



441 G St. N.W.  
Washington, DC 20548

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June 10, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Cathy McMorris Rodgers  
Chair  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Federal Trade Commission: Non-Compete Clause Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Trade Commission (FTC) titled “Non-Compete Clause Rule” (RIN: 3084-AB74). We received the rule on May 30, 2024. It was published in the *Federal Register* as a final rule on May 7, 2024. 89 Fed. Reg. 38342. The effective date of the rule is September 4, 2024.

According to FTC, it issued this final rule pursuant to the Federal Trade Commission Act (FTC Act). See *generally* Pub. L. No. 63-203, 38 Stat. 717 (Sept. 26, 1914). FTC stated that the rule provides that it is an unfair method of competition for persons to, among other things, enter into non-compete clauses (non-competes) with workers on or after the rule’s effective date. FTC also stated that with respect to existing non-competes—*i.e.*, non-competes entered into before the effective date—the rule adopts a different approach for senior executives than for other workers. FTC stated further that for senior executives, existing non-competes can remain in force, while existing non-competes with other workers are not enforceable after the effective date.

Enclosed is our assessment of FTC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: April Tabor  
Secretary of the Commission  
Federal Trade Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
FEDERAL TRADE COMMISSION  
TITLED  
“NON-COMPETE CLAUSE RULE”  
(RIN: 3084-AB74)

(i) Cost-benefit analysis

The Federal Trade Commission (FTC) stated that it considered several effects of this final rule on economic outcomes including earnings, innovation, entrepreneurship, distributional effects on workers, investment in human capital, capital investment, legal and administrative costs, prices, labor mobility and turnover, and litigation costs. FTC also stated that it describes the primary estimates of benefits, transfers, costs, and distributional effects associated with each of the outcomes noted above in a table within the preamble of the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

According to FTC, this final rule will not have a substantial impact on most small entities, and in many cases the final rule will likely have a positive impact on small businesses. FTC estimates the legal and administrative costs imposed by the rule to be \$712.45 to \$1,250.93, on average, for single-establishment firms with 10 workers. FTC stated that these costs would exceed the Small Business Administration’s recommended thresholds for significant impact only if the average profit of regulated entities with 10 workers is \$7,125 to \$12,509, average revenue is \$71,245 to \$125,093, or average labor costs are \$14,249 to \$25,019, respectively. FTC stated further that while there are additional nonmonetizable costs associated with the rule, there are also nonmonetizable benefits which would at least partially offset those costs.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FTC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive*

*Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FTC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On January 19, 2023, FTC released a proposed rule. 88 Fed. Reg. 3482. FTC stated that it received, considered, and reviewed over 26,000 public comments. According to FTC, the comments reflected a diverse cross-section of the U.S. such as employers and workers from a wide range of industries, comments from trade and professional groups, academics, and federal, state, and local government representatives. FTC addressed and summarized comments throughout the preamble of the rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FTC determined that this final rule contains information collection requirements (ICRs) under the Act. FTC estimates the ICR would require 1,132,515 labor hours resulting in labor costs of \$72,121,201 for the ICR sent via digital format and \$22,000,000 for the ICR sent via mail.

Statutory authorization for the rule

FTC promulgated this final rule pursuant to sections 45–46 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FTC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FTC is not subject to the Order.