



April 28, 2021

VIA ELECTRONIC SUBMISSION

The Honorable Gina Raimondo, Secretary
U.S. Department of Commerce
1401 Constitution Ave, NW
Washington, D.C. 20230

Re: Advance Notice of Proposed Rulemaking, Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures (88 Fed. Reg. 16312; March 29, 2021).

Dear Secretary Raimondo:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration submits the following comments in response to the United States Department of Commerce Advance Notice of Proposed Rulemaking: *Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures*. Advocacy urges the Department of Commerce to extend the public comment period for a minimum of 30 additional days to allow for small businesses and their representatives to fully and meaningfully participate in this important rulemaking.

The Office of Advocacy

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 Regulatory Flexibility Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic

¹ 5 U.S.C. § 601 et seq.

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

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.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.³ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁴

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁵

Background

On January 19, 2021, the Department of Commerce (Commerce) published an [interim final rulemaking](#) on the implementation of Executive Order 13873, "Securing the Information and Communications Technology and Services Supply Chain" (84 FR 22689). The rule would allow the Secretary of Commerce to address national security threats by prohibiting certain information and communications technology and services transactions. The interim final rule became effective on March 22, 2021. Commerce announced it would implement a licensing process by May 19, 2021 for any entities, including small businesses, seeking pre-approval (86 FR 4911). However, on March 29, 2021, Commerce published this advance notice of proposed rulemaking (ANPRM), seeking additional public input on several aspects of a potential voluntary licensing or pre-clearance process. The comment period currently runs from March 29, 2021 through April 28, 2021.

Request for Extension of the Public Comment Period

The overall effort by Commerce to create regulations to better control information and communications technology is massive. This process covers most of the entire communication and technology supply chain. The overall process may well have an impact on most small businesses in the United States. Many small businesses are further down the supply chain than larger firms in the industry and thus are not aware fully of the real cost of compliance of this regulatory process.

While supportive of the goals of the interim final rule, small businesses would greatly benefit from public roundtables that explain more clearly the goals and objectives of the overall regulatory scheme. For example, public records show that very few small businesses participated

³ Small Business Jobs Act of 2010 (Pub. L. No. 111-240) § 1601.

⁴ Id.

⁵ 5 U.S.C. § 601 note.

in the rulemaking that culminated in the above-referenced interim final rule. As such, very few small businesses are aware of Commerce's effort in this ANPRM to seek input on a formal license system or a voluntary pre-clearance process.

Advocacy is very pleased that Commerce is seeking specific input from small businesses. However, without a comprehensive discussion by Commerce of its regulatory efforts to intervene, stop, and disallow the transaction of certain business processes that involve information and communication technology, small businesses may not be able to provide sufficient input as to the types of programs that they need to comply, and whether such programs are available at reasonable cost. Advocacy is concerned that the current comment period does not allow for small businesses to prepare detailed analyses and data necessary to address the rulemaking.

Conclusions and Recommendations

Advocacy urges Commerce to extend the public comment period to allow for small businesses to participate more meaningfully in this rulemaking process. Such extension will allow small businesses the time and preparation necessary to provide comprehensive and detailed comments and participate meaningfully in the regulatory process. If you have any questions or require additional information, please contact me at major.clark@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration