



OFFICE OF ADVOCACY FACTSHEET

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Advocacy Informs the Environmental Protection Agency That Proposed Clean Air Act Rule Was Not Properly Certified Under the Regulatory Flexibility Act

The Office of Advocacy (Advocacy) submitted a comment letter on February 7, 2005 regarding a rule proposed by the Environmental Protection Agency (EPA) to reduce emissions of air pollutants from institutional incinerators. Advocacy's comment letter questioned the factual basis for EPA's certification under the Regulatory Flexibility Act (RFA) that the rule will have no significant economic impact on small entities. The rule, which EPA proposed on December 9, 2004, would impose stringent requirements on new and existing institutional waste incinerators. These incinerators are located at grade schools, high schools, colleges, churches and civic organizations, prisons, fire and police departments, and small communities.

EPA certified, under section 605(b) of the RFA, that the proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 69 Fed. Reg. 71,493 (December 9, 2004). In this case, the affected small entities include small governmental jurisdictions (a government of a city, county, town, school district or special district with a population of less than 50,000 persons) and small nonprofit organizations. Advocacy is concerned that the basis for this certification ignored the proposal's impact on existing incineration units located in small school districts, other small governmental jurisdictions, and small organizations.

EPA's finding of inconsequential small entity impact was based largely on average national costs, rather than on the specific costs that would likely have to be borne by individual small entities such as small school districts. EPA's economic analysis, although substantial, fell short in analyzing the effects on the actual incinerator owners: the small governments and the small nonprofit organizations. Advocacy believes that EPA had insufficient information about the number of institutional incinerators nationwide, as well as the number of incinerators operated by small entities. Advocacy recommended that EPA perform a supplemental analysis to either provide the factual basis for the certification, or to withdraw the certification. In the event EPA decides the proposal will likely significantly affect a substantial number of small entities, a panel under the Small Business Regulatory Enforcement and Fairness Act of 1996 would be required.

For information regarding this rulemaking, visit EPA's web site at: <http://www.epa.gov/ttn/atw/129/oswi/oswipg.html>. For more information on the Office of Advocacy's efforts on this and other Clean Air Act rulemakings, contact Keith Holman at keith.holman@sba.gov or (202) 205-6936.