



October 17, 2018

VIA ELECTRONIC CORRESPONDENCE

The Honorable Rick Perry
Secretary, U.S. Department Energy
U.S. Department Energy
1000 Independence Ave. S.W.
Washington, D.C. 20585

Dear Secretary Perry:

As a result of President Trump's executive orders 13771 and 13777, the Office of Advocacy (Advocacy) has been engaged in efforts to hear first-hand from small businesses across the country about specific federal regulatory burdens facing their businesses. As you know, under the Regulatory Flexibility Act (RFA), agencies are required to consider the impact of their regulations on small entities when promulgating federal regulations.¹ We believe the RFA and consideration of small business economic impacts is a good place to start when an agency is selecting rules that are being reviewed for reform or elimination.

We recently hosted roundtables in Virginia, New Hampshire, Massachusetts, Michigan, Wisconsin, Texas, Georgia, California, Florida, Iowa, Nebraska, Colorado, Wyoming, Pennsylvania, New Jersey, and New York and would like to inform you of the specific concerns

¹ Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. 5 U.S.C. § 601 et seq.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so. Small Business Jobs Act of 2010 (PL 111-240) § 1601.

and regulations that we heard about from small businesses in that region. In addition, Advocacy solicited online comments from stakeholders.

Summary of Concerns from Roundtables and Online Comments

- **Energy Efficiency Standards**

Advocacy heard from several stakeholders regarding the energy efficiency standards for various appliances and items. Small entities indicated that these standards are untenable, and extremely burdensome. Small businesses encouraged the Agency to review the standards, and understanding that Energy Policy and Conservation Act (EPCA) prevents anti-backsliding, propose alternatives for small business compliance. Issues include:

- Walk-in Coolers and Freezers
- Automatic Commercial Ice-Makers
- Manufactured Housing
- Ceiling Fans
- Residential Home-Building
- Commercial Refrigeration ambient temperature testing procedures

- **Energy Star Programming**

Stakeholders continued to indicate that the energy star program is currently superfluous in that it takes credit for savings that would have occurred anyway. They stated that the unit shipment data that they are required to submit is a burden, and has no offsetting benefit. Furthermore, entities indicated that the cost of using only third-party certifying bodies is burdensome to small companies. Stakeholders have stated that energy star's qualification levels, and test procedures should be reevaluated and modified.

- **FERC Agency Oversight**

Stakeholders stated that once FERC designates authority to the states for licensing and permitting, states often do not give stakeholders permits that FERC would otherwise authorize. They stated the need to have federal oversight in state operations, and a mechanism for appeal to FERC when stakeholders and states disagree.

- **FERC Distributed Energy Resources (DER) Proposed Rule**

Small entities indicated that the proposed rule would have a significant economic effect on a substantial number of small entities, despite the Agencies' certification of the proposed rule. They stated that the Agency should consider small entity exemptions or alternatives such as allowing the states to decide whether to allow aggregators into the market.

- **Energy Efficiency Process Rule**

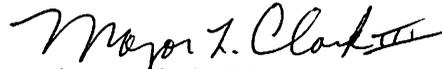
Advocacy heard that small entities appreciated DOE's efforts to collect information on the energy efficiency procedures for consumer products and commercial industrial equipment, and the subsequent public comment hearing, and are hopeful that the Agency will consider specific small business concerns in the finalization of a rule.

The Office of Advocacy looks forward to working with your agency to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their voice in this regulatory reform process. We hope that you will include these specific rules when you compile your list of rules to review. Advocacy would be happy to meet with you or your representative so that we may detail the concerns and help suggest less burdensome alternatives for small business as rules are being considered for revision. I have provided the contact information for Assistant Chief Counsel **Prianka Sharma** below.

As we continue to hear from small businesses across the country at our regional regulatory reform roundtables or through our outreach from our regulatory reform website, we will update you with additional summaries from those locations.

Thank you for considering small business impacts as a vital part of your regulatory reform efforts and for including the Office of Advocacy as an important part of the process.

Sincerely,



Major L. Clark, III

Acting Chief Counsel for Advocacy

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