



October 30, 2018

VIA ELECTRONIC CORRESPONDENCE

The Honorable Ryan Zinke
Secretary, U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Dear Secretary Zinke:

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

- **Fish and Wildlife Service Endangered Species Act (ESA) Reform**
 - Small entities are encouraged that the Agency has proposed three rules regarding revisions to definitions and procedures under the ESA. They and Advocacy are hopeful that the agency will consider the public comments, paying close attention to the interests and considerations of small business. In addition, small entities would like Advocacy to remind the agency that when the rules are finalized the agency should issue implementation guidance documents either simultaneously with the final rule or within a specified period of time. Additionally, Advocacy would encourage the agencies to consider further revising mitigation policies once the rules are finalized.
 - Small entities mentioned that they want the agency to reconsider listings for certain species including:
 - Sage Grouse
 - Lesser Prairie Chicken
 - Long Nose Bat (especially those with white nose syndrome)
 - Beluga sturgeon that are farmed and not imported

- **National Park Service Commercial Use Authorization Fees**

Advocacy has heard from several small entities that the new fee structure for commercial use authorizations is cost-prohibitive to small operators. They have stated that in some instances their costs will increase anywhere from 600-900 percent. They are asking for further relief for small operators by allowing for exemptions or reduced rates. Some have stated that they will have to discontinue their tours or only operate in certain areas until and unless the fees are reduced.

- **Candidate Conservation Agreements (CCA)**

Small entities stated that they want to encourage the agency to consider all affected parties when putting together candidate conservation agreements with assurances (CCAA). They specifically mentioned ensuring that other agencies such as U.S. Department of Agriculture's Rural Utilities Service are included in initial meetings rather than being added later on so that all parties can confer simultaneously. They further stated that the agency should allow for more time for entities to finalize CCA and CCAA's before a listing is finalized so that they are not immediately subject to the implications of the listing.

- **National Park Service and Bureau of Land Management Permits**
 - Some small entities mentioned that the requirements for insurance for recreational activity and special use permits are too high and make it cost prohibitive for small businesses to operate within the parks. They stated the agencies should consult with the public and set a threshold that is reasonable and accurate.

- They also mentioned that the agencies should provide their field offices with uniform guidance on the issuance of permits and what is considered a prohibited activity or a reason for denial of a permit application. Several small entities stated that such determinations by regional staff are often inconsistent from one office to another.
 - Advocacy recommends the agencies review and revise their agency guidance on these issues to ensure standardized implementation, and to provide transparency to the public on the practices and procedures.
- **Bureau of Land Management Mineral Trespass**
Stakeholders indicated that current agency guidance is too stringent, misinterprets the regulation and is confusing. They have stated that the agency should publish a new guidance clarifying (1) What use of sand and gravel (or ordinary soils) will constitute an “unauthorized use”; (2) Does the use result in a fine; (3) What is the amount of the fine, and are there additional fees? In addition, stakeholders are requesting that the agency define commercial vs. personal use of mineral material and define “minimal.”
 - **Fish and Wildlife Service Habitat Conservation Plans**
Small entities have indicated that the draft handbook creates a series of obstacles for applicants. They stated the imposition of mitigation requirements mandating a “no net benefit” goal and “no net loss” standard that creates an untenable situation and impacts manufacturing and devalues private property. Stakeholders have requested the agency re-write the handbook with less stringent requirements in consultation with industry so that they may understand the contents.

Summary of Regulatory Reform Agency Efforts

Advocacy applauds DOI for its ongoing regulatory reform efforts that have reduced the regulatory burden to small entities:

- Withdrawal of the final rule entitled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule.”
- Withdrawal of the 2016 Fish and Wildlife Service mitigation policy.²
- Withdrawal of the 2016 Endangered Species Act (ESA) Compensatory Mitigation Policy.³
- Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements.⁴

The Office of Advocacy looks forward to working with your agency to continue to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their

² U.S. Fish and Wildlife Service Mitigation Policy, 83 Fed. Reg. 36472 (July 30, 2018).

³ Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy, 83 Fed. Reg. 32469 (July 30, 2018).

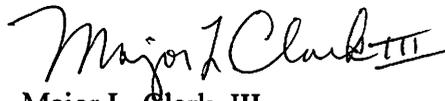
⁴ Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49184 (September 28, 2018).

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,

A handwritten signature in black ink that reads "Major L. Clark, III". The signature is written in a cursive style with a horizontal line under the "III".

Major L. Clark, III
Acting Chief Counsel for Advocacy

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