

112TH CONGRESS
1ST SESSION

H. R. 527

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.

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

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”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 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. 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.

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

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

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

18 (b) INCLUSION OF RULES WITH INDIRECT EF-
 19 FECTS.—Section 601 of title 5, United States Code, is

1 amended by adding at the end the following new para-
2 graph:

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

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

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

13 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
14 FECTS.—

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

24 (2) FINAL REGULATORY FLEXIBILITY ANAL-
25 YSIS.—The first paragraph (6) of section 604(a) of

1 title 5, United States Code, is amended by striking
2 “minimize the significant economic impact” and in-
3 serting “minimize the adverse significant economic
4 impact or maximize the beneficial significant eco-
5 nomic impact”.

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

12 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
13 FORMAL RULEMAKING.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Subsection (a) of section 603 of title 5,
16 United States Code, is amended in the first sen-
17 tence—

18 (A) by striking “or” after “proposed
19 rule,”; and

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

23 (2) FINAL REGULATORY FLEXIBILITY ANAL-
24 YSIS.—Subsection (a) of section 604 of title 5,

1 United States Code, is amended in the first sen-
2 tence—

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

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

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

11 “(10) LAND MANAGEMENT PLAN.—

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

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

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

23 “(B) REVISION.—The term ‘revision’
24 means any change to a land management plan
25 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 Re-
4 newable Resources Planning Act of 1974
5 (16 U.S.C. 1604(f)(5)); or

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

10 “(C) AMENDMENT.—The term ‘amend-
11 ment’ means any change to a land management
12 plan 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 Re-
16 newable Resources Planning Act of 1974
17 (16 U.S.C. 1604(f)(4)) and with respect to
18 which the Secretary of Agriculture pre-
19 pares a statement described in section
20 102(2)(C) of the National Environmental
21 Policy Act of 1969 (42 U.S.C.
22 4332(2)(C)); or

23 “(ii) in the case of a plan described in
24 subparagraph (A)(ii), is made under sec-
25 tion 1610.5–5 of title 43, Code of Federal

1 Regulations (or any successor regulation)
2 and with respect to which the Secretary of
3 the Interior prepares a statement described
4 in section 102(2)(C) of the National Envi-
5 ronmental Policy Act of 1969 (42 U.S.C.
6 4332(2)(C)).”.

7 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
8 INVOLVING THE INTERNAL REVENUE LAWS.—

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

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

18 “(7) COLLECTION OF INFORMATION.—The term
19 ‘collection of information’ has the meaning given
20 such term in section 3502(3) of title 44, United
21 States Code.”.

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

1 “(8) RECORDKEEPING REQUIREMENT.—The
2 term ‘recordkeeping requirement’ has the meaning
3 given such term in section 3502(13) of title 44,
4 United States Code.”.

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

8 “(4) SMALL ORGANIZATION.—

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

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

22 “(ii) in the case of any other enter-
23 prise, has a net worth that does not exceed
24 \$7,000,000 and has not more than 500
25 employees.

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

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

15 **SEC. 3. REQUIREMENTS PROVIDING FOR MORE DETAILED**
16 **ANALYSES.**

17 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

18 (1) Subsection (b) of section 603 of title 5,
19 United States Code, is amended to read as follows:

20 “(b) Each initial regulatory flexibility analysis re-
21 quired under this section shall contain a detailed state-
22 ment—

23 “(1) describing the reasons why action by the
24 agency is being considered;

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

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

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

11 “(5) describing all relevant Federal rules which
12 may duplicate, overlap, or conflict with the proposed
13 rule, or the reasons why such a description could not
14 be provided;

15 “(6) estimating the additional cumulative eco-
16 nomic impact of the proposed rule on small entities
17 beyond that already imposed on the class of small
18 entities by the agency or why such an estimate is
19 not available; and

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

23 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

1 (A) in paragraph (4), by striking “an ex-
2 planation” and inserting “a detailed expla-
3 nation”;

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

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

8 “(7) describing any disproportionate economic
9 impact on small entities or a specific class of small
10 entities.”.

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

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

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

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

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

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

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

15 (1) by inserting “detailed” before “statement”;

16 and

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

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

21 **“§ 607. Quantification requirements**

22 “In complying with sections 603 and 604, an agency
23 shall provide—

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

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

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

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

12 **“§ 608. Additional powers of Chief Counsel for Advo-**
13 **cacy**

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

24 “(2) An agency shall not issue rules which supple-
25 ment the rules issued under subsection (a) unless such

1 agency has first consulted with the Chief Counsel for Ad-
2 vocacy to ensure that such supplemental rules comply with
3 this chapter and the rules issued under paragraph (1).

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

13 “(c) The Chief Counsel for Advocacy may file com-
14 ments in response to any agency notice requesting com-
15 ment, regardless of whether the agency is required to file
16 a general notice of proposed rulemaking under section
17 553.”.

18 (b) CONFORMING AMENDMENTS.—

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

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

23 (3) Section 611(a)(3) of such title is amend-
24 ed—

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

1 (B) by striking “(3)(A) A small entity”
2 and inserting the following:
3 “(3) A small entity”.

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

5 Section 609 of title 5, United States Code, is amend-
6 ed by striking subsection (b) and all that follows and in-
7 serting the following:

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

12 “(A) all materials prepared or utilized by the
13 agency in making the proposed rule, including the
14 draft of the proposed rule; and

15 “(B) information on the potential adverse and
16 beneficial economic impacts of the proposed rule on
17 small entities and the type of small entities that
18 might be affected.

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

22 “(A) relates to the internal revenue laws of the
23 United States; or

1 “(B) is proposed by an independent regulatory
2 agency (as defined in section 3502(5) of title 44,
3 United States Code).

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

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

14 “(2) convene a review panel consisting of an
15 employee from the Office of Advocacy of the Small
16 Business Administration, an employee from the
17 agency making the rule, and in the case of an agen-
18 cy other than an independent regulatory agency (as
19 defined in section 3502(5) of title 44, United States
20 Code), an employee from the Office of Information
21 and Regulatory Affairs of the Office of Management
22 and Budget to review the materials and information
23 provided to the Chief Counsel under subsection (b).

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

1 sel for Advocacy of the Small Business Administration
2 shall, after consultation with the members of such panel,
3 submit a report to the agency and, in the case of an agen-
4 cy other than an independent regulatory agency (as de-
5 fined in section 3502(5) of title 44, United States Code),
6 the Office of Information and Regulatory Affairs of the
7 Office of Management and Budget.

8 “(2) Such report shall include an assessment of the
9 economic impact of the proposed rule on small entities and
10 a discussion of any alternatives that will minimize adverse
11 significant economic impacts or maximize beneficial sig-
12 nificant economic impacts on small entities.

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

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

23 “(1) an annual effect on the economy of
24 \$100,000,000 or more;

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

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

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

12 “(f) Upon application by the agency, the Chief Coun-
13 sel for Advocacy of the Small Business Administration
14 may waive the requirements of subsections (b) through (e)
15 if the Chief Counsel determines that compliance with the
16 requirements of such subsections are impracticable, un-
17 necessary, or contrary to the public interest.”.

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

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

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

22 “(a) Not later than 180 days after the enactment of
23 the Regulatory Flexibility Improvements Act of 2011,
24 each agency shall publish in the Federal Register and
25 place on its website a plan for the periodic review of rules

1 issued by the agency which the head of the agency deter-
2 mines have a significant economic impact on a substantial
3 number of small entities. Such determination shall be
4 made without regard to whether the agency performed an
5 analysis under section 604. The purpose of the review
6 shall be to determine whether such rules should be contin-
7 ued without change, or should be amended or rescinded,
8 consistent with the stated objectives of applicable statutes,
9 to minimize any adverse significant economic impacts or
10 maximize any beneficial significant economic impacts on
11 a substantial number of small entities. Such plan may be
12 amended by the agency at any time by publishing the revi-
13 sion in the Federal Register and subsequently placing the
14 amended plan on the agency's website.

15 “(b) The plan shall provide for the review of all such
16 agency rules existing on the date of the enactment of the
17 Regulatory Flexibility Improvements Act of 2011 within
18 10 years of the date of publication of the plan in the Fed-
19 eral Register and for review of rules adopted after the date
20 of enactment of the Regulatory Flexibility Improvements
21 Act of 2011 within 10 years after the publication of the
22 final rule in the Federal Register. If the head of the agen-
23 cy determines that completion of the review of existing
24 rules is not feasible by the established date, the head of
25 the agency shall so certify in a statement published in the

1 Federal Register and may extend the review for not longer
2 than 2 years after publication of notice of extension in
3 the Federal Register. Such certification and notice shall
4 be sent to the Chief Counsel for Advocacy of the Small
5 Business Administration and the Congress.

6 “(c) Each agency shall annually submit a report re-
7 garding the results of its review pursuant to such plan
8 to the Congress, the Chief Counsel for Advocacy of the
9 Small Business Administration, and, in the case of agen-
10 cies other than independent regulatory agencies (as de-
11 fined in section 3502(5) of title 44, United States Code)
12 to the Administrator of the Office of Information and Reg-
13 ulatory Affairs of the Office of Management and Budget.
14 Such report shall include the identification of any rule
15 with respect to which the head of the agency made a deter-
16 mination described in paragraph (5) or (6) of subsection
17 (d) and a detailed explanation of the reasons for such de-
18 termination.

19 “(d) In reviewing a rule pursuant to subsections (a)
20 through (c), the agency shall amend or rescind the rule
21 to minimize any adverse significant economic impact on
22 a substantial number of small entities or disproportionate
23 economic impact on a specific class of small entities, or
24 maximize any beneficial significant economic impact of the
25 rule on a substantial number of small entities to the great-

1 est extent possible, consistent with the stated objectives
2 of applicable statutes. In amending or rescinding the rule,
3 the agency shall consider the following factors:

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

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

7 “(3) Comments by the Regulatory Enforcement
8 Ombudsman and the Chief Counsel for Advocacy of
9 the Small Business Administration.

10 “(4) The complexity of the rule.

11 “(5) The extent to which the rule overlaps, du-
12 plicates, or conflicts with other Federal rules and,
13 unless the head of the agency determines it to be in-
14 feasible, State and local rules.

15 “(6) The contribution of the rule to the cumu-
16 lative economic impact of all Federal rules on the
17 class of small entities affected by the rule, unless the
18 head of the agency determines that such calculations
19 cannot be made and reports that determination in
20 the annual report required under subsection (c).

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

1 “(e) The agency shall publish in the Federal Register
2 and on its website a list of rules to be reviewed pursuant
3 to such plan. Such publication shall include a brief de-
4 scription of the rule, the reason why the agency deter-
5 mined that it has a significant economic impact on a sub-
6 stantial number of small entities (without regard to wheth-
7 er it had prepared a final regulatory flexibility analysis
8 for the rule), and request comments from the public, the
9 Chief Counsel for Advocacy of the Small Business Admin-
10 istration, and the Regulatory Enforcement Ombudsman
11 concerning the enforcement of the rule.”.

12 **SEC. 7. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
13 **QUIREMENTS OF THE REGULATORY FLEXI-**
14 **BILITY ACT AVAILABLE AFTER PUBLICATION**
15 **OF THE FINAL RULE.**

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

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

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

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

3 (2) by inserting “, in the case of a rule for
4 which the date of final agency action is the same
5 date as the publication of the final rule,” after “ex-
6 cept that”.

7 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
8 CACY.—Subsection (b) of section 612 of title 5, United
9 States Code, is amended by inserting before the first pe-
10 riod “or agency compliance with section 601, 603, 604,
11 605(b), 609, or 610”.

12 **SEC. 8. JURISDICTION OF COURT OF APPEALS OVER RULES**
13 **IMPLEMENTING THE REGULATORY FLEXI-**
14 **BILITY ACT.**

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

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

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

21 (3) by adding at the end the following new
22 paragraph:

23 “(8) all final rules under section 608(a) of title
24 5, United States Code.”.

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

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

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

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(F) the Office of Advocacy of the Small
10 Business Administration, when the final rule is
11 under section 608(a) of title 5, United States
12 Code.”.

13 (c) AUTHORIZATION TO INTERVENE AND COMMENT
14 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
15 DURE.—Subsection (b) of section 612 of title 5, United
16 States Code, is amended by inserting “chapter 5, and
17 chapter 7,” after “this chapter,”.

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

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

21 (1) in paragraph (1)—

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

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

- 1 “(1) AGENCY.—The term”;
- 2 (2) in paragraph (3)—
- 3 (A) by striking the semicolon at the end
- 4 and inserting a period, and
- 5 (B) by striking “(3) the term” and insert-
- 6 ing the following:
- 7 “(3) SMALL BUSINESS.—The term”;
- 8 (3) in paragraph (5)—
- 9 (A) by striking the semicolon at the end
- 10 and inserting a period, and
- 11 (B) by striking “(5) the term” and insert-
- 12 ing the following:
- 13 “(5) SMALL GOVERNMENTAL JURISDICTION.—
- 14 The term”; and
- 15 (4) in paragraph (6)—
- 16 (A) by striking “; and” and inserting a pe-
- 17 riod, and
- 18 (B) by striking “(6) the term” and insert-
- 19 ing the following:
- 20 “(6) SMALL ENTITY.—The term”.
- 21 (b) The heading of section 605 of title 5, United
- 22 States Code, is amended to read as follows:

1 **“§ 605. Incorporations by reference and certifi-**
2 **cations”.**

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

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

“605. Incorporations by reference and certifications”;

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

“607. Quantification requirements”;

9 and

10 (3) by striking the item relating to section 608
11 and inserting the following:

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

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

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

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

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