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118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 118–851
Part 1

REGULATORY TRANSPARENCY FOR SMALL BUSINESSES ACT

DECEMBER 10, 2024.—Ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 8033]

The Committee on Small Business, to whom was referred the bill (H.R. 8033) to amend title 5, United States Code, to clarify the information required to be included in a certification by an agency that a rule will not have a significant economic impact on a substantial number of small entities, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. Purpose and Bill Summary

On April 17, 2024, Rep. Luetkemeyer along with Reps. Meuser, Mann and Salazar introduced H.R. 8033. The purpose of H.R. 8033, the "Regulatory Transparency for Small Businesses Act," is to define a "factual basis" in section 605(b) of the Regulatory Flexibility Act (RFA), and to require agencies to show their work when certifying that a bill will not have a significant economic impact on a substantial number of small entities.

II. Need for Legislation

When agencies are drafting proposed rules, they must determine whether a rule will have a significant economic impact on a substantial number of small entities. If it does, then the agency must complete an analysis under the RFA. If it does not, the agency merely must certify that it does not.

Certifying saves the agency the headache of doing an analysis, so often times despite the true impact of a rule, an agency will improperly certify that the rule will not have a significant impact despite evidence to the contrary.

This legislation will require agencies to show their work when certifying that a bill will not have a significant economic impact on a substantial number of small entities to ensure that a proper certification done.

III. Hearings

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 8033. On May 22, 2024, the Committee held a hearing titled "Burdensome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses" which examined the impacts of the Biden Administration's burdensome regulatory landscape and explored ways to support small businesses and overcome agencies' noncompliance with the RFA.

IV. Committee Consideration

The Committee on Small Business met in open session, with a quorum being present, on September 10, 2024 and ordered H.R. 8033 reported to the House of Representatives. During the markup no amendments were offered.

V. Committee Votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 8033 to the House of Representatives at 2:24 PM.

118th Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 at 9:45 AM ET
Bill: H.R. - 8033

Time of Vote: 2:24 PM

Republicans	Aye	Nay	Present
Mr. Luetkemeyer (MO-03)			
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)	✓		
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)			
Mr. Lalota (NY-01)	✓		
Ms. Maloy (UT-02)	✓		
Chairman Williams (TX-25)	✓		
TOTALS:	13		

118th Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 9:45 AM ET
Bill: H.R. - 8033

Democrats	Aye	Nay	Present
Mr. Golden (ME-02)		✓	
Mr. Phillips (MN-03)		✓	
Mr. Landsman (OH-01)		✓	
Mr. McGarvey (KY-03)		✓	
Ms. Gluesenkamp Perez (WA-03)		✓	
Ms. Scholten (MI-03)		✓	
Mr. Thanedar (MI-13)		✓	
Ms. Chu (CA-28)		✓	
Ms. Davids (KS-03)		✓	
Mr. Pappas (NH-01)		✓	
Ranking Member Velazquez (NY-07)		✓	
TOTALS:		11	

VI. SECTION-BY-SECTION OF H.R. 8033

Section 1: Short title

This bill may be cited as the "Regulatory Transparency for Small Businesses Act."

Section 2: Information required to be included in a certification by an agency that a rule will not have a significant economic impact on a substantial number of small entities

When certifying that a rule will not have a significant economic impact on a substantial number of small entities, the agency must include the number of impacted small entities, a cost estimate for implementation of the rule, whether these costs represent a significant economic impact, the criteria used to make the determination, and an estimate of the number of small entities which will experience a significant economic impact.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 8033 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 8033 are incorporated into the descriptive portions of this report.

X. PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 8033 are to require agencies to include a detailed analysis of how they reached their determination of whether

a rule will have a significant economic impact on a substantial number of small entities when considering whether or not they must conduct a full regulatory flexibility analysis.

XI. Statement of Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 8033 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Statement of Constitutional Authority

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1 of the Constitution of the United States.

XVII. Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics

and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

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§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(d) The certification under subsection (b) shall include, at a minimum, the following:

(1) The approximate number of small entities, if any, impacted by the rule, and an identification of any such small entity (including the North American Industry Classification System code, if applicable).

(2) An estimate of the total cost of implementing the rule, including the cost of compliance with the rule, which may be measured as an estimated percentage of the revenue of the small entities determined to be impacted under paragraph (1), or another reasonable measure of economic significance.

(3) A determination of whether the costs of compliance under paragraph (2) represent a significant economic impact, and the criteria used to make such determination.

(4) A determination of the number of small entities that will experience a significant economic impact as a result of the rule, whether that number is substantial, and the criteria used to make such determinations.

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MINORITY VIEWS

The bill would amend Section 605 of the Regulatory Flexibility Act (RFA) to require agencies to include new requirements for the certification that rules will not have a "significant economic impact on a substantial number of small entities" (SEISNSE). The new required information would be:

- The approximate number of small entities impacted and identification of any such small entity (including their NAICS code);
- An estimate of total cost of implementing the rule, including the cost of compliance with the rule, measured as percentage of revenue of the small entities (or other reasonable measure);
- A determination of whether those costs are significant, and the criteria used to make the determination; and
- A determination of whether the number of small entities that will experience a significant impact is substantial and the criteria used to make the determination.

The bill is a solution in search of a problem. Under current law, agencies are required to certify whether a rule would have a SEISNSE and submit the certification and factual basis in the Federal Register at the time of the publication of the proposed and final rule.[1] If a certification is not adequate, courts will overturn the rule. In amending the RFA to require a statement of factual basis, Congress intended that agencies provide more than a boilerplate and unsubstantiated statement. The factual basis has to be meaningful.

The bill imposes a cost analysis requirement for every rule, not just those that have a SEISNSE. While agencies include some of these requirements in their factual basis, the requirement for an estimate of the total cost of implementing the rule, including the cost of compliance with the rule is not required for every rule. Only economically significant rules are required to have a cost-benefit analysis.[2] The APA does not require economic analyses when rules are proposed; and the RFA requires initial regulatory flexibility analyses only on rules that will have a SEISNSE. Moreover, this bill would extend the *cost* requirement to a vast majority of rules, but not require agencies to calculate the *benefits* of the rules, which is only half of the ledger. Even more troubling, the cost estimate would be extended to all rules, even those that do not impact small businesses. For example, the U.S. Coast Guard has published thousands of rules in the Federal Register to declare safety zones for public events, like firework displays or triathlons. It doesn't make sense to require the cost estimate for rules that will not impact small businesses, and it is a waste of taxpayers' dollars. Moreover, the bill removes any flexibility given to agencies to determine the most appropriate level of analysis.

The new procedural requirements to be included in the certification are very detailed, frequently unavailable to agencies, and provide no flexibility in instances where the information is difficult

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[1] OFF. OF ADVOCACY, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, U.S. SMALL BUS. ADMIN. (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf.

[2] CONG. RESEARCH SERV., COST BENEFIT ANALYSIS IN FEDERAL AGENCY RULEMAKING, 1–2 (Mar. 8, 2022).

to obtain. As drafted, the provisions require agencies to identify every specific small entity and provide an estimate of revenue for each specific small entity impacted, which would be practicably impossible if the small entity is unknown. Congress created the rulemaking process to allow the public to provide agencies with information necessary to make informed decisions. Moreover, the language is inconsistent with the RFA in that it does not include language like "to the extent practicable" or "where feasible" to take into consideration a situation where the data is unknown, unquantifiable, or unavailable.

In sum, this bill would require agencies with limited resources to perform extremely detailed data and analytical requirements for every rule, even if a rule would not have a significant impact on a significant number of small businesses.

The bill provides no additional resources to agencies to conduct a cost estimate for every rule or obtain the detailed information for the certification. This requirement for detailed analysis for all rules would detract from the quality of analysis for rules in which the RFA is triggered.

The bill's detailed requirements would also be subject to judicial review. Specifically, the new subsection (d) would detail the requirements for the certification in 605(b), and those certifications are subject to judicial review under 611(a). In essence, if an agency failed to comply with one of the new procedural requirements the rule could be overturned.

The Majority is concerned that agencies are improperly certifying that rules do not have a SEISNSE. It is important to note that the Office of Advocacy (Advocacy), an independent agency, is responsible for monitoring agencies' compliance with the RFA. In testimony before the Committee, Mr. Clark, the Acting Chief Counsel of Advocacy stated, "our concern when an agency does, in fact, attempt to certify a regulation that the certification has a factual basis. And the factual basis should set forth reasons why they feel that the impact is minimum or to no extent on small business. And when agencies fail to give us the factual basis, we do bring it to their attention."[3]

Moreover, with regard to DOL's Walkaround Rule, Advocacy didn't state the certification was wrong, it just said that the agency should conduct more outreach and better explain the impact of the proposed rule on small businesses. In another instance, Advocacy sent a comment letter to EPA raising concerns over the improper certification of the rule requiring one-time reporting and recordkeeping requirements for Asbestos. In the final rule, the EPA provided an exemption to businesses with annual sales threshold of $500,000 or less, in any calendar year from 2019 to 2022, saving small businesses 144 million.[4]

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[3] Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act, Hearing Before the H. COMM. ON SMALL BUS., 118th Cong. (Jun. 22, 2023).

[4] OFF. OF ADVOCACY, ANNUAL REPORT ON THE REGULATORY FLEXIBILITY ACT, (Jun. 2024)., http://advocacy.sba.gov/wp-content/uploads/2024/06/RFA-FY23_final.pdf.

For these reasons, I oppose the legislation.

NYDIA M. VELÁZQUEZ,
Ranking Member.

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