



August 21, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
Fish and Wildlife Service
1849 C St. NW
Washington, D.C. 20240

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

Re: Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation (Docket No. FWS-HQ-ES-2021-0104), Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat (Docket No. FWS-HQ-ES-2021-0107); and Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants (Docket No. FWS-HQ-ES-2023-0018).

Dear Secretary Haaland and Secretary Raimondo:

On June 22, 2023, the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS; together the Services) jointly published two proposed rules titled “Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation”¹ and “Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat.”² Additionally, FWS published a proposed rule entitled

¹ 88 Fed. Reg. 40753 (June 22, 2023).

² 88 Fed. Reg. 40764 (June 22, 2023).

“Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants.”³ Each of the proposed rules would make multiple changes to Endangered Species Act (ESA) regulations. This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the proposed rule.

Advocacy is concerned that many of the changes to the ESA made by the Services are vague and could cause confusion for small businesses. In addition, guidance will be required to implement multiple changes proposed by the Services. Further, Advocacy disagrees with the removal of language eliminating the consideration of economic impacts of critical habitat listing decisions.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under 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). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁵ 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, the RFA requires federal agencies to assess the impact of the proposed rule on small entities 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.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

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.”⁸

B. The Proposed Rules

Congress enacted the ESA in 1973 to conserve species likely to become endangered. The Act defines endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range.”⁹ Section 4 of the Act requires the Services to designate critical

³ 88 Fed. Reg. 40742 (June 22, 2023).

⁴ 5 U.S.C. §601 et seq.

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

⁶ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁷ *Id.*

⁸ *Id.*

⁹ 16 U.S.C. § 1532(6).

habitat when a determination is made that a species is endangered or threatened.¹⁰ Section 9 of the Act allows for specific prohibitions on activities and takings pertaining to species listed as endangered under the Act.¹¹ Section 4(d) of the Act allows for extensions of Section 9 prohibitions to species listed as threatened.¹² Finally, Section 7 requires that agencies ensure that their actions do not imperil the continued existence of endangered or threatened species.¹³ It is these various provisions that are the subjects of the three proposed rules.

In 2019, the Services proposed a series of revisions to the ESA. These revisions were challenged in federal court and vacated by the Northern District Court of California in 2022.¹⁴ The U.S. Court of Appeals for the Ninth Circuit temporarily stayed this decision. Later that year, the Agencies notified the District Court that they anticipated additional rulemaking. The District Court then remanded the 2019 rules to the Services.

Additionally, the 2019 ESA revisions were subject to review under Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” which directed federal agencies to review regulatory actions taken between January 20, 2017 and January 20, 2021 which conflicted with the Administration’s goals on environmental justice and climate change.

On June 22, 2023, FWS and NMFS published three proposed rules revising multiple aspects of the ESA. Changes made by the proposed rules include:

- Reinstating the “blanket 4(d) rule” applying ESA Section 9 protections to newly listed threatened species of wildlife and plants.
- Extending exemptions to the ESA’s take prohibitions, which are currently available to federal and state agencies, to federally recognized tribes.
- Requiring that species listing determinations be made “without reference to possible economic or other impacts of such determination.”¹⁵
- Revising the framework for interpreting the term “foreseeable future” in the ESA’s definition of threatened species.
- Revising the procedures and standards applied when making delisting decisions.
- Removing the justification for a “not prudent” critical habitat determination when threats to habitat stem solely from causes which cannot be addressed through management actions in a Section 7 consultation.
- Removing the justification for a “not prudent” critical habitat determination when “the Secretary otherwise determines critical habitat would not be prudent based on the best scientific data available.”¹⁶

¹⁰ *Id.*

¹¹ *Id.* §1538 (a).

¹² *Id.*

¹³ *Id.* § 1536 (a).

¹⁴ *Ctr. for Biological Diversity v. Haaland*, 609 F. Supp. 3d 1058.

¹⁵ Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, 88 Fed. Reg. 40764, 40765 (June 22, 2023).

¹⁶ *Id.* at 40,768.

- Removing the requirement that unoccupied areas will only be considered for critical habitat when occupied critical habitat would be inadequate for conservation of the species.
- Removing requirements for there to be a reasonable certainty that unoccupied areas will contribute to the conservation of the species and contain one or more physical or biological features that are essential for the conservation of the species.
- Revising the terms “Effects of the Action” and “Environmental Baseline” in regulations governing ESA Section 7 consultations.
- Removing regulatory language determining whether an activity or consequence is “reasonably certain to occur.”
- Expanding the scope of reasonable and prudent measures to include measures outside of the action area that avoid, reduce, or offset the impact of an incidental take.

Advocacy requested an extension of the Services’ 60-day comment period on July 14, 2023, noting that it was not sufficient to allow small entities to meaningfully review and comment on all three proposals.¹⁷ The Services denied this request on July 28, 2023. The Services also certified that the rules would not have a significant economic effect on a substantial number of small entities.

II. Advocacy’s Small Business Concerns

Advocacy held a roundtable on August 1, 2023, to discuss issues raised by the Services’ three proposed rules. In attendance were small businesses and their representatives. In addition, multiple small business stakeholders have reached out to Advocacy to discuss these proposals. Small businesses are directly impacted by ESA regulations. If enacted, these proposals will modify existing permitting requirements for the ESA. Advocacy is concerned these modifications will result in increased compliance costs and delays for projects involving small businesses. Small businesses were also concerned that many of the changes proposed by the Services were vague and could lead to confusion.

A. Comments on Proposed Rule on “Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation”¹⁸

This proposed rule amends the ESA’s Section 7 interagency consultation process. Section 7 requires federal agencies to consult with FWS and NMFS on whether proposed agency actions will jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.¹⁹ The interagency consultation

¹⁷ See, U.S. Small Bus. Admin., Off. of Advocacy, Comment letter on Proposed Rules for Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation, Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants (July 14, 2023), <https://www.regulations.gov/comment/FWS-HQ-ES-2021-0107-0014>.

¹⁸ 88 Fed. Reg. 40,753 (June 22, 2023).

¹⁹ See 50 C.F.R. § 402.

process often results in project delays and increased costs for small entities. The time and expenses associated with these consultations often result in an increase in regulatory burdens and can put potential projects out of reach for small entities. For example, the Section 7 consultation process for port and waterway infrastructure projects currently takes “two to three years, and sometimes longer, to complete.”²⁰

i. The Proposed Definition of “Effects of the Action” Should be Clarified.

The proposed rule would modify the definition of the phrase “effects of the action” to include “all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action.”²¹ This phrase is unclear. A small entity is can reasonably discern the impacts of their actions but requiring that same entity to forecast consequences that are “not part of the action” as well could cause significant confusion.

Advocacy recommends this addition be removed or clarified. If the modification is not removed or clarified, the Services should propose guidance to ensure that the interpretation of “not part of the action” is consistent amongst all district offices and make such guidance available for public comment.

ii. The Proposed Changes to “Reasonably Certain to Occur” Should be Based on the Best Data Available.

The proposed rule removes section 50 CFR 402.17, which calls for the use of “clear and substantial information” to determine whether an activity or consequence is reasonably certain to occur, citing “confusion.”²² The Services further propose to resolve any issues caused by the removal of this section in forthcoming guidance and/or updates to the Services’ Consultation Handbook.²³

In order to maintain the “reasonable certainty” required for small businesses to meet ESA requirements, Advocacy recommends that any standard replacing “clear and substantial information” be based on the best data available. Using the best available data will help to ensure that additional regulations will only be necessary when there is enough support to justify them. Also, any proposed guidance or updates to the Services’ Consultation Handbook should be made available for public comment and stress consistent application amongst district offices.

²⁰ See Pac. Nw. Waterways Ass’n, Comment Letter on Proposed Rule on Endangered and Threatened Species: Interagency Cooperation (Aug. 1, 2023), <https://www.regulations.gov/comment/FWS-HQ-ES-2021-0104-45203>; Lake Charles Harbor & Terminal Dist., Comment Letter on Proposed Rule on Endangered and Threatened Species: Interagency Cooperation (Aug. 9, 2023), <https://www.regulations.gov/comment/FWS-HQ-ES-2021-0104-70362>.

²¹ 88 Fed. Reg. 40,755 (June 22, 2023).

²² *Id.* at 40,757-58.

²³ *Id.*

iii. The Proposed Changes to “Reasonable and Prudent Measures” Should Not Be the Basis for Additional Mitigation Requirements.

The proposed rule would revise and expand the scope of reasonable and prudent measures that could be included as part of an incidental take statement.²⁴ Additionally, reasonable and prudent measures could be taken either inside or outside of the area where an action is occurring.²⁵ While Advocacy supports the increase in flexibility this change could bring by allowing additional mitigation options, it should not be used as the basis for additional mitigation requirements. While the proposed rule would expand the mitigation options available to a project, current mitigation requirements should remain unchanged.

The RFA requires agencies to analyze whether a proposed regulation will be duplicative of existing regulatory requirements. In this case, ESA mitigation requirements are already required for a variety of permits, including Clean Water Act permits. Additionally, the Council on Environmental Quality is proposing to add mitigation requirements to various stages of the National Environmental Policy Act review process.²⁶ The mitigation requirements of various statutes should work in harmony with one another rather than simply adding to each other. Advocacy recommends the Services not interpret these proposed changes in a manner that duplicates or increases existing mitigation requirements for projects.

B. Comments on Proposed Rule on “Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat.”²⁷

This proposed rule revises regulations regarding the listing of species as threatened or endangered and the designation of critical habitat under Section 4 of the ESA. Critical habitat designations can impose a significant burden on small entities, especially in instances where the Services improperly designate an area. Critical habitat designations delay infrastructure, development projects, and necessary repairs. Often, small entities must wait for more than a year for a consultation and biological assessment finding of “not likely to adversely affect” the species.²⁸ Advocacy has long stated in its own public comments to the Services that under the RFA, critical habitat designations have direct and burdensome impacts on small entities.²⁹

²⁴ *Id.* at 40,758-40,760.

²⁵ *Id.*

²⁶ 88 Fed. Reg. 49,924 (July 31, 2023).

²⁷ 88 Fed. Reg. 40,764 (June 22, 2023).

²⁸ 16 U.S.C. § 1536 describes the process for consulting with the Services when an action is to occur in an area where a species is present or where critical habitat has been designated. The Services then issue biological assessments to identify species or habitat that may be affected, and whether the action is likely to result in destruction or adverse modification of habitat. It is this process that results in delays to small businesses.

²⁹ *See, e.g.*, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Critical Habitat for Gunnison Sage-Grouse (Dec. 2, 2013), <https://www.regulations.gov/comment/FWS-R6-ES-2012-0108-0636>. *See also*, U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Critical Habitat for the New Mexico Jumping Mouse (July 15, 2013), <https://www.regulations.gov/comment/FWS-R2-ES-2013-0014-0005>; U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Revisions to the Regulations for Impact Analysis for Critical Habitat (Jan. 31, 2013), <https://www.regulations.gov/comment/FWS-R9-ES-2011->

i. Advocacy Strongly Objects to Eliminating Consideration of the Economic Impacts of Listing Decisions

The proposal adds language directing critical habitat determinations to be made “without reference to possible economic or other impacts of such determination.”³⁰ The Services rely on legislative history, stating that listing and delisting decisions under the ESA be made “solely upon biological criteria” and “economic considerations have no relevance to [listing and delisting] determinations.”³¹ The legislative history cited, however, only applies to the decision to list or delist a species, not to critical habitat determinations.

Choosing to protect a species has different impacts than deciding upon a method by which that species should be protected. Critical habitat decisions routinely impact communities, individuals, and small businesses. Advocacy believes not only that the economic impacts of critical habitat decisions should be considered, but that the Services should provide a regulatory impact analysis (RIA) to better inform the public of the impacts of any listing as critical habitat designation. The Services’ duty to inform the public in many cases falls short because no such analysis is currently provided.

Advocacy has frequently disagreed with the Services’ assertion that the RFA does not apply to critical habitat designations. Advocacy has also frequently disagreed with the Services’ certifications that their rules will not have an impact on small business.³² FWS has argued in response that because the regulatory mechanism through which critical habitat protections are realized is Section 7 of the ESA (which requires other federal agencies to consult with the Services), there are no direct impacts to small businesses. Essentially, this amounts to the assertion that FWS is not regulating small entities because another federal agency, which is required to conduct a consultation with FWS and obtain FWS’ consent to action, stands as an intermediary in the process. However, FWS retains the final decision as to what modifications are reasonable and prudent, and therefore adequate, to refrain from running afoul of the ESA. Since these decisions directly impact small entities, and since FWS has the final say, the RFA requires regulatory flexibility analyses to determine whether their proposed critical habitat designations will have a significant economic impact on a substantial number of small entities.

Advocacy has urged the Services to conduct thorough threshold RFA analyses to consider the impacts of critical habitat designations on small business. Many, if not all, critical habitat

[0073-0085](https://www.regulations.gov/comment/FWS-R2-ES-2011-0053-0021); U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Revised Critical Habitat for Southwestern Willow Flycatcher (Oct. 11, 2011), <https://www.regulations.gov/comment/FWS-R2-ES-2011-0053-0021>.

³⁰ 88 Fed. Reg. 40,764 (June 22, 2023).

³¹ *Id.* at 40,765

³² See U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Proposed Designation of Critical Habitat for Gunnison Sage-Grouse, (Dec. 2, 2013), <https://www.regulations.gov/comment/FWS-R6-ES-2012-0108-0636>. See also several comments from the SBA Office of Advocacy regarding no RFA analyses in the rulemaking, and/or incorrect certifications of rules by the Services at <https://www.sba.gov/category/advocacy-navigation-structure/legislative-actions/regulatory-comment-letters>.

designations have a direct and, in most cases, significant effect on small business. In some instances, small businesses have had to completely abandon potential projects due to a critical habitat designation because the permitting process was so costly and arduous. The delay in time was so lengthy that they would not have been able to recover these lost costs if and when the project did move forward.³³

Advocacy strongly objects to the addition of proposed language and urges the Services to consider the economic impacts of critical habitat decisions to ascertain a more complete understanding of the effects these decisions can have on a given area.

ii. The Proposed Changes to “Foreseeable Future” Could Cause Uncertainty.

The Services propose to redefine the term “foreseeable future” to encompass “as far into the future as the Services can reasonably rely on information about the threats to the species and the species’ responses to those threats.”³⁴ The Services further describe the concept of “foreseeable future” as a “temporal structure” in which they “do not need to have absolute certainty in the information we use.”³⁵ At the same time, the agencies maintain decisions made concerning “foreseeable future” will “avoid speculation” and be “rationally articulated and fully supported.”³⁶ Additionally, the Services state that foreseeable future decisions would be made in the same manner that “a reasonable person would rely on in making predictions about their own future.”³⁷

Advocacy is concerned about the open-ended, confusing foreseeable future framework proposed by the Services. There do not appear to be any boundaries or guideposts as to how decisions will be made under this concept. Using the language above, there could be scenarios where “foreseeable future” has no end point. Also, the undefined nature of the proposed changes to “foreseeable future” could easily lead to a scenario where different district offices have vastly different concepts of what the term means.

Advocacy recommends the Services develop a framework in which “foreseeable future” has a defined endpoint. Small businesses need regulatory predictability and to be able to understand when requirements begin, and more importantly, when they will end. It is useless for small businesses to know only that they will last for an inconsistent and undefined “foreseeable future.”

iii. The Services Should Not Remove “Not Prudent” Determinations

The proposal removes language allowing for a determination that critical habitat is “not Prudent” when threats to a species habitat are from causes which cannot be remedied through management

³³ See *supra* note 32.

³⁴ 88 Fed. Reg. 40,766

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

actions resulting from a Section 7 consultation.³⁸ If this proposed language is enacted, it will transform critical habitat from a means by which regulated entities can alter their behavior to help reestablish a species into a regulatory burden with no goal or endpoint. If the purpose of critical habitat is to develop a plan by which a species can be preserved, then it stands to reason that critical habitat may “not be prudent” in instances where no such plan is achievable.

The Services cite “anticipated climate-change impacts” as a motivating factor for making this change.³⁹ However, small entities should not be held responsible for factors over which they have no control. In situations where conservation management actions cannot address the harm to the species, including as anticipated impacts to climate change and disease, it is not appropriate to designate critical habitat as this would not provide any further benefit to the species.

Services need to develop a tangible framework with guideposts and defined actions regulated entities could take once critical habitat is designated.

iv. The Proposed Changes to Unoccupied Areas are Contrary to Supreme Court Precedent.

The proposed rule revises the methods by which critical unoccupied habitat is designated. Specifically, the rule would remove requirements that unoccupied areas be considered essential when occupied critical habitat is inadequate and when there is a reasonable certainty that the unoccupied area will contribute to the conservation of the species. Additionally, a requirement that the unoccupied area contains one or more physical or biological features essential to the conservation of the species is also removed. The Services would replace these requirements with broad language allowing unoccupied critical habitat to be designated so long as the Secretary determines it to be “essential for the conservation of the species.”⁴⁰

Advocacy is concerned this new method of designating unoccupied critical habitat is at odds with the Supreme Court’s decision in *Weyerhaeuser v. U.S. Fish & Wildlife Service*.⁴¹ In *Weyerhaeuser*, the Court ruled that in order to be eligible for critical habitat designation, an area must be “habitat” for the listed species.⁴² The Services attempt to address *Weyerhaeuser* by stating the decision “does not resolve the specific issue of how to define ‘habitat’ against the backdrop of the two prongs of the statutory definition of ‘critical habitat.’”⁴³ This reasoning twists the Supreme Court’s decision out of context. An area must be habitable for a species to be critical habitat. For an area to be habitat, it must contain at least one feature necessary for the existence and survival of a species.

Additionally, the Services justify the removal of the “reasonable certainty” language by stating, “Imposing a specific standard of certainty therefore could potentially result in the Services excluding from consideration the best available data merely because it was deemed not to be

³⁸ *Id.* at 40,768.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 139 S. Ct. 361 (2018).

⁴² *Id.*

⁴³ 88 Fed. Reg. at 40,770.

sufficiently certain.”⁴⁴ If data does not contain the requisite amount of certainty as to whether or not an area is necessary for the survival of a species, it should not be relied upon in making regulatory decisions which have direct impacts on small businesses.

Advocacy urges the Services to develop a framework which adheres to the *Weyerhaeuser* decision and places regulatory guardrails, including the existence of features essential to the survival of a species, on the determination of unoccupied critical habitat. Without these considerations, small businesses will have no reasonable way to ascertain whether they are within an area which could possibly be impacted by ESA regulations.

C. Comments on Proposed Rule on “Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants”⁴⁵

This proposed rule reinstates the general application of the “blanket 4(d) rule,” which allows threatened species to be treated as endangered. It also impacts regulations on how federally recognized tribes aid, salvage, or dispose of threatened species. Generally, small business stakeholders need ESA regulations to be as specific and narrowly tailored as possible. Reinstating the “blanket 4(d) rule” takes the exact opposite approach. Rather than identifying threatened species which require additional protection and crafting rules to create species-specific plans, the “blanket 4(d)” rule instead adopts a “one size fits all” approach for all threatened species. While this may be easier from an administrative point of view, it creates additional burdens for the regulated public, including small businesses.

Additionally, agency data does not show the need for reinstatement of the “blanket 4(d) rule.” According to the FWS Environmental Conservation Online System (ECOS), there have been 90 species listed as threatened under the ESA since 2009.⁴⁶ Of these, less than half (37) have received a species-specific 4(d) rule.⁴⁷ The fact that 4(d) rules have been used in less than half of the species considered in the past three administrations shows the need for a species-by-species approach as opposed to returning to “blanket” regulations. Additionally, all 18 species listed as threatened since 2021 have received a 4(d) rule even though the “blanket rule” has been repealed. This demonstrates that, when necessary, 4(d) can be used as frequently as needed on an individual basis.

Advocacy opposes a return to the “blanket 4(d)” approach because it fails to account for the individual needs of species and errs on the side of regulating where there may not be a specific need, increasing costs and burdens on small entities.

⁴⁴ *Id.*

⁴⁵ 88 Fed. Reg. 40,742 (June 22, 2023).

⁴⁶ See U.S. Fish & Wildlife Serv., *U.S. Federal Endangered and Threatened Species by Calendar Year*, <https://ecos.fws.gov/ecp/report/species-listings-by-year-totals> (last visited Aug. 17, 2023).

⁴⁷ *Id.*

III. Conclusion

Advocacy is concerned with the vague and open-ended nature of many of the Services proposed changes to ESA regulations. If implemented, these rules will erode the predictability small businesses need to understand and meet their regulatory responsibilities. Additionally, Advocacy reiterates our long-standing recommendation for the Services to provide an RIA, including a threshold analysis under the RFA, as a part of any critical habitat analysis.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or by email at nick.goldstein@sba.gov.

Sincerely,

/s/

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

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget