

114TH CONGRESS
1ST SESSION

S. 846

To require Federal agencies to review certain rules and regulations, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2015

Mr. KIRK (for himself and Mr. DAINES) introduced the following bill; which
was read twice and referred to the Committee on Homeland Security and
Governmental Affairs

A BILL

To require Federal agencies to review certain rules and
regulations, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Regu-
5 latory Sunset Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “agency” has the meaning given
9 the term in section 551 of title 5, United States
10 Code;

1 (2) the term “covered rule” means any rule or
2 group of rules—

3 (A) for which an agency is required to pre-
4 pare a regulatory flexibility analysis under sec-
5 tion 603 or 604 of title 5, United States Code;
6 and

7 (B) that is a major rule;

8 (3) the term “major rule” has the meaning
9 given the term in section 804 of title 5, United
10 States Code; and

11 (4) the terms “rule” and “small entity” have
12 the meanings given those terms in section 601 of
13 title 5, United States Code.

14 **SEC. 3. PERIODIC REVIEW OF PREEXISTING SMALL BUSI-**
15 **NESS REGULATIONS.**

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

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

19 “(a)(1) Not later than 180 days after the date of en-
20 actment of the Small Business Regulatory Sunset Act of
21 2015, each agency shall establish a plan for the periodic
22 review of—

23 “(A) each rule issued by the agency that the
24 head of the agency determines has a significant eco-
25 nomic impact on a substantial number of small enti-

1 ties, without regard to whether the agency per-
2 formed an analysis under section 604 with respect to
3 the rule; and

4 “(B) any small entity compliance guide required
5 to be published by the agency under section 212 of
6 the Small Business Regulatory Enforcement Fair-
7 ness Act of 1996 (5 U.S.C. 601 note).

8 “(2) In reviewing rules and small entity compliance
9 guides under paragraph (1), the agency shall determine
10 whether the rules and guides should—

11 “(A) be amended or rescinded, consistent with
12 the stated objectives of applicable statutes, to mini-
13 mize any significant adverse economic impacts on a
14 substantial number of small entities (including an
15 estimate of any adverse impacts on job creation and
16 employment by small entities); or

17 “(B) continue in effect without change.

18 “(3) Each agency shall publish the plan established
19 under paragraph (1) in the Federal Register and on the
20 Web site of the agency.

21 “(4) An agency may amend the plan established
22 under paragraph (1) at any time by publishing the amend-
23 ment in the Federal Register and on the Web site of the
24 agency.

1 “(b) Each plan established under subsection (a) shall
2 provide for—

3 “(1) the review of each rule and small entity
4 compliance guide described in subsection (a)(1) in
5 effect on the date of enactment of the Small Busi-
6 ness Regulatory Sunset Act of 2015—

7 “(A) not later than 9 years after the date
8 of publication of the plan in the Federal Reg-
9 ister; and

10 “(B) every 9 years thereafter; and

11 “(2) the review of each rule adopted and small
12 entity compliance guide described in subsection
13 (a)(1) that is published after the date of enactment
14 of the Small Business Regulatory Sunset Act of
15 2015—

16 “(A) not later than 9 years after the date
17 of publication of the final rule in the Federal
18 Register; and

19 “(B) every 9 years thereafter.

20 “(c) In reviewing rules under the plan required under
21 subsection (a), the agency shall consider—

22 “(1) the continued need for the rule;

23 “(2) the nature of complaints received by the
24 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, du-
6 plicates, or conflicts with other Federal rules and,
7 unless the head of the agency determines it to be in-
8 feasible, State 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 a calcula-
13 tion cannot be made;

14 “(7) the length of time since the rule has been
15 evaluated, or the degree to which technology, eco-
16 nomic conditions, or other factors have changed in
17 the area affected by the rule; and

18 “(8) the economic impact of the rule, includ-
19 ing—

20 “(A) the estimated number of small enti-
21 ties to which the rule will apply;

22 “(B) the estimated number of small entity
23 jobs that will be lost or created due to the rule;
24 and

1 “(C) the projected reporting, record-
2 keeping, and other compliance requirements of
3 the proposed rule, including—

4 “(i) an estimate of the classes of small
5 entities that will be subject to the require-
6 ment; and

7 “(ii) the type of professional skills
8 necessary for preparation of the report or
9 record.

10 “(d)(1) Each agency shall submit an annual report
11 regarding the results of the review required under sub-
12 section (a) to—

13 “(A) Congress; and

14 “(B) in the case of an agency that is not an
15 independent regulatory agency (as defined in section
16 3502(5) of title 44), the Administrator of the Office
17 of Information and Regulatory Affairs of the Office
18 of Management and Budget.

19 “(2) Each report required under paragraph (1) shall
20 include a description of any rule or small entity compli-
21 ance guide with respect to which the agency made a deter-
22 mination of infeasibility under paragraph (5) or (6) of
23 subsection (c), together with a detailed explanation of the
24 reasons for the determination.

1 “(e) Each agency shall publish in the Federal Reg-
 2 ister and on the Web site of the agency a list of the rules
 3 and small entity compliance guides to be reviewed under
 4 the plan required under subsection (a) that includes—

5 “(1) a brief description of each rule or guide;

6 “(2) for each rule, the reason why the head of
 7 the agency determined that the rule has a significant
 8 economic impact on a substantial number of small
 9 entities (without regard to whether the agency had
 10 prepared a final regulatory flexibility analysis for the
 11 rule); and

12 “(3) a request for comments from the public,
 13 the Chief Counsel for Advocacy of the Small Busi-
 14 ness Administration, and the Regulatory Enforce-
 15 ment Ombudsman concerning the enforcement of the
 16 rules or publication of the guides.

17 “(f)(1) Not later than 6 months after each date de-
 18 scribed in paragraphs (1) and (2) of subsection (b), the
 19 Inspector General for each agency shall—

20 “(A) determine whether the agency has con-
 21 ducted the review required under subsection (b) ap-
 22 propriately; and

23 “(B) notify the head of the agency of—

24 “(i) the results of the determination under
 25 subparagraph (A); and

1 “(ii) any issues preventing the Inspector
2 General from determining that the agency has
3 conducted the review required under subsection
4 (b) appropriately.

5 “(2)(A) Not later than 6 months after the date on
6 which the head of an agency receives a notice under para-
7 graph (1)(B) that the agency has not conducted the review
8 required under subsection (b) appropriately, the agency
9 shall address the issues identified in the notice.

10 “(B) Not later than 30 days after the last day of the
11 6-month period described in subparagraph (A), the In-
12 specter General for an agency that receives a notice de-
13 scribed in subparagraph (A) shall—

14 “(i) determine whether the agency has ad-
15 dressed the issues identified in the notice; and

16 “(ii) notify Congress if the Inspector General
17 determines that the agency has not addressed the
18 issues identified in the notice.

19 “(C) Not later than 30 days after the date on which
20 the Inspector General for an agency transmits a notice
21 under subparagraph (B)(ii), an amount equal to 1 percent
22 of the amount appropriated for the fiscal year to the ap-
23 propriations account of the agency that is used to pay sal-
24 aries shall be rescinded.

1 “(D) Nothing in this paragraph may be construed to
 2 prevent Congress from acting to prevent a rescission
 3 under subparagraph (C).”.

4 **SEC. 4. SUNSET OF NEW SMALL BUSINESS REGULATIONS.**

5 (a) IN GENERAL.—Except as provided in subsection
 6 (b) and beginning on the date of enactment of this Act,
 7 each covered rule promulgated by an agency shall cease
 8 to have effect on the date that is 7 years after the date
 9 on which the final version of the covered rule is published.

10 (b) EXTENSION OF RULE.—

11 (1) IN GENERAL.—Before the end of the 7-year
 12 period described in subsection (a), an agency may
 13 take action to renew a covered rule in accordance
 14 with the process described in paragraph (2) and if
 15 such action is taken, the covered rule shall remain
 16 in effect until modified or repealed by the agency ac-
 17 tion or statute.

18 (2) RENEWAL PROCESS.—

19 (A) IN GENERAL.—An agency may renew
 20 a covered rule by using the notice and comment
 21 rulemaking process.

22 (B) REQUIREMENTS.—In conducting a
 23 rulemaking to renew a covered rule under sub-
 24 paragraph (A), an agency shall—

1 (i) solicit and respond to public com-
2 ment from entities affected by the covered
3 rule;

4 (ii) compare the projected costs of the
5 covered rule to the actual costs realized by
6 implementation of the covered rule and de-
7 termine whether modifications can be made
8 to the covered rule to lower the cost of the
9 covered rule;

10 (iii) consider whether any regulatory
11 alternatives exist that would accomplish
12 the same regulatory objective as the cov-
13 ered rule with less of an impact on affected
14 small entities; and

15 (iv) make modifications to the covered
16 rule, if necessary, to reflect—

17 (I) comments solicited under
18 clause (i);

19 (II) modifications described in
20 clause (ii); and

21 (III) any regulatory alternatives
22 described in clause (iii).

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