National Association of Manufacturers

Impact on Small Businesses

Executive Order 12,866 and Regulatory Flexibility Act Requirements for Small Business

E.O. 12866 directs each agency to "tailor its regulations to impose the least burden on…businesses of different sizes." See E.O. 12866 §1(11).

Regulatory flexibility analysis needs to "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." See 5 U.S.C. § 603.

Impact on Small Businesses not Considered

CBP has failed to meet its obligations to analyze the economic impact of the proposed rule on small manufacturers even though CBP has stated that the rule "likely affects a substantial number of small entities." See 73 Fed. Reg. 107.

First, CBP has not considered alternatives to minimize the impact on small manufacturers. CBP in its initial report stated "it [had] not identify any significant alternatives to the proposed rule that specifically address small entities." See 73 Fed. Reg. 107. The RegFlex requires CBP to identify alternatives.

Second, CBP has not tailored the rule to be least burdensome on small manufacturers. Instead, CBP claims that "due to data limitations, we cannot determine if these effects will be significant on a per-entity basis." See 73 Fed. Reg. 107. If CBP were to conduct a pilot program on the proposed rule, it would have more data to use to determine the impact on small businesses. CBP should be held accountable and required to determine the impact on small businesses.

- Small businesses lack the resources needed to comply with CBP's proposal, including the expertise and computer software needed to help collect, compile and report the information required by 10+2.
- Small businesses will also face significant increases in operating costs. CBP's proposed 10+2 rule will require small importers to stock and store extra inventory, pay increased bond charges, and insure the goods for an extra 2-5 days or more if the sailing deadline is missed.
- Small businesses ship in consolidated containers, which means that if one importer's ISF creates a red flag, the entire container will be delayed and each importer will incur significant costs while their goods sit at the foreign port.
- CBP has also failed to address many of the practical issues that arise for international business transactions including the issuance of lines of credit, the ability of customs brokers to provide services to small importers, the ability to obtain ISF bonds and the ability to store and protect goods while they sit at the foreign ports. These costs and considerations are extremely important for small businesses, placing additional burdens on their operations that are simply not sustainable.
- Customs Brokers have stated that they will not be able to provide services to small businesses for the ISF. This will significantly impact the ability of small businesses to comply with and file the ISF.