



November 13, 2008

BY ELECTRONIC SUBMISSION

Mary A. Bomar
Director, National Park Service
1849 C Street NW
Washington, DC 20240
Electronic Address: www.regulations.gov (RIN 1024-AD73)

Re: Special Regulations; Areas of the National Park System, Proposed Rule, 73 Fed. Reg. 65784 (November 5, 2008), RIN 1024-AD73.

Dear Director Bomar:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) submits these comments on the National Park Service proposed rule regarding winter visitation and recreational use in Yellowstone National Park. Advocacy has concerns regarding the impact of the proposed rule on small businesses operating snowmobile rentals and tours in and around Yellowstone. In light of the recent court decision vacating the Park Service's 2007 rule regarding permissible daily limits for snowmobile entries into Yellowstone, Advocacy appreciates the Park Service's quick action to ensure that snowmobiles will be allowed entry into Yellowstone for the 2008-2009 winter season. However, Advocacy remains concerned that the daily entry limits proposed by the Park Service will have a significant negative impact on a substantial number of small businesses over the 2008-2011 winter seasons, as proposed.

The Office of 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 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

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.).

assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

On August 13, 2002, President Bush signed Executive Order 13272,³ which requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

Advocacy's Comments

Advocacy has been monitoring and forwarding the concerns of small businesses affected by the regulation of snowmobile use in Yellowstone National Park to the Park Service for many years. On April 16, 2001, Advocacy filed comments with the Park Service supporting measures to assist the Park Service in meeting its obligations to manage the environmental health of the park while reducing the burden on small businesses.⁴ At the time, Advocacy highlighted the importance of snowmobile use in Yellowstone to the local economy, noting that more than 70 small businesses in the area depend on snowmobile recreation as an important source of revenue during the winter months.⁵ Advocacy now provides the following comments to assist the Park Service in protecting the environmental health of Yellowstone National Park while reducing the burden on the small businesses that fuel the winter economy of the communities surrounding the park.

The Park Service underestimated the cost of the proposed rule on small entities.

The proposed rule sets the daily limits for snowmobile entry into Yellowstone at 318 entries per day. The proposed daily entry limit is significantly lower than the daily entry limit for the 2007-2008 winter season, which was 540. In its Initial Regulatory Flexibility Analysis, the Park Service concluded that the net effect of the proposed regulation on small businesses will be positive based on the assumption that the regulatory baseline is zero snowmobile entries instead of 540 entries.

The Park Service justifies its baseline on a recent court decision vacating the 2007 rule permitting 540 daily entries. Without a new regulation providing for snowmobile use in Yellowstone, no snowmobiles would be allowed entry into the park this winter season. The Park Service's analysis presents a distorted view of the impacts of the proposed rule on small businesses. In reality, the proposed rule will have serious negative impacts on small businesses operating snowmobile tours in Yellowstone this winter.

³ *Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking*, 67 *Fed. Reg.* 53461 (Aug. 16, 2002).

⁴ Comments filed by the Office of Advocacy, "Re: The National Park Service's final rule phasing out snowmobile use in Yellowstone National Park, the John D. Rockefeller, Jr. Parkway, and with some exceptions, in Grand Teton National Park, 66 *Fed. Reg.* 7259" (April 16, 2001), available at http://www.sba.gov/advo/laws/comments/doi01_0416.html.

⁵ *Id.* at 2.

Advocacy believes that the “zero entry” scenario should not be the baseline for the Park Service’s analysis, but rather one of the alternatives examined in the analysis. The “zero entry” baseline does not represent the regulatory paradigm under which small businesses operated during the 2007-2008 winter season. Therefore, the Park Service’s analysis does not present an accurate reflection of the potential economic impact on small entities because it does not allow for accurate capture of the incremental costs of reducing the number of snowmobiles allowed into Yellowstone from 540 to 318.

A number of individuals from the local communities surrounding Yellowstone have already provided comments to the Park Service discussing the burden placed on businesses that relied on the 2007 limits in planning and booking snowmobile tours for the 2008-2009 winter season. When the Park Service drafts its Final Regulatory Flexibility Analysis for this rule, it should examine the incremental costs to small businesses as a result of the proposed lower daily entry limit using the 540 daily entry limit as the baseline for its analysis.

The Park Service should examine further alternatives.

If the Park Service determines that the incremental costs of decreasing the daily entry limits to small businesses is significant, then the Park Service must examine alternatives to lessen that impact pursuant to Section 604 of the RFA.⁶ The Park Service has not examined alternatives allowing for a daily entry limit between 540 and 318, even though the Park Service admits that a limit of 318 daily snowmobile entries is far below what it believes it can legally implement.⁷ Given the Park Service’s belief that it can legally set the daily entry limit at a higher level, the Park Service should have discussed further alternatives to the proposed action. Such a discussion would include analysis of higher daily entry limits as well as other burden-reducing measures, such as allowing for more snowmobile entries into Yellowstone on anticipated high volume weekends.

In addition, Advocacy urges the Park Service to refrain from implementing the proposed entry limits for seasons beyond the 2008-2009 winter season, and initiate a separate rulemaking that would set limits for future winter seasons based on much more comprehensive analysis of alternatives. Advocacy appreciates the time constraints under which the Park Service is operating, as evidenced by the short 15-day comment period for this rule. It is in small businesses’ interests for the Park Service to quickly implement a final rule allowing for some snowmobile access into Yellowstone this winter season; however, the Park Service should not hastily establish the limit for future seasons.

Conclusion

Advocacy commends the Park Service for acting quickly to ensure that small businesses operating snowmobile tours in Yellowstone will be granted continued access to the park during the 2008-2009 winter season. However, Advocacy has serious concerns that the Park Service has not adequately analyzed both the impacts of its proposed rule on small businesses and adequate burden-reducing alternatives for small businesses as required by

⁶ 5 U.S.C. § 604 (a)(5).

⁷ 73 *Fed. Reg.* 65784 at 65786 (November 5, 2008).

Section 604 of the RFA. Therefore, Advocacy urges the Park Service to consider the alternatives referenced in this letter to reduce the burden on small entities and meet its obligations under the RFA.

Advocacy is pleased to forward the comments and concerns of small businesses. Please feel free to contact me or Jamie Saloom at (202) 205-6890 (Jamie.Belcore@sba.gov) if you have any questions or require additional information.

Sincerely,

//signed//

Shawne C. McGibbon
Acting Chief Counsel for Advocacy

//signed//

Jamie Belcore Saloom
Assistant Chief Counsel for Advocacy

- cc: The Honorable Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs
- cc: Philip A. Selleck, Chief, Regulations and Special Park Uses, National Park Service