

116TH CONGRESS
2D SESSION

H. R. 8035

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, to clarify the nature of judicial review of agency interpretations, to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 14, 2020

Mr. BURCHETT introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, to clarify the nature of judicial review of agency interpretations, 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.**

4 This Act may be cited as the “Protecting Jobs and
5 Wages from Regulations Act of 2020”.

1 **SEC. 2. DEFINITIONS.**

2 Section 551 of title 5, United States Code, is amend-
3 ed—

4 (1) in paragraph (13), by striking “and” at the
5 end;

6 (2) in paragraph (14), by striking the period at
7 the end and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(15) ‘negative-impact on jobs and wages rule’
10 means any rule that the agency that made the rule
11 or the Administrator of the Office of Information
12 and Regulatory Affairs determines is likely to—

13 “(A) in one or more sectors of the economy
14 that has a 6-digit code under the North Amer-
15 ican Industry Classification System, reduce em-
16 ployment not related to new regulatory compli-
17 ance by 1 percent or more annually during the
18 1-year, 5-year, or 10-year period after imple-
19 mentation;

20 “(B) in one or more sectors of the econ-
21 omy that has a 6-digit code under the North
22 American Industry Classification System, re-
23 duce average weekly wages for employment not
24 related to new regulatory compliance by 1 per-
25 cent or more annually during the 1-year, 5-
26 year, or 10-year period after implementation;

1 “(C) in any industry area (as such term is
2 defined in the Current Population Survey con-
3 ducted by the Bureau of Labor Statistics) in
4 which the most recent annual unemployment
5 rate for the industry area is greater than 5 per-
6 cent, as determined by the Bureau of Labor
7 Statistics in the Current Population Survey, re-
8 duce employment not related to new regulatory
9 compliance during the first year after imple-
10 mentation; or

11 “(D) in any industry area in which the Bu-
12 reau of Labor Statistics projects in the Occupa-
13 tional Employment Statistics program that the
14 employment level will decrease by 1 percent or
15 more, further reduce employment not related to
16 new regulatory compliance during the first year
17 after implementation.”.

18 **SEC. 3. RULE MAKING.**

19 (a) Section 553(a) of title 5, United States Code, is
20 amended by striking “(a) This section applies” and insert-
21 ing “(a) APPLICABILITY.—This section applies”.

22 (b) Section 553 of title 5, United States Code, is
23 amended by striking subsection (b) and inserting the fol-
24 lowing:

1 “(b) RULE MAKING CONSIDERATIONS.—In a rule
2 making, an agency shall make all preliminary and final
3 factual determinations based on evidence and consider, in
4 addition to other applicable considerations, the following:

5 “(1) The legal authority under which a rule
6 may be proposed, including whether a rule making
7 is required by statute, and if so, whether by a spe-
8 cific date, or whether the agency has discretion to
9 commence a rule making.

10 “(2) Other statutory considerations applicable
11 to whether the agency can or should propose a rule
12 or undertake other agency action.

13 “(3) The specific nature and significance of the
14 problem the agency may address with a rule (includ-
15 ing the degree and nature of risks the problem poses
16 and the priority of addressing those risks compared
17 to other matters or activities within the agency’s ju-
18 risdiction), whether the problem warrants new agen-
19 cy action, and the countervailing risks that may be
20 posed by alternatives for new agency action.

21 “(4) Whether existing rules have created or
22 contributed to the problem the agency may address
23 with a rule and whether those rules could be amend-
24 ed or rescinded to address the problem in whole or
25 part.

1 “(5) Any reasonable alternatives for a new rule
2 or other response identified by the agency or inter-
3 ested persons, including not only responses that
4 mandate particular conduct or manners of compli-
5 ance, but also—

6 “(A) the alternative of no Federal re-
7 sponse;

8 “(B) amending or rescinding existing
9 rules;

10 “(C) potential regional, State, local, or
11 tribal regulatory action or other responses that
12 could be taken in lieu of agency action; and

13 “(D) potential responses that—

14 “(i) specify performance objectives
15 rather than conduct or manners of compli-
16 ance;

17 “(ii) establish economic incentives to
18 encourage desired behavior;

19 “(iii) provide information upon which
20 choices can be made by the public; or

21 “(iv) incorporate other innovative al-
22 ternatives rather than agency actions that
23 specify conduct or manners of compliance.

24 “(6) Notwithstanding any other provision of
25 law—

1 “(A) the potential costs and benefits asso-
2 ciated with potential alternative rules and other
3 responses considered under section 553(b)(5),
4 including direct, indirect, and cumulative costs
5 and benefits and estimated impacts on jobs (in-
6 cluding an estimate of the net gain or loss in
7 domestic jobs), wages, economic growth, innova-
8 tion, economic competitiveness, and impacts on
9 low income populations;

10 “(B) means to increase the cost-effective-
11 ness of any Federal response; and

12 “(C) incentives for innovation, consistency,
13 predictability, lower costs of enforcement and
14 compliance (to government entities, regulated
15 entities, and the public), and flexibility.”.

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