



October 2, 2017

VIA ELECTRONIC CORRESPONDENCE

The Honorable Sonny Perdue  
Secretary, U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

Dear Secretary Perdue:

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, Ohio, Kentucky, Missouri; and Kansas, and would like to inform you of the specific concerns and regulations that we heard about from small businesses in that region. In addition, we received comments through our website.

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<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.

## Summary of Concerns from Roundtables and Website

- **FSIS Regulation 9 C.F.R. § 418.2—misbranding of products**  
Advocacy has heard from stakeholders that this regulation should be revised. Small entities stated that the regulation requires any issue related to misbranding or be reported by the shipping and/or receiving establishment to the relevant FSIS District Office. Stakeholders suggested placing the reporting onus on the shipping entity rather than the shipping and receiving entity.
- **FSIS Regulation 9 C.F.R. § 310.25 (a)- contamination with microorganisms**  
Stake holders indicated that the rule requiring generic E. coli testing adds cost to operations but provides little benefits. Stakeholders stated that inspectors rarely review results and reviews of establishment data show little relation to public health objectives. In addition, newer technologies for screening and process control assessments have been developed and are used, which results in more meaningful and robust data. Stakeholders have indicated that the rule should be revised.
- **FSIS Regulation 9 C.F.R. § 381.91- contamination**  
Advocacy has heard from small entities that this rule should be amended to eliminate the need to rinse poultry salvage parts with 20-50 ppm chlorine. Stakeholders indicate that there is little scientific data supporting the need to use chlorine and the prescriptive nature of the rule contradicts a HACCP approach. They stated that a facility should have to address hazards of concern and in doing so companies may and should consider alternatives to rinsing with chlorine.
- **FSIS Regulation 9 C.F.R. § 381.65 (g)- controlling contamination through slaughter and dressing operation**  
Stakeholders indicated that the regulation includes prescriptive and burdensome sampling requirements for poultry slaughter establishments. They stated that requiring plants to sample 1/22,000 carcasses is burdensome and unnecessary. Stakeholders also indicated that a facility should collect data to support its processes and what best serves public health may not include sampling at this frequency, particularly for APC or other generic organisms. When SIP was in place, Salmonella sampling was necessary but with the new poultry inspection system the need for such testing has been eliminated. In addition, each poultry facility has over two years' of data now under the NPIS system. Stakeholders believe the required testing does not add value or enhance food safety and ask that it be revised.
- **FSIS Regulation 9 C.F.R. §381.36-facilities**  
Stakeholders indicated that most provisions in this section no longer apply under the new poultry inspection system (NPIS), and therefore the regulations should either be repealed or revised.
- **FSIS 9 C.F.R. § 381.66-temperatures and chilling and freezing procedures**  
Advocacy heard from stakeholders that the temperature and chilling regulations are outdated and should be repealed or revised.

- **FSIS 9 C.F.R. § 381.67- slaughter inspection rate maxims**  
Stakeholders indicated that under NPIS the line configuration provisions no longer apply.
- **FSIS 9 C.F.R. § 381.76- post mortem inspection**  
Stakeholders indicated that this regulation is not about food safety but product quality and should be rescinded.
- **FSIS 9 C.F.R. § 381.79-passing of carcasses and parts**  
Advocacy heard from stakeholders that this regulation is superfluous and not needed.
- **FSIS 9 C.F.R. § 381.80-93- relating to several diseases**  
Stakeholders indicated that these regulations are outdated and not in use because plant programs accomplish the same objectives more efficiently. The regulations should be rescinded.
- **FSIS Specific Risk Materials Rules**  
Advocacy heard from stakeholders that certain components addressing the issues involving removal of SRM (i.e., the feed ban) should remain, but that the Agency should review the science regarding the risk and reassess the cost and effectiveness of the SRM removal/disposal regulations, including those relating to non-ambulatory disabled livestock (NADL). Stakeholders stated that the rule imposes a cost exceeding the benefits and results in added food waste. They stated that at a minimum, the Agency should allow public health veterinarians to make a professional case-by-case disposition.
- **Organic Standards**  
Advocacy heard from one stakeholder about the need to properly enforce organic standards rules for labeling and that there should be better enforcement and policing of entities that mislabel products that are not USDA certified. Advocacy also heard from stakeholders in the fishing industry about the need to finalize the organic aquaculture standard for fish, as well as develop an organic standard for shellfish.
- **Forest Service Timber on Federal Lands**  
Several stakeholders indicated that Forest Service should make more timber available for purchase on federal lands. They also spoke about the need to speed up the process for sales of wildfire salvage timber, indicating that the current NEPA process delays the sales to the point where the wood is no longer salvageable. Furthermore, they stated that Forest Service should offer every sale as a set-aside first, and then open it up if no small business bids. Furthermore they stated that stewardship should be counted in small business calculations, and that the NEPA process for bids should be streamlined so that it is not as costly or burdensome.

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 Counsels **Linwood Rayford** and **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*

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