



September 28, 2017

VIA ELECTRONIC CORRESPONDENCE

The Honorable Ryan Zinke  
Secretary, U.S. Department of the Interior  
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 begun an effort 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.<sup>1</sup> 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 Louisiana, Idaho, Kentucky, Ohio, Missouri, and Kansas, and would like to inform you of the specific concerns and regulations that we heard about from small

---

<sup>1</sup> 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.

businesses in that region. In addition, stakeholders submitted comments online through our website.

### Summary of Concerns from Roundtables and Online Comment Form

- **Designation of Critical Habitats**  
Stakeholders indicated that the current procedures do not require an environmental analysis that is thorough enough and that there should be stricter requirements for designations. They stated that the current requirements are too lenient and that often entire areas are designated critical when a species does not even reside in that particular area. Currently there is no requirement for the presence of physical or biological habitat features. The current definition lowers the threshold for action to “appreciably diminish” critical habitats. Stakeholders want the definition to reflect a more science-based approach that balances economic growth.
- **Definition of Destruction or Adverse Modification of Critical Habitat**  
Stakeholders stated that this definition needs to be updated as it is too broad and problematic.
- **Endangered and Threatened Species Act Compensatory Mitigation Policy**  
Stakeholders indicated that the current policy limits the ability of small businesses to start, expand, and operate due to costly permitting and mitigation requirements. The rule is a shift from project-by-project to a landscape-scale approach. The policy needs to hold all compensatory mitigation mechanisms to equivalent and effective standards.
- **Habitat Conservation Plans**  
The current handbook complicates issues of an already costly and inefficient process, and imposes mitigation requirements that mandate “net benefit” and a “no net standard” loss which stakeholders have said is untenable and devalues private property. Stakeholders are asking that this handbook be withdrawn and re-written.
- **Endangered Species Act Litigation**  
Stakeholders have requested that DOI take steps to defend against mass listing actions and avoid sue and settle arrangements which take away from Fish and Wildlife Service discretion.
- **Leasing of Federal Coal**  
Stakeholders would like to see increased opportunities to lease federal coal. Manufacturers in particular use coal for electricity and stated that they use approximately 43 million short tons of coal per year for non-electric generation purposes.
- **Off-shore Oil and Gas Exploration**  
Stakeholders would like to see increased opportunities to lease federal coal. Manufacturers in particular use coal for electricity as well as for non-electric purposes. They have stated that approximately 43 million short tons of coal per year is used for

non-electric generation purposes.

- **Hydraulic Fracturing (Fracking)**

Stakeholders would like less stringent regulations that allow them to conduct hydraulic fracturing procedures.

- **Specific Endangered Species Listings**

Stakeholders have indicated that there are several listings that are particularly problematic and should be reviewed including: rusty patch bumble bee, lesser prairie chicken, spotted owls, northern long-eared bats.

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,

*/s/ Major L. Clark, III*

Major L. Clark, III  
Acting Chief Counsel for Advocacy

Assistant Chief Counsel, Prianka Sharma  
Prianka.Sharma@sba.gov  
(202) 205-6938