

## **EPA's Proposed Hardrock Mining Financial Responsibility Rule**

On January 11, 2017, EPA issued a proposed rule requiring development of financial responsibility instruments to provide coverage for potential liabilities for releases of hazardous substances from hardrock mines. On January 19, 2017, the Office of Advocacy (Advocacy) filed a comment letter requesting that EPA withdraw the proposal. The letter to EPA may be accessed at: <http://www.sba.gov/advocacy/>.

- Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 directs EPA to develop requirements for classes of facilities to establish evidence of financial responsibility for risks associated with the production, transportation, treatment, storage, or disposal of hazardous substances. EPA's proposal addresses only the hardrock mining industry with respect to this requirement.
- In Advocacy's view, however, these small mines are already highly regulated by robust state and Federal programs. Advocacy, the small business mining community and mining regulators believe that these programs effectively address the same issues at modern small mines. The office finds no significant evidence of a problem warranting federal regulation.
- EPA proposed this rule based upon a contrary belief that the existing state and Federal programs would not adequately address future CERCLA liabilities.
- Under the Regulatory Flexibility Act (RFA), EPA recognized that the rule will have a significant economic impact on a substantial number of small businesses. Consequently, a SBREFA panel was convened to examine and consider alternatives to minimize the impacts on small businesses. The panel report is found at <https://www.epa.gov/reg-flex/sbar-panel-cercla-108b-hard-rock-mining-financial-assurance-proposed-rule>.

Based on information from the SBREFA panel and the rulemaking record, Advocacy is concerned that this rule would result in substantial costs for small businesses without significant environmental benefits. Advocacy urges EPA to withdraw this proposed rule.

For more information, visit Advocacy's website at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel Kevin Bromberg by email at [kevin.bromberg@sba.gov](mailto:kevin.bromberg@sba.gov) or by phone at 202-205-6964.

