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1ST SESSION

H. R. 527

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2011

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification and expansion of rules covered by the Regulatory Flexibility Act.
- Sec. 3. Expansion of report of regulatory agenda.
- Sec. 4. Requirements providing for more detailed analyses.
- Sec. 5. Repeal of waiver and delay authority; Additional powers of the Chief Counsel for Advocacy.
- Sec. 6. Procedures for gathering comments.
- Sec. 7. Periodic review of rules.
- Sec. 8. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
- Sec. 9. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.
- Sec. 10. Clerical amendments.
- Sec. 11. Agency preparation of guides.

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

9 (a) **IN GENERAL.**—Paragraph (2) of section 601 of
10 title 5, United States Code, is amended to read as follows:

11 “(2) **RULE.**—The term ‘rule’ has the meaning
12 given such term in section 551(4) of this title, ex-
13 cept that such term does not include a rule of par-
14 ticular (and not general) applicability relating to
15 rates, wages, corporate or financial structures or re-
16 organizations thereof, prices, facilities, appliances,
17 services, or allowances therefor or to valuations,
18 costs or accounting, or practices relating to such

1 rates, wages, structures, prices, appliances, services,
2 or allowances.”.

3 (b) INCLUSION OF RULES WITH INDIRECT EF-
4 FECTS.—Section 601 of title 5, United States Code, is
5 amended by adding at the end the following new para-
6 graph:

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

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

12 “(B) any indirect economic effect on small
13 entities which is reasonably foreseeable and re-
14 sults from such rule (without regard to whether
15 small entities will be directly regulated by the
16 rule).”.

17 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
18 FECTS.—

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

1 maximize any beneficial significant economic impact
2 on small entities.”.

3 (2) FINAL REGULATORY FLEXIBILITY ANAL-
4 YSIS.—The first paragraph (6) of section 604(a) of
5 title 5, United States Code, is amended by striking
6 “minimize the significant economic impact” and in-
7 serting “minimize the adverse significant economic
8 impact or maximize the beneficial significant eco-
9 nomic impact”.

10 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
11 NIZATIONS.—Paragraph (5) of section 601 of title 5,
12 United States Code, is amended by inserting “and tribal
13 organizations (as defined in section 4(l) of the Indian Self-
14 Determination and Education Assistance Act (25 U.S.C.
15 450b(l))),” after “special districts,”.

16 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
17 FORMAL RULE MAKING.—

18 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
19 YSIS.—Subsection (a) of section 603 of title 5,
20 United States Code, is amended in the first sen-
21 tence—

22 (A) by striking “or” after “proposed
23 rule,”; and

1 (B) by inserting “or publishes a revision or
2 amendment to a land management plan,” after
3 “United States,”.

4 (2) FINAL REGULATORY FLEXIBILITY ANAL-
5 YSIS.—Subsection (a) of section 604 of title 5,
6 United States Code, is amended in the first sen-
7 tence—

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

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

13 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
14 tion 601 of title 5, United States Code, is amended
15 by adding at the end the following new paragraph:

16 “(10) LAND MANAGEMENT PLAN.—

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

19 “(i) any plan developed by the Sec-
20 retary of Agriculture under section 6 of
21 the Forest and Rangeland Renewable Re-
22 sources Planning Act of 1974 (16 U.S.C.
23 1604); and

24 “(ii) any plan developed by the Sec-
25 retary of Interior under section 202 of the

1 Federal Land Policy and Management Act
2 of 1976 (43 U.S.C. 1712).

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

6 “(i) in the case of a plan described in
7 subparagraph (A)(i), is made under section
8 6(f)(5) of the Forest and Rangeland Re-
9 newable Resources Planning Act of 1974
10 (16 U.S.C. 1604(f)(5)); or

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

15 “(C) AMENDMENT.—The term ‘amend-
16 ment’ means any change to a land management
17 plan which—

18 “(i) in the case of a plan described in
19 subparagraph (A)(i), is made under section
20 6(f)(4) of the Forest and Rangeland Re-
21 newable Resources Planning Act of 1974
22 (16 U.S.C. 1604(f)(4)) and with respect to
23 which the Secretary of Agriculture pre-
24 pares a statement described in section
25 102(2)(C) of the National Environmental

1 Policy Act of 1969 (42 U.S.C.
2 4332(2)(C)); or

3 “(ii) in the case of a plan described in
4 subparagraph (A)(ii), is made under sec-
5 tion 1610.5–5 of title 43, Code of Federal
6 Regulations (or any successor regulation)
7 and with respect to which the Secretary of
8 the Interior prepares a statement described
9 in section 102(2)(C) of the National Envi-
10 ronmental Policy Act of 1969 (42 U.S.C.
11 4332(2)(C)).”.

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

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

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

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

1 (3) RECORDKEEPING REQUIREMENT.—Para-
2 graph (8) of section 601 of title 5, United States
3 Code, is amended to read as follows:

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

7 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
8 graph (4) of section 601 of title 5, United States Code,
9 is amended to read as follows:

10 “(4) SMALL ORGANIZATION.—

11 “(A) IN GENERAL.—The term ‘small orga-
12 nization’ means any not-for-profit enterprise
13 which, as of the issuance of the notice of pro-
14 posed rulemaking—

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

24 “(ii) in the case of any other enter-
25 prise, has a net worth that does not exceed

1 \$7,000,000 and has not more than 500
2 employees.

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

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

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

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

20 (1) in subsection (a)—

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

23 (B) by redesignating paragraph (3) as
24 paragraph (4); and

1 (C) by inserting after paragraph (2) the
2 following:

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

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

10 “(c) Each agency shall prominently display a plain
11 language summary of the information contained in the
12 regulatory flexibility agenda published under subsection
13 (a) on its website within 3 days of its publication in the
14 Federal Register. The Office of Advocacy of the Small
15 Business Administration shall compile and prominently
16 display a plain language summary of the regulatory agen-
17 das referenced in subsection (a) for each agency on its
18 website within 3 days of their publication in the Federal
19 Register.”.

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

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

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

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

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

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

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

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

20 “(6) estimating the additional cumulative eco-
21 nomic impact of the proposed rule, or the cumulative
22 impact of any other rule stemming from the imple-
23 mentation of the Free Trade Agreements, on small
24 entities beyond that already imposed on the class of

1 small entities by the agency or why such an estimate
2 is not available; and

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

6 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

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

12 (B) in each of paragraphs (4), (5), and the
13 first paragraph (6), by inserting “detailed” be-
14 fore “description”; and

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

16 “(7) describing any disproportionate economic
17 impact on small entities or a specific class of small
18 entities.”.

19 (2) INCLUSION OF RESPONSE TO COMMENTS ON
20 CERTIFICATION OF PROPOSED RULE.—Paragraph
21 (2) of section 604(a) of title 5, United States Code,
22 is amended by inserting “(or certification of the pro-
23 posed rule under section 605(b))” after “initial reg-
24 ulatory flexibility analysis”.

1 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

2 Subsection (b) of section 604 of title 5, United
3 States Code, is amended to read as follows:

4 “(b) The agency shall make copies of the final regu-
5 latory flexibility analysis available to the public, including
6 placement of the entire analysis on the agency’s website,
7 and shall publish in the Federal Register the final regu-
8 latory flexibility analysis, or a summary thereof which in-
9 cludes the telephone number, mailing address, and link to
10 the website where the complete analysis may be ob-
11 tained.”.

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

13 Subsection (a) of section 605 of title 5, United States
14 Code, is amended to read as follows:

15 “(a) A Federal agency shall be treated as satisfying
16 any requirement regarding the content of an agenda or
17 regulatory flexibility analysis under section 602, 603, or
18 604, if such agency provides in such agenda or analysis
19 a cross-reference to the specific portion of another agenda
20 or analysis which is required by any other law and which
21 satisfies such requirement.”.

22 (d) CERTIFICATIONS.—Subsection (b) of section 605
23 of title 5, United States Code, is amended—

24 (1) by inserting “detailed” before “statement”
25 the first place it appears; and

1 (2) by inserting “and legal” after “factual”.

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

5 **“§ 607. Quantification requirements**

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

8 “(1) a quantifiable or numerical description of
9 the effects of the proposed or final rule and alter-
10 natives to the proposed or final rule; or

11 “(2) a more general descriptive statement and
12 a detailed statement explaining why quantification is
13 not practicable or reliable.”.

14 **SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**
15 **TIONAL POWERS OF THE CHIEF COUNSEL**
16 **FOR ADVOCACY.**

17 (a) IN GENERAL.—Section 608 is amended to read
18 as follows:

19 **“§ 608. Additional powers of Chief Counsel for Advo-**
20 **cacy**

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

1 agency compliance with this chapter. The Chief Counsel
2 may modify or amend such rules after notice and comment
3 under section 553. This chapter (other than this sub-
4 section) shall not apply with respect to the issuance, modi-
5 fication, and amendment of rules under this paragraph.

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

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

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

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 611(a)(1) of such title is amended
2 by striking “608(b),”.

3 (2) Section 611(a)(2) of such title is amended
4 by striking “608(b),”.

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

7 (A) by striking subparagraph (B); and

8 (B) by striking “(3)(A) A small entity”

9 and inserting the following:

10 “(3) A small entity”.

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

12 Section 609 of title 5, United States Code, is amend-
13 ed by striking subsection (b) and all that follows through
14 the end of the section and inserting the following:

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

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

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

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

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

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

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

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

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

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).

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

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

19 “(3) Such report shall become part of the rulemaking
20 record. In the publication of the proposed rule, the agency
21 shall explain what actions, if any, the agency took in re-
22 sponse to such 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, Federal, State, or local
8 governments, tribal organizations, or geographic re-
9 gions;

10 “(3) significant adverse effects on competition,
11 employment, investment, productivity, innovation, or
12 on 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 are impracticable, un-
22 necessary, or contrary to the public interest.”.

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

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

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

2 “(a) Not later than 180 days after the enactment of
3 the Regulatory Flexibility Improvements Act of 2011,
4 each agency shall publish in the Federal Register and
5 place on its website a plan for the periodic review of rules
6 issued by the agency which the head of the agency deter-
7 mines have a significant economic impact on a substantial
8 number of small entities. Such determination shall be
9 made without regard to whether the agency performed an
10 analysis under section 604. The purpose of the review
11 shall be to determine whether such rules should be contin-
12 ued without change, or should be amended or rescinded,
13 consistent with the stated objectives of applicable statutes,
14 to minimize any adverse significant economic impacts or
15 maximize any beneficial significant economic impacts on
16 a substantial number of small entities. Such plan may be
17 amended by the agency at any time by publishing the revi-
18 sion in the Federal Register and subsequently placing the
19 amended plan on the agency’s website.

20 “(b) The plan shall provide for the review of all such
21 agency rules existing on the date of the enactment of the
22 Regulatory Flexibility Improvements Act of 2011 within
23 10 years of the date of publication of the plan in the Fed-
24 eral Register and for review of rules adopted after the date
25 of enactment of the Regulatory Flexibility Improvements
26 Act of 2011 within 10 years after the publication of the

1 final rule in the Federal Register. If the head of the agen-
2 cy determines that completion of the review of existing
3 rules is not feasible by the established date, the head of
4 the agency shall so certify in a statement published in the
5 Federal Register and may extend the review for not longer
6 than 2 years after publication of notice of extension in
7 the Federal Register. Such certification and notice shall
8 be sent to the Chief Counsel for Advocacy of the Small
9 Business Administration and the Congress.

10 “(c) The plan shall include a section that details how
11 an agency will conduct outreach to and meaningfully in-
12 clude small businesses for the purposes of carrying out
13 this section. The agency shall include in this section a plan
14 for how the agency will contact small businesses and gath-
15 er their input on existing agency rules.

16 “(d) Each agency shall annually submit a report re-
17 garding the results of its review pursuant to such plan
18 to the Congress, the Chief Counsel for Advocacy of the
19 Small Business Administration, and, in the case of agen-
20 cies other than independent regulatory agencies (as de-
21 fined in section 3502(5) of title 44) to the Administrator
22 of the Office of Information and Regulatory Affairs of the
23 Office of Management and Budget. Such report shall in-
24 clude the identification of any rule with respect to which
25 the head of the agency made a determination described

1 in paragraph (5) or (6) of subsection (e) and a detailed
2 explanation 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) The agency shall publish in the Federal Register
10 and on its website a list of rules to be reviewed pursuant
11 to such plan. Such publication shall include a brief de-
12 scription of the rule, the reason why the agency deter-
13 mined that it has a significant economic impact on a sub-
14 stantial number of small entities (without regard to wheth-
15 er it had prepared a final regulatory flexibility analysis
16 for the rule), and request comments from the public, the
17 Chief Counsel for Advocacy of the Small Business Admin-
18 istration, and the Regulatory Enforcement Ombudsman
19 concerning the enforcement of 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.**—Paragraph (1) of section 611(a)
6 of title 5, United States Code, is amended by striking
7 “final agency action” and inserting “such rule”.

8 (b) **JURISDICTION.**—Paragraph (2) of such section is
9 amended by inserting “(or which would have such jurisdic-
10 tion if publication of the final rule constituted final agency
11 action)” after “provision of law,”.

12 (c) **TIME FOR BRINGING ACTION.**—Paragraph (3) of
13 such section is amended—

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

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

20 (d) **INTERVENTION BY CHIEF COUNSEL FOR ADVO-**
21 **CACY.**—Subsection (b) of section 612 of title 5, United
22 States Code, is amended by inserting before the first pe-
23 riod “or agency compliance with section 601, 603, 604,
24 605(b), 609, or 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 new paragraph:

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

14 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
15 section 2341 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 new sub-
21 paragraph:

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

25 (c) AUTHORIZATION TO INTERVENE AND COMMENT
26 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-

1 DURE.—Subsection (b) of section 612 of title 5, United
2 States Code, is amended by inserting “chapter 5, and
3 chapter 7,” after “this chapter,”.

4 **SEC. 10. CLERICAL AMENDMENTS.**

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

7 (1) in paragraph (1)—

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

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

12 “(1) AGENCY.—The term”;

13 (2) in paragraph (3)—

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

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

18 “(3) SMALL BUSINESS.—The term”;

19 (3) in paragraph (5)—

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

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

24 “(5) SMALL GOVERNMENTAL JURISDICTION.—

25 The term”; and

1 (4) in paragraph (6)—

2 (A) by striking “; and” and inserting a pe-
3 riod; and

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

6 “(6) SMALL ENTITY.—The term”.

7 (b) The heading of section 605 of title 5, United
8 States Code, is amended to read as follows:

9 **“§ 605. Incorporations by reference and certifi-
10 cations”.**

11 (c) The table of sections for chapter 6 of title 5,
12 United States Code, is amended—

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

“605. Incorporations by reference and certifications.”;

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

“607. Quantification requirements.”; and

17 (3) by striking the item relating to section 608
18 and inserting the following:

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

19 (d) Chapter 6 of title 5, United States Code, is
20 amended as follows:

21 (1) In section 603, by striking subsection (d).

1 (2) In section 604(a) by striking the second
2 paragraph (6).

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

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

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

 Passed the House of Representatives December 1,
2011.

Attest:

KAREN L. HAAS,

Clerk.