



March 2016

## Summary of H.R. 4557

### BLOCKING REGULATORY INTERFERENCE FROM CLOSING KILNS ACT OF 2016

Committee on Energy and Commerce, Democratic Staff

H.R. 4557, also known as the BRICK Act, represents an effort by the Republicans to delay implementation of EPA's final Brick and Structural Clay Products rule and the final Clay Ceramics Manufacturing rule (Brick and Clay MACT) by extending all compliance deadlines based on pending judicial review. If this bill were to become law, compliance with the Brick and Clay MACT would be delayed until "judgment becomes final, and no longer subject to further appeal or review." The Committee on Energy and Commerce reported H.R. 4557 on a party line vote of 28-22 with all Democrats voting against the bill.

**Clean Air Act Section 112:** EPA has responsibility under Section 112 of the Clean Air Act (CAA) to control pollution from stationary sources of pollution, including from brick and clay plants. Standards under 112 are known as maximum achievable control technology, or MACT, standards. MACT standards set specific emission limits based on the emission levels already being achieved by similar facilities.

**EPA's Brick and Clay MACT Rule:** Brick and clay plants, if left unregulated, can be major sources of toxic air pollutants like hydrogen fluoride, hydrogen chloride, and hazardous metals – pollutants that are associated with a variety of acute and chronic health effects, including cancer. EPA originally issued a Brick and Clay final rule in 2003, but that rule was vacated by the D.C. Circuit in 2007. In response to a lawsuit, EPA issued a new final rule in 2015 which included flexible compliance options and also made distinctions between requirements for small and large kilns in order to reduce the impacts of the rule on small businesses. EPA also provided three years for compliance with the rule – the maximum time allowed under the law – and sources can apply to their state for an additional year under certain circumstances. EPA estimates that the final Brick and Clay MACT rule will reduce nationwide air toxics by approximately 375 tons per year in 2018.

**H.R. 4557 Delays Implementation of the Brick and Clay MACT:** H.R. 4557 automatically delays implementation of EPA's final Brick and Clay MACT rule by extending all deadlines by however long it takes to complete all possible litigation. This blanket extension would be given to all facilities covered by the final rule, without regard for the merits of the legal challenges or their final outcome. Opponents of the Brick and Clay MACT rule would be given an incentive to "run the clock" on frivolous litigation, simply to put off having to comply with the rule.

**Wrong Solution:** Republicans will say this bill is necessary in order to delay EPA's Brick and Clay MACT rule until all judicial review has been completed. That, however, is completely false. The courts already have the ability to issue a "stay" of any compliance dates in a final rule. Well-established legal factors exist for granting a stay – these factors take into account whether there is a likelihood of success on the merits; the prospect of irreparable harm on parties; and whether granting the stay is in the public interest. The courts have used these factors time and time again to determine whether to grant a stay and for how long. There is no reason for Congress to override this process and the judgment of the court.

**Bad Policy and Bad Precedent:** Previous attempts to grant blanket compliance extensions for EPA rules – most recently, in H.R. 2042, the Ratepayer Protection Act - have not been successful. If H.R. 4557 were to become law, it would encourage other industries to seek compliance extensions through legislation. H.R. 4557 represents bad policy and passing it would create a dangerous precedent.