



Memorandum

Advocacy: the voice of small business in government

TO: Nathan Frey, Office of Management and Budget, Office of Information and Regulatory Affairs
FROM: Kia Dennis, Assistant Chief Counsel, Office of Advocacy, Small Business Administration
CC: Charles Maresca, Director, Interagency Affairs, Office of Advocacy, Small Business Administration
DATE: June 7, 2011
SUBJECT: Interagency Comments regarding the National Park Service's Special Regulation Areas of the National Park System

The following memorandum contains information that falls under the Freedom of Information Act (FOIA) deliberative process provisions and is, therefore, exempt from public disclosure. This report is intended for internal agency review only, and the information is FOIA(b)(5) exempt.

Thank you for providing the Office of Advocacy (Advocacy) with the opportunity to submit interagency comments on the National Park Service's (NPS) Special Regulation Areas of the National Park System. The rule designates routes where off-road vehicles may be used within the Cape Hatteras National Seashore.

Background on 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,² 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.

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.).

Advocacy Suggests NPS Conduct an IRFA

Advocacy recognizes that this rule will not directly regulate small businesses and will have indirect economic effects only. Generally, the RFA allows an agency to certify a rule when the impacts on small businesses are indirect.³ However, under the circumstances Advocacy suggests that NPS conduct an initial regulatory flexibility analysis (IRFA).

Advocacy has spoken to small businesses that will be indirectly affected by this rule and has noted that the Off Road Vehicle Management Plan has garnered a good deal of press attention in the affected region. Additionally, NPS' cost-benefit analysis indicates that most businesses in the economic region that will be affected by this rule are small entities.⁴ The cost-benefit analysis also states that these small businesses will have a harder time absorbing the revenue losses detailed in the analysis and that some small businesses may experience major impacts as a result of this rule.⁵ Under the circumstances, Advocacy suggests that NPS do an IRFA despite the fact that the economic effects are indirect. Much of the economic information that NPS would need to include may be extracted from the cost-benefit analysis. For example, NPS estimates that 81.42 percent of the businesses discussed in the cost-benefit analysis are small businesses. It may be appropriate, then, to estimate that 81.42 percent of the costs would fall on small businesses. Advocacy believes that, although these costs are an indirect effect of the regulation, because the majority of businesses that they will fall upon are small businesses and these small businesses will have a harder time absorbing these costs, it would be beneficial to small businesses to have an IRFA and for NPS to consider public comments concerning these costs and possible ways to mitigate costs to small businesses.

Advocacy would be happy to assist NPS in preparing an IRFA. Please do not hesitate to contact Kia Dennis at 202-205-6936 if you have any questions.

³ A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act, 69-71 (June 2010).

⁴ Benefit –Cost Analysis of Proposed ORV Use Regulation in Cape Hatteras National Seashore, 2-19 (January 2011).

⁵ Id. at 3-26.