

OFFICE OF ADVOCACY

REGULATION • RESEARCH • OUTREACH



October 17, 2018

The Honorable Andrew Wheeler
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
via e-mail

Dear Administrator Wheeler:

I am writing to provide you an update on the Office of Advocacy's (Advocacy) regional regulatory reform efforts. As a result of President Trump's executive orders, 13771 and 13777, the Office of Advocacy began its 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.

Since September 2017, we hosted additional roundtables in Virginia, New Hampshire, Massachusetts, Michigan, Wisconsin, Texas, Georgia, California, Florida, Indiana, Wyoming, Colorado, New Jersey, Pennsylvania and New York and would like to inform you of the specific concerns and regulations that we heard about from small businesses in those regions.

Advocacy heard from many small businesses on a number of environmental regulations. For instance, with regard to EPA's chemical regulations, small businesses expressed concerns regarding the adverse impacts of multiple federal agency rules, including EPA, in handling regulated chemical substances. These small businesses suggested that the agency examine and address overlapping, duplicative, and contradictory regulations. Small businesses also expressed

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.

concern about the lack of a consistent small business definition for all federal agencies. These small businesses suggested the EPA revise their small manufacturer definition. Advocacy would like to commend EPA for working with our office to harmonize the small business definition with the Small Business Administration's size standards for EPA's recently finalized fee rule. This is a step in the right direction to provide uniformity for small business definitions across federal regulations. Advocacy is hopeful that we can continue our collaboration with the agency to address any concerns arising from the revision of the small business definition under the Toxic Substance Control Act's Section 8(a).

There were also several small business commenters that identified issues with EPA's hazardous waste regulations. For example at our Georgia roundtable, we learned about small business concerns pertaining to EPA's regulation of airbag waste under the Resource, Conservation, and Recovery Act (RCRA). Advocacy reached out to EPA on this issue and was pleased to see that the agency addressed this small business's concern by subsequently issuing its July 2018 memorandum to provide the necessary clarifications and flexibilities. Advocacy plans on staying engaged with the agency on further developments with regard to airbag waste management and any potentially related regulations.

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 continue to include us as you refine or add to 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.

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 again.

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

cc: Brittany Bolen, Associate Administrator
Office of Policy
Environmental Protection Agency