dissemi-
10 nated, and made easily available to small entities.

11 (2) SMALL BUSINESS DEVELOPMENT CEN-
12 TERS.—In carrying out this subsection, each covered
13 agency shall provide sufficient numbers of compli-
14 ance guides to small business development centers
15 for distribution to small businesses concerns.

16 (c) LIMITATION ON ENFORCEMENT.—

17 (1) IN GENERAL.—No covered agency may
18 bring an enforcement action in any Federal court or
19 in any Federal administrative proceeding against a
20 small entity to enforce a rule for which a compliance
21 guide is not published and disseminated by the cov-
22 ered agency as required under this section.

23 (2) EFFECTIVE DATES.—This subsection shall
24 take effect—

1 (A) 1 year after the date of the enactment
2 of this Act with regard to a final regulation in
3 effect on the date of the enactment of this Act;
4 and

5 (B) on the date of the enactment of this
6 Act with regard to a regulation that takes effect
7 as a final regulation after such date of enact-
8 ment.

9 **SEC. 103. NO ACTION LETTER.**

10 (a) APPLICATION.—This section applies to all covered
11 agencies, except—

12 (1) the Federal Trade Commission;

13 (2) the Equal Employment Opportunity Com-
14 mission; and

15 (3) the Consumer Product Safety Commission.

16 (b) ISSUANCE OF NO ACTION LETTER.—Not later
17 than 90 days after the date on which a covered agency
18 receives a no action request, the agency shall—

19 (1) make a determination regarding whether to
20 grant the no action request, deny the no action re-
21 quest, or seek further information regarding the no
22 action request; and

23 (2) if the agency makes a determination under
24 paragraph (1) to grant the no action request, issue

1 a no action letter and transmit the letter to the re-
2 questing small entity.

3 (c) RELIANCE ON NO ACTION LETTER OR COMPLI-
4 ANCE GUIDE.—In any enforcement action brought by a
5 covered agency in any Federal court or Federal adminis-
6 trative proceeding against a small entity, the small entity
7 shall have a complete defense to any allegation of non-
8 compliance or violation of a rule if the small entity affirm-
9 atively pleads and proves by a preponderance of the evi-
10 dence that the act or omission constituting the alleged
11 noncompliance or violation was taken in good faith with
12 and in reliance on—

13 (1) a no action letter from that agency; or

14 (2) a compliance guide of the applicable rule
15 published by the agency under section 102(a).

16 **SEC. 104. VOLUNTARY SELF-AUDITS.**

17 (a) PROCEDURES.—Each agency shall establish vol-
18 untary self-audit procedures for small entities regulated
19 by the agency.

20 (b) INADMISSIBILITY OF EVIDENCE AND LIMITATION
21 ON DISCOVERY.—If action to address a violation is taken
22 not later than 180 days after the date on which a vol-
23 untary self-audit is concluded, the evidence described in
24 subsection (c)—

1 (1) shall not be admissible, unless agreed to by
2 the small entity, in any enforcement action brought
3 against a small entity by a Federal agency in any
4 Federal—

5 (A) court; or

6 (B) administrative proceeding; and

7 (2) may not be the subject of discovery in any
8 enforcement action brought against a small entity by
9 a Federal agency in any Federal—

10 (A) court; or

11 (B) administrative proceeding.

12 (c) APPLICATION.—For purposes of subsection (b),
13 the evidence described in this subsection is—

14 (1) a voluntary self-audit made in good faith;
15 and

16 (2) any report, finding, opinion, or any other
17 oral or written communication made in good faith
18 relating to such voluntary self-audit.

19 (d) EXCEPTIONS.—Subsection (b) shall not apply
20 if—

21 (1) the act or omission that forms the basis of
22 the enforcement action is a violation of criminal law;
23 or

24 (2) the voluntary self-audit or the report, find-
25 ing, opinion, or other oral or written communication

1 was prepared for the purpose of avoiding disclosure
2 of information required for an investigative, adminis-
3 trative, or judicial proceeding that, at the time of
4 preparation, was imminent or in progress.

5 **TITLE II—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 201. PERFORMANCE MEASURES.**

8 No covered agency shall establish or enforce agency
9 personnel practices that reward agency employees, directly
10 or indirectly, based on the number of contacts made with
11 small entities in pursuit of enforcement actions or on the
12 amount of fines levied against small entities to enforce
13 agency regulations.

14 **SEC. 202. GRACE PERIOD FOR CORRECTION OF VIOLA-**
15 **TIONS OF ENVIRONMENTAL PROTECTION**
16 **AGENCY REGULATIONS.**

17 (a) IN GENERAL.—Subject to subsection (b), for vio-
18 lations of regulations identified on or after the date of en-
19 actment of this Act, the Administrator of the Environ-
20 mental Protection Agency shall afford small entities 180
21 days after the date on which the violation is identified to
22 correct such violation.

23 (b) EXCEPTION.—Subsection (a) shall not apply—

