



May 30, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing; EPA-HQ-OAR-2024-0404

Dear Administrator Zeldin:

On March 31, 2025, the U.S. Environmental Protection Agency (EPA) published a request for comments on a review of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Manufacturing and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing under Section 610 of the Regulatory Flexibility Act (RFA).¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on EPA's request.

Advocacy appreciates the EPA conducting this review and encourages the agency to make greater use of the RFA section 610 review process. Section 610 review can be a useful tool to modify existing regulations to make them less burdensome on small businesses. Reviews provide the opportunity to consider input received from small entities, new economic or regulatory conditions, and the continued need for the rule. From Advocacy's outreach on this rule, small entities believe the existing brick and clay NESHAP is feasible and Advocacy does not recommend any changes. Advocacy encourages the EPA to review the ongoing impacts of the rule on existing small entities as well as potential barriers for new entrants. Advocacy also recommends seeking input from affected small entities to inform their review.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy in 1976 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) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that

¹ 90 Fed. Reg. 14228 (Mar. 31, 2025).

regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),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, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.³ Additionally, section 609 of the RFA requires the Consumer Financial Protection Bureau, the Occupational Safety and Health Administration, and the EPA to conduct special outreach efforts through a review panel.⁴ The panel must carefully consider the views of the impacted small entities, assess the impact of the proposed rule on small entities, and consider less burdensome alternatives for small entities.⁵ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁶

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁷ 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.⁸

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."⁹

B. The RFA Section 610 Review Process

The objective of the RFA section 610 review process is to determine whether existing rules are still working as intended or if revisions (or rescissions) are needed.¹⁰ The reviews must take place within 10 years of a rule's enactment.¹¹ When reviewing a rule, an agency must consider:

- 1) The continued need for the rule;
- 2) The nature of public complaints or comments received on the rule;

² Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

³ 5 U.S.C. § 603.

⁴ *Id.* § 609.

⁵ *Id.*

⁶ *Id.* § 605(b).

⁷ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁸ *Id.*

⁹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹⁰ See U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, A GUIDE FOR GOVERNMENT AGENCIES: HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT 80 (Nov. 2018).

¹¹ 5 U.S.C. § 610(a).

- 3) The complexity of the rule;
- 4) The extent to which the rule overlaps, duplicates or conflicts with other federal rules (and state and local governmental rules); and
- 5) The length of time since the rule was last evaluated and the degree to which technology, economic conditions, or other factors may have impacted the area regulated by the rule.¹²

After considering these factors and taking public comment, the agency can decide to continue implementing the rule without change, amend the rule to address issues brought up during the review process, or rescind the rule if there is no longer a need to regulate.

In this case, the rule being reviewed is the NESHAP for Brick and Structural Manufacturing and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing.¹³ The rule sets Clean Air Act (CAA) standards for multiple pollutants from brick and clay manufacturers. Advocacy participated in a Small Business Advocacy Review Panel¹⁴ and submitted a public comment letter¹⁵ on the Brick and Clay NESHAP in 2015.

II. Advocacy Does Not Recommend any Changes to the Brick and Clay NESHAP and Supports EPA's Continued Use of the RFA Section 610 Review Process.

Advocacy has consulted with members of the brick and clay manufacturing industry. The small business representatives Advocacy has spoken with have not recommended any changes to the brick and clay NESHAP. Industry participants have absorbed the up-front costs of the rule and do not want to upset the stability of their current regulatory environment. Advocacy concurs and does not believe any changes to the rule are necessary at this time.

Advocacy supports the EPA's use of the RFA section 610 review process to examine the Brick and Clay NESHAP and encourages the EPA to continue to identify rules in need of retrospective reviews.

Regular use of RFA section 610 review is statutorily required. It is also a good government practice and allows agencies to identify and remove regulations that are no longer necessary as well as review whether the regulation is achieving its stated objectives. Currently, the EPA is engaged in a major deregulatory effort involving more than 30 major rules.¹⁶ The RFA section 610 review process can complement this effort and reduce the need for additional deregulatory

¹² *Id.* § 610(b).

¹³ 80 Fed. Reg. 65470 (Oct. 26, 2015).

¹⁴ U.S. ENV'T PROT. AGENCY, SMALL BUSINESS ADVOCACY REVIEW PANEL: REPORT ON EPA'S PLANNED PROPOSED RULE "NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY FOR BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING" (Dec. 6, 2013), <https://www.regulations.gov/document/EPA-HQ-OAR-2013-0291-0172>.

¹⁵ U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on EPA's Proposed Rule on National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay Product Manufacturing (March 17, 2015), <https://www.regulations.gov/comment/EPA-HQ-OAR-2013-0291-0517>.

¹⁶ See U.S. Env't Prot. Agency, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>.

actions in the future. Specifically, RFA section 610 reviews can help to identify which aspects of a rule may no longer be needed, ensure that all rules are reviewed on a predictable schedule and prevent rules from remaining active longer than necessary.

While the reviews are required to be completed within 10 years of a rule's publication, there is nothing preventing agencies from initiating RFA section 610 reviews on a more frequent basis, including when small entities call attention to unanticipated regulatory impacts.¹⁷ This would help agencies identify outdated rules and reduce unnecessary regulatory impacts to small entities sooner rather than later. Advocacy encourages the EPA to continue to use RFA section 610 review as a tool to examine and reduce the regulatory burdens currently facing existing small entities as well as potential barriers for new entrants.

The utility of RFA section 610 reviews will be enhanced by the effort an agency puts into the process, including the depth of its analysis and the quality of its engagement with small entities. Analysis of rules under RFA section 610 review can help determine whether the rule still meets its stated objectives and how technology may have changed the need for the rule or how it is enforced.

The EPA also should focus its efforts on ensuring reviews clearly and concisely explain the rules at issue in a manner that is easy for small entities to understand and respond to. Also, Advocacy can help EPA reach out to small entities who are directly impacted by RFA section 610 reviews. This will lead to increased small entity participation and, in turn, lead to the EPA receiving better information about the continued impacts of existing regulations.

III. Conclusion

Advocacy encourages the EPA to continue to use the RFA section 610 review process as a way of consistently evaluating the burdens of its regulations on small entities and does not recommend any changes to the Brick and Clay NESHAP.

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

Sincerely,

/s/

Chip Bishop
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

¹⁷ *Id.*

/s/

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Copy to: Mr. Jeffrey B. Clark, Sr. Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget