

Advocacy Recommends that EPA Provide an Exemption to the Proposed Ban of Pre-Charged Air Conditioning and Refrigeration Equipment

On February 6, 2009, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Environmental Protection Agency (EPA) regarding the rulemaking titled, "*Proposed Ban on the Sale or Distribution of Pre-Charged Appliances*". 73 Fed. Reg. 78705 (December 23, 2008). Advocacy recommended that EPA revise its improper certification under the Regulatory Flexibility Act (RFA) and provide an exemption to the ban to limit adverse small business impacts, while still achieving the statutory goals.

A complete copy of Advocacy's letter to EPA is available at: www.sba.gov/advo/laws/comments/.

The proposed rule would ban the sale or distribution of air-conditioning and refrigeration appliances containing HCFC-22, HCFC-142b, or blends containing one or both of these substances as of January 1, 2010. EPA proposed a ban of these restricted refrigerants in order to protect stratospheric ozone. EPA mistakenly certified the rule as having no effect on small entities, although the agency separately identified distributors and manufacturers as being regulated by the proposal. In order to reduce the potential adverse impact on small manufacturers, distributors and retailers, Advocacy recommended that EPA exempt from the ban appliances and appliance components that were manufactured and placed into inventory prior to the ban deadline.

EPA's certification that the rule would not have a significant economic effect assumed that no inventory would be stranded by the ban. However, Advocacy was informed by small entity representatives that manufacturers, distributors, and retailers virtually all understood that products could be manufactured through December 31, 2009, thereby creating stranded inventory. In our view, retailers and manufacturers with leftover inventory should be allowed to sell their inventory to mitigate any harmful effects on the industry, as EPA apparently intended. If EPA does eliminate the inventory problem in the final rule, it can then properly issue a certification of no significant economic impact.

For more information about EPA's proposed rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Kevin Bromberg, Assistant Chief Counsel, at (202) 205-6964 (or kevin.bromberg@sba.gov).