



NMA
National
Mining
Association



American Exploration &
Mining Association
EST. 1895™



**ESSENTIAL
MINERALS**
ASSOCIATION

February 14, 2024

The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nydia Velazquez
Ranking Member
Committee Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Williams and Ranking Member Velazquez:

On behalf of the National Mining Association (NMA), the American Exploration and Mining Association (AEMA), and the Essential Minerals Association (EMA), we commend your leadership in examining the impact of the U.S. Environmental Protection Agency's (EPA) burdensome regulations on small businesses and the communities they support.

Our associations represent small and large businesses across the entire U.S. mining industry – from exploration and active mining to mine closure and reclamation. Our combined approximately 2,500 members explore for and mine the raw materials needed for *nearly every* industry and consumer product. The coal, metals, and nonmetal minerals our members produce form the building blocks of our nation's agriculture, energy, infrastructure, manufacturing, defense, high-tech, and medical supply chains. The mining industry also plays a critical role in supporting this Administration's ambitious national priorities¹ and investing in local communities.

As you examine the impact of EPA's burdensome regulations on small businesses in today's hearing, we urge your consideration of the following:

1.) Recognize the importance of small mining companies and the businesses they support in the communities in which they operate.

The mining industry supports nearly 500,000 direct jobs and more than 800,000 indirect jobs nationwide.² The financial contributions of the mining industry are also significant. According to a recent U.S. Geological Survey report, domestically mined mineral raw materials contribute

¹ The White House, Fact Sheet: Securing a Made in America Supply Chain for Critical Minerals (Feb. 22, 2022), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/22/fact-sheet-securing-a-made-in-america-supply-chain-for-critical-minerals/> (last visited Jan. 31, 2024). ("Critical minerals provide the building blocks for many modern technologies and are essential to our national security and economic prosperity.")

² National Mining Association, 2023 Mining Facts, at 4, available at <https://nma.org/wp-content/uploads/2022/04/FINAL-NMA-Mining-Facts-2023.pdf> (last visited Feb. 14, 2024).

\$105 billion to the U.S. economy. Additionally, the value added to the U.S. gross domestic product by major industries that consume processed mineral materials is \$3,840 billion.³

Because many mine projects are located in rural, economically disadvantaged areas with limited job opportunities and public services, a mining operation can become a community's, and even a region's, best and often only opportunity to improve the quality of life for everyone. Many mining companies make substantial financial investments in their local communities to build or improve schools, upgrade roads, utility, and internet services, subsidize medical services, offer vocational training to prospective employees, and provide scholarships and other educational opportunities for their workforces. These investments represent positive contributions to the communities in which they operate, in addition to the state and local taxes the mines pay, which create positive returns not only for the company but for the entire region.

Many of our members are also classified as small businesses. These small mining companies create jobs and economic opportunity in communities that often need these investments most. Unfortunately, EPA's crushing regulatory agenda has made it more difficult and expensive for these small businesses to operate. This has created a ripple effect, harming not just our small business miners, but also the small indirect industries that rely on the mining industry.

2.) Champion clear, predictable, and reasonable regulations.

The U.S. mining industry is one of the most regulated industries on the planet. Comprehensive environmental and health and safety regulations, at the federal, state, and local levels, govern nearly every inch of a mining operation. We strongly support reasonable regulations that protect the environment and health and safety while also ensuring that domestic natural resource development is viable and globally competitive. Clear, predictable, and reasonable regulations provide certainty and clarity that are crucial for mining operations. This is especially important considering the significant time, investment, and effort required to successfully permit and construct a mining or processing operation. All of this requires a vast investment that miners must pay over a period of years or even decades before seeing any revenue in return once operations begin. Mining entities must have long term clarity and certainty that regulations will not make their operation impossible or nonviable before making those investments to produce vital mineral resources domestically.

3.) Provide oversight of EPA's required economic impact analysis on small businesses and compliance with the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA), and the Administrative Procedure Act (APA).

Finally, we urge the Committee to exercise its oversight authority to ensure EPA conducts required economic impact analyses and complies with the statutes requiring the consideration of impacts on small businesses. Under this administration, EPA has either glossed over or ignored altogether the economic impact analysis on small businesses and the subsequent notice and comment process that is required under the RFA, SBREFA, and the APA. Quite often in a proposed rule, the agency will include a cursory acknowledgement that the rule will not have a substantial impact on a significant number of small businesses but fail to undertake a serious, thorough review of the impact on small businesses.

One such example was the June 28, 2021, proposed rule on reporting and recordkeeping requirements for per- and polyfluoroalkyl substances (PFAS) under the Toxic Substances

³ U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries 2024 at 4, available at <https://pubs.usgs.gov/periodicals/mcs2024/mcs2024.pdf> (last visited Feb. 14, 2024).

Control Act (TSCA). When EPA initially certified that the proposed rule would not have a significant impact on a substantial number of small businesses, the Small Business Administration's Office of Advocacy (SBA-OA) called EPA to task. As a result of evidence provided by (SBA-OA), EPA was forced to amend the estimated costs from the proposed rule from \$10.8 million to \$875 million.⁴ SBA contends that even the updated figures were still inadequate, and EPA should have started over by re-proposing the rule.

Following this episode, EPA has taken more steps to adhere to SBREFA, but these efforts could only be described as symbolic. SBA-OA has repeatedly criticized EPA for underestimating the impact of proposed rules, cutting corners or disregarding feedback from small businesses. To note one example among many: In the August 9, 2023, EPA proposed rule "Revisions to Air Emissions Reporting Requirements," SBA's Office of Advocacy again called out EPA for cutting procedural corners that will ultimately cost small businesses dearly. While the agency did seek greater input from small businesses on the impact of greater emissions reporting, the agency subsequently ignored this input, resulting in a proposed rule that does not provide small businesses with the necessary tools to comply. Penalties for noncompliance under the Clean Air Act can be severe. As a result, small businesses are left to figure out for themselves whether they must comply with the rule, how to do so, and then shoulder the increased costs.⁵

We encourage the Committee to exercise its oversight duties and make sure the RFA, SBREFA and the APA are being faithfully observed. Sadly, EPA is not alone among agencies giving short shrift to these laws. The federal government should not overlook the impact on small businesses to push new rules out the door as quickly as possible.

We appreciate the Committee's support of the small businesses that will create jobs, strengthen our communities, and provide the energy and materials that are the foundation of our economy. We look forward to continuing to work with you.

Sincerely,

National Mining Association
American Exploration and Mining Association
Essential Minerals Association

⁴ Comments of the U.S. Small Business Administration Office of Advocacy, TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances; Notice of Data Availability and Request for Comment; Docket ID No. EPA-HQ-OPPT-2020-0549; at 3, *available at* <https://advocacy.sba.gov/wp-content/uploads/2022/12/Comment-Letter-TSCA-PFAS-Recordkeeping-and-Reporting-IRFA-12.19.22-508c.pdf> (last visited Feb. 14, 2024).

⁵ Comments of the U.S. Small Business Administration Office of Advocacy, Revisions to the Air Emissions Reporting Requirements, 88 Fed. Reg. 54,118 (August 9, 2023), Docket ID. EPA-HQ-OAR-2004-0489, at 4, *available at* <https://advocacy.sba.gov/wp-content/uploads/2023/11/Comment-Letter-Revisions-to-the-AERR-508.pdf> (last visited Feb. 14, 2024). ("The requirement that small entities comply regardless of the availability of the necessary emissions estimation tools is extremely problematic...Unless EPA provides greater accommodations to small entities in the absence of the promised tools, the impacts on small entities would be severe.")