

# Union Calendar No. 191

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 527

**[Report No. 112–289, Parts I and II]**

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2011

Mr. SMITH of Texas (for himself, Mr. GRAVES of Missouri, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

NOVEMBER 16, 2011

Additional sponsors: Mr. GALLEGLY, Mr. FRANKS of Arizona, Mr. GOWDY, Mr. REED, Mr. ROSS of Florida, Mr. KING of New York, Mr. MANZULLO, Ms. FOXX, Mr. SHUSTER, Mr. DANIEL E. LUNGREN of California, Mr. GRIFFIN of Arkansas, Mr. GIBBS, Mr. GRIMM, Mr. JOHNSON of Ohio, Mr. TURNER of Ohio, Mr. DAVIS of Kentucky, Mr. DUNCAN of Tennessee, Mr. SENSENBRENNER, Mr. GOODLATTE, Mr. POE of Texas, Mr. FRELINGHUYSEN, Mrs. BLACK, Mr. MCKINLEY, and Mr. BROOKS

NOVEMBER 16, 2011

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 16, 2011

Reported from the Committee on Small Business with an amendment

[Strike out all after the enacting clause and insert the part printed in **boldface roman**]

[For text of introduced bill, see copy of bill as introduced on February 8, 2011]

# **A BILL**

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

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

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

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
 7 *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. Requirements providing for more detailed analyses.*

*Sec. 4. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.*

*Sec. 5. Procedures for gathering comments.*

*Sec. 6. Periodic review of rules.*

*Sec. 7. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.*

*Sec. 8. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.*

*Sec. 9. Clerical amendments.*

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

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

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

1        *structures, prices, appliances, services, or allow-*  
2        *ances.”.*

3        *(b) INCLUSION OF RULES WITH INDIRECT EFFECTS.—*  
4        *Section 601 of title 5, United States Code, is amended by*  
5        *adding at the end the following new paragraph:*

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

9                        *“(A) any direct economic effect on small en-*  
10        *tities of such rule; and*

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

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

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

1 *beneficial significant economic impact on small enti-*  
2 *ties.”.*

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 ORGANI-*  
11 *ZATIONS.—Paragraph (5) of section 601 of title 5, United*  
12 *States Code, is amended by inserting “and tribal organiza-*  
13 *tions (as defined in section 4(l) of the Indian Self-Deter-*  
14 *mination and Education Assistance Act (25 U.S.C.*  
15 *450b(l)),” after “special districts,”.*

16 (e) *INCLUSION OF LAND MANAGEMENT PLANS AND*  
17 *FORMAL RULEMAKING.—*

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

21 (A) *by striking “or” after “proposed rule,”;*

22 *and*

23 (B) *by inserting “or publishes a revision or*  
24 *amendment to a land management plan,” after*  
25 *“United States,”.*

1           (2) *FINAL REGULATORY FLEXIBILITY ANAL-*  
2 *YSIS.—Subsection (a) of section 604 of title 5, United*  
3 *States Code, is amended in the first sentence—*

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

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

9           (3) *LAND MANAGEMENT PLAN DEFINED.—Section*  
10 *601 of title 5, United States Code, is amended by*  
11 *adding at the end the following new paragraph:*

12           “(10) *LAND MANAGEMENT PLAN.—*

13           “(A) *IN GENERAL.—The term ‘land man-*  
14 *agement plan’ means—*

15           “(i) *any plan developed by the Sec-*  
16 *retary of Agriculture under section 6 of the*  
17 *Forest and Rangeland Renewable Resources*  
18 *Planning Act of 1974 (16 U.S.C. 1604);*  
19 *and*

20           “(ii) *any plan developed by the Sec-*  
21 *retary of Interior under section 202 of the*  
22 *Federal Land Policy and Management Act*  
23 *of 1976 (43 U.S.C. 1712).*

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

1           “(i) in the case of a plan described in  
2           subparagraph (A)(i), is made under section  
3           6(f)(5) of the Forest and Rangeland Renew-  
4           able Resources Planning Act of 1974 (16  
5           U.S.C. 1604(f)(5)); or

6           “(ii) in the case of a plan described in  
7           subparagraph (A)(ii), is made under section  
8           1610.5–6 of title 43, Code of Federal Regu-  
9           lations (or any successor regulation).

10          “(C) AMENDMENT.—The term ‘amendment’  
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)(4) of the Forest and Rangeland Renew-  
16               able Resources Planning Act of 1974 (16  
17               U.S.C. 1604(f)(4)) and with respect to  
18               which the Secretary of Agriculture prepares  
19               a statement described in section 102(2)(C)  
20               of the National Environmental Policy Act  
21               of 1969 (42 U.S.C. 4332(2)(C)); or

22               “(ii) in the case of a plan described in  
23               subparagraph (A)(ii), is made under section  
24               1610.5–5 of title 43, Code of Federal Regu-  
25               lations (or any successor regulation) and

1                   with respect to which the Secretary of the  
2                   Interior prepares a statement described in  
3                   section 102(2)(C) of the National Environ-  
4                   mental Policy Act of 1969 (42 U.S.C.  
5                   4332(2)(C)).”.

6           (f) *INCLUSION OF CERTAIN INTERPRETIVE RULES IN-*  
7 *VOLVING THE INTERNAL REVENUE LAWS.—*

8                   (1) *IN GENERAL.—*Subsection (a) of section 603  
9                   of title 5, United States Code, is amended by striking  
10                  the period at the end and inserting “or a record-  
11                  keeping requirement, and without regard to whether  
12                  such requirement is imposed by statute or regula-  
13                  tion.”.

14                  (2) *COLLECTION OF INFORMATION.—*Paragraph  
15                  (7) of section 601 of title 5, United States Code, is  
16                  amended to read as follows:

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

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

23                  “(8) *RECORDKEEPING REQUIREMENT.—*The term  
24                  ‘recordkeeping requirement’ has the meaning given  
25                  such term in section 3502(13) of title 44.”.



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

4                   “(4) *SMALL ORGANIZATION.*—

5                           “(A) *IN GENERAL.*—*The term ‘small organi-*  
6 *zation’ means any not-for-profit enterprise*  
7 *which, as of the issuance of the notice of pro-*  
8 *posed rulemaking—*

9                                   “(i) *in the case of an enterprise which*  
10 *is described by a classification code of the*  
11 *North American Industrial Classification*  
12 *System, does not exceed the size standard es-*  
13 *tablished by the Administrator of the Small*  
14 *Business Administration pursuant to sec-*  
15 *tion 3 of the Small Business Act (15 U.S.C.*  
16 *632) for small business concerns described*  
17 *by such classification code; and*

18                                   “(ii) *in the case of any other enter-*  
19 *prise, has a net worth that does not exceed*  
20 *\$7,000,000 and has not more than 500 em-*  
21 *ployees.*

22                           “(B) *LOCAL LABOR ORGANIZATIONS.*—*In*  
23 *the case of any local labor organization, sub-*  
24 *paragraph (A) shall be applied without regard to*

1           *any national or international organization of*  
2           *which such local labor organization is a part.*

3           “(C) *AGENCY DEFINITIONS.*—Subpara-  
4           *graphs (A) and (B) shall not apply to the extent*  
5           *that an agency, after consultation with the Office*  
6           *of Advocacy of the Small Business Administra-*  
7           *tion and after opportunity for public comment,*  
8           *establishes one or more definitions for such term*  
9           *which are appropriate to the activities of the*  
10           *agency and publishes such definitions in the*  
11           *Federal Register.”.*

12 **SEC. 3. REQUIREMENTS PROVIDING FOR MORE DETAILED**  
13           **ANALYSES.**

14           *(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.*—  
15           *Subsection (b) of section 603 of title 5, United States Code,*  
16           *is amended to read as follows:*

17           “(b) *Each initial regulatory flexibility analysis re-*  
18           *quired under this section shall contain a detailed state-*  
19           *ment—*

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

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

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

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

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

11          “(6) estimating the additional cumulative eco-  
12          nomic impact of the proposed rule on small entities  
13          beyond that already imposed on the class of small en-  
14          tities by the agency or why such an estimate is not  
15          available; and

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

19          (b) *FINAL REGULATORY FLEXIBILITY ANALYSIS.*—

20                 (1) *IN GENERAL.*—Section 604(a) of title 5,  
21                 United States Code, is amended—

22                         (A) in paragraph (4), by striking “an ex-  
23                         planation” and inserting “a detailed expla-  
24                         nation”;

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

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

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

8           (2) *INCLUSION OF RESPONSE TO COMMENTS ON*  
9           *CERTIFICATION OF PROPOSED RULE.*—Paragraph (2)  
10          of section 604(a) of title 5, United States Code, is  
11          amended by inserting “(or certification of the pro-  
12          posed rule under section 605(b))” after “initial regu-  
13          latory flexibility analysis”.

14          (3) *PUBLICATION OF ANALYSIS ON WEBSITE.*—  
15          Subsection (b) of section 604 of title 5, United States  
16          Code, is amended to read as follows:

17          “(b) The agency shall make copies of the final regu-  
18          latory flexibility analysis available to the public, including  
19          placement of the entire analysis on the agency’s website,  
20          and shall publish in the Federal Register the final regu-  
21          latory flexibility analysis, or a summary thereof which in-  
22          cludes the telephone number, mailing address, and link to  
23          the website where the complete analysis may be obtained.”.

1           (c) *CROSS-REFERENCES TO OTHER ANALYSES.*—Sub-  
2 section (a) of section 605 of title 5, United States Code,  
3 is amended to read as follows:

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

11           (d) *CERTIFICATIONS.*—Subsection (b) of section 605 of  
12 title 5, United States Code, is amended—

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

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

16           (e) *QUANTIFICATION REQUIREMENTS.*—Section 607 of  
17 title 5, United States Code, is amended to read as follows:

18           **“§ 607. Quantification requirements**

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

21           “(1) a quantifiable or numerical description of  
22 the effects of the proposed or final rule and alter-  
23 natives to the proposed or final rule; or

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

4 **SEC. 4. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**  
5                           **TIONAL POWERS OF THE CHIEF COUNSEL**  
6                           **FOR ADVOCACY.**

7           (a) *IN GENERAL.*—Section 608 is amended to read as  
8 follows:

9 **“§ 608. Additional powers of Chief Counsel for Advoc-**  
10                           **cacy**

11           “(a)(1) Not later than 270 days after the date of the  
12 enactment of the Regulatory Flexibility Improvements Act  
13 of 2011, the Chief Counsel for Advocacy of the Small Busi-  
14 ness Administration shall, after opportunity for notice and  
15 comment under section 553, issue rules governing agency  
16 compliance with this chapter. The Chief Counsel may mod-  
17 ify or amend such rules after notice and comment under  
18 section 553. This chapter (other than this subsection) shall  
19 not apply with respect to the issuance, modification, and  
20 amendment of rules under this paragraph.

21           “(2) An agency shall not issue rules which supplement  
22 the rules issued under subsection (a) unless such agency has  
23 first consulted with the Chief Counsel for Advocacy to en-  
24 sure that such supplemental rules comply with this chapter  
25 and the rules issued under paragraph (1).

1       “(b) Notwithstanding any other law, the Chief Counsel  
2 for Advocacy of the Small Business Administration may  
3 intervene in any agency adjudication (unless such agency  
4 is authorized to impose a fine or penalty under such adju-  
5 dication), and may inform the agency of the impact that  
6 any decision on the record may have on small entities. The  
7 Chief Counsel shall not initiate an appeal with respect to  
8 any adjudication in which the Chief Counsel intervenes  
9 under this subsection.

10       “(c) The Chief Counsel for Advocacy may file com-  
11 ments in response to any agency notice requesting comment,  
12 regardless of whether the agency is required to file a general  
13 notice of proposed rulemaking under section 553.”

14       (b) CONFORMING AMENDMENTS.—

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

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

19               (3) Section 611(a)(3) of such title is amended—

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

21                       (B) by striking “(3)(A) A small entity” and

22                       inserting the following:

23                       “(3) A small entity”.

1 **SEC. 5. PROCEDURES FOR GATHERING COMMENTS.**

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

5 *“(b)(1) Prior to publication of any proposed rule de-*  
6 *scribed in subsection (e), an agency making such rule shall*  
7 *notify the Chief Counsel for Advocacy of the Small Business*  
8 *Administration and provide the Chief Counsel with—*

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

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

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

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

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

22 *“(c) Not later than 15 days after the receipt of such*  
23 *materials and information under subsection (b), the Chief*  
24 *Counsel for Advocacy of the Small Business Administration*  
25 *shall—*



1           “(1) identify small entities or representatives of  
2           small entities or a combination of both for the pur-  
3           pose of obtaining advice, input, and recommendations  
4           from those persons about the potential economic im-  
5           pacts of the proposed rule and the compliance of the  
6           agency with section 603; and

7           “(2) convene a review panel consisting of an em-  
8           ployee from the Office of Advocacy of the Small Busi-  
9           ness Administration, an employee from the agency  
10          making the rule, and in the case of an agency other  
11          than an independent regulatory agency (as defined in  
12          section 3502(5) of title 44), an employee from the Of-  
13          fice of Information and Regulatory Affairs of the Of-  
14          fice of Management and Budget to review the mate-  
15          rials and information provided to the Chief Counsel  
16          under subsection (b).

17          “(d)(1) Not later than 60 days after the review panel  
18          described in subsection (c)(2) is convened, the Chief Counsel  
19          for Advocacy of the Small Business Administration shall,  
20          after consultation with the members of such panel, submit  
21          a report to the agency and, in the case of an agency other  
22          than an independent regulatory agency (as defined in sec-  
23          tion 3502(5) of title 44), the Office of Information and Reg-  
24          ulatory Affairs of the Office of Management and Budget.

1       “(2) Such report shall include an assessment of the eco-  
2       nomic impact of the proposed rule on small entities and  
3       a discussion of any alternatives that will minimize adverse  
4       significant economic impacts or maximize beneficial sig-  
5       nificant economic impacts on small entities.

6       “(3) Such report shall become part of the rulemaking  
7       record. In the publication of the proposed rule, the agency  
8       shall explain what actions, if any, the agency took in re-  
9       sponse to such report.

10       “(e) A proposed rule is described by this subsection if  
11       the Administrator of the Office of Information and Regu-  
12       latory Affairs of the Office of Management and Budget, the  
13       head of the agency (or the delegatee of the head of the agen-  
14       cy), or an independent regulatory agency determines that  
15       the proposed rule is likely to result in—

16               “(1) an annual effect on the economy of  
17               \$100,000,000 or more;

18               “(2) a major increase in costs or prices for con-  
19               sumers, individual industries, Federal, State, or local  
20               governments, tribal organizations, or geographic re-  
21               gions;

22               “(3) significant adverse effects on competition,  
23               employment, investment, productivity, innovation, or  
24               on the ability of United States-based enterprises to

1       *compete with foreign-based enterprises in domestic*  
2       *and export markets; or*

3               “(4) a significant economic impact on a substan-  
4       *tial number of small entities.*

5       “(f) Upon application by the agency, the Chief Counsel  
6       *for Advocacy of the Small Business Administration may*  
7       *waive the requirements of subsections (b) through (e) if the*  
8       *Chief Counsel determines that compliance with the require-*  
9       *ments of such subsections are impracticable, unnecessary,*  
10       *or contrary to the public interest.”.*

11       **SEC. 6. PERIODIC REVIEW OF RULES.**

12       *Section 610 of title 5, United States Code, is amended*  
13       *to read as follows:*

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

15       “(a) Not later than 180 days after the enactment of  
16       *the Regulatory Flexibility Improvements Act of 2011, each*  
17       *agency shall publish in the Federal Register and place on*  
18       *its website a plan for the periodic review of rules issued*  
19       *by the agency which the head of the agency determines have*  
20       *a significant economic impact on a substantial number of*  
21       *small entities. Such determination shall be made without*  
22       *regard to whether the agency performed an analysis under*  
23       *section 604. The purpose of the review shall be to determine*  
24       *whether such rules should be continued without change, or*  
25       *should be amended or rescinded, consistent with the stated*

1 objectives of applicable statutes, to minimize any adverse  
2 significant economic impacts or maximize any beneficial  
3 significant economic impacts on a substantial number of  
4 small entities. Such plan may be amended by the agency  
5 at any time by publishing the revision in the Federal Reg-  
6 ister and subsequently placing the amended plan on the  
7 agency's website.

8       “(b) The plan shall provide for the review of all such  
9 agency rules existing on the date of the enactment of the  
10 Regulatory Flexibility Improvements Act of 2011 within 10  
11 years of the date of publication of the plan in the Federal  
12 Register and for review of rules adopted after the date of  
13 enactment of the Regulatory Flexibility Improvements Act  
14 of 2011 within 10 years after the publication of the final  
15 rule in the Federal Register. If the head of the agency deter-  
16 mines that completion of the review of existing rules is not  
17 feasible by the established date, the head of the agency shall  
18 so certify in a statement published in the Federal Register  
19 and may extend the review for not longer than 2 years after  
20 publication of notice of extension in the Federal Register.  
21 Such certification and notice shall be sent to the Chief  
22 Counsel for Advocacy of the Small Business Administration  
23 and the Congress.

24       “(c) Each agency shall annually submit a report re-  
25 garding the results of its review pursuant to such plan to

1 *the Congress, the Chief Counsel for Advocacy of the Small*  
2 *Business Administration, and, in the case of agencies other*  
3 *than independent regulatory agencies (as defined in section*  
4 *3502(5) of title 44) to the Administrator of the Office of*  
5 *Information and Regulatory Affairs of the Office of Man-*  
6 *agement and Budget. Such report shall include the identi-*  
7 *fication of any rule with respect to which the head of the*  
8 *agency made a determination described in paragraph (5)*  
9 *or (6) of subsection (d) and a detailed explanation of the*  
10 *reasons for such determination.*

11       “(d) *In reviewing a rule pursuant to subsections (a)*  
12 *through (c), the agency shall amend or rescind the rule to*  
13 *minimize any adverse significant economic impact on a*  
14 *substantial number of small entities or disproportionate*  
15 *economic impact on a specific class of small entities, or*  
16 *maximize any beneficial significant economic impact of the*  
17 *rule on a substantial number of small entities to the greatest*  
18 *extent possible, consistent with the stated objectives of appli-*  
19 *cable statutes. In amending or rescinding the rule, the agen-*  
20 *cy shall consider the following factors:*

21               “(1) *The continued need for the rule.*

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

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

4           “(4) *The complexity of the rule.*

5           “(5) *The extent to which the rule overlaps, dupli-*  
6           *cates, or conflicts with other Federal rules and, unless*  
7           *the head of the agency determines it to be infeasible,*  
8           *State, territorial, and local rules.*

9           “(6) *The contribution of the rule to the cumu-*  
10          *lative economic impact of all Federal rules on the*  
11          *class of small entities affected by the rule, unless the*  
12          *head of the agency determines that such calculations*  
13          *cannot be made and reports that determination in the*  
14          *annual report required under subsection (c).*

15          “(7) *The length of time since the rule has been*  
16          *evaluated or the degree to which technology, economic*  
17          *conditions, or other factors have changed in the area*  
18          *affected by the rule.*

19          “(e) *The agency shall publish in the Federal Register*  
20          *and on its website a list of rules to be reviewed pursuant*  
21          *to such plan. Such publication shall include a brief descrip-*  
22          *tion of the rule, the reason why the agency determined that*  
23          *it has a significant economic impact on a substantial num-*  
24          *ber of small entities (without regard to whether it had pre-*  
25          *pared a final regulatory flexibility analysis for the rule),*

1 *and request comments from the public, the Chief Counsel*  
 2 *for Advocacy of the Small Business Administration, and*  
 3 *the Regulatory Enforcement Ombudsman concerning the*  
 4 *enforcement of the rule.”.*

5 **SEC. 7. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**  
 6 **QUIREMENTS OF THE REGULATORY FLEXI-**  
 7 **BILITY ACT AVAILABLE AFTER PUBLICATION**  
 8 **OF THE FINAL RULE.**

9 *(a) IN GENERAL.—Paragraph (1) of section 611(a) of*  
 10 *title 5, United States Code, is amended by striking “final*  
 11 *agency action” and inserting “such rule”.*

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

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

18 *(1) by striking “final agency action” and insert-*  
 19 *ing “publication of the final rule”; and*

20 *(2) by inserting “, in the case of a rule for which*  
 21 *the date of final agency action is the same date as the*  
 22 *publication of the final rule,” after “except that”.*

23 *(d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-*  
 24 *CACY.—Subsection (b) of section 612 of title 5, United*  
 25 *States Code, is amended by inserting before the first period*

1 “or agency compliance with section 601, 603, 604, 605(b),  
2 609, or 610”.

3 **SEC. 8. JURISDICTION OF COURT OF APPEALS OVER RULES**  
4 **IMPLEMENTING THE REGULATORY FLEXI-**  
5 **BILITY ACT.**

6 (a) *IN GENERAL.*—Section 2342 of title 28, United  
7 States Code, is amended—

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

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

12 (3) by inserting after paragraph (7) the fol-  
13 lowing new paragraph:

14 “(8) all final rules under section 608(a) of title  
15 5.”.

16 (b) *CONFORMING AMENDMENTS.*—Paragraph (3) of  
17 section 2341 of title 28, United States Code, is amended—

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

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

22 (3) by adding at the end the following new sub-  
23 paragraph:



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

4                   (c) *AUTHORIZATION TO INTERVENE AND COMMENT ON*  
5 *AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-*  
6 *DURE.*—Subsection (b) of section 612 of title 5, United  
7 States Code, is amended by inserting “chapter 5, and chap-  
8 ter 7,” after “this chapter,”.

9 **SEC. 9. CLERICAL AMENDMENTS.**

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

12                   (1) in paragraph (1)—

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

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

17                                 “(1) *AGENCY.*—The term”;

18                   (2) in paragraph (3)—

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

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

23                                 “(3) *SMALL BUSINESS.*—The term”;

24                   (3) in paragraph (5)—

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

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

5                   “(5) *SMALL GOVERNMENTAL JURISDICTION.*—  
6                   *The term*”; and

7                   (4) in paragraph (6)—

8                   (A) by striking “; and” and inserting a pe-  
9                   riod; and

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

12                  “(6) *SMALL ENTITY.*—*The term*”.

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

15                  “**§ 605. Incorporations by reference and certifi-**  
16                  **cations**”.

17                  (c) *The table of sections for chapter 6 of title 5, United*  
18                  *States Code, is amended—*

19                   (1) *by striking the item relating to section 605*  
20                   *and inserting the following new item:*

                  “605. *Incorporations by reference and certifications.*”;

21                   (2) *by striking the item relating to section 607*  
22                   *and inserting the following new item:*

                  “607. *Quantification requirements.*”;

23                   and

1           (3) *by striking the item relating to section 608*  
 2           *and inserting the following:*

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

3           (d) *Chapter 6 of title 5, United States Code, is amend-*  
 4 *ed as follows:*

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

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

8 **SEC. 1. SHORT TITLE; TABLE OF CONTENTS.**

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

12           **(b) TABLE OF CONTENTS.—The table of con-**  
 13 **tents of 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 pow-  
 ers 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 pub-  
 lication of the final rule.**

**Sec. 9. Jurisdiction of court of appeals over rules imple-  
 menting the Regulatory Flexibility Act.**

**Sec. 10. Clerical amendments.**

**Sec. 11. Agency preparation of guides.**

1 SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-  
2 ERED BY THE REGULATORY FLEXIBILITY  
3 ACT.

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

7 “(2) RULE.—The term ‘rule’ has the  
8 meaning given such term in section  
9 551(4) of this title, except that such term  
10 does not include a rule of particular (and  
11 not general) applicability relating to  
12 rates, wages, corporate or financial struc-  
13 tures or reorganizations thereof, prices,  
14 facilities, appliances, services, or allow-  
15 ances therefor or to valuations, costs or  
16 accounting, or practices relating to such  
17 rates, wages, structures, prices, appli-  
18 ances, services, or allowances.”.

19 (b) INCLUSION OF RULES WITH INDIRECT EF-  
20 FECTS.—Section 601 of title 5, United States  
21 Code, is amended by adding at the end the fol-  
22 lowing new paragraph:

23 “(9) ECONOMIC IMPACT.—The term ‘eco-  
24 nomic impact’ means, with respect to a  
25 proposed or final rule—

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

3           “(B) any indirect economic effect  
4           on small entities which is reasonably  
5           foreseeable and results from such  
6           rule (without regard to whether small  
7           entities will be directly regulated by  
8           the rule).”.

9           (c) INCLUSION OF RULES WITH BENEFICIAL  
10          EFFECTS.—

11           (1) INITIAL REGULATORY FLEXIBILITY  
12          ANALYSIS.—Subsection (c) of section 603 of  
13          title 5, United States Code, is amended by  
14          striking the first sentence and inserting  
15          “Each initial regulatory flexibility anal-  
16          ysis shall also contain a detailed descrip-  
17          tion of alternatives to the proposed rule  
18          which minimize any adverse significant  
19          economic impact or maximize any bene-  
20          ficial significant economic impact on  
21          small entities.”.

22           (2) FINAL REGULATORY FLEXIBILITY  
23          ANALYSIS.—The first paragraph (6) of sec-  
24          tion 604(a) of title 5, United States Code,  
25          is amended by striking “minimize the sig-

1       nificant economic impact” and inserting  
2       “minimize the adverse significant eco-  
3       nomic impact or maximize the beneficial  
4       significant economic impact”.

5       **(d) INCLUSION OF RULES AFFECTING TRIBAL**  
6       **ORGANIZATIONS.—**Paragraph (5) of section 601  
7       of title 5, United States Code, is amended by  
8       inserting “and tribal organizations (as de-  
9       fined in section 4(l) of the Indian Self-Deter-  
10      mination and Education Assistance Act (25  
11      U.S.C. 450b(l)),” after “special districts,”.

12      **(e) INCLUSION OF LAND MANAGEMENT PLANS**  
13      **AND FORMAL RULE MAKING.—**

14           **(1) INITIAL REGULATORY FLEXIBILITY**  
15      **ANALYSIS.—**Subsection (a) of section 603 of  
16      title 5, United States Code, is amended in  
17      the first sentence—

18           **(A) by striking “or” after “pro-**  
19      **posed rule,”; and**

20           **(B) by inserting “or publishes a**  
21      **revision or amendment to a land**  
22      **management plan,” after “United**  
23      **States,”.**

24           **(2) FINAL REGULATORY FLEXIBILITY**  
25      **ANALYSIS.—**Subsection (a) of section 604 of

1 **title 5, United States Code, is amended in**  
2 **the first sentence—**

3 **(A) by striking “or” after “pro-**  
4 **posed rulemaking,”; and**

5 **(B) by inserting “or adopts a revi-**  
6 **sion or amendment to a land manage-**  
7 **ment plan,” after “section 603(a),”.**

8 **(3) LAND MANAGEMENT PLAN DEFINED.—**  
9 **Section 601 of title 5, United States Code,**  
10 **is amended by adding at the end the fol-**  
11 **lowing new paragraph:**

12 **“(10) LAND MANAGEMENT PLAN.—**

13 **“(A) IN GENERAL.—The term ‘land**  
14 **management plan’ means—**

15 **“(i) any plan developed by the**  
16 **Secretary of Agriculture under**  
17 **section 6 of the Forest and Range-**  
18 **land Renewable Resources Plan-**  
19 **ning Act of 1974 (16 U.S.C. 1604);**  
20 **and**

21 **“(ii) any plan developed by**  
22 **the Secretary of Interior under**  
23 **section 202 of the Federal Land**  
24 **Policy and Management Act of**  
25 **1976 (43 U.S.C. 1712).**

1           **“(B) REVISION.—**The term ‘**re-**  
2 **vision’** means any change to a land  
3 **management plan which—**

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

10          **“(ii) in the case of a plan de-**  
11 **scribed in subparagraph (A)(ii), is**  
12 **made under section 1610.5–6 of**  
13 **title 43, Code of Federal Regula-**  
14 **tions (or any successor regula-**  
15 **tion).**

16          **“(C) AMENDMENT.—**The term  
17 **‘amendment’** means any change to a  
18 **land management plan which—**

19          **“(i) in the case of a plan de-**  
20 **scribed in subparagraph (A)(i), is**  
21 **made under section 6(f)(4) of the**  
22 **Forest and Rangeland Renewable**  
23 **Resources Planning Act of 1974**  
24 **(16 U.S.C. 1604(f)(4)) and with re-**  
25 **spect to which the Secretary of**



1           **Agriculture prepares a statement**  
2           **described in section 102(2)(C) of**  
3           **the National Environmental Pol-**  
4           **icy Act of 1969 (42 U.S.C.**  
5           **4332(2)(C)); or**

6           **“(ii) in the case of a plan de-**  
7           **scribed in subparagraph (A)(ii), is**  
8           **made under section 1610.5–5 of**  
9           **title 43, Code of Federal Regula-**  
10           **tions (or any successor regula-**  
11           **tion) and with respect to which**  
12           **the Secretary of the Interior pre-**  
13            **pares a statement described in**  
14           **section 102(2)(C) of the National**  
15           **Environmental Policy Act of 1969**  
16           **(42 U.S.C. 4332(2)(C)).”.**

17           **(f) INCLUSION OF CERTAIN INTERPRETIVE**  
18           **RULES INVOLVING THE INTERNAL REVENUE**  
19           **LAWS.—**

20           **(1) IN GENERAL.—Subsection (a) of sec-**  
21           **tion 603 of title 5, United States Code, is**  
22           **amended by striking the period at the**  
23           **end and inserting “or a recordkeeping re-**  
24           **quirement, and without regard to wheth-**

1 er such requirement is imposed by statute or regulation.”.

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

7 “(7) COLLECTION OF INFORMATION.—The  
8 term ‘collection of information’ has the  
9 meaning given such term in section  
10 3502(3) of title 44.”.

11 (3) RECORDKEEPING REQUIREMENT.—  
12 Paragraph (8) of section 601 of title 5,  
13 United States Code, is amended to read  
14 as follows:

15 “(8) RECORDKEEPING REQUIREMENT.—  
16 The term ‘recordkeeping requirement’  
17 has the meaning given such term in section  
18 3502(13) of title 44.”.

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

22 “(4) SMALL ORGANIZATION.—

23 “(A) IN GENERAL.—The term ‘small  
24 organization’ means any not-for-profit  
25 enterprise which, as of the issuance

1 of the notice of proposed rule-  
2 making—

3 “(i) in the case of an enter-  
4 prise which is described by a clas-  
5 sification code of the North Amer-  
6 ican Industrial Classification Sys-  
7 tem, does not exceed the size  
8 standard established by the Ad-  
9 ministrator of the Small Business  
10 Administration pursuant to sec-  
11 tion 3 of the Small Business Act  
12 (15 U.S.C. 632) for small business  
13 concerns described by such classi-  
14 fication code; and

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

19 “(B) LOCAL LABOR ORGANIZA-  
20 TIONS.—In the case of any local labor  
21 organization, subparagraph (A) shall  
22 be applied without regard to any na-  
23 tional or international organization  
24 of which such local labor organiza-  
25 tion is a part.

1           **“(C) AGENCY DEFINITIONS.—Sub-**  
2           **paragraphs (A) and (B) shall not**  
3           **apply to the extent that an agency,**  
4           **after consultation with the Office of**  
5           **Advocacy of the Small Business Ad-**  
6           **ministration and after opportunity**  
7           **for public comment, establishes one**  
8           **or more definitions for such term**  
9           **which are appropriate to the activi-**  
10           **ties of the agency and publishes such**  
11           **definitions in the Federal Register.”.**

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

13           **Section 602 of title 5, United States Code,**  
14 **is amended—**

15           **(1) in subsection (a)—**

16                   **(A) in paragraph (2), by striking “,**  
17                   **and” at the end and inserting “;”;**

18                   **(B) by redesignating paragraph**  
19                   **(3) as paragraph (4); and**

20                   **(C) by inserting after paragraph**  
21                   **(2) the following:**

22                   **“(3) a brief description of the sector**  
23                   **of the North American Industrial Classi-**  
24                   **fication System that is primarily affected**  
25                   **by any rule which the agency expects to**

1       **propose or promulgate which is likely to**  
2       **have a significant economic impact on a**  
3       **substantial number of small entities;**  
4       **and”;** and

5               **(2) in subsection (c), to read as fol-**  
6       **lows:**

7       **“(c) Each agency shall prominently dis-**  
8       **play a plain language summary of the infor-**  
9       **mation contained in the regulatory flexibility**  
10       **agenda published under subsection (a) on its**  
11       **website within 3 days of its publication in the**  
12       **Federal Register. The Office of Advocacy of**  
13       **the Small Business Administration shall com-**  
14       **pile and prominently display a plain language**  
15       **summary of the regulatory agendas ref-**  
16       **erenced in subsection (a) for each agency on**  
17       **its website within 3 days of their publication**  
18       **in the Federal Register.”.**

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

21       **(a) INITIAL REGULATORY FLEXIBILITY ANAL-**  
22       **YSIS.—Subsection (b) of section 603 of title 5,**  
23       **United States Code, is amended to read as fol-**  
24       **lows:**

1       **“(b) Each initial regulatory flexibility**  
2 **analysis required under this section shall con-**  
3 **tain a detailed statement—**

4           **“(1) describing the reasons why ac-**  
5 **tion by the agency is being considered;**

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

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

11           **“(4) describing the projected report-**  
12 **ing, recordkeeping, and other compliance**  
13 **requirements of the proposed rule, in-**  
14 **cluding an estimate of the classes of**  
15 **small entities which will be subject to the**  
16 **requirement and the type of professional**  
17 **skills necessary for preparation of the re-**  
18 **port and record;**

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

24           **“(6) estimating the additional cumu-**  
25 **lative economic impact of the proposed**

1 rule on small entities beyond that already  
2 imposed on the class of small entities by  
3 the agency or why such an estimate is  
4 not available; and

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

8 (b) FINAL REGULATORY FLEXIBILITY ANAL-  
9 YSIS.—

10 (1) IN GENERAL.—Section 604(a) of title  
11 5, United States Code, is amended—

12 (A) in paragraph (4), by striking  
13 “an explanation” and inserting “a de-  
14 tailed explanation”;

15 (B) in each of paragraphs (4), (5),  
16 and the first paragraph (6), by insert-  
17 ing “detailed” before “description”;  
18 and

19 (C) by adding at the end the fol-  
20 lowing:

21 “(7) describing any disproportionate  
22 economic impact on small entities or a  
23 specific class of small entities.”.

24 (2) INCLUSION OF RESPONSE TO COM-  
25 MENTS ON CERTIFICATION OF PROPOSED

1       **RULE.—Paragraph (2) of section 604(a) of**  
2       **title 5, United States Code, is amended by**  
3       **inserting “(or certification of the pro-**  
4       **posed rule under section 605(b))” after**  
5       **“initial regulatory flexibility analysis”.**

6               **(3) PUBLICATION OF ANALYSIS ON**  
7       **WEBSITE.—Subsection (b) of section 604 of**  
8       **title 5, United States Code, is amended to**  
9       **read as follows:**

10       **“(b) The agency shall make copies of the**  
11       **final regulatory flexibility analysis available**  
12       **to the public, including placement of the en-**  
13       **tire analysis on the agency’s website, and**  
14       **shall publish in the Federal Register the final**  
15       **regulatory flexibility analysis, or a summary**  
16       **thereof which includes the telephone number,**  
17       **mailing address, and link to the website**  
18       **where the complete analysis may be ob-**  
19       **tained.”.**

20               **(c) CROSS-REFERENCES TO OTHER ANAL-**  
21       **YSES.—Subsection (a) of section 605 of title 5,**  
22       **United States Code, is amended to read as fol-**  
23       **lows:**

24       **“(a) A Federal agency shall be treated as**  
25       **satisfying any requirement regarding the con-**



1 tent of an agenda or regulatory flexibility  
2 analysis under section 602, 603, or 604, if such  
3 agency provides in such agenda or analysis a  
4 cross-reference to the specific portion of an  
5 other agenda or analysis which is required by  
6 any other law and which satisfies such re-  
7 quirement.”.

8 (d) CERTIFICATIONS.—Subsection (b) of sec-  
9 tion 605 of title 5, United States Code, is  
10 amended—

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

13 (2) by inserting “and legal” after “fac-  
14 tual”.

15 (e) QUANTIFICATION REQUIREMENTS.—Sec-  
16 tion 607 of title 5, United States Code, is  
17 amended to read as follows:

18 “§ 607. Quantification requirements

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

21 “(1) a quantifiable or numerical de-  
22 scription of the effects of the proposed or  
23 final rule and alternatives to the pro-  
24 posed or final rule; or

1           **“(2) a more general descriptive state-**  
2           **ment and a detailed statement explaining**  
3           **why quantification is not practicable or**  
4           **reliable.”.**

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

8           **(a) IN GENERAL.—Section 608 is amended**  
9           **to read as follows:**

10          **“§ 608. Additional powers of Chief Counsel for Advo-**  
11                  **cacy**

12           **“(a)(1) Not later than 270 days after the**  
13           **date of the enactment of the Regulatory Flexi-**  
14           **bility Improvements Act of 2011, the Chief**  
15           **Counsel for Advocacy of the Small Business**  
16           **Administration shall, after opportunity for**  
17           **notice and comment under section 553, issue**  
18           **rules governing agency compliance with this**  
19           **chapter. The Chief Counsel may modify or**  
20           **amend such rules after notice and comment**  
21           **under section 553. This chapter (other than**  
22           **this subsection) shall not apply with respect**  
23           **to the issuance, modification, and amendment**  
24           **of rules under this paragraph.**

1       **“(2) An agency shall not issue rules which**  
2 **supplement the rules issued under subsection**  
3 **(a) unless such agency has first consulted**  
4 **with the Chief Counsel for Advocacy to en-**  
5 **sure that such supplemental rules comply**  
6 **with this chapter and the rules issued under**  
7 **paragraph (1).**

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

19       **“(c) The Chief Counsel for Advocacy may**  
20 **file comments in response to any agency no-**  
21 **tice requesting comment, regardless of wheth-**  
22 **er the agency is required to file a general no-**  
23 **tice of proposed rulemaking under section**  
24 **553.”.**

25       **(b) CONFORMING AMENDMENTS.—**

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

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

5           **(3) Section 611(a)(3) of such title is**  
6           **amended—**

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

8                   **and**

9                   **(B) by striking “(3)(A) A small en-**  
10                   **tity” and inserting the following:**

11           **“(3) A small entity”.**

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

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

17           **“(b)(1) Prior to publication of any pro-**  
18           **posed rule described in subsection (e), an**  
19           **agency making such rule shall notify the**  
20           **Chief Counsel for Advocacy of the Small Busi-**  
21           **ness Administration and provide the Chief**  
22           **Counsel with—**

23                   **“(A) all materials prepared or utilized**  
24                   **by the agency in making the proposed**

1 rule, including the draft of the proposed  
2 rule; and

3 “(B) information on the potential ad-  
4 verse and beneficial economic impacts of  
5 the proposed rule on small entities and  
6 the type of small entities that might be  
7 affected.

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

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

13 “(B) is proposed by an independent  
14 regulatory agency (as defined in section  
15 3502(5) of title 44).

16 “(c) Not later than 15 days after the re-  
17 ceipt of such materials and information under  
18 subsection (b), the Chief Counsel for Advo-  
19 cacy of the Small Business Administration  
20 shall—

21 “(1) identify small entities or rep-  
22 resentatives of small entities or a com-  
23 bination of both for the purpose of ob-  
24 taining advice, input, and recommenda-  
25 tions from those persons about the poten-

1        **tial economic impacts of the proposed**  
2        **rule and the compliance of the agency**  
3        **with section 603; and**

4            **“(2) convene a review panel con-**  
5        **sisting of an employee from the Office of**  
6        **Advocacy of the Small Business Adminis-**  
7        **tration, an employee from the agency**  
8        **making the rule, and in the case of an**  
9        **agency other than an independent regu-**  
10       **latory agency (as defined in section**  
11       **3502(5) of title 44), an employee from the**  
12       **Office of Information and Regulatory Af-**  
13       **fairs of the Office of Management and**  
14       **Budget to review the materials and infor-**  
15       **mation provided to the Chief Counsel**  
16       **under subsection (b).**

17        **“(d)(1) Not later than 60 days after the re-**  
18       **view panel described in subsection (c)(2) is**  
19       **convened, the Chief Counsel for Advocacy of**  
20       **the Small Business Administration shall, after**  
21       **consultation with the members of such panel,**  
22       **submit a report to the agency and, in the case**  
23       **of an agency other than an independent regu-**  
24       **latory agency (as defined in section 3502(5) of**  
25       **title 44), the Office of Information and Regu-**

1 latory Affairs of the Office of Management  
2 and Budget.

3       “(2) Such report shall include an assess-  
4 ment of the economic impact of the proposed  
5 rule on small entities, including an assess-  
6 ment of the proposed rule’s impact on the cost  
7 that small entities pay for energy, and a dis-  
8 cussion of any alternatives that will minimize  
9 adverse significant economic impacts or  
10 maximize beneficial significant economic im-  
11 pacts on small entities.

12       “(3) Such report shall become part of the  
13 rulemaking record. In the publication of the  
14 proposed rule, the agency shall explain what  
15 actions, if any, the agency took in response to  
16 such report.

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

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

3           **“(2) a major increase in costs or**  
4           **prices for consumers, individual indus-**  
5           **tries, Federal, State, or local govern-**  
6           **ments, tribal organizations, or geo-**  
7           **graphic regions;**

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

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

16          **“(f) Upon application by the agency, the**  
17          **Chief Counsel for Advocacy of the Small Busi-**  
18          **ness Administration may waive the require-**  
19          **ments of subsections (b) through (e) if the**  
20          **Chief Counsel determines that compliance**  
21          **with the requirements of such subsections are**  
22          **impracticable, unnecessary, or contrary to**  
23          **the public interest.”.**



1 SEC. 7. PERIODIC REVIEW OF RULES.

2 Section 610 of title 5, United States Code,  
3 is amended to read as follows:

4 “§ 610. Periodic review of rules

5 “(a) Not later than 180 days after the en-  
6 actment of the Regulatory Flexibility Im-  
7 provements Act of 2011, each agency shall  
8 publish in the Federal Register and place on  
9 its website a plan for the periodic review of  
10 rules issued by the agency which the head of  
11 the agency determines have a significant eco-  
12 nomic impact on a substantial number of  
13 small entities. Such determination shall be  
14 made without regard to whether the agency  
15 performed an analysis under section 604. The  
16 purpose of the review shall be to determine  
17 whether such rules should be continued with-  
18 out change, or should be amended or re-  
19 scinded, consistent with the stated objectives  
20 of applicable statutes, to minimize any ad-  
21 verse significant economic impacts or maxi-  
22 mize any beneficial significant economic im-  
23 pacts on a substantial number of small enti-  
24 ties. Such plan may be amended by the agency  
25 at any time by publishing the revision in the

1 **Federal Register and subsequently placing**  
2 **the amended plan on the agency’s website.**

3 **“(b) The plan shall provide for the review**  
4 **of all such agency rules existing on the date**  
5 **of the enactment of the Regulatory Flexibility**  
6 **Improvements Act of 2011 within 10 years of**  
7 **the date of publication of the plan in the Fed-**  
8 **eral Register and for review of rules adopted**  
9 **after the date of enactment of the Regulatory**  
10 **Flexibility Improvements Act of 2011 within**  
11 **10 years after the publication of the final rule**  
12 **in the Federal Register. If the head of the**  
13 **agency determines that completion of the re-**  
14 **view of existing rules is not feasible by the es-**  
15 **tablished date, the head of the agency shall so**  
16 **certify in a statement published in the Fed-**  
17 **eral Register and may extend the review for**  
18 **not longer than 2 years after publication of**  
19 **notice of extension in the Federal Register.**  
20 **Such certification and notice shall be sent to**  
21 **the Chief Counsel for Advocacy of the Small**  
22 **Business Administration and the Congress.**

23 **“(c) The plan shall include a section that**  
24 **details how an agency will conduct outreach**  
25 **to and meaningfully include small businesses**

1 for the purposes of carrying out this section.  
2 The agency shall include in this section a plan  
3 for how the agency will contact small busi-  
4 nesses and gather their input on existing  
5 agency rules.

6 “(d) Each agency shall annually submit a  
7 report regarding the results of its review pur-  
8 suant to such plan to the Congress, the Chief  
9 Counsel for Advocacy of the Small Business  
10 Administration, and, in the case of agencies  
11 other than independent regulatory agencies  
12 (as defined in section 3502(5) of title 44) to the  
13 Administrator of the Office of Information  
14 and Regulatory Affairs of the Office of Man-  
15 agement and Budget. Such report shall in-  
16 clude the identification of any rule with re-  
17 spect to which the head of the agency made  
18 a determination described in paragraph (5) or  
19 (6) of subsection (e) and a detailed expla-  
20 nation of the reasons for such determination.

21 “(e) In reviewing a rule pursuant to sub-  
22 sections (a) through (d), the agency shall  
23 amend or rescind the rule to minimize any ad-  
24 verse significant economic impact on a sub-  
25 stantial number of small entities or dispropor-

1 **tionate economic impact on a specific class of**  
2 **small entities, or maximize any beneficial sig-**  
3 **nificant economic impact of the rule on a sub-**  
4 **stantial number of small entities to the great-**  
5 **est extent possible, consistent with the stated**  
6 **objectives of applicable statutes. In amending**  
7 **or rescinding the rule, the agency shall con-**  
8 **sider the following factors:**

9           **“(1) The continued need for the rule.**

10           **“(2) The nature of complaints re-**  
11 **ceived by the agency from small entities**  
12 **concerning the rule.**

13           **“(3) Comments by the Regulatory En-**  
14 **forcement Ombudsman and the Chief**  
15 **Counsel for Advocacy of the Small Busi-**  
16 **ness Administration.**

17           **“(4) The complexity of the rule.**

18           **“(5) The extent to which the rule**  
19 **overlaps, duplicates, or conflicts with**  
20 **other Federal rules and, unless the head**  
21 **of the agency determines it to be infeas-**  
22 **ible, State and local rules.**

23           **“(6) The contribution of the rule to**  
24 **the cumulative economic impact of all**  
25 **Federal rules on the class of small enti-**

1        **ties affected by the rule, unless the head**  
2        **of the agency determines that such cal-**  
3        **culations cannot be made and reports**  
4        **that determination in the annual report**  
5        **required under subsection (d).**

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

11          **“(f) The agency shall publish in the Fed-**  
12       **eral Register and on its website a list of rules**  
13       **to be reviewed pursuant to such plan. Such**  
14       **publication shall include a brief description**  
15       **of the rule, the reason why the agency deter-**  
16       **mined that it has a significant economic im-**  
17       **port on a substantial number of small entities**  
18       **(without regard to whether it had prepared a**  
19       **final regulatory flexibility analysis for the**  
20       **rule), and request comments from the public,**  
21       **the Chief Counsel for Advocacy of the Small**  
22       **Business Administration, and the Regulatory**  
23       **Enforcement Ombudsman concerning the en-**  
24       **forcement 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  
6 611(a) of title 5, United States Code, is amend-  
7 ed by striking “final agency action” and in-  
8 serting “such rule”.

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

14 (c) **TIME FOR BRINGING ACTION.**—Para-  
15 graph (3) of such section is amended—

16 (1) by striking “final agency action”  
17 and inserting “publication of the final  
18 rule”; and

19 (2) by inserting “, in the case of a rule  
20 for which the date of final agency action  
21 is the same date as the publication of the  
22 final rule,” after “except that”.

23 (d) **INTERVENTION BY CHIEF COUNSEL FOR**  
24 **ADVOCACY.**—Subsection (b) of section 612 of  
25 title 5, United States Code, is amended by in-  
26 serting before the first period “or agency com-

1 **pliance with section 601, 603, 604, 605(b), 609,**  
2 **or 610”.**

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

6 **(a) IN GENERAL.—Section 2342 of title 28,**  
7 **United States Code, is amended—**

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

10 **(2) in paragraph (7), by striking the**  
11 **period at the end and inserting “; and”;**  
12 **and**

13 **(3) by inserting after paragraph (7)**  
14 **the following new paragraph:**

15 **“(8) all final rules under section**  
16 **608(a) of title 5.”.**

17 **(b) CONFORMING AMENDMENTS.—Paragraph**  
18 **(3) of section 2341 of title 28, United States**  
19 **Code, is amended—**

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

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

1           **(3) by adding at the end the following**  
2           **new subparagraph:**

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

7           **(c) AUTHORIZATION TO INTERVENE AND COM-**  
8           **MENT ON AGENCY COMPLIANCE WITH ADMINIS-**  
9           **TRATIVE PROCEDURE.—Subsection (b) of sec-**  
10           **tion 612 of title 5, United States Code, is**  
11           **amended by inserting “chapter 5, and chapter**  
12           **7,” after “this chapter,”.**

13           **SEC. 10. CLERICAL AMENDMENTS.**

14           **(a) Section 601 of title 5, United States**  
15           **Code, is amended—**

16                   **(1) in paragraph (1)—**

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

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

21                           **“(1) AGENCY.—The term”;**

22                   **(2) in paragraph (3)—**

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



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

3           **“(3) SMALL BUSINESS.—The term”;**

4           **(3) in paragraph (5)—**

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

7           **(B) by striking “(5) the term” and**  
8           **inserting the following:**

9           **“(5) SMALL GOVERNMENTAL JURISDIC-**  
10          **TION.—The term”; and**

11          **(4) in paragraph (6)—**

12          **(A) by striking “; and” and insert-**  
13          **ing a period; and**

14          **(B) by striking “(6) the term” and**  
15          **inserting the following:**

16          **“(6) SMALL ENTITY.—The term”.**

17          **(b) The heading of section 605 of title 5,**  
18          **United States Code, is amended to read as fol-**  
19          **lows:**

20          **“§ 605. Incorporations by reference and certifi-**  
21                  **cations”.**

22          **(c) The table of sections for chapter 6 of**  
23          **title 5, United States Code, is amended—**

1           **(1) by striking the item relating to**  
2           **section 605 and inserting the following**  
3           **new item:**

**“605. Incorporations by reference and certifications.”;**

4           **(2) by striking the item relating to**  
5           **section 607 and inserting the following**  
6           **new item:**

**“607. Quantification requirements.”; and**

7           **(3) by striking the item relating to**  
8           **section 608 and inserting the following:**

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

9           **(d) Chapter 6 of title 5, United States**  
10          **Code, is amended as follows:**

11           **(1) In section 603, by striking sub-**  
12           **section (d).**

13           **(2) In section 604(a) by striking the**  
14           **second paragraph (6).**

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

16           **Section 212(a)(5) the Small Business Regu-**  
17           **latory Enforcement Fairness Act of 1996 (5**  
18           **U.S.C. 601 note) is amended to read as follows:**

19           **“(5) AGENCY PREPARATION OF GUIDES.—**  
20           **The agency shall, in its sole discretion,**  
21           **taking into account the subject matter of**  
22           **the rule and the language of relevant**  
23           **statutes, ensure that the guide is written**

1       **using sufficiently plain language likely to**  
2       **be understood by affected small entities.**  
3       **Agencies may prepare separate guides**  
4       **covering groups or classes of similarly af-**  
5       **ected small entities and may cooperate**  
6       **with associations of small entities to dis-**  
7       **tribute such guides. In developing guides,**  
8       **agencies shall solicit input from affected**  
9       **small entities or associations of affected**  
10      **small entities. An agency may prepare**  
11      **guides and apply this section with re-**  
12      **spect to a rule or a group of related**  
13      **rules.”.**

Union Calendar No. 191

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 527**

[Report No. 112-289, Parts I and II]

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## **A BILL**

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

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NOVEMBER 16, 2011

Reported from the Committee on the Judiciary with an amendment

NOVEMBER 16, 2011

Reported from the Committee on Small Business with an amendment