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LEGISLATIVE HEARING ON S. 1857, S. 203, S. 839, AND S. 1934

HEARING

BEFORE THE

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2017

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ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION

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LEGISLATIVE HEARING ON S. 1857, S. 203, S. 839, AND S. 1934

TUESDAY, NOVEMBER 14, 2017

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Building, Hon. Shelley Moore Capito (Chairwoman of the Subcommittee) presiding.

Present: Senators Capito, Inhofe, Boozman, Wicker, Fischer, Ernst, Shelby, Whitehouse, Gillibrand, and Carper.

Senator CAPITO. I want to thank everybody for being here today.

This hearing of the Clean Air and Nuclear Safety Subcommittee is called to order.

I will begin by recognizing myself for a brief opening statement before turning over the floor to Ranking Member Whitehouse for 5 minutes. We will then hear from our first panel, which consists of Senator Burr, who just arrived to introduce his legislation, the RPM Act.

Thank you, Senator Burr, for being here.

Our second panel of expert witnesses will then take their seats. Senator Shelby will then be recognized to introduce two witnesses from his home State of Alabama before we proceed.

I will recognize myself for 5 minutes.

OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator CAPITO. I don't think anyone can argue that the volume of Federal regulation has grown over the decades. The last decade, in particular, saw an explosion in red tape. The Code of Federal Regulations has grown from 71,224 pages in 1975 to 185,053 pages at the end of last year.

The Federal Register mirrors this regulatory expansion. Last year 95,894 shattered the record of the most pages entered in a single year. Of the 10 highest annual Federal Register page counts, 7 of these occurred during the last Administration.

The results of all that regulation have been predictable—the slowest economic recovery from any recession since World War II; an increase in litigation instead of investment; meager job creation; wage growth and more businesses dying than being opened; and a transfer of power—I would argue the legislative authority itself—from Congress to the executive branch that would confound, I believe, our framers of the Constitution.

Politicians, bureaucrats, and the media have been fixated on the biggest, most headlining, grabbing regulations of the past few years, Obamacare implementation, Dodd-Frank, and the EPA's Clean Power Plan, to name a few. While these are massive regulatory expansions touching huge sectors of the economy, and rightfully deserve public and political scrutiny, there are many more regulations being imposed outside the spotlight largely unnoticed.

That is the subject of today's hearing. This will demonstrate that they have not gone unnoticed by the businesses, families, and communities suffering from the impacts of all this red tape. The four bills being considered by the Committee today are narrowly targeted to simply and easily provide regulatory relief and certainty for industries that will unnecessarily suffer outsized cost from EPA rules and actions. As we will hear, the companies affected are not huge multinationals, but American family businesses across the country, their workers, and their customers.

My bipartisan bill, S. 1857, introduced with Senators Shelby, McCaskill, and Manchin, would extend the deadline for 3 years for the wood heater industry to meet new emissions standards. That extension is vital for them to develop, engineer, test, manufacture, and distribute to retailers models that are compliant with the new standards. It also makes common sense when the EPA has not even certified the new test procedure for these wood stoves and hydronic heaters. It is hard for anyone to study for a test when you don't know what will be on it.

Senator Wicker's S. 839, the BRICK Act, of which I am a cosponsor, will similarly extend the compliance deadline on rules relating to emissions from brick manufacturing until that litigation issue is complete.

Senator Burr's S. 203, the RPM Act, which I have also co-sponsored, would clarify that vehicles used solely for competition are not to be treated like the cars that drive on our nation's roads. Congress never intended for cars that have been modified from street use to use only on race tracks to be regulated. Race cars cannot and should not be held to the same standards as passenger vehicles. The EPA tried to circumvent the language of the Clean Air Act by creating a regulatory regime that would hurt not only the motor sports industry, but Americans all over the country who enjoy the hobby of tracking modified vehicles.

Senator Sullivan's S. 1934, the Alaska Remote Generator Reliability and Protection Act, will ensure that remote communities will have access to reliable power. The diesel generators upon which communities rely in remote Alaska cannot be required to install emission controls if that would put the health and welfare of Alaskans at risk. I have visited Oscarville, so I have been to a remote village.

I would also ask unanimous consent to insert Senator Sullivan's statement for the record.

Senator WHITEHOUSE. Without objection.

[The prepared statement of Senator Sullivan follows:]

STATEMENT OF HON. DAN SULLIVAN,
U.S. SENATOR FROM THE STATE OF ALASKA

Chairwoman Capito, I submit the following testimony regarding S. 1934, the Alaska Remote Generator Reliability and Protection Act, which I introduced in October

with Senator Murkowski. This bill is narrowly focused to provide a minor exemption from New Source Performance Standards (NSPS) for compression ignition internal combustion engines used to power and heat remote Alaska villages. I appreciate the Committee adding this bill to the agenda today and for being willing to consider an issue that while of limited impact to the lower 48, has potentially large ramification for my constituents.

EXISTING REGULATIONS MAY RAISE COSTS AND RELIABILITY CONCERNS TO REMOTE ALASKA VILLAGES

Rural Alaskans and Alaska natives face environmental, energy, and survival challenges that are unique in the United States. Alaska is the only State with large amounts of land above the Arctic Circle. Further at 1/5 the land mass of the lower 48, but with a population below 750,000 people, Alaskans in remote villages off the highway system are far removed from traditional modes of supply, transportation, and power transmission. Because of this, remote Alaska villages rely heavily on diesel generators to provide for electricity and heat. In the winter these necessities become even more vital as parts of the State can plunge to 40+ below. If the power fails and can't be restored quickly, it can become not just a question of comfort but health and safety—even life and death.

EPA recognized these unique challenges when it first issued its New Source Performance Standards for compression ignition internal combustion engines. In that 2006 rule EPA created a process for Alaska to work with EPA to form a different implementation plan for rural areas not on the Federal Aid Highway System (FAHS) in Alaska.[1] EPA later promulgated special standards for these engines in rural Alaska. In setting these special standards EPA recognized that "these villages are scattered over long distances in remote areas and are not connected to population centers by road or power grid. The villages are located in the most severe arctic environments in the United States and they rely on stationary diesel engines and fuel for electricity and heating, and these engines need to be in working condition, particularly in the winter."[2] EPA also expanded the definition of remote areas in Alaska in its newest special rules to include certain small and isolated engines on the marine highway system or road system.

Under existing regulations, EPA set specific standards for diesel generators in "remote Alaska." All new generator sets installed in remote areas of Alaska must install diesel particulate filters (DPFs) on their new engines. Unfortunately, DPFs decrease the reliability of these engines, as well as their fuel efficiency, increasing maintenance requirements and nearly doubling the cost of a new engine. Additional cost of maintaining a DPF can affect both the economic and public health of remote areas. If anything goes wrong with the DPF, and the generator shuts down, only a factory trained service technician with the proper codes can fix the problem.[3] In remote Alaska, these technicians are at least 1–2 days away from a village and can be extremely expensive for small communities without significant access to cash economies.[4] "It is not uncommon, especially in the fall and winter, for villages to be without flights due to weather or extreme cold for multiple days or weeks. If a failure in the powerhouse occurs during one of these times, the village could suffer significant damage to its infrastructure and potentially loss of life."[5] The marine industry was able to avoid the restrictions specifically because DPF systems are expensive and unreliable. Rural Alaska however did not receive this same type of exemption.

One story that I have heard from my constituents that highlights these problems recently took place in Dutch Harbor on Amaknak Island in the Aleutians. Dutch Harbor is one of the top fishing ports in the world, and a key part of Alaska's economy.[6] Recently Dutch Harbor's powerhouse had a malfunction which required a technician from Anchorage, 2 hours away, at a cost of approximately $1,000 for the flights.[7] Once in Dutch Harbor the technician was able to repair the DPF and return to Anchorage without additional work.[8] While the technician was able to re-

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[1] Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 80 FR 68808, 68811 (EPA Nov. 6, 2015).
[2] Id. at 68812.
[3] Letter from Dave Messier, Rural Energy Coordinator, Tanana Chiefs Conference, 1 (2017) (on file with author).
[4] Id.
[5] Id.
[6] Id.
[7] Id. at 1–2
[8] Id.

turn quickly, if the weather had turned bad—as is not uncommon in remote parts of Alaska—it could easily have stranded technicians for 2 or more days costing upwards of $130 per hour.[9]

S. 1934 SUMMARY

To address the cost, maintenance, reliability, and flexibility concerns with the existing Alaska specific standards, Senator Murkowski and I introduced S. 1934, the Alaska Remote Generator Reliability and Protection Act. S. 1934 directs the Administrator of EPA to revise, within 1 year, 40 CFR 60.4216(c) which sets specific standards for stationary compression ignition internal combustion engines (CI ICE) like diesel generators in "remote Alaska." The revision to these regulations may only require certain emission control devices after the Department of Energy and EPA determine that required controls will not negatively affect electricity and energy reliability in remote areas of Alaska.

Senator CAPITO. I look forward to discussing how these narrow, straightforward relief bills will benefit American workers, consumers, and families because the cost to all of our constituents is real.

I will now recognize Ranking Member Whitehouse for his opening statement.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. I would like to join Chairman Capito in thanking our witnesses for being here today to discuss four bills that my Republican colleagues argue will aid specific industries stifled by burdensome, costly regulations. Their claim is that each bill is a simple fix for a narrowly tailored regulation, but the devil is always in the details.

Industry has asked for a free pass in this Administration, and the majority seems happy to oblige. These bills seek to delay and defang environmental standards pushing compliance dates for regulations or stripping authority from the Clean Air Act.

In May the Subcommittee had a similar hearing on a pair of ozone bills that would delay compliance of air quality requirements for ozone and other pollutants. Ozone causes bad air days in a State like mine located downwind from industry facilities to our west. Bad air days keep infants, the elderly, and folks with breathing difficulties indoors. The harms to them deserve to be counted, too. I have grown weary of this Congress and the Trump administration simply following industry orders.

EPA Administrator Scott Pruitt is the poster child for this mess. In the 4 months since his appointment, he has moved to undo, delay, or otherwise block more than 30 environmental rules. There has been no visible enforcement of anything. Science denial is rife.

The regulatory rollback—larger in scope than any over so short a time in the agency's near half-century history—is a direct boon to the fossil fuel industry. Polluters never want to reduce their pollution.

Fossil fuel producers regularly attack the Clean Air Act. They inflate their costs and ignore the other side of the ledger like those infants, elderly folks, and folks with breathing difficulties who have to stay indoors. These public health benefits of reducing pollution deserve to be counted.

[9] Id. at 2.

Pruitt just pulled tricks to under-count the public health side in his justification for repealing the Clean Power Plan, a rule which many utilities and States actually supported. He has cooked the books to make the climate and health benefits of the plan appear almost negligible compared to the compliance costs. This is, again, no change in the harm to individuals. It is simple accounting trickery from EPA.

Clean Air Act regulations have been working for decades, and our country has prospered. Between 1970 until 2011 cumulative emissions of air pollutions dropped by two-thirds while U.S. GDP grew by more than 200 percent. The work force grew by 88 percent over this period.

According to a 2011 EPA assessment, the benefits of the Clean Air Act will outweigh its cost by a ratio of 30 to 1, $30 of value in our economy and the lives of regular Americans for every single dollar the polluters have to pay in cleanup costs.

We only seem to care about the latter. Thirty to one is a good deal for America, and as a downwind State, it is a particularly good deal for Rhode Island. In the Northeast, we are showing how we can reduce pollution and grow our economy. The Regional Greenhouse Gas Initiative, RGGI, is a cooperative effort among the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and shortly I expect again, New Jersey.

Since 2009 power sector emissions in our region have dropped 37 percent. Meanwhile, electricity prices have fallen by 3.4 percent, and bills have gone down as efficiency measures save on use. RGGI estimates it has helped create 30,000 new jobs and added $2.9 billion in regional economic growth. Just recently the bipartisan Governors involved in RGGI agreed to strengthen the program by an additional 30 percent reduction in power sector emissions. RGGI proves Republicans and Democrats can work together to fight pollution, protect the climate, and power the economy forward.

I urge my colleagues to reach across the aisle to work with us. There is common ground to be found on a variety of environmental issues. We shouldn't just deliver an industry wish list like the Murray Coal three-page plan we have not been allowed to see. Delaying air quality standards has real life consequences, and they hit home in Rhode Island.

I look forward to today's discussion.

Thank you, Chairman Capito.

Senator CAPITO. Thank you, Senator.

I will now recognize our first panel and panelist, our colleague, Senator Burr, from the great State of North Carolina to introduce his legislation, S. 203, the RPM Act.

Welcome.

OPENING STATEMENT OF HON. RICHARD BURR, U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. Thank you, Chairman Capito, Ranking Member Whitehouse, and any other members of the Subcommittee who might be here.

I want to thank you for allowing me to come and speak in favor of a bill I introduced this year, S. 203, the Recognizing the Protec-

tion of Motorsports Act, the RPM Act. Let me say from the beginning that this is a bipartisan, common sense approach to something that shouldn't have been a problem.

Since the first motor vehicle rolled across the assembly line, amateur mechanics and drivers have used hard work and ingenuity to transform their vehicles into race cars. These early pioneers established a framework for today's thriving American motor sports industry from the largest race tracks in Daytona, Florida; Dover, Delaware; Watkins Glen, New York; to the local tracks like Devil's Bowl Speedway in Vermont and the Summit Point Motor Sports Park in West Virginia.

The National Association of Stock Car Auto Racing was founded in 1948. It was initially based on the notion that racers purchased cars from dealer stock and modified them to race. NASCAR has come a long way from its roots in the foothills of North Carolina where moonshiners modified their vehicles to elude local law enforcement.

Today the area around Charlotte hosts multi-million dollar facilities where professional race teams manufacture and fabricate their race cars. Each week these teams travel around the United States racing in front of millions of fans. However, for thousands of amateur mechanics and drivers all across the country, the tradition of modifying a street car in order to race at their local track each weekend still lives on.

A rule proposed in 2015 by the EPA raised doubts as to whether amateur racing would continue. The EPA rule would have made it illegal to convert an automobile into a race car if the engine, exhaust, or any other part of the emissions system was altered from its stock configuration. Thankfully, the rulemaking was withdrawn as it would have directly attacked the very idea American motor sports was built on, and which hundreds of thousands of Americans still participate in as competitors and spectators every single weekend.

The bill I introduced is very straightforward. It reaffirms that the vehicles used solely for competition—including vehicles modified to be used exclusively for racing—will not sit in the garage because of an overly broad Washington rule. This was never Congress' intent which has, for years, expressly exempted these vehicles. The legislation would ensure that the original congressional intent is maintained into the future. I have been pleased with the bipartisan support this legislation has garnered with a total of 38 co-sponsors, including 9 of my Democrat colleagues. I hope this broad support highlights the importance of the legislation across the country.

For those who illegally modify their personal vehicles for use on our roads, this bill offers no relief. For example, in North Carolina, most passenger vehicles are required to pass emissions testing every year. In the State of Maryland, it is every 2 years.

Following passage of this legislation, States will still be able to establish a testing regime that meets their needs for all vehicles that operate on public streets and highways. The RPM Act is narrowly tailored to ensure Americans who want to purchase a modified vehicle and take it to the race track—and only the race track—will continue to be able to do so.

I believe after careful consideration and examination, members of this Committee will come to the same conclusion that this is a simple, yet important, piece of legislation that will provide certainty to amateur racing enthusiasts in each of our States.

Again, I want to thank the Subcommittee for consideration of this legislation.

[The prepared statement of Senator Burr follows:]

STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Chairman Barrasso, Ranking Member Carper, members of the Senate Committee on Environment and Public Works, thank you for allowing me to come here today and speak in favor of the bill I introduced earlier this year, S. 203, the Recognizing the Protection of Motorsports Act of 2017, or RPM Act.

Since the first motor vehicle rolled across the assembly line, amateur mechanics and drivers have used hard work and ingenuity to transform their vehicles into race cars. These early pioneers established the framework for today's thriving American motorsports industry, from the largest race tracks in Daytona Beach; Dover, Delaware; and Watkins Glen, New York, to local tracks like Devil's Bowl Speedway in Vermont and the Summit Point Motorsports Park in West Virginia. The National Association for Stock Car Auto Racing was founded in 1948, and was initially based on the notion that racers purchase cars from dealers' stock and modify them to race.

NASCAR has come a long way from its roots in the foothills of North Carolina, where moonshiners modified their vehicles to elude local law enforcement. Today the area around Charlotte hosts multi-million dollar facilities where professional race teams manufacture and fabricate their race cars, and each week these teams travel around the United States racing in front of millions of fans; however, for thousands of amateur mechanics and drivers all across the country the tradition of modifying a street car in order to race at their local track each weekend still lives on.

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I believe after careful consideration and examination the members of this Committee will come to the same conclusion that this is a simple, yet important piece of legislation that will provide certainty to the amateur racing enthusiasts in each of our States.

I again want to thank the Committee for allowing me to speak today.

Senator CAPITO. Thank you, Senator. I appreciate that.

You can head off to your business, and I will call the second panel. Thank you.

I would like to thank the second panel for joining us.

I want to now recognize Senator Shelby to introduce two of our witnesses from the great State of Alabama.

OPENING STATEMENT OF HON. RICHARD SHELBY, U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SHELBY. Thank you, Madam Chair. I would like to thank you for calling this hearing. I know I just got here, but I welcome the opportunity to introduce two of our witnesses, Mr. Davis Henry of Selma, Alabama, and Paul Williams of Bridgeport, Alabama.

Mr. Davis Henry currently serves as President of Henry Brick Company, a family owned, small business that has manufactured clay bricks in Selma, Alabama, for more than 70 years. He represents a third generation, and the Henrys operate the plant which employs 58 Alabamians.

Mr. Williams is the Vice President, Business Intelligence for the U.S. Stove Company, where he has worked for more than 20 years. U.S. Stove Company's manufacturing facility is located in Bridgeport, Alabama, not very far from Chattanooga, Tennessee, where they employ more than 150 people.

These two privately owned, small businesses represent many of the industries and employers in Alabama that are being adversely impacted by overly proscriptive and burdensome EPA rules and regulations.

When agencies disregard the interests and needs of small manufacturers and businesses, the results are policies that do more economic harm than environmental good and places undue hardships on both the producers and the consumers.

I want to thank you for your work, Madam Chair, in working to reduce regulatory burdens on small manufacturers and job creators. I look forward to hearing from our panelists today on how the bills before us will do just that.

Thank you.

Senator CAPITO. Thank you, Senator.

I will move forward with the rest of the introductions. Mr. Christopher J. Kersting is the President and CEO of the Specialty Equipment Market Association, representing the aftermarket automobile parts and service industry. Mr. John Walke is the Director of the Clean Air and Climate Program at the Natural Resources Defense Council here in Washington. Ms. Emily Hammond is the Glen Earl Weston Research Professor of Law at the George Washington University Law School focused on energy, environmental and administrative law. Welcome.

Mr. Henry, I will start with you. You will be recognized for 5 minutes. Your full statement will be submitted for the record.

STATEMENT OF DAVIS HENRY, PRESIDENT, HENRY BRICK COMPANY

Mr. HENRY. Chairman Capito, Ranking Member Whitehouse, and distinguished members of the Subcommittee, good morning, and thank you for inviting me to testify on this important issue.

As Senator Shelby said, my name is Davis Henry. I am the President of Henry Brick Company located in Selma, Alabama, a company that my grandfather founded in 1945. I represent the third generation of Henry's to operate this plant. I also currently serve

as the Vice Chairman of the Brick Industry Association. I am here today to speak on behalf of both my company and my industry.

We currently employ 58 people. If we have both plants running, that number is about 95. We have not run Plant 2 too much since 2008. The economy took a downturn then. As you can imagine, the last 9 years has been a very trying time for our company, as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources, we need to be sure we know what is required of us and that the target will not change once those resources are committed.

I am here today because we were directly impacted by a previous moving regulatory target. I want to ensure that my company and all remaining brick companies are not victimized again.

In 2003 the first maximum achievable control technology, MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, HAP, and only to the larger kilns in our industry. For our industry, with only two pollutants emitted in any large amount, the definition of major source that really applies is a facility that has the potential to emit 10 tons or more of any single HAP.

Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did at a total cost of about $1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 Brick MACT, it was vacated by the courts. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls.

During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns. In 2008 the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard, the EPA looked at the best performing kilns, including those new control devices that were the result of the 2003 MACT to establish the limits. Unfortunately, like many who installed DLAs, our kilns cannot meet these new, more stringent limits.

We recently conducted a stack test at our facilities that confirmed our inability to meet the limits for two of three HAP categories with numeric limits. We cannot meet the mercury limit nor the PM/non-mercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to rip out the DLAs and install a new lime based system called a DIFF. The EPA believes this could cost as much as $3.8 million per kiln.

There is also an alternate solution the EPA has proposed that would only cost $1.65 million per kiln, but that is an untested control scenario, and no one knows whether it will actually work.

There is a way to avoid MACT compliance. In fact, the EPA's first listed option for complying with the rule is to avoid the rule altogether by becoming a synthetic miner or synthetic area source. To become a synthetic area source, a facility accepts federally enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like

Henry Brick and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source with our current control devices without greatly reducing capacity. EPA's determination was based on faulty data. It appears that there was some kind of error in the test that made it appear we could reach the limit. We are still investigating our data.

Henry Brick simply cannot afford to try to hit another moving target for Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to rip out our DLAs and replace them with DIFFs.

We need the BRICK Act to ensure that we are not required to invest again until we know that the standard is and that it is not going to change. This is not a hypothetical issue for our industry. It is real. It happened to us at Henry Brick. Please don't let it happen again.

I would be happy to answer any questions.

[The prepared statement of Mr. Henry follows:]

Testimony of
Davis Henry
President
Henry Brick
Selma, Alabama

U.S Senate
Environment and Public Works Subcommittee on Clean Air and Radiation

Date: November 14, 2017
Time: 10:00 A.M.

Chairman Capito, Ranking Member Whitehouse, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this important issue. My name is Davis Henry. I am the President of Henry Brick, which has manufactured clay bricks in Selma, Alabama for over 70 years. I represent the third generation of Henry's to operate this plant. I also currently serve as the Vice Chairman of the Board for the Brick Industry Association (BIA), the national trade association that represents manufacturers and distributors of clay brick and pavers. I am here today to speak on behalf of both my company and my industry.

Henry Brick currently employs 58 people, including our manufacturing, sales and support staff. That number grows to about 95 when we bring Plant 2 back online. It has been idle since June of 2008 due to the economy. As you can imagine, the last 9 years have been a very trying time for our company as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources, we need to be sure that we know what is required of us and that the target will not change once those resources are committed. I am here today because we were directly impacted by a previous moving regulatory target and I want to ensure that my company—and all remaining brick companies—are not victimized again.

In 2003, the first maximum achievable control technology, or MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, or HAP, and only to the larger kilns in our industry. For our industry, with only two pollutants emitted in any large amount, the only definition of major source that really applies is a facility that has the potential to emit 10 tons or more of any single HAP. Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did. We installed limestone based systems, called dry limestone adsorbers or DLAs, on both of our kilns at a total cost of approximately $1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 Brick MACT, it was vacated by the courts for deficiencies. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls. During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns.

In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard, the EPA looked at the best performing kilns, including those brand new controls, to establish the limits.

Unfortunately, like many who installed DLAs, our kilns cannot meet these new, more stringent limits. We recently conducted a stack test at our facilities that confirmed our inability to meet the limits for two of three HAP categories with numeric limits. We cannot meet the mercury limit, nor the PM/non-mercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to rip out the DLAs and install a new lime-based system called a DIFF, which the EPA estimates would cost approximately $3.8 million per kiln. EPA believes that there may be a solution that would only cost $1.65 million per kiln, but that is an untested control scenario and no one knows whether it will actually work on a brick kiln- so I am uncomfortable relying on that estimate. The EPA's estimated emission reduction for an average kiln for mercury and metals is less than 400 pounds per year for an uncontrolled source, so our incremental reduction from our controlled kilns would likely be lower.

There is a way to avoid MACT compliance. In fact, EPA's first listed option for "complying" with the rule is to avoid the rule by becoming a "synthetic minor" or "synthetic area" source. To become a synthetic area source, a facility accepts Federally enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like Henry Brick, and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost. If you follow EPA's approach to assigning costs, you would assign an annual cost of less than $20,000 per year.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source with our current controls. EPA's determination was based on faulty data. It appears that there was some kind of error in the test that made it appear we could reach the limit- or it is possible that this demonstrates that the performance of a new control system could not be maintained over time. We are still investigating our data. The only option left to us to become a synthetic minor is to reduce our production, which is an extremely inefficient way to run a brick kiln.

Henry Brick simply cannot afford to try to hit another moving target for Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to rip out our DLAs and replace them with DIFFs. We need the BRICK Act to ensure that we are not required to invest again until we know that the standard is not going to change. Just last week my friend Al Puckett, owner of Columbus Brick, which has been run by his family for 126 years, sold his company because of the uncertainty created by the current regulatory environment. This is not a

hypothetical issue to me. It is real. It happened to me. Please do not let it happen again.

Thank you for introducing this bill and for taking the time to listen to me today. I am happy to answer any additional questions you may have.

Senator CAPITO. Thank you.

Mr. Kersting, you are recognized for 5 minutes.

STATEMENT OF CHRISTOPHER J. KERSTING, PRESIDENT AND CEO, SPECIALTY EQUIPMENT MARKET ASSOCIATION

Mr. KERSTING. Chairwoman Capito, Ranking Member Whitehouse, and members of the Subcommittee, I appreciate the opportunity to speak today in support of the Recognizing the Protection of Motorsports Act, RPM. We applaud Senator Burr for introducing S. 203, along with 38 other bipartisan co-sponsors, including EPW Chairman Barrasso, Chairwoman Capito, and Subcommittee members Inhofe, Boozman, Fischer, Moran, and Ernst.

My name is Chris Kersting, and I am the President and CEO of the Specialty Equipment Market Association. SEMA is a trade association that represents more than 6,900 companies that manufacture, sell, and install a variety of specialty auto parts, including motorsports equipment.

The RPM Act solves a problem that did not exist before 2015. It clarifies that it has always been legal to make emissions related changes to a street vehicle that has been converted into a race car. It also confirms that it is legal to produce, market, and install racing equipment.

In July 2015 the EPA issued a proposed regulation declaring that the Clean Air Act prohibits converting a motor vehicle into a race car. Manufacturing, selling, and installing racing parts for the converted vehicle would also be a violation. Although the EPA did not finalize the proposed rule, the agency stands by that interpretation. SEMA contends the interpretation contradicts over 47 years of previous EPA practice, and it renders illegal the majority of current and future race cars and motorcycles.

Congress never intended for the EPA to regulate race cars. Under the Act, a regulated motor vehicle is one that operates on the roadways. When enacted in 1970 Congress clarified in the conference committee report that the term motor vehicle did not include vehicles manufactured or modified for racing.

Then in 1990 Congress provided authority to the EPA to regulate non-road vehicles. It specifically excluded vehicles used solely for competition from the definition of a non-road vehicle.

Despite this past clear congressional intent, the EPA's 2015 regulatory language reads, in part, "Certified motor vehicles and their emission control devices must remain in their certified configuration even if they are used solely for competition; anyone modifying a certified motor vehicle for any reason is subject to the tampering and defeat device prohibitions."

The EPA interpretation is a reversal from a 45 year status quo and is the sole issue of the RPM Act. For nearly five decades modification of street vehicles for racing has never been questioned under the Act.

The motor sports industry and the racing enthusiasts reasonably rely that racing activity is legal. The RPM Act is now necessary to restore certainty under the law.

There are about 1,300 race tracks across the country. Most cater to thousands of organized amateur racing events which involve converted vehicles. These drivers, the race teams, and the spectators

all help drive local economies, fill motel rooms and restaurants, and they shop at local stores. All these activities translate into tens of thousands of jobs and billions of dollars in economic activity, including annual sales of racing equipment.

The EPA interpretation puts this direct and related economic activity at risk as illegal under the law. In the State of California, which has its own very strict emissions laws, they provide an express exemption for race cars and modification equipment in both statute and regulation.

A racing vehicle is defined as a competition vehicle not used on public highways. This law establishes an approach that is consistent with the RPM Act and consistent with nearly five decades of interpretation under the Clean Air Act.

In conclusion, the RPM Act is narrow in scope. It would restore nearly 50 years of consistent interpretation under the law. The American motor sports tradition, the many small businesses, the jobs and tax revenue associated with it are all in jeopardy.

The EPA's position results in these businesses currently operating illegally. The RPM Act will make clear Congress renders this activity legal.

Thank you again for the opportunity to speak in support of the RPM Act. I would be willing to answer any questions you may have. Thank you.

[The prepared statement of Mr. Kersting follows:]



Christopher J. Kersting
CAE, President and CEO
Specialty Equipment Market Association (SEMA)

Chris Kersting has been president and CEO of the Specialty Equipment Market Association (SEMA) since July 2002. He is the fifth staff executive to lead the trade group since its founding in 1963.

As president and CEO, Kersting has led SEMA's growing influence in the automotive industry through a series of innovative programs and services that help the association's more than 6,600 member companies capture new business opportunities. With a focus on programs targeted to small businesses, he has championed initiatives that include industry collaboration on vehicle technology, industry data standardization, and strong legislative and regulatory advocacy.

Kersting became a SEMA staff member in 1996 when he joined the Washington, DC office as vice president of legislative and technical affairs. As the association's lead representative in the nation's capital, he successfully urged lawmakers to pass bills that protected the interests of SEMA member companies and challenged government regulation in order to maintain innovation and growth in the aftermarket industry.

Early in his career, Kersting worked for SEMA as outside counsel and government affairs representative. He also handled legal matters for SEMA member companies, as well as industry institutions such as the National Hot Rod Association (NHRA), Performance Warehouse Association (PWA) and Auto International Association (AIA).

A Certified Association Executive (CAE), Kersting received his law degree from Washington College of Law, American University in 1989 and graduated from the University of Colorado with a Bachelor of Science degree in business in 1985.

Born in Cincinnati, Ohio, Kersting currently resides in Pasadena, California, with his wife and family.



Testimony of

Christopher J. Kersting, President & CEO
Specialty Equipment Market Association

before the

Subcommittee on Clean Air and Nuclear Safety

on

November 14, 2017

Introduction

Chairwoman Capito, Ranking Member Whitehouse, and members of the Subcommittee, I appreciate the opportunity to speak with you today in support of S. 203, the "Recognizing the Protection of Motorsports Act." With this legislation, Congress would re-affirm that the long-established practice of converting street vehicles for use in motorsports is not a prohibited activity under the Clean Air Act. The motorsports community applauds Sen. Richard Burr for introducing S. 203, along with 38 other bipartisan cosponsors, including Environment and Public Works Committee Chairman Barrasso, Subcommittee Chair Capito and Subcommittee members Sens. Inhofe, Boozman, Fischer, Moran and Ernst.

My name is Chris Kersting and I am the President and CEO of the Specialty Equipment Market Association (SEMA). SEMA is a national trade association that represents more than 6,900 mostly small businesses that manufacture, market and sell a wide variety of specialty automotive aftermarket products, including performance equipment for vehicles used in motorsports competition.

The RPM Act clarifies that it has always been legal to make the emissions-system modifications needed to convert a previously street-legal motor vehicle into a racecar used exclusively at the track under the Clean Air Act (CAA). The bill also confirms that it is legal to manufacture, distribute, sell, and install race parts used to convert these vehicles for exclusive use on the track.

Issue

In July of 2015, the U.S. Environmental Protection Agency (EPA) issued a proposed regulation[1] declaring that the Clean Air Act prohibits converting a motor vehicle—defined as a car, truck or motorcycle designed for use on the public streets and highways—into a racecar. Under the EPA interpretation, manufacturing, selling and installing racing parts to accomplish such a conversion would also be a violation of the CAA. Although the EPA did not finalize the proposed rule, it maintains that the CAA prohibits racecar conversions along with the sale and use of racing products that can be installed on these vehicles.

SEMA contends the EPA interpretation contradicts 47 years of previous EPA policy and practice. Further, the EPA position renders illegal the majority of current (and future) race cars and motorcycles and would devastate the 1,300 motorsports facilities located across the country. It will also crush thousands of small businesses that supply the products used in motorsports – an industry that alone generates more than $1.6 billion in annual sales and provides tens of thousands of jobs across America.

In response, the RPM Act was introduced as a narrowly-crafted bill which will restore certainty and the status quo under the law. The bill will preserve decades of American motorsport tradition, countless related small businesses and the many jobs they provide.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2, 80 Fed. Reg. 40138 (proposed July 13, 2015).

EPA Position on the Clean Air Act

Congress never intended for the EPA to regulate racecars. The Motor Vehicle Air Pollution Control Act of 1965 defined a "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway." When the Clean Air Act Amendments were enacted in 1970, Congress clarified in conference committee deliberations that the term "motor vehicle" did not include vehicles manufactured or modified for racing.[2] Then in 1990, Congress provided authority to the EPA to regulate nonroad vehicles and engines. Because the term "nonroad vehicle" could easily be construed to include race vehicles, Congress included language to expressly exclude from the definition vehicles used solely for competition.[3]

Despite the clarity of congressional intent, the EPA's 2015 proposed rule made it illegal to convert a motor vehicle into a dedicated racecar and a violation of the tampering provisions, which are subject to civil fines and related penalties. The EPA proposed regulation read in part as follows:

> 40 CFR § 86.1854-12(b) covering "Prohibited Acts" would be amended to add the following provision:
>
> > (5) Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3). [80 FR 40565]

The EPA's interpretation would apply to any vehicle which started life as a street car or motorcycle originally certified to meet federal emissions standards—meaning that it is illegal to make any modifications that affect any emissions-related component, even if the vehicle is converted into a dedicated track car.

For nearly five decades, the Act has allowed the modification of street vehicles for racing. During that time, the EPA has had, and has utilized, the clear authority under the Act to enforce against anyone who offers, sells or installs products that knowingly take a regulated street vehicle out-of-compliance. Opponents of the RPM Act have asserted that the legislation provides a loophole that allows racing equipment to be sold for use on the

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[2] *See* House Consideration of the Report of the Conference Committee, Dec. 18, 1970 (reprinted in *A legislative history of the Clean air amendments of 1970, together with a section-by-section index*, U.S. LIBRARY OF CONGRESS, ENVIRONMENTAL POLICY DIVISION, Washington: U.S. Govt. Print. Off. Serial No. 93-18, 1974, p. 117) (Representative Nichols: "I would ask the distinguished chairman if I am correct in stating that the terms "vehicle' and "vehicle engine" as used in the act do not include vehicles or vehicle engines manufactured for, modified for or utilized in organized motorized racing events which, of course, are held very infrequently but which utilize all types of vehicles and vehicle engines?"; Representative Staggers: "In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this act, because the act deals only with automobiles used on our roads in everyday use. The act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either.").

[3] *See* 42 U.S.C. § 7550(10) (2016) ("The term 'nonroad vehicle' means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.").

street. However, it is not apparent how the language of the RPM Act would bring about this result. The RPM Act does nothing to amend or alter EPA's enforcement authority. The agency will continue to have the full authority it has had in the past, and has today, to enforce against tampering violations.

Economic Impact of the EPA Proposal

Motorsports encompasses a wide variety of racing categories (stock, drag, sprint, etc.) and track types (oval, off-road, drag, etc.). Across the United States, far more racecars originate on an assembly line as street vehicles as compared to racecars that are purpose-built (e.g. dragsters, formula and midget cars). The converted street vehicles are driven mainly by amateur and sportsman drivers.

There are about 1,300 race tracks across the country and most cater to organized amateur racing events. The tracks host thousands of annual local races along with test-and-tuning events. While professional racing receives more publicity, amateur racing has more participants. Drivers, race teams and spectators help drive local economies by filling up motel rooms and restaurants, and shopping at local stores. In turn, these activities support jobs and generate tax revenues at the local, state and federal levels.

To cite just a few states as examples, an estimated 23,000 Indiana residents are employed by motorsports companies.[4] Indianapolis Motor Speedway alone contributes over $510 million of economic activity annually in Indiana.[5] In Ohio, Summit Motorsports Park sponsored by aftermarket parts supplier Summit Racing has a $99.5 million economic impact on the surrounding community.[6] In 2005, motorsports generated almost $6 billion for North Carolina's economy and supported more than 27,000 jobs.[7] The state is home to more than 1,000 teams, tracks, businesses and educational institutions related to motorsports, including 90% of the NASCAR teams, with many based in the Charlotte region, home of the Charlotte Motor Speedway.

At the local level, the Sonoma County Economic Development Board estimates that Sonoma Raceway in California generated nearly $2 million in regional economic impact for a single vintage race weekend. The Raceway demonstrates the nexus between racing and the economy. About 75 small businesses are in the adjoining industrial park where many of these vehicles are converted, modified, stored, prepared for events and fixed when they break. Those businesses employ hundreds of skilled technicians and they in turn support a range of high-performance parts and components manufacturers and distributors whose products are delivered to the facility daily. Sonoma Raceway employs about 80 full-time workers and another 300-400 people work

[4] Rich Van Wyk, *Study Shows Motorsports Impact on Indiana Economy*, WTHR (Dec. 6, 2012), available at http://www.wthr.com/story/20281896/study-shows-motorsports-impact-on-indiana-economy.
[5] Drew Klacik, *Estimating the Annual Economic Contributions of Indianapolis Motor Speedway*, INDIANA UNIVERSITY PUBLIC POLICY INSTITUTE at 3 (2013), *available at* http://www.imsproject100.com/wp-content/uploads/2013/07/Report_Update.pdf.
[6] https://www.summitmotorsportspark.com/news/81-news/217-economic-impact-study-released
[7] The Economic Impacts and Occupational Analysis of the North Carolina Motorsports Industry for 2005, The Belk College of Business, University of North Carolina at Charlotte (January 2006), available at http://charlotteusa.com/images/uploads/CharlotteUSA_Motorsports_Report_2006.pdf

every day in the industrial park. During large events, staffing numbers can balloon as high as 2,000-2,500 workers. This same pattern of small business employment and economic impact can be found at tracks located all around the U.S.

Also figuring into the economic impact of motorsports is the racing equipment industry. The specialty equipment aftermarket employs about one million Americans across all 50 states, and retail sales of racing parts and equipment alone make up a $1.6 billion market annually. Race vehicles are modified in shops across the nation and the vehicles are outfitted with safety equipment such as five-point seat belts, roll bars, cages and safety netting, suspension, wheels and tires. These sales and services would be eliminated if racing modifications are prohibited.

Beyond specialty racing equipment, the EPA's interpretation would have a significant negative impact on the motorsports divisions of the major auto makers, divisions that include advanced product engineering and development, safety systems and sales and marketing. And the EPA itself would suffer a setback. The EPA's "Green Racing" program seeks to collaborate with industry and race sanctioning organizations to promote innovative product development through racing. The Program serves as a testing platform for new performance technologies that will eventually benefit the public when incorporated into mass-produced vehicles. The EPA's interpretation of the Clean Air Act would have a stifling effect on new products that could emerge through the Program.

California: Express Exemption

California's counterpart law to the federal Clean Air Act expressly exempts race cars and parts in both statute and regulation. California defines a "racing vehicle" as a competition vehicle not used on public highways.[8]

For parts that may be mistakenly or improperly installed on a highway vehicle, California instructs companies to mark the products "for race use only" and closely monitor sales to help ensure proper use. SEMA has urged the EPA to take the same approach. The RPM Act is consistent with California law.

Conclusion

The RPM Act is a necessary re-affirmation that street vehicles can legally be converted into dedicated race vehicles and that parts sold and installed on such vehicles are not subject to the requirements of the CAA. The RPM Act is narrow in scope. It does not create a loophole or seek major changes to the CAA. The EPA retains all authority provided to pursue tampering when defeat devices are illegally installed on street vehicles. SEMA has supported these enforcement efforts and will continue to do so.

The EPA's interpretation of the Clean Air Act jeopardizes the legality of an important industry and the motorsports tradition enjoyed by tens of thousands of enthusiasts. The RPM Act provides a permanent solution by returning the law to what Congress intended.

Thank you again for this opportunity to speak in support of the RPM Act.

[8] Cal Health & Saf Code § 39048.

December 14, 2017

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Clean Air and Nuclear Safety
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Clean Air and Nuclear Safety
Committee on Environment and Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Capito and Ranking Member Whitehouse:

Thank you for the opportunity to testify at the Subcommittee on Clean Air and Nuclear Safety's Nov. 14 hearing on S. 203, the "Recognizing the Protection of Motorsports Act of 2017" (RPM Act). Following-up on your Nov. 30 letter, below are SEMA's responses to the U.S. Environmental Protection Agency's Technical Assistance (TA) document and proposed bill text. SEMA's responses correspond with the EPA's enumerated statements in the TA and are as follows:

From Senator Whitehouse:

1. EPA supports an exemption from the tampering provisions of 42 U.S.C. § 7522(a)(3)(A) for the modification of certified motor vehicles into vehicles used solely for competition motorsports.

- *Response*: SEMA welcomes the EPA statement supporting the exemption for modification of motor vehicles used solely for motorsports competition. The exemption language in the RPM Act is critically important to ensuring that racers, racing equipment suppliers and installers are not subject to tampering penalties under the Clean Air Act.

2. EPA supports an exemption from the defeat device provisions of 42 U.S.C. § 7522(a)(3)(B) for components used to modify certified motor vehicles into vehicles used solely for competition motorsports.

- *Response*: Please refer to 1. above.

3. EPA has observed a growing market in electronic devices that can be used to render inoperative or remove the emission controls of certified motor vehicles.

- *Response*: Please refer to 4. below.

4. While some of these devices may be used to modify certified motor vehicles into vehicles used solely for competition motorsports, EPA has observed that the same or similar electronic devices can unlawfully be used to defeat emission controls in vehicles *not* used solely for competition motorsports (e.g., to render inoperative or remove the emission

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control systems in light-duty diesel trucks). This unlawful use can result in significant excess air pollution.

- *Response*: SEMA is aware of this issue and the EPA's concern regarding defeat devices. Section 203(a) of the Clean Air Act (42 U.S.C. 7522 (a)) currently provides the EPA authority to bring enforcement action against those violating the law's anti-tampering provisions. The EPA has a record of successful enforcement actions using these provisions of the law. Where the EPA has indicated concerns that the RPM Act language would make enforcement more difficult, SEMA has offered changes to the Act that specifically address these concerns (please see modified RPM Act language below).

5. This technical assistance therefore aims to regularize the sale and use of these electronic devices on vehicles used solely for competition motorsports, while retaining the prohibition against their use in other contexts.

- *Response*: SEMA appreciates the EPA's commitment to ensuring that modification equipment may lawfully be used on vehicles that compete in motorsports competition. We recognize the need for the EPA to maintain its ability to enforce against products that are illegally used on roads and highways. The RPM Act clarifies in federal law that these products are lawful when used exclusively on race vehicles, including those converted from a motor vehicle. The bill does not impact the agency's ability to enforce against companies and individuals that circumvent the intended use of these products. As noted, the EPA's concerns with the specific language of the Act have been addressed in the modifications submitted herewith below.

6. EPA believes that if an end user wants to render inoperative or remove the emission controls of a certified motor vehicle in order to race, the vehicle should no longer be registered for use on streets or highways. If an end user wants to retain the vehicle's registration for on-road use, the defeat device should not be installed, even temporarily.

- *Response*: Please refer to 8. below.

7. EPA therefore recommends an exemption in Section 2 of S.203 from the tampering and defeat device prohibitions of the Act for vehicles that are no longer registered to be operated on a street or highway.

- *Response*: Please refer to 8. below.

8. This is a bright line test applicable at the point of sale and enforceable by a comparison of vehicle identification numbers collected at the point of sale to state motor vehicle registration information. Those that install these electronic devices on a vehicle registered for on-road use would be subject to the tampering prohibition of 42 U.S.C. § 7522(a)(3)(A). Those that manufacture or sell those devices without taking adequate precautions that emission controls would be defeated only on vehicles not

registered for on-road use would be subject to the defeat device prohibition of 42 U.S.C. § 7522(a)(3)(B).

- *Response*: SEMA shares the EPA's goal of enabling racers to lawfully purchase and use race parts needed to compete in motorsports, while ensuring that these products do not show up on vehicles driven on roads and highways. However, the specific method and procedures to accomplish the law's intent should not be prescribed in statutory language, but should be properly developed through a rulemaking process that involves all stakeholders.

  SEMA is concerned that the point-of-sale requirement that the EPA is proposing will not be feasible and will lead to undue burdens for all parties in the supply channel. Motor vehicles are titled and registered at the state level. States have various systems and timetables to maintain vehicle registration data. Currently there is no VIN registration system that would be available to auto parts retailers. In some states, the time from de-registration of a vehicle to the time it is in the records database can vary from weeks to months. The racing equipment business is comprised mostly of small businesses. These small retailers compete for a household's discretionary dollars – against everything from sporting goods to patio furniture. Any system requiring weeks and months of delay will effectively kill the chance for these businesses to complete sales in a timeframe that reflects today's competitive retail environment.

  SEMA asserts that the current law provides authority to enforce against tampering and that the EPA has a record of successful enforcement actions. The RPM does not alter or reduce the EPA's capability to enforce the law. As noted, if the EPA believes more detailed measures are required, the agency should offer such measures as appropriate for notice and comment through the rulemaking process, not as prescriptions in the Clean Air Act itself.

9. EPA would discourage an approach that focuses solely on the end use of the modified vehicle (e.g., by excluding from the definition of "motor vehicle" vehicles *used* solely for competition) because of the profound difficulty in policing the end use of vehicles. For example, though the end use approach excludes competition vehicles from *non-road* emission standards under 42 U.S.C. § 7550(10), EPA cannot determine how many of the approximately 85,000 competition dirt bikes lawfully imported each year are actually used "solely for competition." Accordingly, EPA proposes that Section 3 of S.203 be removed.

- *Response*: In consideration of the EPA's concern, we agree to remove the RPM Act's proposed change to the definition of "motor vehicle" (Section 3 of S. 203), as we have in our draft legislation (below).

10. EPA proposes a two-year deadline in which to promulgate implementing regulations.

- *Response*: The RPM Act provides the EPA one-year from enactment to issue regulations, which is consistent with other bills that require regulations. We oppose a two-year period to promulgate regulations, as it would be burdensome to race-parts businesses planning to invest in capital and employees.

EPA Alternative RPM Act Language

SEMA can agree to the EPA's proposal to change the anti-tampering provision from an exclusion to an exemption in Sec. 2 of S. 203.

We oppose adding legislative text stating "that is no longer registered to be operated on a street or highway" to 42 U.S.C. 7522 (a), as this language is tied to a very specific regulatory scheme, which would require the creation of a VIN database used for point-of-sale verification (See 8. Above). Sec. 2 of S. 203, as originally drafted, clearly states that vehicles used "solely for competition" are the only modified motor vehicles that are not subject to tampering penalties. Consistent with the goal of ensuring converted vehicles are used exclusively for racing, SEMA proposes the addition of language to clarify that converted motor vehicles "will not be operated on a street or highway" (described in the section below).

SEMA supports removing the proposed change to the definition of "motor vehicle" in Sec. 3 of S. 203.

Finally, we recommend that Sec. 4 of S. 203 (Sec. 3 of the EPA's version of the bill) not be amended.

SEMA Alternative RPM Act Language

Based on feedback from the EPA, members of the Senate Environment and Public Works Committee and the House Energy and Commerce (E&C) Committee, congressional staff, environmental groups, and other stakeholders, SEMA has drafted alternative language for S. 203 (below).

SEMA's proposed text addresses concerns raised at the Sep. 13 E&C Subcommittee on Environment hearing regarding the use of the word "purpose" in Sec. 3 of H.R. 350 (Sec. 2 of S. 203). Although "purpose" is used in similar exemption provisions of Section 7522(a), our proposed bill language removed the term to reinforce that what matters is in fact the end-use of a vehicle rather than the intended use of a part when it was produced or sold.

SEMA proposes strengthening the RPM Act by adding language to Sec. 2 of S. 203 stating that converted race vehicles, which are exempt from anti-tampering provisions of the Clean Air Act, "will not be operated on a street or highway." We also recommend

the addition of language clarifying what is and what is not a prohibited act regarding the production, sale, installation and use of racing parts that bypass, defeat or render inoperative the emissions control system of a motor vehicle and converted race vehicles.

Given the EPA's concerns raised with amending the Clean Air Act's definition of a motor vehicle, we agree to remove Sec. 3 of S. 203.

The revised RPM Act text below addresses the concerns of stakeholders while allowing the conversion of street vehicles for racing and the availability of race parts.

SEMA Proposed Amendments to S. 203
115TH CONGRESS 1ST SESSION

S. 203

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JANUARY 24, 2017

Mr. BURR (for himself, Mr. ROUNDS, Mr. RUBIO, Mr. TILLIS, Mr. CRAPO, Mr. HELLER, Mr. GRAHAM, Mr. BOOZMAN, Mr. MORAN, Mrs. ERNST, Mr. MANCHIN, Mr. INHOFE, Mrs. FISCHER, Mr. TESTER, and Mr. DONNELLY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Recognizing the Protection of Motorsports Act of 2017" or the "RPM Act of 2017".

SEC. 2. ~~EXCLUSION~~ EXEMPTION FROM ANTI-TAMPERING PROVISIONS.

Section 203(a) of the Clean Air Act (42 U.S.C. 7522(a)) is amended by adding at the end the following: "No action with respect to any device or element of design described in paragraph (3) shall be treated as a prohibited act under that paragraph if the action ~~is for the purpose~~ results in the modification of ~~modifying~~ a motor vehicle into a vehicle to be used solely for competition and which will not be operated on a street or highway.".

It shall be a prohibited act to manufacture, sell or install a part or component to bypass, defeat or render inoperative the emissions control system of a motor vehicle.

It shall not be a prohibited act to manufacture, sell or install a part that is used on a vehicle to be used solely for competition.

~~**SEC. 3. DEFINITION OF MOTOR VEHICLE.**~~

~~Section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)) is amended—~~
~~(1) by striking "(2) The term" and inserting the following:~~
~~"(2) MOTOR VEHICLE.—~~
~~"(A) IN GENERAL.—The term"; and~~
~~(2) by adding at the end the following:~~
~~"(B) EXCLUSION.—The term 'motor vehicle' does not include a vehicle used solely for competition, including a vehicle used solely for competition that was converted from a motor vehicle.".~~

SEC. 3. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall finalize any regulation necessary to implement the amendments made by this Act.

If you would like further clarification regarding any of the answers provided or our proposed amendments to S. 203, please don't hesitate to contact me.

Sincerely,



Christopher J. Kersting
President & CEO

Senator CAPITO. Thank you.

Mr. Williams, you are recognized for 5 minutes.

STATEMENT OF PAUL WILLIAMS, VICE PRESIDENT, BUSINESS INTELLIGENCE, UNITED STATES STOVE COMPANY

Mr. WILLIAMS. Chairwoman Capito, Ranking Member Whitehouse, and members of the Subcommittee, thank you for holding this hearing today on S. 1857.

My name is Paul Williams, and I am the Vice President of the United States Stove Company. We are a privately owned business employing 150 people in Alabama and Tennessee.

We make a full range of wood heating appliances covered by these regulations. The company is almost 150 years old and would like to be in business for another 150 years, but we are worried.

Today I represent all wood stove and heater manufacturers and retailers that make or sell appliances impacted by EPA emission standards. I will refer to this regulation as the New Source Performance Standard, NSPS.

I want to be clear that the United States Stove Company and the industry support these Federal regulations. Standards provide uniform regulations and predictability which lowers costs for consumers through manufacturing efficiencies. All we are asking in this bill is for a 3 year extension to meet Step 2 of the NSPS standards.

Here is the situation. The EPA finalized this rule in 2015, and there are two steps. Manufacturers have already met Step 1 standards, in most cases, by reducing product emissions by 70 percent or more. Step 2 standards are even more stringent and must be met by May 2020. Products not meeting Step 2 cannot be made or sold after May 2020.

For some products, we had to redesign them from the ground up to meet Step 1. It takes a large capital investment ranging from $250,000 to $500,000 per product and an additional 9 to 15 months to bring a single product from concept to market. Meeting the Step 1 deadline had consumed a great deal of our time and resources. Now we must start this process all over to meet the 2020 standards. Since wood burning products are seasonal, there is a specific window of time for selling them that will make or break a company.

Retailers will make decisions in October 2018, less than a year from now, on products they will sell in the 2019–2020 heating season. That means we must invent the technology, test it for durability and safety, send it to an EPA approved lab for testing, and then have it certified by the EPA, all by the early fall of 2018 to have product in stores by 2020.

Each of these steps takes several months and has significant cost. Even if we do our part, we are concerned about the EPA's capacity to certify products in time.

Let us talk about the real life impacts. United States Stove offers 46 products. If the current timeline stands, we will be lucky to have 17 products ready for sale in May 2020. Two-thirds of our product line will not be ready. Since retailers don't want to get stuck with Step 1 products they are not allowed to sell, the closer we get to 2020, they will cut purchases to keep inventory low.

Fewer sales means less production, fewer manufacturing jobs, and less capital to develop Step 2 products. We have already seen this in Step 1. With fewer products at higher prices, retailers will lose sales.

For one hardware distributor in Prichard, West Virginia, whom I have worked with for more than two decades, Step 1 changed and dramatically affected his forced air furnace sales. Product prices doubled from $1,000 to $2,000. In 2015 he sold 42 warm air furnaces. In 2016, after the price doubled, his number dropped to 11, and this year it is down to 8. This will only get worse as the number of products declines and prices continue to rise. Retailer income and jobs will be cut.

Rural consumers in States like Iowa, Oklahoma, and Illinois who rely on our products will be hard hit. First, consumer choices will be cut. Second, prices will rise, and finally, consumers will not get cleaner air. With limited products and higher prices, consumers will hold on to their older, dirtier products longer, many of which have uncontrolled emissions.

In a rush to improve air quality, we are creating incentive to hold on to older products longer. This will actually slow air quality improvements.

Three years does not sound like much, but it will give us time to accumulate the capital and do the work to try to properly design and test wood burning products that are safe and reliable while meeting the required emission limits. We may be able to get the prices down to where more families can afford them.

Keep in mind, people and families trust our products to have a live fire in their home. We take that seriously. All we are asking for is time so that we can accomplish the task at hand.

Thank you for your time.

[The prepared statement of Mr. Williams follows:]



Paul Williams
Vice President of Business Intelligence
United States Stove Company
Bridgeport, AL

Paul Williams joined United States Stove Company as the sales coordinator in 1994, was promoted to National Sales Manager in 2001 and moved to Vice President of Business Intelligence in 2015. He has responsibility for the ERP and network operations, strategic reporting, patents and trademarks and inventory management. While also serving as a voting ASTM member, helping to develop testing protocols for the Hearth Industry. He brings a wealth of management experience to his current role, and has a record of success developing and implementing solutions to maximize top- and bottom-line performance through all sales channels. He is a team leader who excels at building customer relationships to drive growth and profitability. He is also active in his community and serves on the board of local Rotary Club, Past President and Rotary District Leadership. Other experiences includes serving as Industry Expert for the EPA Regulatory Development and Government Affairs and Chairperson of the Warm Air Furnace Caucus for NSPS (New Source Performance Standard). Mr. Williams attended University of Tennessee of Chattanooga majoring in Chemical Engineering from 1982-1984 before joining the Professional Bowlers Association and graduating from PBA school in Cincinnati, OH in 1987.

UNITED STATES STOVE COMPANY

Tradition, Quality, & Value since 1869

Statement of Paul Williams, Vice President of Business Intelligence, United States Stove Company
before the
Senate Committee on Environment & Public Works
Subcommittee on Clean Air and Nuclear Safety
November 14, 2017

Thank you Chairwoman Capito, Ranking Member Whitehouse, and members of the Subcommittee for holding this hearing today on S. 1857.

My name is Paul Williams and I am the Vice President of Business Intelligence at United States (U.S.) Stove Company. Our company is a fourth generation, family-owned small business that manufactures heating appliances with headquarters in rural middle Tennessee, where we are the third-largest employer in the area, and manufacturing in Bridgeport, Alabama, where we are the second-largest employer. We provide jobs for over 150 people. We offer a full range of affordable heating products, covering a broad variety of product types including wood and coal stoves, wood and pellet stoves, wood furnaces, coal furnaces and boilers, wood- and pellet-burning outdoor cooking appliances, and various gas and oil-fueled products.

As a cornerstone of the industry, started in 1869, we became the largest woodstove manufacturer in the world after the U.S. Civil War. Our growth continued with acquisitions until the early part of the 1900s when World War I and the Great Depression produced a difficult economy. U.S. Stove Company rebounded after these tough times and again experienced growth through the popular mail-order catalog business of Sears, Roebuck & Company. The rollercoaster ride continued through World War II and the oil embargo in the early 1970s. Being in business continually since 1869, it is our many years of experience that affords us a unique insight of our industry, our customers, and our own company.

All of our wood- and pellet-fueled residential heating appliances are affected by the EPA's emissions standards, known as New Source Performance Standards (NSPS) for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces. Today I am speaking on behalf of all manufacturers and retailers – most of whom are small businesses – who manufacture or sell one or more of the three categories of appliances impacted by these standards: (1) wood and pellet stoves, (2) forced-air furnaces ("wood furnaces"), and (3) hydronic heaters. The first set of NSPS standards ("Step 1") began to come into effect May 15, 2015, while Step 2 will come into effect May 15, 2020. It is important to understand that products not meeting the

Step 2 standard cannot be manufactured or sold after May 2020. That means that the significantly cleaner Step 1 products we just finished developing will not be available to consumers at that time.

I want to strongly emphasize that we support federal standards for wood heating appliances. Our veteran management team, with more than 150 years of combined industry experience, contributed in developing the first NSPS in the 1980s and worked closely with the EPA and other stakeholders in developing today's standards. We have a firm grasp on the importance of environmental responsibility in new product development and associated costs, achievable timetables and getting products to market, along with many variables that affect the retail landscape. However, today's standards must be implemented within a reasonable timeframe in which we can develop cost-effective means of achieving emissions limits. We want to partner with EPA to produce regulations that improve air quality while at the same time preventing an economic disaster for our industry.

Without extra time to meet Step 2, the wood heater market will be adversely affected by reduced consumer choice and major price increases, impacting the end consumers' ability to purchase cleaner products to replace older, non EPA-certified appliances. Reduced sales will ripple through the industry hurting retailers and manufacturing jobs. For U.S. Stove, we'd have more time to ***try to*** properly design and test woodburning products that are safe and reliable for consumers while effectively meeting the required emissions limits. Keep in mind that people trust us and our products enough to have a live fire in their home. We take that responsibility seriously. We test our products for safety and durability, not just for emissions. We need more time to accomplish the task at hand.

TIMING AND SEASONAL IMPACTS

After 148 years, U.S. Stove Company is still a leading supplier of renewable energy-fueled alternative heating systems to the big retail chains and independently-owned farm implement and hardware stores. Our substantial penetration in these segments gives us a major market share and keen understanding of product demand, changes, and profitability with these price-sensitive retail partners. Our typical customers live in rural communities and are low-to-middle income families looking for affordable sources of heat. We pride ourselves in providing a diverse variety of affordable heating options for consumers, and throughout the different divisions in our company we sell products designed to be the most affordable and some of the most reliable alternative options in the market.

Since woodburning products are used seasonally, there are seasonal windows of opportunity for selling them that can make or break a company. As a manufacturer, we are currently in the final, third phase of seasonal product demand, between September and December, the main selling season. On average, sales volume diminishes by the end of February. Retailers will attempt to balance inventory in preparation for spring seasonal supplies such as lawnmowers, grass seed, and grills.

With most of the companies in our industry being small businesses, their inventory is their banking collateral, which affords them their cash flow. The harmonious seasonal relationship between the manufacturer, retailer, and customer is a tricky one and presents multiple challenges.

> **Small retailers and consumers are being affected, today.** Take the example of one of our accounts in West Virginia, Persinger Supply in Prichard, WV. We have worked with Dusty Vanzandt there for two decades. The Step 1 wood furnaces standards (which went into effect in 2016 for small furnaces and 2017 for larger furnaces) have already affected his sales, mostly because the units are more expensive and there is less consumer choice. In 2015, he sold 42 furnaces. Last year in 2016, that number dropped to 11. So far this year, he has sold 8 furnaces. We attribute this reduced demand solely to price increases. The wood furnace market is still adjusting to this NSPS Step 1 regulation. Before this rule, the cost of a wood furnace was $1,000. Now, an EPA-certified furnace costs $2,000 at retail. As mentioned earlier, price-sensitive retailers and consumers cannot stomach 100 percent price increases very well. This will hopefully settle over time, but without more time to try to meet Step 2 this part of the wood heater industry will no longer exist. We have concerns about the effect of price increases in other product categories as well.

Although the effective date of Step 2 is May 15, 2020, in reality we need to have products ready for Step 2 by October 2018. Here is why: In October 2018, larger retailers will review available product lines of all companies and evaluate which products they'll sell in the 2019-2020 heating season. May 2019 falls at the time when retailers submit their purchase orders to manufacturers for products they will sell in the 2019-2020 heating season. Retailers are not going to purchase products that they won't be able to sell after the next heating season.

This means we need to know exactly which products we'll be presenting and manufacturing months before meeting with retailers in fall 2018. If we don't have a product certified and ready to be presented at that point, we miss out on an entire year of business for a product line. This reduces product choice for the consumer and limits opportunities for small business retailers. Figure 1 illustrates the business cycle we face with a large retailer. EPA certification of a product must happen *before* it can go through any of the below steps.

Figure 1. Business Cycle for Manufacturers of Residential Wood Heaters: Timeline for a Large Retailer (i.e. Lowes, Home Depot)

2018	2018-2019	2019			2019-2020
September - October	***November - January***	***February - April***	***May***	***June - July***	***September - March***
Manufacturer meets with retailer(s) to review process and appliances	Manufacturer purchases steel and other materials in advance of production	Manufacturer starts production to fulfill estimated purchase orders (PO)	Retailer submits PO to manufacturer	Appliances are shipped to distribution facilities to be sent to retailers	Peak selling time

In the face of this extended business cycle, we need to have our EPA certificates in hand no later than early fall 2018 – less than a year from now. As a practical reality, we cannot offer for sale or produce any products that aren't Step 2-compliant by that point. After the retailer reviews appliances and prices, we purchase the steel and other materials in advance of production. We start production for fulfilling purchase orders between February and April of 2019. Throughout the summer, we ship appliances to distribution facilities to be sent to retailers in time for the fall selling season.

Retailers are already basing business decisions on 2020.
One manufacturer has told us that during their most recent October line review meeting with a large retailer, the nation-wide retailer stated that they wouldn't be purchasing any products in the future that didn't meet the 2020 standard. This decision was made in fear of being stranded with products in stores that couldn't be sold after May 15, 2020, even though we are well over two years away from that effective date.

EMISSIONS AND SAFETY TESTING STANDARDS THAT WE FACE

Extending the Step 2 effective date by three years would allow the heating industry to feasibly amortize our time-based resources and the available company finances for design, development, and testing of new products over a more achievable period of time to try to be able to offer compliant products ready for the marketplace.

Our company has been heavily affected by the NSPS as we manufacture products for the U.S. market that are in four of five affected product categories (wood and pellet stoves, single burn rate woodstoves, and wood furnaces). One of these products, wood furnaces, was previously unregulated prior to the NSPS rule. Under the NSPS rule, standards for furnaces had different effective dates, with regulations for small furnaces coming into effect in May 2016 and for large furnaces in May 2017. It takes a large capital investment and anywhere from nine to 15 months to bring a single product from concept to a finished item ready for market. Plus the time it takes to receive a certificate from EPA. Up to this point, meeting these deadlines has consumed ALL the available time-based resources our company has at its disposal as well as all available working capital for new product research, development, and testing. Now we

have to start this process all over again since our products in the furnace category don't yet meet the 2020 standards.

Without more time to test products, which would be provided by S. 1857, U.S. Stove Company will very likely only be able to offer a very limited product line by the 2020 compliance deadline. With limited products to offer for sale, our company will lose key accounts and customers, which would ultimately compromise the viability of our company and the people we employ moving forward. We currently offer 46 wood burning appliance models. Looking ahead to 2020, we expect to have all pellet stoves (13) pass, but they will have to be re-tested at around $20,000 per model. We will likely have less than five woodstove models (down from 28) to sell in 2020 and **no furnaces** that will meet the 2020 standards. That is nearly a two thirds reduction in the appliance models we offer today. Here we will experience significant cost between $250,000 to $500,000 per model for research and development and testing expenses to try to meet 2020 requirements.

The testing process and test lab is very similar to making a trip to the DMV. You wait in line at the DMV for a few hours with all of your necessary paperwork in-hand. You get to the front of the line, but you are told that you are missing one form. You then have to get out of line, find and fill out that one form, and then get back in line and start all over again. When we have to start over testing, we still have to re-apply with the lab for lab space. There are other manufacturers who have signed up months in advance, as we do, for test lab space. With only five test labs in North America accredited by EPA to test wood heaters, a test lab logjam will worsen as we get closer to the 2020 effective date. Some manufacturers, even if they feel their product is ready for final testing, often need to wait months for their appointment with a testing lab.

After completing and passing emissions testing at the lab, we then have to wait months for EPA to review our test report and certify our product as EPA-certified. For wood furnaces, after receiving an EPA certificate for emissions, we still need to test the units for safety and durability. This process can also take months. If any changes need to be made after safety and durability testing, that unit has to again be re-tested for emissions at a lab and again certified by EPA since changes were made. As you can see, this process takes time, sometimes over a year, before a new or modified product can even make it to market to the consumer.

We are very concerned about EPA's ability to certify products by 2018. In addition, we face a log jam getting products tested by the five test labs approved by EPA to test wood heaters. In one year, one lab processed 14 wood heaters. Another processed only six appliances and half were sent back for more work. Once the lab approves it, the EPA has to review the test results, often taking 3-4 months for this industry. As the deadline gets closer, hundreds of appliances will need EPA testing and certification in a very short timeframe. There is not enough capacity to get through the process in time.

With the current backlog of test reports to be reviewed at EPA's Office of Enforcement and Compliance Assurance (OECA) (currently in excess of three months per model in our experience), the government's ability to issue a certificate for our appliances alone would create such a backlog it would decimate the industry. Even if investment capital and time allotted for design, development, and testing were not an issue, U.S. Stove Company (and all the other products manufactured by the wood heater industry) would not be certified in time.

This issue of testing and certification delays continues today for us and other wood heater manufacturers. We predicted much of this would happen in our 2014 comments to EPA on the proposed NSPS, which can be found as an attachment to this statement. Much of what we warned EPA about in 2014 is described in this statement as these issues did occur as foreseen by industry.

IMPACTS ON AIR QUALITY

Delaying Step 2 by three years (from May 15, 2020 to May 15, 2023) will not have a significant impact on air quality. Two of the regulated product categories (furnaces and hydronic heaters) were not regulated before the rule came into effect in May 2015. Those products have made significant emissions reductions since 2015. For instance, EPA estimated that the Step 1 standard for hydronic heaters represented over a 90% reduction in emissions. All products covered by the NSPS will remain regulated under Step 1 if Congress were to grant an extension of Step 2. In order to achieve meaningful reductions in emissions, we have to motivate end-users to replace the older pre-NSPS heaters (the vast majority of heaters in use today) with new ones. To do that, the new units need to be affordable and available.

> **Changeout programs produce results.**
> As an example, one changeout program in Libby, Montana replaced the entire town's 1,130 older woodstoves and replaced them with newer, EPA-certified stoves. Research done by the University of Montana showed that indoor air quality improved by 70 percent in the winter after the changeout program compared to the year before the program. Outdoor air quality was found to have improved by 30 percent.[1]

The true emission reductions come from changeout programs: replacing older, non EPA-certified wood heaters with today's new, EPA-certified appliances. However, if the price of appliances increases, two things will happen. First, there is an incentive for consumers to repair their higher emitting, uncontrolled appliances rather than replace them with EPA-certified appliances. Second, there will be less opportunity to change out as many units as possible. If furnace or hydronic heater manufacturers are regulated out of existence, there won't be any suitable option for a consumer looking for

[1] Hearth, Patio & Barbecue Association. (2008). *Preliminary Report: Clearing the Smoke: The Woodstove Changeout in Libby, Montana.* Retrieved from https://www.hpba.org/Portals/26/Documents/Government%20Affairs/Libby_Report-Final.pdf?ver=2017-06-13-082448-233

a 1-to-1 replacement for their wood heater. Why strive for perfection at the cost of eliminating part of an industry? And the irony is that in a rush to improve air quality in a hurry-up process, we are creating incentives to hold onto older, much dirtier products for longer and slow down air quality improvements.

CONCLUSION

Without this extension of Step 2, I fear that my company, the hearth industry, and consumers (your constituents) would needlessly suffer as a result. Our industry wants federal standards, but they must be cost-effective and achievable. With more time, provided by S. 1857, we can continue with R&D and testing as we work to try to meet Step 2 of this regulation. The existing deadline is infeasible. I thank the subcommittee for the opportunity to provide feedback on the current and future impacts of the EPA's emissions standards for wood heaters.

ATTACHMENT

U.S. STOVE COMPANY WRITTEN COMMENTS SUBMITTED TO EPA ON PROPOSED RULE: NEW SOURCE PERFORMANCE STANDARDS FOR NEW RESIDENTIAL WOOD HEATERS, NEW RESIDENTIAL HYDRONIC HEATERS AND FORCED-AIR FURNACES

(APRIL 30, 2014)

Docket ID No. EPA-HQ-OAR-2009-0734

United States Stove Company
Written Comments
On
Environmental Protection Agency
Proposed New and Revised New Source Performance Standards
For New Residential Wood Heaters, New Residential Hydronic Heaters and
Forced Air Furnaces and New Residential Masonry Fireplaces
April 30, 2014

I. Executive Summary

United States Stove Company (USSC) submits these written comments to highlight areas of agreement, concerns, interest and our recommendations regarding the Environmental Protection Agency's (EPA) new and revised New Source Performance Standards (NSPS) for hearth appliances under Section III of the Clean Air Act, published in the Federal Register on February 3, 2014.

While we are in agreement with the EPA that review of particulate standards for our appliances is warranted, we have concerns about:

1) the use of defined and proven testing protocols to realistic emission requirements;

2) the proposed compliance transition period and limitations to sell product at retail;

3) the economic impact of the proposed rule on our industry, manufacturers, retailers and consumers; and

4) real-world issues, consequences and unintended adverse outcomes if the proposed rule is implemented as currently written.

USSC wants to partner with the EPA to produce regulations which improve air quality while at the same time preventing an economic disaster for our industry. In short, we agree with the EPA's goal, but we disagree with the flawed process it proposes to use to accomplish it. We strongly disagree with Step 2 limits in all product categories, for reasons that the Hearth Patio and Barbecue Association (HPBA) has enumerated in its detailed comments. We know that if these limits are imposed, this industry will be devastated to the point that it will no longer exist in any meaningful capacity.

Many manufacturers, including USSC, produce several categories of products that are facing regulation, most for the first time in history, which greatly exacerbates problems on all fronts. Not only are we faced with a "crash course" to bring our products into compliance with the proposed NSPS's, we are also faced with daunting challenges in deciding how we address retail markets[1], the immense financial

[1] *See* Corrected Transcript April 1, 2014 (A80197F) for Public Hearing: Proposed Revisions to the Standards of Performance for New Residential Wood Heaters, February 26, 2014 page 10 lines 1-8: At the public hearing in Boston, MA on February 26, 2014, Greg Green of the EPA stated that it is not the Agency's intent for the proposed NSPS to affect wood heater inventory for stores and any heater currently in home use. We are sure Mr. Green was being sincere and straightforward in his statement. As noted above, the impact of the rule, as currently proposed, is contrary EPA's stated intent.

burden of short term compliance and most importantly, our own ability to make a profit while doing so. Given adequate time and reasonable emission goals, the industry will develop compliant products as the market demands, but the key to doing so is having a reasonable pragmatic time frame within which to do so. In order for us to help the EPA improve the emission performance of wood burning products, common sense demands that sufficient time must be allowed for manufacturers to design, test and perfect compliant products for the market.

As a responsible, family-owned small business with a long history of excellence in seasonal appliance development and manufacturing, a founding member of the HPBA and an active participant in the development of the first NSPS for our industry, it is our strong desire and commitment to partner with the EPA, HPBA and other interested parties to achieve responsible standards that are essential to properly addressing the economic concerns, energy needs and air quality issues that are now at the forefront of national and state agendas. These are complicated issues demanding reasonable, common sense compromise between the regulating body and our industry. Failure to do so will be catastrophic to many worthy small businesses, including USSC.

II. Our History and Unique Perspective

We are a fourth generation family owned small business which is the oldest manufacturer of affordable renewable energy powered heating appliances in the United States. Headquartered in the small town of South Pittsburg, TN, we now operate four facilities in four states: Tennessee, Alabama, Michigan, and Oregon. We offer a full range of affordable heating products, covering a broad range of appliance types, **all** of which are affected by EPA's proposed NSPS.

As a cornerstone of the industry, our early years produced great success as we became the largest wood stove manufacturer in the world after the Civil War. Our growth continued with acquisitions until the early part of the 1900's when World War I and the Great Depression produced a difficult economy. USSC rebounded through these tough times and again experienced growth through the popular mail-order catalog business of Sears, Roebuck & Company. The rollercoaster ride continued through World War II and the oil embargo in the early 70's. Being in business continually since 1869, we have endured many personal and economic hardships. Forged during wars and the Great Depression to an oil shortage and market collapses, it is our many years of experience that affords us the unique insight on our industry, our customer and our own company.

Our veteran management team, with over 150 years of combined industry experience, was instrumental in developing the first NSPS and has worked closely with participants to respond responsibly to the proposed NSPS. These industry professionals have a firm grasp on the importance of environmental responsibility in new product development and associated costs, achievable timetables and getting items to market, along with the many variables that affect the retail landscape. Their input is the basis for these comments.

III. Our Commercial Partners and Seasonal Markets

After 145 years, USSC is still a leading supplier of renewable energy fueled alternative heating appliances to the big retail chains and independently owned farm implement and hardware stores. Our substantial penetration in these segments gives us a major market share and keen understanding of product

demand, turns and profitability with these price sensitive retail partners. We pride ourselves in providing a full range of affordable heating options for the consumer, and throughout the different divisions in our company we sell products designed to be the most affordable and some of the most reliable alternative options in the market. Due to our distinct niche in the marketplace, we bear the main burden of providing affordable wood-fueled heating to American families. Our scope goes far beyond our abilities to just provide affordable heating, as we also provide a full range of products that serve the builder/contractor and specialty hearth markets through our Breckwell, Vogelzang, Ashley and HomComfort brands.

Since wood burning products are used seasonally, there are seasonal windows of opportunity for selling them that can make or break a company. At retail, the bulk of the heating appliance selling season runs from around Labor Day to December. Depending on winter weather conditions or special sales promotion events, Q1 sales figures can vary greatly (up to 300% swings observed over the past 5 years). On average, sales volume diminishes by the end of February. Retailers will attempt to balance inventory in preparation for spring seasonal supplies. Lawnmowers, grills and pools are the next challenge for the seasonal buyer. With most of the small businesses in manufacturing for this market, their inventory is their banking collateral, and it affords them their cash flow. The harmonious seasonal relationship between the manufacturer, retailer and customer is a tricky one and presents multiple challenges.

At the manufacturing level, we see seasonal product demand in three phases. The **first phase** is actually the last (December-March). How effective were the marketing efforts and how well did we do in the season? How is the inventory pipeline? These questions are often impacted by events or uncontrollable variables. With heating appliances, was there a winter? Was there a driving force, beyond marketing efforts, that impacted sales? In recent years fuel supply shortages, fluctuations in weather patterns and economic conditions affect inventories both positively and negatively. Once the inventory situation is evaluated, we enter the **second market phase** (April-September). This is the stocking stage and produces an initial surge of product entering the market place. Balanced with what is left in the pipeline and marketing expectations, long lead time items are critical challenges during this seasonal phase and the next. Product that is a little late is often too late. The **third seasonal phase** (September.-December) is in-season demand and fulfillment. It is considered the reaction phase. How is demand reacting to the marketing efforts and what is the manufacturer's ability to supply the inventory needed? Balancing resources and communications are critical in each phase where mistakes can be magnified leading to disastrous results. When we introduce or launch new products for the year, there is typically a soft cutoff date in the middle of the second phase (April-September) during which if product is not ready to ship, it will not be picked up by our retailers and the capital investment in the product will have to be borne by the manufacturer for another year.

Having a network of financially healthy manufacturers and retailers is **the key** to maintaining a healthy industry and is the **vital link** to offering the consumer new compliant products. The market phases and characteristics described above have a direct impact on determining what a reasonable time frame is for implementation and compliance with any new NSPS affecting our products.

We have organized our comments based on the products we currently sell that are directly affected by the proposed NSPS: wood heaters, wood pellet heaters, forced-air furnaces, and single burn rate wood heaters. Each one of these products presents a unique set of circumstances that warrant explanation. We have contributed to the comment efforts of the HPBA, both financially and substantively, regarding the proposed NSPS so we will not repeat those points. As industry experts we can help EPA achieve its ultimate goal of emission reductions by offering advice on setting realistic and justified emissions limits. We can also advise on providing adequate transition time relief, including grandfathering, so that in a

reasonable time frame we can develop cost effective means of achieving those limits so the market will with not be adversely impacted by major price increases, and the end consumer is able to buy cleaner products to replace their older non-NSPS compliant products.

IV. Financial Impact of Compliance

USSC has 51 skus that were previously exempt under the current Subpart AAA: 15 pellet heaters ($15,000), 19 being single burn rate or utility heaters ($356,250), 17 forced-air furnaces ($356,250). There are an additional 2 adjustable burn rate wood heaters ($356,250) that are not Step 1 compliant. In some product categories the EPA estimate of $356,250[2] for compliant unit development is too low. We will nevertheless use the EPA estimate for single burn rate heater, forced-air furnaces, and adjustable burn rate heaters in our analysis since EPA clearly noted that this was an assumed number for all product categories. Also, in the case of pellet heaters, we believe that they can meet Step 1 of the proposed NSPS in most cases and thus we will assume $15,000 as testing, shipping, and administrative costs associated with becoming EPA certified. Combining the costs in all categories, we estimate that the capital investment due upon promulgation under the proposed compliance timelines to continue business as usual would be in excess of $13.5 million. This level of investment is not financially viable in a short timeframe. As a small business, we do not have the liquid capital and we cannot borrow enough money for research and development to meet those financial demands. The limits and testing methodologies for all categories of our products make proposed Step 2 unachievable. For that reason, we are unable to provide a realistic cost estimate to bring our products into compliance.

V. A Practical Overall of the Proposed NSPS

The Step 2 emissions requirements together with the proposed methodologies are currently impractical and unachievable. Pushing the limits beyond Step 1 is not the "Best System for Emission Reduction" (BSER) mandated in Chapter 111 of the Clean Air Act, because the requirements are not achievable and cost effective for the industry. Ironically, the proposed Step 2 limits will ultimately not achieve the goal of reducing overall emissions from wood burning appliances in any meaningful way, and will surely reduce the overall size of the woodstove marketplace to virtual non-existence. The HPBA has provided ample information demonstrating why Step 2 limits and methodology are not achievable. In order to achieve meaningful reductions in emissions we have to motivate end-users to replace the older pre-NSPS heaters (the vast majority of heaters in use) in the marketplace with new ones. In order to do that, the new units need to be affordable.

All wood burning appliances require time for design, testing, and production processes to ensure they are safe, cost-effective, and compliant products for the marketplace. It is not unusual to take up to 3 years to develop a wood heating product from concept to production. Certification of compliance 60 days after promulgation in the case of pellet heaters, single burn rate heaters, and forced-air furnaces is unrealistic. With the current backlogs in the Office of Enforcement and Compliance Assurance (OECA) (currently in excess of 4 months per model in our experience), the government's ability to produce a certificate for our appliances alone would create such a backlog it would decimate the industry. USSC would have 53 different products under review by OECA around the date of promulgation – even if doing so is financially and possible and on an achievable timeline – which is certainly not the case. OECA has certified less than 1,000 products in the past 25 years - an average of slightly less than 40 products

[2] *See* 79 Fed. Reg. at 6350

annually. Even if investment capital and time allotted for design, development and testing were not an issue, USSC products alone exceed the annual OECA average of certificates issued under the proposed NSPS. We can assume that other manufactures will have a similar certification needs. If OECA cannot perform better than it is operating today, we can safely assume that it cannot meet the needs of this industry up to and after promulgation. The impact of such a bottleneck on our industry is obvious.

Finally, investment capital is important for operation. If any business does not have adequate cash flow, it will not survive. If products do not have time to sell out in the supply chains after promulgation, an undue burden will immediately be placed on retailers, distributors and ultimately the manufacturers. Reasonable time for retail sales is paramount to the financial health and viability of our industry.

VI. Adjustable Burn Rate Wood Heaters

USSC endorses HPBA's comments on adjustable burn rate wood heaters and the proposed test methods associated with them. We endorse and accept the proposed Step 1 limit of 4.5 g/hr. We believe this emission standard, along with including products that are currently exempted under the Subpart AAA, will achieve the EPA's goal of improving overall air quality on a national scale without damaging the industry to the point where the replacement of older non-compliant products in the industry will not occur.

VII. Wood Pellet Heaters

USSC also endorses HPBA's comments concerning wood pellet stoves and the proposed test methods associated with them. We endorse and accept the proposed Step 1 limit of 4.5 g/hr and the use of ASTM E2779-10(Standard Method for Determining Particulate Matter Emissions from Pellet Heaters) in its entirety. Since wood pellet stoves were a previously unaffected appliance under the current NSPS, and since most manufacturers of wood pellet stoves will be impacted by the proposal in multiple product categories, and since the almost certain potential for "logjams" in the testing labs, we recommend the following transition relief for wood pellet stoves which would be concurrent with the previous NSPS:

- Compliance extension of at least 1 year after promulgation of the proposed rule; and
- Authorization for retail sell through of at least 2 years after the compliance date of the proposed rule.

VIII. Forced-Air Furnaces

USSC endorses the HPBA's comments regarding forced air furnaces. We would like to expand on several points made in HPBA's comments.

EPA proposes to regulate forced-air furnaces under Subpart QQQQ (Standards of Performance for New Residential Hydronic Heaters and Forced Air Furnaces) along with hydronic heaters under the category of central heaters. The two technologies are vastly different. As defined in the proposed NSPS a residential forced-air furnace is "a fuel burning device designed to burn wood or wood pellet fuel that warms spaces other than the space where the furnace is located, by distribution of air heated by the furnace through ducts"[3] and a residential hydronic heater is "a fuel burning device designed to burn

[3] *See* 79 Fed. Reg. at 6384

wood or wood pellet fuel for the purpose of heating building space and/or water through the distribution typically through pipes, of a fluid heated in the device, typically water or a water and antifreeze mixture."[4] According to these definitions, forced-air furnaces utilize a heat distribution media of air while hydronic heaters use a heat distribution media of water. Water is roughly 1000 times more dense than air and has over 4 times the specific heat vs. air. In simple terms that means that water is a much better storage media for heat. Due to its greater heat storage capacity, water allows hydronic heaters to operate at their optimum burn rates or "sweet spot" to achieve relatively clean burns without overheating, even when the thermostat is not demanding heat. By comparison, forced-air furnaces have virtually no heat storage capabilities with their distribution media and are not able to consistently operate in their "sweet spot" due to many safety concerns and common use habits by the end users. We also would like to emphasize that there has been no EPA or state voluntary program for warm air furnaces as there has been for hydronic heaters.

There are significant differences in size and weight of these two appliances. Hydronic heaters are typically designed to be installed outdoors, so the manufacturer is not constrained by size or weight limits to their product for modifications. On the other hand, forced-air furnaces are made to be installed indoors in a basement or utility room. Because of this, manufacturers are restricted to size and weight of the appliance for installation. With this premise, it is important to realize the manufacturer is restricted by size and weight for add-on technologies to improve emissions. This presents a significant design and engineering challenge.

In it comments, HPBA makes a distinction between small and large furnaces with a differentiation point at 65,000 BTU/hr of ducted output, and acknowledges that there are several (approximately 4) furnaces that are currently compliant with B415.1-10 when tested through an accredited lab. All of these products would be classified as a smaller furnace by this definition. It is important to note that smaller furnaces are primarily designed for supplemental heating of homes, while larger furnaces are designed to be whole home heaters. There are no known large furnaces by definition that have been tested and certified to the limits of B415.1-10.

To the best of our knowledge, all of the furnaces that are currently listed to B415.1-10 (the same standard and limits listed in the proposed NSPS) are manufactured in Canada, so they are immediately able to comply with subpart QQQQ from a design and testing standpoint. No major American forced-air furnace manufacturer currently produces a furnace that meets the requirements of B415.1-10, while Canadian manufacturers of forced-air furnaces have already made the investment into their products to meet step 1 emissions requirements of the proposed rule in order to sell into their markets. As clearly stated in the docket from public comment, through the economics of NAFTA, in its present form the proposed NSPS directly promotes Canadian based manufacturing at the expense of American manufacturers all of which are American small business that support American jobs and families.

USSC is the largest forced air furnace manufacturer in the US. Supporting evidence to that claim will be submitted under CBI, if requested by EPA. We emphasize that we do not currently have a furnace that meets the requirements and limits of B415-1-10. The proposed NSPS states that "Given that the largest U.S. forced-air furnace manufacturer already has a catalytic model meeting 0.06 lb/MMBtu, we think the 6 years of lead time is sufficient time in which to conduct R&D to produce comparably lower emitting model lines." This statement is incorrect. USSC did not make it and no evidence of a cordwood burning forced-air furnace has been produced on a device currently meeting 0.06 lb/MMBtu.

[4] *See* 79 Fed. Reg. at 6384

In light of the clear favoritism of Canadian based manufacturers and the lack of any voluntary program (which has lasted approximately 8 years for the other heater type under Subpart QQQQ) for this device, we request the following transition relief broken down between smaller and larger forced air furnaces.

For smaller furnaces:

- Compliance extension of at least 1 year after promulgation of the proposed NSPS; and
- Permitted retail sell through at least 3 years after promulgation of the proposed NSPS.

These aspects of the transition relief we request are consistent with phase 2 allowances under current subpart AAA. The previous NSPS for Wood Heaters was regulating previously unaffected facilities and provide 2 years to comply and two years following that compliance date to sell through product at retail.

Since there are no large furnaces on the market today that are certified to B415.1-10 and thus no BSER to establish limits on said furnaces we request the following in transition relief.

For large furnaces:

- Compliance extension of at least 3 year after promulgation of the proposed NSPS; and
- Permitted retail sell through at least 5 years after promulgation of the proposed NSPS.

USSC fully supports the HPBA's comments on grandfathering provisions for warm air furnaces. It is of the utmost importance that if a product is compliant with the proposed emissions requirements before the effective date of this proposed NSPS, and certified though an EPA accredited third party laboratory, it should be granted a certificate of compliance of no less than 5 years from the date of certification.

It is very important to note that modifications to the existing non-affected facilities are required to comply with the proposed NSPS. If modifications are made to an existing safety listed appliance, verification that an appliance is safe for the end user through a manufacturer's life testing protocols and retesting to safety standard will be required. In short, modifications to the emissions reduction technology of an appliance require re-testing to safety standards for safety assurance. This requirement further exacerbates the burden on the manufacturer of bringing a product to market under the proposed time line.

On p. 6344 of Volume 79 of the Federal Register (the proposed NSPS), the preamble includes in Table 5 the Proposed Approach Subpart QQQQ PM Emissions Standards limits for Forced Air Furnaces for Step 1 at 0.93 lb/MMBtu and Step 2 at 0.06 lb/MMBtu and Table 6 for the Alternate Approach for Forced Air Furnaces for Step 1 at 0.93 lb/MMBtu and Step 2 at 0.15 lb/MMBtu and Step 3 at 0.06 lb/MMBtu. But, when referencing the rule, section 60.5474 (4) (b) (3) states "2015 forced-air furnaces particulate matter emission limit: 0.93 lb/million Btu (0.40 g/megajoule) heat output and 7.5 g/hr (0.017 lb/hr) as determined by the test methods and procedures in 60.5476."

These statements are contradictory and contrary to the information presented in the Preamble. We request the 7.5 g/hr requirement be struck from the document as this must be a typographical error, since both reporting numbers cannot be correlated. This is also not consistent with the reporting limit as stated in CSA B415.1-10. The EPA as stated that CSA B415.1-10 will be the proposed test method in this under Subpart QQQQ.

IX. Single Burn Rate Heaters

Single burn rate heaters are defined in the proposed NSPS as a heater that does not have an adjustable damper. However the exemption for single burn rate heaters, often termed utility heaters, has been defined in the past as an appliance that cannot be dampened down below a burn rate of 5kg/hr when tested in accordance with Method 28A. Because of that burn rate, it was exempt from the current subpart AAA requirements. These types of heaters typically do not have sophisticated emissions controls and are designed specifically to meet a heating need at a sensitive price point. These devices are the most affordable forms of wood heating in the marketplace, and as the EPA has noted represent a significant segment of the wood heating marketplace.

Since HPBA is not providing extensive comment on single burn rate wood heaters, we would like to address some of the points on which the EPA had requested specific comment. Single burn rate wood heaters have been grouped into the room heater category under Subpart AAA. For room heaters, EPA is proposing that the effective date for compliance is upon promulgation of the rule and a six month sell-through for retail. They requested specific comment on a 1 year compliance extension[5].

We believe that a compliance extension of over one year is paramount for this type of heater, along with extra time for retail sell-through, for the following reasons:

1. Until the rule making is final, a manufacturer does not know conclusively what test method to apply to a product. Since a Single Burn Rate appliance was classified as a non-affected facility, a manufacturer cannot realistically be expected to produce compliant products upon promulgation.
2. As stated in the proposed NSPS, the Single Burn Rate appliances have previously been defined as a non-affected facility. Manufacturers of these appliances need time to design, test and produce products to the proposed NSPS which will be addressed later in this document.
3. With the first NSPS, the EPA allowed two years for compliance for adjustable burn rate wood heaters and an additional 2 years for retail sell through. USSC is requesting this same time line for the category of appliances. The two years for compliance will allow for R & D testing and then time for compliance testing in a lab. The two years of sell-through following the compliance date will allow retailers to clear out their inventory. It is important to note that if the compliance deadline is May 2015, retailers will not be selling heating products until October at the earliest. The proposed sell-through will not allow retailers time to release their current product.

We are in agreement with the EPA's proposal[6] of using the appendix of ASTM E2780-10 in its entirety for compliance testing of this appliance category.

In the Preamble, the EPA describes the number of single burn rate stoves sold each year[7]. USSC does not dispute this estimate and we would like to note that we have the largest market share in this product category. This product type represents a major revenue stream for this company and, as previously noted, we want to work with EPA to achieve improved air quality through the reduction of wood burning emissions. We need to settle on a solution that will achieve real emissions reductions and not decimate a product category through an unreasonably short timeline. Give us adequate time to develop effective technology to incorporate into these devices that can meet emission requirements and still be safe and cost effective to the end-user.

[5] *See* 79 Fed. Reg. at 6340
[6] *See* 79 Fed. Reg. at 6342
[7] *See* 79 Fed. Reg. at 6357

We do not agree with the comments made on this page of the preamble that "some models would require modifications....." All models will require modifications to be compliant. These models do not have any technology built into the appliance for emissions reduction. Therefore, considerable time will be required to research, develop and incorporate new technology into each model, and then send the appliance for testing at a lab. To expect a manufacturer to be compliant with this category on the day of promulgation is unreasonable and most likely impossible when you factor in the time at the lab and the amount of time the OECA is taking to review each test report. For the above timing requirements, USSC again requests from EPA that the timing of compliance be extended from the proposed date. We request the timing of the phase in for single burn rate heaters follow the timing of Phase 2 of the original NSPS for wood heaters:

- Compliance extension of at least 2 years after promulgation of the proposed NSPS; and
- Permitted retail sell through at least 4 years after promulgation of the proposed NSPS.

The EPA makes reference[8] to the additional cost to manufacture a lower emitting single burn rate heater. This comment does not clearly define how the $100 dollars was determined. If this comment is referring to the added material costs of manufacturing, then it is fairly accurate. It is, however, important to note that the cost of producing a lower emitting single burn rate heater far exceeds the cost of the materials. We estimate the additional costs associated with bringing single burn rate heaters into compliance would be $250 of manufacturing cost. Please note this cost increase is at the manufacturing cost level, not the retail price level – which would be more.

The EPA requested comments on the Alternative Step 1 approach[9]. As previously discussed, we are very concerned with the amount of time given to bringing this appliance category to the proposed compliance standard. We strongly disagree with the Alternative Approach as this would place additional burden on compliance. We have already explained that the proposed Approach is too aggressive for ALL parties involved. The Alternative Approach is even more aggressive and is completely unacceptable. We request that EPA adhere to the proposed approach and eliminate Step 2 until the next review of the NSPS. There is no BDT to cordwood fuel being used for emissions testing, so, as discussed in the Wood Heater Module presented by HPBA, Step 2 should be reviewed after data is submitted with the next NSPS review.

As noted this category of appliances is also referred to as "utility heaters". These products provide a source of heat for those that would otherwise be unable to afford a heater in their home. As a manufacturer, we are deeply concerned with the additional cost burden this will place on the consumer by not having a "utility heater" category. We understand the importance of improving the air quality. We also understand the importance of providing a "utility" style wood heater for the consumer.

X. Other Pertinent Observations

In the Preamble you request comments[10] on the requirement of the "direct distribution manufacturers and retailers providing moisture meters to the consumer at the time of sale. It also states that "some manufacturers include a moisture meter for their operators".

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[8] *See* 79 Fed. Reg. at 6351
[9] *See* 79 Fed. Reg. at 6363
[10] *See* 79 Fed. Reg. at 6364

First of all, to propose that a moisture meter be required to be included with the sale of a wood heater is unreasonable. The retail consumer will not use this piece of equipment. As anyone knows who has ever used one, it is very easy to break a pin on this type of gauge. This poses a risk of harm to the user, plus once broken, it is very unlikely the retail consumer would fix or replace it.

Second, the comment that "some manufacturers include a moisture meter for their operators" is unfounded. We have surveyed the top hearth manufacturers and HPBA and we could not document one manufacturer supplying a moisture meter with their product. The last comment does not make any sense. Who is the operator? Operator of what?

It is important to point out, split cordwood seasons very well one or two years after being cut. The manufacturer's instructions (as the Preamble points out) clearly guide the consumer on the proper seasoning of fuel for their product for proper operation.

The requirement to have retailers include a moisture meter is an undue cost burden and would not improve the maintenance of the consumer's fuel or performance.

XI. Conclusion

Meaningful and enduring emission reduction that advances the state of the art, while preserving the time tested benefits of products consumers rely on to provide for their basic needs, can only be achieved through mutually beneficial partnerships between government and industry. The new and revised New Source Performance Standards for wood burning appliances used by consumers contains an admirable, meaningful and cost-effective step forward. Unfortunately, it also proposes one or potentially two additional steps too far. If taken now, these extra steps will lead to the destruction of a successful American industry that has been forged over several generations and will not benefit the American consumer or achieve meaningful reductions of emissions from wood burning appliances in the United States. Please don't let that happen.

Respectfully submitted:

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Senator CAPITO. Thank you.
Ms. Hammond.

STATEMENT OF EMILY HAMMOND, GLEN EARL WESTON RESEARCH PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Ms. HAMMOND. Chairwoman Capito, Ranking Member Whitehouse, and distinguished members of the Subcommittee, thank you for the opportunity to testify today.

I will begin by discussing the Clean Air Act and the economic benefits clean air provides. Next, I will put the bills you are considering today into context by sounding an alarm. The very air we breathe and the climate we depend are under assault.

In the executive branch, the Environmental Protection Agency is abdicating its responsibilities under the Act. Several features of the bills under consideration today would further undermine our clean air protections.

The Clean Air Act is foundational to protecting human health and the environment and ensuring a thriving economy. As a result of its protections, between 1970 and 2011 air pollution dropped 68 percent while the gross domestic product increased 212 percent. Private sector jobs increased by 88 percent during that same time period.

Regulations promulgated under the Clean Air Act saved over 164,000 lives in 2010 alone and are projected to save 237,000 lives in 2020. By contrast, S. 1857 would roll back protections and impose on our society 300 to 800 premature deaths per year.

Of course when people are sick, they are not working. When children are sick, they are not attending school. Clean Air Act rules save millions of days of lost work and missed school each year.

Even this brief snapshot shows the economic benefits of clean air protections. However, the bills under consideration today roll back those protections, which were developed after rigorous expert analysis, public and industry input, and cost justification, all in the name of catering to special interests at the expense of our most vulnerable populations.

These bills must be considered in further context. The Trump administration is failing to carry out Congress' mandate to ensure clean air. For example, it is considering revoking protections from air toxics, just as another of the bills before you today would do, and it has illegally attempted to delay the compliance deadlines for environmental protections already in effect.

Alarming as these efforts are, even worse is the Administration's utter failure to exercise leadership on climate change. Under the Clean Air Act, EPA must regulate air pollutants that it finds endanger public health and welfare.

The term air pollutants includes greenhouse gases. EPA has made a detailed, science backed finding that greenhouse gases do endanger public health and welfare.

Given its mandate to regulate in the face of such a finding, EPA has undertaken several efforts to reduce the United States' contribution to the global problem. These efforts used the social cost of carbon in their cost-benefit analyses which was developed by an

interagency working group, subjected to peer review, and upheld in Federal court.

Notwithstanding the scientific consensus and the unthinkable cost of climate change, the Trump administration has taken the destructive, absurd approach of pretending that it does not exist. This utter abdication of responsibility demands this institution's oversight.

A step in the right direction and within the Subcommittee's jurisdiction would be to call EPA Administrator Scott Pruitt to task for falling down on the job. Notably, Administrator Pruitt has not attempted to revoke the endangerment finding. Doing so would be arbitrary and capricious given the overwhelming scientific record.

Yet despite the Clean Air Act's clear direction to regulate such emissions, EPA is now attempting to do exactly the opposite and with a watered down, outcome driven concept of the cost of carbon. Several of the bills before you today would add to these harms.

For example, S. 1857 would increase black carbon and greenhouse gas emissions as well as premature deaths due to particulate matter exposure. S. 839 would increase emissions of hazardous air pollutants like mercury and dioxins.

Years of experience with the Clean Air Act and EPA's implementing regulations demonstrates that clean air is an economic good, but clean air protections and our global climate are at risk. I urge you to consider this bigger picture as you take up the bills before you today. We cannot afford complacency.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Ms. Hammond follows:]



Emily Hammond
Glen Earl Weston Research Professor of Law
George Washington University Law School

Emily Hammond is a nationally recognized expert in energy law, environmental law, and administrative law. A former environmental engineer, she brings technical fluency to cutting-edge issues at the intersection of law, science, and policy. Professor Hammond's scholarship focuses on regulatory process, the responses of various legal institutions to scientific uncertainty, electricity markets, climate change, and the law of water quality. Her articles have appeared in numerous top-ranked journals, including the Columbia Law Review, the Duke Law Journal, the Michigan Law Review, and the Vanderbilt Law Review. She is a co-author of one of the nation's leading energy law texts, Energy, Economics and the Environment, and the environmental law text Environmental Protection: Law and Policy, in addition to a variety of book chapters and shorter works.

An elected member of the American Law Institute, Professor Hammond is also past chair of the American Association of Law Schools' Administrative Law Section and a member scholar of the Center for Progressive Reform. She has consulted on various energy, environmental, and administrative law matters, authored amicus briefs, and testified before Congress on these issues. Professor Hammond actively collaborates with other researchers from a variety of disciplines within her field, and she is a past Distinguished Young Environmental Scholar recipient at the Stegner Center, University of Utah.

Prior to joining the GW law faculty, Professor Hammond served on the faculties at Wake Forest University and the University of Oklahoma College of Law, where she served as Associate Dean for Academic Affairs and Associate Director of the Law Center, and won numerous teaching awards. She has visited at the University of Texas, Florida State University, and the University of Georgia. Before entering academia, Professor Hammond practiced with law with Bondurant, Mixson & Elmore, LLP in Atlanta, Georgia, and clerked for Judge Richard W. Story of the U.S. District Court for the Northern District of Georgia.

TESTIMONY OF EMILY HAMMOND
GLEN EARL WESTON RESEARCH PROFESSOR OF LAW
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY
LEGISLATIVE HEARING ON S. 1857, S. 203, S. 839, AND S. 1934

November 14, 2017

Thank you, Chairman Capito, Ranking Member Whitehouse, and distinguished Members of the Subcommittee, for the opportunity to testify today about the Clean Air Act (CAA) and the following bills: S. 1857;[1] S. 203;[2] S. 839;[3] and S. 1934.[4]

I am the Glen Earl Weston Research Professor of Law at the George Washington University Law School, a member-scholar of the not-for-profit regulatory think-tank, the Center for Progressive Reform, and past-Chair of the Administrative Law Section of the Association of American Law Schools. I am testifying today, however, on the basis of my expertise and not as a partisan or representative of any organization. As a professor and scholar of environmental law, energy law, and administrative law, I specialize in the role of these laws in society. My work is published both internationally and in this country's top scholarly journals, and I am a co-author of textbooks on both environmental law and energy law. Early in my career, I practiced environmental engineering; that experience and training inform my assessment of the role of environmental law in bettering our society.

In my testimony today, I will begin by discussing the CAA, including the many health, environmental, and economic benefits it provides. Next, I will put the bills you are considering

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[1] S. 1857, 115th Cong. (2017) – A bill to establish a compliance deadline of May 15, 2023, for step 2 emissions standards for new residential wood heaters, new residential hydronic heaters, and forced air furnaces.
[2] RPM Act of 2017, S. 203, 115th Cong. (2017).
[3] Blocking Regulatory Interference from Closing Kilns Act of 2017, S. 839 (115th Cong. 2017).
[4] Alaska Remote Generator Reliability and Protection Act, S. 1984, 115th Cong. (2017).

today in context by sounding an alarm: the very air we breathe, and the climate we depend on, are under assault. In the executive branch, the Environmental Protection Agency (EPA) is abdicating its responsibilities under the CAA. Several features of the bills under consideration today would further undermine our clean air protections—increasing premature deaths, imposing significant costs on our economy, and creating even more regulatory uncertainty for businesses.

I. The Benefits of Clean-Air Protections

In its wisdom, this institution passed the CAA as a foundational means of protecting human health and the environment while ensuring a thriving economy. As a result of these protections, between 1970 and 2011, air pollution dropped 68% while Gross Domestic Product (GDP) increased 212%.[5] Private sector jobs increased by 88% during that same time period. Our population grew, our industries innovated, and our infrastructure expanded. There is still much to be done—a point to which I will return in a moment. But over and over again, studies demonstrate that cleaner air is an economic good.[6]

It is helpful to make these numbers concrete by examining air pollution in more detail. Air pollutants have considerable adverse health and environmental effects. Ozone, for instance, is linked to respiratory illnesses, heart attacks, premature death, and negative effects on forests

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[5] ENVTL. PROTECTION AGENCY, THE CLEAN AIR ACT AND THE ECONOMY, at https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy#_ednref6 (last visited Nov. 11, 2017).

[6] *See generally* Sidney A. Shapiro et al., *Saving Lives, Preserving the Environment, Growing the Economy: The Truth About Regulation*, CTR. FOR PROGRESSIVE REFORM WHITE PAPER #1109 (July 2011), at http://www.progressivereform.org/articles/RegBenefits_1109.pdf; *see also* Stephen M. Meyer, *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, MIT PROJECT ON ENVIRONMENTAL POLITICS AND POLICY iv (Oct. 5, 1992) (measuring economic performance of all fifty states as compared to state environmental rank, and concluding that "states with stronger environmental policies did not experience inferior rates of economic growth.").

and crop yields.[7] Particulate matter likewise causes premature death, cardiovascular and respiratory harm, and reproductive and developmental harm; it furthermore is a cause of haze in many of our national parks.[8] Air toxics, like mercury and arsenic, are even worse:[9] several are known or probable human carcinogens, and they cause chronic damage to the central nervous system, kidneys, and lungs.[10] Indeed, EPA has estimated that because of air toxics, "all 285 million people in the U.S. have an increased cancer risk of greater than 10 in one million."[11]

Given these and many other harms, one can see how clean-air protections save lives. Regulations promulgated under the CAA saved over 164,000 lives in 2010 alone, and are projected to save 237,000 lives in 2020.[12] By contrast, S. 1857 would roll back protections and *impose on our society 300 – 800 premature deaths per year.*[13] Moreover, when people are sick they are not working; when children are sick, they are not attending school. Those same CAA rules saved 13 million days of lost work, and 3.2 million days of missed school, in 2010. By

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[7] *See generally* Final Rule, National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292 (Oct. 26, 2015).
[8] Final Rule, National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3086, 3110 (Jan. 15, 2013). Along with ozone and particulate matter, EPA regulates lead, carbon monoxide, sulfur dioxide, and nitrogen dioxide as criteria pollutants under the National Ambient Air Quality Standards Program. *See* ROBERT L. GLICKSMAN ET AL., ENVIRONMENTAL PROTECTION: LAW AND POLICY 421-26 (7th ed. 2015) (providing further summaries).
[9] *See generally* Supplemental Finding That It Is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 81 Fed. Reg. 24,420 (Apr. 25, 2016) (reaffirming appropriate and necessary finding on remand from *Michigan v. EPA*, 135 S. Ct. 2699 (2015)).
[10] *E.g.*, National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units, 76 Fed. Reg. 24,976, 25,003 – 05 (May 3, 2011).
[11] ENVTL. PROTECTION AGENCY, SUMMARY OF RESULTS FOR THE 2011 NATIONAL-SCALE ASSESSMENT, at 4 (2015).
[12] ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020, at 7-9 (Mar. 2011).
[13] *See* Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces, 80 Fed. Reg. 13,672, 13,674 (Mar. 16, 2015) (reporting emission standards will avoid 300-800 premature deaths per year).

2020, these numbers will increase to 17 million and 5.4 million days, respectively.[14] Even this brief snapshot helps show the economic benefit of clean-air protections, but there is more: the cumulative *benefit* to society by 2050 of regulating air toxics is over $104 billion.[15] Overall, the benefits of the 1990 CAA Amendments and implementing regulations exceed costs by a factor of more than 30 to 1.[16] And the Office of Management and Budget reports that the monetized benefits of CAA regulations accounted for 80% of the benefits of all regulations analyzed for its 2015 report to Congress.[17]

Despite these many successes, there is still much to do. We must ensure that we continue to strengthen protections against criteria pollutants and air toxics, and further support EPA and the states in their enforcement roles. The bills under consideration today roll back protections developed after rigorous expert analysis, public and industrial input, and cost justification—all in the name of catering to special interests at the expense of our most vulnerable populations. Moreover, as discussed below, we have lost federal leadership on the very most urgent issue of our time: climate change.

II. The Broader Context: An Assault on Our Future

The Trump Administration is failing to carry out Congress's mandate to ensure clean air. For example, it is considering revoking protections from air toxics,[18] and it has illegally attempted to delay the compliance deadlines for environmental protections that are already in

[14] EPA, *supra* note 12, at 5-25 (Tbl. 5-6).
[15] Amanda Giang & Noelle E. Selin, *Benefits of mercury controls for the United States*, 113 PNAS 286 (Jan. 12, 2016).
[16] EPA, *supra* note 12, at 7-1.
[17] OMB, *supra* note 4, at 12.
[18] Murray Energy Corporation v. EPA, et al., No.16-1127 (D.C. Cir. Apr. 27, 2017) (suspending litigation challenging the Mercury and Air Toxics Standards, given EPA's stated intent to review and revise the rule).

effect.[19] Alarming as these efforts are, even worse is the Administration's utter failure to exercise leadership on climate change.

Under the CAA, EPA must regulate air pollutants that it finds endanger public health and welfare.[20] The term "air pollutants" includes greenhouse gases, and EPA has made a detailed, science-backed finding that greenhouse gases do endanger public health and welfare, and "science overwhelmingly shows greenhouse gas concentrations [are] at unprecedented levels due to human activity."[21] (Note that the recent Climate Science Special Report concurs.[22]) Given its mandate to regulate in the face of such a finding, EPA has undertaken several efforts to reduce the United States' contribution to this global problem.[23] These efforts use the social cost of carbon (SCC) in their cost-benefit analyses. The SCC was developed by an interagency working group, subjected to peer review,[24] and upheld in federal court.[25] Because some of the harshest impacts will occur in the future, the discount rate is an important component of any carbon-based cost-benefit calculation, and federal agencies were directed to evaluate several rates in

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[19] *E.g.*, Clean Air Council v. Pruitt, No. 17-1145 (D.C. Cir. Jul. 3, 2017) (holding EPA lacked authority to stay rule involving fugitive methane and other greenhouse gas emissions from the oil and gas sector). For a detailed list of many such delays, see Rena Steinzor & Elise Desiderio, *The Trump Administration's Rulemaking Delays*, CTR. FOR PROGRESSIVE REFORM (Jul. 2017).

[20] 42 U.S.C. § 7521(a)(1); Massachusetts v. EPA, 549 U.S. 1438 (2007).

[21] Envtl. Protection Agency, Press Release, Greenhouse Gases Threaten Public Health and the Environment/Science Overwhelmingly Shows Greenhouse Gas Concentrations at Unprecedented Levels Due to Human Activity (Dec. 7, 2009); Endangerment Finding and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

[22] Weubbles, D.J. et al., Climate Science Special Report: Fourth National Climate Assessment, U.S. Global Change Research Program (Nov. 2017).

[23] *See, e.g.*, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) [hereinafter the "Clean Power Plan"]; Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Generating Units, 79 Fed. Reg. 1430 (Oct. 23, 2015).

[24] *See* Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12,866 (May 2013, revised July 2015).

[25] Zero Zone, Inc. v. Dep't of Energy, 832 F.3d 654, 677-78 (7th Cir. 2016).

calculating present value. Notably, some studies suggest that the SCC ought to be much higher than reported by the interagency working group.[26] Here is a snapshot of the SCC, which EPA used in its cost-benefit analysis of the Clean Power Plan—a foundational rule aimed at greenhouse gas emissions from power plants:

Table 4-2. Social Cost of CO_2, 2015-2050 (in 2011$ per short ton)*

	Discount Rate and Statistic			
Year	5% Average	3% Average	2.5% Average	3% (95th percentile)
2015	$11	$35	$54	$100
2020	$12	$40	$60	$120
2025	$13	$44	$65	$130
2030	$15	$48	$70	$150
2035	$17	$53	$75	$160
2040	$20	$58	$81	$180
2045	$22	$62	$86	$190
2050	$25	$66	$91	$200

* These SC-CO_2 values are stated in $/short ton and rounded to two significant figures. The SC-CO_2 values have been converted from $/metric ton to $/short ton using the conversion factor 0.90718474 metric tons in a short ton for consistency with this rulemaking. This calculation does not change the underlying methodology nor does it change the meaning of the SC-CO2 estimates. For both metric and short tons denominated SC-CO_2 estimates, the estimates vary depending on the year of CO_2 emissions and are defined in real terms, i.e., adjusted for inflation using the GDP implicit price deflator.

Source: EPA, Regulatory Impact Analysis for the Clean Power Plan Final Rule, at 4-8, Tbl. 4-2 (Oct. 23, 2015).

Over and over again, EPA has concluded that the benefits of protecting against greenhouse gas emissions substantially outweigh the costs. For the Clean Power Plan, after subtracting compliance costs, the *net* climate and health benefits were estimated from $3.9 billion to $6.7 billion in 2020, with substantial increases in later years.[27] Other climate rules are

[26] *See, e.g.*, Frances C. Moore & Delavane B. Diaz, *Temperature impacts on economic growth warrant stringent mitigation policy*, 5 NATURE CLIMATE CHANGE 127 (Jan. 2015) (arguing for SCC an order of magnitude higher than used by federal agencies).

[27] 2011 dollars, using 3% discount rate and mass-based approach. For further details, see Final Rule, Carbon Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,661, 64,679 (Oct. 23, 2015).

similarly overwhelmingly cost-justified, and as mentioned above, a federal court has upheld use of the SCC.[28]

Notwithstanding the scientific consensus and the unthinkable costs of climate change, the Trump Administration has taken the destructive, absurd approach of pretending that it does not exist. This utter abnegation of responsibility demands this institution's oversight. A step in the right direction—and within this subcommittee's jurisdiction—would be to call EPA Administrator Scott Pruitt to task. Notably, Administrator Pruitt has not attempted to revoke the endangerment finding; doing so would be arbitrary and capricious in light of the overwhelming scientific record. Yet despite the CAA's clear direction to regulate such emissions following an endangerment finding, EPA is now attempting to do exactly the opposite. Moreover, the proposed rule to rescind the Clean Power Plan is based on accounting sleights-of-hand that make a mockery of the real dangers faced by society due to climate change. For example, in estimating costs and benefits, the agency could not escape the plain fact that regulating greenhouse gas emissions is cost-justified.[29] So EPA tinkered with the numbers—changing accepted discount rates and how the harms of climate change are counted—to force the result it wanted.[30]

Several of the bills before you today would add to these harms. S. 1857 would increase black carbon and greenhouse gas emissions as well as premature deaths due to particulate matter exposure;[31] S. 839 would increase emissions of hazardous air pollutants like mercury and

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[28] *Zero Zone*, 832 F.3d at 67-78.
[29] *See* Clean Power Plan Rescission, *supra* note **Error! Bookmark not defined.**, at 48,043 – 47 (summarizing regulatory impact analysis).
[30] For further analysis, see Richard L. Revesz & Jack Lienke, *The EPA's Smoke and Mirrors on Climate*, N.Y. TIMES, Oct. 9, 2017.
[31] *See* Standards of Performance for New Residential Wood Heaters, New residential Hydronic Heaters, and Forced-Air Furnaces, 80 Fed. Reg. 13,672, 13,674 (Mar. 16, 2015) (documenting benefits of rule including reduced climate effects).

dioxins;[32] and S. 203—though innocuous on its face—would increase dangerous motor vehicle emissions by burdening EPA's enforcement obligation beyond its capabilities.[33]

III. Conclusions

Environmental laws were enacted to ameliorate a classic market failure: polluters have every incentive to impose costs that they have created on human health and the environment rather than taking responsibility for those impacts themselves. Years of experience with the CAA and EPA's implementing regulations demonstrate that clean air is an economic good. But clean-air protections and our global climate are at risk, and I urge you to consider this bigger picture as you take up the bills under consideration today. There is still a great deal more to do, and we cannot afford complacency.

Thank you again for the opportunity to testify today. I look forward to your questions.

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[32] *See* NESHAP for Brick and Structural Clay Products Manufacturing; NESHAP for Clay Ceramics Manufacturing, 80 Fed. Reg. 65,470, 65,473 (Oct. 26, 2015) (describing health effects of pollutants emitted by this industry).

[33] EPA already has made clear that it does not enforce section 203(b)(3) of the CAA against motor vehicles used exclusively for racing. Ryan Beene, *EPA drops proposal feared to ban street-to-race car conversions*, AUTOMOTIVE NEWS, Apr. 16, 2016.

Senator CAPITO. Thank you.
Mr. Walke.

STATEMENT OF JOHN WALKE, CLEAN AIR DIRECTOR, NATURAL RESOURCES DEFENSE COUNCIL

Mr. WALKE. Thank you, Chairwoman Capito, Ranking Member Whitehouse, and distinguished members.

My name is John Walke. I am Clean Air Director and a senior attorney for the Natural Resources Defense Council. I am testifying over concerns that these four bills will increase harmful air pollution. My statement will focus on two of the more harmful bills before you, S. 203, the RPM Act; and S. 836, a bill to delay protections from hazardous air pollution.

The most troubling bill before you is one that should not be particularly controversial. The RPM Act appears to be a well intentioned effort to clarify that vehicles used solely for organized motorized racing events do not have to meet pollution control requirements applied to on-road vehicles.

Unfortunately, the current language of the bill opens a hugely damaging loophole in the Clean Air Act. I believe the resulting increases in air pollution would dwarf the harmful air pollution and health impacts of the recent Volkswagen cheating scandal.

The current bill makes it effectively impossible for the Federal Government to stop or enforce after the fact the sale of vehicle pollution control defeat devices as long as a company claims that they intend the device to be used for racing. Companies may simply claim under the bill that on-road, non-competition use of defeat devices was not their purpose when selling the devices, even if they knew, even if they should have known, or even if they acted in willful disregard of whether those defeat devices were being used on roads and highways.

We don't grant toy manufacturers amnesty from liability if they sell toys that are choking hazards for toddlers that they should have known the toys would be used and swallowed by toddlers or if they acted in willful disregard of that certainty. The Clean Air Act should not grant amnesty to manufacturers that sell pollution control devices to vehicles registered for roads and highways that the manufacturers should have known would be used for ordinary on-road driving or if they act in willful disregard of that certainty.

The bill's purpose language is the problem, but I believe it is one that can be fixed. Illegal pollution control defeat devices are a significant air pollution and health concern in this country.

In just one Justice Department settlement, illegal defeat devices allowed an additional 71,000 tons of smog forming air pollution. That is equal to one and a half times all motor vehicle smog emissions in the State of West Virginia for a full year, including from every car, truck, bus, motorcycle, tractor, bulldozer, and all other construction and recreational vehicles.

The bill, however, reflects welcome agreements among us here today. S. 203 supporters do not want harmful emissions due to defeat devices on vehicles driven on roads and highways. S. 203 critics do not want racing cars used solely for competition to be covered by the Clean Air Act. There is a legislative drafting fix that can meet the reasonable goals of both groups.

I ask you to fix the bill. In the meantime, I ask you not to pass the bill as written.

Turning to the hazardous air pollution delay bill, S. 839, Joan Hardy and her husband live on a farm outside Elgin, Texas, where they raise chickens and turkeys and grow vegetables. Their home and farm are surrounded by three brick plants covered by EPA's rule. S. 839 would delay that rule indefinitely.

The Hardys' soil, drinking water, vegetable garden, and animals are exposed to hazardous pollutants from these brick plants, including mercury, heavy metals, dioxins, furans, and acid gases. The Hardys are concerned about increased health problems for them and their grandchildren who play outside and help them tend the vegetables and chickens.

S. 839 represents an effort to indefinitely delay regulation of hazardous air pollution from these facilities after these standards have already been delayed 17 years past the time that Congress promised the Hardys and all Americans that dangerous toxins would be regulated.

S. 839 seeks even more delay after the industry trade association has worked not once but twice to avoid these standards. The first time resulted in a Federal court striking them down. Let me emphasize that 106 out of 147 kilns have no air pollution controls due to this earlier unlawful standard that the brick industry supported.

Finally, let me give brief remarks on the wood stove compliance delay bill, S. 1857. There are already significant numbers of stoves complying with the Step 2 standards and the 2020 compliance date; 73 percent of wood pellet wood stoves and 41 percent of central heaters, for example.

Those companies are complying, and we should not delay the bill for those that are not. Thank you.

[The prepared statement of Mr. Walke follows:]



John D. Walke
Clean Air Director
Natural Resources Defense Council

John D. Walke is a senior attorney and Director of Clean Air Programs with the Natural Resources Defense Council, where he has general responsibility for NRDC's clean air advocacy. His work focuses on the Clean Air Act's new source review (NSR) preconstruction review programs and a variety of State Implementation Plan measures under Title I of the Act; air toxics programs under Title III of the Act; Title IV's acid rain program; and the Title V operating permits program. Prior to joining NRDC in 2000, John worked for the United States Environmental Protection Agency, in the air and radiation law office of the Office of General Counsel, from 1997-2000. At EPA, John was the primary attorney responsible for the operating permits program under Title V of the Clean Air Act. He also worked extensively on issues relating to NSR programs, air toxics, monitoring, and enforcement under the Clean Air Act. Before working at EPA, John was an associate in the Washington, D.C. office of Beveridge & Diamond, P.C. from 1993-1997, where his practice concentrated on the Clean Air Act, the Clean Water Act, and the representation of individuals and corporations in criminal and administrative proceedings. John has a bachelor's degree in English from Duke University and a law degree from Harvard Law School.

TESTIMONY OF JOHN D. WALKE

CLEAN AIR DIRECTOR

NATURAL RESOURCES DEFENSE COUNCIL

LEGISLATIVE HEARING ON S. 1857, S. 203, S. 839 AND S. 1934

BEFORE THE SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY,

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

November 14, 2017

Thank you, Chairman Capito and Ranking Member Whitehouse for the opportunity to testify today. My name is John Walke, and I am clean air director and senior attorney for the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.3 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing.

I have worked at NRDC since 2000. Before that I was a Clean Air Act attorney in the Office of General Counsel for the U.S. Environmental Protection Agency (EPA). Prior to that I was an attorney in private practice where I represented corporations, industry trade associations and individuals. Having worked on air pollution issues for the entirety of my career, I believe each of these bills would increase air pollution compared to today's law, some of them much more substantially and dangerously than others. I will address each of these bills and their potential to harm air quality and Americans' health in turn.

S.203 – The "Recognizing the Protection of Motorsports Act of 2017"

Introduction

The most troubling bill before us is one that should not be particularly controversial. The RPM Act, S. 203, appears to be a well-intentioned effort to clarify that vehicles used only for organized motorized racing events—whether they are built for racing or modified from on-road vehicles—do not have to meet the pollution control requirements that apply to on-road vehicles. Unfortunately, the current language of the RPM Act opens a hugely damaging loophole in the Clean Air Act. I believe the resulting increase in air pollution will dwarf the harmful air pollution and health impacts of the recent VW cheating scandal.

S. 203 creates an "exclusion" from the Clean Air Act's anti-tampering provisions barring defeat devices for emissions control systems. The exclusion is for actions concerning motor vehicles or engine design elements or devices under section 203(a) of the Clean Air Act, 42 U.S.C. §7522(a)—and here is the crucial, problematic language—"if the action is for the *purpose* of modifying a motor vehicle into a vehicle *to be used solely for competition*." Clean Air Act section 203(a) makes it unlawful to remove, "bypass, defeat, or render inoperative" any part of a motor vehicle's emissions control system. The bill attempts to accomplish its goals further by amending section 216(2) of the Act to exclude "a vehicle used solely for competition" from the definition of the term "motor vehicle." Even though this amendment may sound minor or technical in nature, were S. 203 to become law, it would have an extremely negative impact on air quality nationwide that would far surpass the Volkswagen "dieselgate" scandal.

A handful of companies have made and marketed for general use after-market "defeat devices," which effectively turn off vehicle emissions controls. Up to now, the Department of Justice has been able to enforce against unscrupulous companies that have sold tens of thousands

of these devices for vehicles rarely used for racing, even when companies knew or should have known the defeat devices would be used on the nation's road and highways. In one consent agreement in 2015, EPA estimated that the devices sold allowed an additional 71,000 tons of smog-forming NOx pollution. That's equivalent to *all* motor vehicles emissions in the state of Wyoming *for a full year*, including on-road vehicles (cars, trucks, buses, semis, motorcycles etc.) and non-road vehicles (tractors, forklifts, utility and recreational vehicles, other construction, farm and garden equipment etc.).[1] It is comparable to the 75,000 tons of NOx emissions that EPA's most recent power plant rule reduced from coal-burning power plants in 22 eastern states.[2] In other words, these are enormous amounts of smog-forming pollutants, and this was just from a *single* defeat device legal settlement.

The current bill language in S. 203 could make it almost impossible for EPA and the Department of Justice to stop the sale of heretofore illegal defeat devices, as long as a company claims that they *intend* the device to be used for racing. I want to emphasize that this is a matter of legislative drafting. It is not difficult to exempt racing-only DIY modifications from pollution control requirements. But the bill before you goes far beyond that, threatening serious harm to public health. I urge the Committee to fix this fatal flaw before moving forward.

Background

It is no secret that air pollution from motor vehicles greatly impacts air quality across the United States. Motor vehicles emit nitrogen oxides (NOx) emissions and volatile organic

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[1] U.S. EPA, National Emissions Inventory 2014, v.1 (71,621 tons of NOx emissions from mobile sources in Wyoming in 2014), *available at* https://www3.epa.gov/cgi-bin/broker?_service=data&_debug=0&_program=dataprog.state_1.sas&pol=NOX&stfips=56.

[2] U.S. EPA, Regulatory Impact Analysis of the Cross-State Air Pollution Rule (CSAPR) Update for the 2008 National Ambient Air Quality Standards for Ground-Level Ozone, at ES-8, *available at* https://www3.epa.gov/ttnecas1/docs/ria/transport_ria_final-csapr-update_2016-09.pdf.

compounds (VOCs) that combine to form smog, as well as deadly fine particle pollution. Transportation produces more than half of the NOx emissions, almost a third of the VOCs, and over one-fifth of the particulate matter air pollution in the United States. Together, these air pollutants aggravate asthma, cause bronchitis, lung disease, heart attacks, strokes, and even premature death. Recently updated air pollution standards for motor vehicles will, by 2030, prevent:

- up to 2,000 premature deaths each year;
- 2,200 hospital admissions and asthma-related emergency room visits annually;
- 19,000 asthma exacerbations each year;
- 30,000 upper and lower respiratory symptoms in children each year; and
- 1.4 million lost school days, work days and minor-restricted activities annually.[3]

These standards will continue to reduce on-road emissions of some of the most common and pervasive air pollution nationwide, including NOx, VOCs, sulfur dioxide (SO2), carbon monoxide (CO) and known carcinogens, such as benzene and formaldehyde.[4]

Title II of the Clean Air Act regulates mobile sources of air pollution, and requires that, for the sale of a new motor vehicle, the automaker must supply a "certificate of compliance" to show compliance with federal emissions standards like those described above. Section 203 of the Act makes it unlawful to remove, "bypass, defeat, or render inoperative" any part of a motor vehicle's emissions control system. 42 U.S.C. §7522(a)(3). S. 203 would exempt actions enabling modifications to a motor vehicle whose "*purpose*" is for the vehicle "to be used solely for competition." If that asserted manufacturer or installer purpose is present, emissions control

[3] U.S. EPA, "U.S. EPA sets Tier 3 Motor Vehicle and Fuel Standards," *available at* https://nepis.epa.gov/Exe/ZyPDF.cgi/P100HVZV.PDF?Dockey=P100HVZV.PDF
[4] *Id.*

"defeat devices" lawfully may be sold, installed and distributed under the bill for vehicles that are used on-road, even routinely, and that may or may not also be used for competitions. Such defeat devices shut off a vehicle's emission control system, and allow it to spew pollution into the air unrestrained.

In exempting a certain subset of defeat device manufacture, installation and use from the anti-tampering provisions of the Clean Air Act, S. 203 raises a host of problems with adverse air quality and health consequences. Though the aim of this bill may be to address the concerns of the motor vehicle racing community that uses vehicles for competitive racing exclusively, the bill creates a significant loophole for the manufacture and installation of defeat devices that will be used on highways and roads, rather than just competitive racing.

In testimony concerning S. 203's counterpart bill in the House, H.R. 4715, the Congressional Research Service described the longstanding Clean Air Act approach, where the:

> distinction between a vehicle's capabilities and its intended use is key to EPA's position. Going back as far as at least 1974, EPA has maintained that it would make determinations on exclusions from the motor vehicle definition based on *vehicle design, not intended use*. Since that time, EPA has employed that test for a variety of uses, including off-road vehicles, kit cars, vocational vehicles, and imported racing cars.[5]

It is exactly this "design versus *intended* use" issue that speaks to the most harmful impacts of this proposed legislation. S. 203 appears to be a well-intentioned effort to clarify that vehicles *actually* used only for racing—whether they are built for racing or modified from on-road vehicles—need not meet the pollution control requirements that apply to on-road vehicles. Unfortunately, the current language of the bill opens a hugely damaging loophole in the Clean

[5] Congressional Research Service, Testimony for Hearing on "Racing to Regulate: EPA's Latest Overreach on Amateur Drivers" *available at* https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY21-WState-BYacobucci-20160315.pdf (emphasis added).

Air Act, and the resulting increase in air pollution will dwarf the impacts of the VW cheating scandal.

As the CRS notes, EPA has experimented with attempting to regulate certain types of vehicles based on their uses in the past:

> [I][n November 2002 EPA established emissions standards for recreational nonroad vehicles and engines—including motorcycles, all-terrain vehicles (ATVs), and snowmobiles.[] Within those rules, EPA provided specific procedures and guidance for how new nonroad motorcycles, or "dirt bikes," can be converted from recreational use to competition-only. Specifically, only nonroad bikes may be converted.[] Before doing so, the owner must destroy the original emissions compliance label attached to the dirt bike, and the owner may not then use the bike for recreation. If the owner later sells the dirt bike, he or she must inform the purchaser that it has been modified and may only be used for competition. This process is, to our understanding, based solely on owner compliance, and EPA does not maintain any sort of database of these conversions.[6]

In essence, for dirt bikes, the Agency has no idea whether or not the requirements that would ensure compliance with this regulatory approach are being met, or what percentage of owners are complying. With no enforcement at all, compliance is unknown. Further, the Agency has explored temporary exclusions for certain types of racing vehicles, where the CRS also notes that the:

> EPA and the National Highway Traffic Safety Administration (NHTSA), part of the Department of Transportation, also provide temporary exemptions for cars and trucks imported for racing purposes. In those cases, importers must follow a more detailed process to request an exemption from EPA and NHTSA. These exemptions are granted on a case-by-case basis. Importers must supply to EPA, among other things, the Vehicle Identification Number, or VIN, a list of race-specific characteristics (such as roll bars/cages and racing harnesses), a list of characteristics that preclude the vehicle's safe use on roads (for example, lack of a reverse gear or headlights), and photos of the vehicle. In guidance available on its website, EPA specifically states that "not all vehicles used in races are excluded from emissions compliance. Determinations are based on the capability of the vehicle, not its intended use.[7]

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[6] *Id.*, at 2.
[7] *Id.*, at 2-3.

Here, these vehicles' characteristics make it more obvious they are for racing only, and not being imported for on-road use. Moreover, a case-by-case evaluation by the agency would suggest that there is sufficient oversight to prevent rampant abuse.

S.203 – Creating New Problems While Failing to Solve Others

The Clean Air Act today defines "non-road engine" and "non-road vehicle" to exclude vehicles or their engines that are "used solely for competition," such as motor sport racing events. 42 U.S.C. § 7550(10) & (11). As the Congressional Research Service noted in testimony at a hearing for the counterpart House bill to S.203, however,[8] "[g]oing back as far as at least 1974, EPA has maintained that it would make determinations on exclusions from the motor vehicle definition based on vehicle design, *not intended use.*" Neither CRS nor we have identified any previous Department of Justice enforcement cases against defeat device manufacturers where the government was compelled to disprove or overcome manufacturer claims that the intent or purpose of the sale was for use solely for competition. Indeed, "CRS could identify no instances where enforcement actions were taken against parts suppliers who were operating solely in the racing parts market."[9]

Consider the 2007 case by the Bush administration against a company for "selling devices that allow cars to release excess levels of pollution into the environment, in violation of the Clean Air Act."[10] The company sold 44,000 defeat devices through retailers and on its Web site, with increased air pollution caused by these defeat devices "equivalent to the emissions produced by a half-million cars with fully operational emission control systems over their

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[8] *Id.*, at 3.
[9] *Id.*
[10] U.S. Department of Justice, Federal Settlement Targets Illegal Emission Control "Defeat Devices" Sold for Autos, Press Release 07-490, Washington, DC, July 10, 2007, *available at* https://www.justice.gov/archive/opa/pr/2007/July/07_enrd_490.html.

lifetimes." *Id.* The Bush administration's civil case was based on the sale of defeat devices to on-road vehicle users, despite the company's claims that the devices were for off-road use only. *Id.* If the Bush administration had been proceeding under a Clean Air Act that excluded defeat device sales where a company claimed it was not the "purpose" of the defeat device to be used on-road, then this 2007 case—and others like it—would not have been possible. Hundreds of thousands of tons of illegal air pollution increases due to defeat devices in on-road vehicles would be perfectly fine. Americans would face excess air pollution and health risks equivalent to the emissions from millions more cars on the road.

Motor vehicles modified for racing present a situation where "there may be no way to produce parts that would only operate on modified motor vehicles."[11] Were these vehicles limited to solely racing vehicles, the bill's impacts would be limited and modest. However, past enforcement cases indicate that defeat devices generally are in wide use in on-road vehicles, and S. 203 would sanction the increase use of defeat devices—with the certainty that defeat devices will be used on-road, despite the intent of bill proponents that this not happen, and with an impossible or near-impossible legal standard for the Department of Justice to overcome in cases against defeat device manufacturers. We do not believe that to be the intent of S. 203 co-sponsors, but that will be the bill's impact in the real world.

This will cause harmful impacts on air quality and Americans' health. In prior defeat device cases, the government has found that:

> In some of the supplier cases, settlements between EPA, the Department of Justice, and the defendants were based on the sale of defeat devices to road vehicle users *despite claims by the manufacturer that the parts were for off-road or nonroad use only.*[12]

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[11] *Id.* at 3.
[12] *Id.*

In fact, in one enforcement case, the supplier acknowledged that it had sold over 85,000 defeat devices that it should have known were being used by on-road vehicle users.[13] In so doing, their sales led to increased emissions of almost 72,000 tons of NOx, over 4,200 tons of non-methane hydrocarbons, and 380 tons of particulate matter.[14] Together, these emissions equate to nearly twice the pollution emitted by Volkswagen from 2008 until the 2015 enforcement action.[15] For context, the study analyzing the impact of the VW "dieselgate" found that the company's violations "result[ed] in a total of 59 [] premature deaths, 87% of which are attributable to the $PM_{2.5}$ exposure and 13% to ozone exposure."[16]

What's more, the NOx emissions from defeat devices sold by just one company, 71,000 tons, are one-and-one-half times the emissions from *every* mobile source—every car, truck, semi, bus, and bulldozer—in the State of West Virginia, for an *entire* year. Those same NOx emissions are equivalent to half of the annual mobile source emissions in Kansas or Iowa. And if you add in the emissions from three other companies' defeat devices, the resulting NOx pollution is equivalent to half of Wisconsin's annual mobile source NOx emissions, or over half of Nebraska's.[17] Defeat devices sold by those manufacturers are on the road today. They are

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[13] Consent Agreement, In the Matter of H&S Performance, LLC, U.S. EPA, Environmental Appeals Board, No. CAA-HQ-2015-MSEB 8248, 8 (Dec. 17, 2015), PG 8 *available at* https://www.epa.gov/sites/production/files/2016- 01/documents/hscafo.pdf.

[14] *Id.*

[15] Steven R. Barrett, et al., Impact of the Volkswagen emissions control defeat device on US public health, Environmental Research Letters, Volume 10, Number 11, October 2015, *available at* http://iopscience.iop.org/article/10.1088/1748-9326/10/11/114005/meta (estimating VW emissions.

[16] *Id.*

[17] U.S. EPA, 2014 National Emissions Inventory data, *available at* https://www3.epa.gov/cgi-bin/broker?polchoice=NOX&_debug=0&_service=data&_program=dataprog.national_1.sas (providing state-wide emissions of smog-forming nitrogen oxides (NOx) from *all* mobile sources--on-road and off-road--for an *entire* year, are: 46,859 tons in West Virginia; 138,800

emitting enormous amounts of illegal air pollution every year—because once a defeat device is on a vehicle, EPA has no practical ability to bring enforcement actions against tens of thousands of individual vehicles that are driving on the nation's roads and highways. As the CRS has testified, "EPA has historically not taken action against individuals," despite having that authority.[18] S.203 is silent as to how to solve the problems that it worsens.

In fact, S. 203 entirely ignores the thicket of problems relating to abuse and enforcement that its provisions would create. There are over 240 million vehicles on the road today, and abuse of the particular "exclusion" afforded by S. 203 would have very negative impacts on air quality and Americans' health. There are relatively few vehicles used solely for racing, and these vehicles are driven for relatively small periods of time, making their air pollution contributions comparatively insignificant. Narrowly crafted, targeted language that applied only to such modifications and vehicles likely would have little adverse effect on motor vehicle emissions, relative to current circumstances. Unfortunately, the RPM Act is the opposite of narrow and targeted. It is not realistic nor workable to expect that the federal government can protect Americans by ensuring that each vehicle equipped with defeat devices 'intended' for exclusive competitive use is in fact being used only for that non-road, competitive racing purpose.

The current bill language makes it effectively impossible for the federal government to stop, or enforce after-the-fact, the sale of these devices, as long as a company claims that they *intend* the device to be used for racing. Companies that know, companies that should have known, and companies that act in willful disregard of whether defeat devices are being used on-road may simply claim under S. 203 that on-road, non-competition use was not their "purpose."

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tons in Kansas; 140,585 tons in Iowa; 147,392 tons in Nebraska; 156,318 tons in Wisconsin; 195,320 tons in Virginia.)

[18] *Supra note 5*, at 3.

This changed legal standard represents an extreme weakening of the standard the Department of Justice has used to hold companies liable for selling illegal defeat devices with awareness and abuses that do not rise all the way to the level of purposeful intent. It would not be difficult as a matter of drafting to exempt racing-only modifications from pollution control requirements, without the unworkable "purpose" condition. But S. 203 goes far beyond that, threatening serious harm to Americans' health and air quality. We urge you to fix the bill's language to avoid these undesired consequences., and to vote against S. 203 if it remains in its current, harmful form.

S. 839 – The "Blocking Regulatory Interference from Closing Kilns Act of 2017"

Unlike almost every other industrial source of air pollution in the nation, there currently are no federal hazardous air pollutant standards in place for brick manufacturers. The industry is in the 17th year past the time that Congress directed that toxic pollution from these industrial facilities should be covered by Clean Air Act standards. Now, as litigation on these facilities is about to come to a close, S. 839 represents an effort to indefinitely delay the regulation that all other sources of industrial hazardous air pollution must meet. There is no reason that this bill should become law. It rewards delay tactics and prior Clean Air Act lawbreaking that the brick manufacturing industry supported. The bill seeks to further avoid federal regulation of deadly, carcinogenic air pollution at the expense of air quality and Americans living near these facilities.

The American people have been subject to excessive levels of highly toxic air pollution from brick manufacturers for seventeen years longer than the deadline Congress established in the 1990 Clean Air Act amendments. Meanwhile, other industries have been meeting required standards for one to two decades. It is unjustified and harmful to millions of

Americans to allow this one industry sector to continue evading standards for reducing hazardous air pollution.

Background

There are approximately 150 brick and clay kilns and ceramics plants large enough to be called "major sources" subject to regulation under the Clean Air Act's hazardous air pollutant (HAP) program.[19] These plants emit significant amounts of hazardous air pollutants, including mercury and other heavy metals, dioxins/furans and acid gases. Acid gases in particular account for over 99% of kilns' toxic emissions and include hydrogen chloride, hydrogen fluoride and chlorine. These highly toxic pollutants cause serious health effects, including severe respiratory illness, kidney damage, cancer and even death.

Section 112(d) of the Clean Air Act requires EPA to set emissions standards for hazardous air pollutants emitted by certain stationary sources listed under section 112(c) of the Act. 42 U.S.C. § 7412(d) & (c). EPA first issued standards for this sector on May 16, 2003. For existing sources of pollution, section 112(d)(3) of the Act requires a standard that is at least as stringent as the level of reduction achieved by the best performing 12 percent of already existing sources. 42 U.S.C. § 7412(d)(3). For new sources, the standard must be set at a level at least as stringent as the control level achieved in practice by the best controlled similar source. *Id.*

EPA was originally required to set standards for this source category in November of 2000. EPA did not issue those standards until 2003. 68 Fed. Reg. 26,690 (May 16, 2003). The Bush administration EPA proposed standards that did not meet the Clean Air Act's plain

[19] Memorandum from Kristin Sroka, RTI International, to Sharon Nizich, EPA/OAQPS/SPPD RE: Development of Cost and Emission Reduction Impacts for the Final BSCP Manufacturing NESHAP, EPA-HQ-OAR-2013-0291-0664. Sept. 24, 2015.

language and that were inconsistent with governing D.C. Circuit caselaw interpreting the Act.[20] Representatives for the brick and structural clay manufacturers supported the proposal of the unlawful standards. Members of the public commented to EPA that the proposed standards plainly violated the Clean Air Act. On March 13, 2007, the U.S. Court of Appeals for the D.C. Circuit invalidated the 2003 rule, siding with the arguments of commenters that had pointed out the standards were unlawful, and rejecting the arguments of the Bush EPA and brick and clay products manufacturers. The court found that the rule illegally attempted to redefine "best performing" sources in violation of the plain language of Clean Air Act section 112(d)(3), and was unlawfully weak and unprotective. *See Sierra Club v. EPA,* 479 F. 3d. 875 (D.C. Cir. 2007). Following extensive delay on remand, EPA proposed new standards pursuant to a consent decree on December 18, 2014, s*ee* 79 Fed. Reg. 75,622, and finalized standards on October 26, 2015, see 80 Fed. Reg. 65,470.

Representatives from the brick and clay products manufacturing industry and the Sierra Club challenged the final standards in court in 2015. On October 3rd, 2017, approximately 4 weeks before the court hearing, the EPA announced it would reconsider the standards and sought to place the lawsuits in abeyance, indefinitely.[21] EPA did so, fully aware of pending congressional legislation to delay compliance indefinitely with the hazardous air pollution standards so long as litigation and all appeal opportunities were continuing. The industry litigants supported EPA's move; the health and environmental parties opposed.

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[20] 67 Fed. Reg. 47,894 *et seq* (July 22, 2002).

[21] Respondents' Motion to Continue Oral Arguments and Hold Proceedings in Abeyance, No. 15-1487 *et al.* (D.C. Cir.) (Oct. 3, 2017), *available at* (https://www.eenews.net/assets/2017/10/04/document_gw_01.pdf.

On October 26th, the D.C. Circuit Court of Appeals denied EPA's request.[22] The court order directed "the parties [to] be prepared to address with specificity at oral argument whether an additional period of abeyance is appropriate for this matter."[23] Then on Friday night, November 3rd, 2017, a mere 6 days before the court hearing, EPA informed the court and the Sierra Club that it wished to sever the petitions in the lawsuit, and "hold the proceedings on the industry petitions in abeyance"—indefinitely.[24] The agency's court filing said that "EPA has determined that no further agency action is warranted as to the issues raised by Environmental Petitioners." EPA urged the court to hear and resolve those issues—but not the industry legal challenges.[25] In a letter attached to the court filing, EPA said that it had decided to administratively reconsider issues raised by the industry litigants—but not the environmental petitioners.[26]

The court hearing on the Environmental Petitioners' challenges to the standards happened on November 9th. At the hearing, the federal judges were incredulous and annoyed over the EPA's request—with the industry's backing—to further delay resolution of the standards that were nearly 20 years overdue already:

> Federal judges today slammed U.S. EPA for foot-dragging on air standards for brick and tile manufacturers that are already nearly 20 years behind schedule.
>
> By law, EPA was supposed to adopt maximum achievable control technology, or MACT, standards for the industry by 2000. But the Trump EPA recently said it would

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[22] Order, No. 15-1487 *et al.* (D.C. Cir.) (Oct. 26, 2017), *available at* https://www.eenews.net/assets/2017/10/26/document_gw_06.pdf.
[23] *Id.*
[24] Respondents' Notice of Action on Brick/Clay Rule and Unopposed Motion to Sever and Hold in Abeyance Industry Petitions, No. 15-1487 *et al.* (D.C. Cir.) (Nov. 11, 2017), *available at* https://www.eenews.net/assets/2017/11/06/document_gw_04.pdf.
[25] *Id.*
[26] *Id.*

> address industry concerns and finalize a new rule by 2019 to replace standards that the Obama administration issued.
>
> A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard arguments from environmental groups over the Obama-era rule. But when an attorney for EPA took the stand, the judges shifted from questioning her on the environmental claims to frustration over the agency's delays.
>
> "This rule was supposed to be out in 2000. ... Under your scenario, we're now going to be 19 years past that," Judge Patricia Millett said. "Why is the time frame you proposed reasonable?
>
> "Don't you have some duty to act with exceptional urgency?"[27]

The judges were annoyed further by the inability of government counsel to say with any "specificity" when and why the EPA decided to review and potentially change the rule. "We're trying to move this case forward," one judge said.[28] Government attorneys never did supply those answers.[29] Finally, the third judge indicated that the court might simply deny EPA's motion to hold the industry lawsuit in abeyance, saying the court could proceed and decide the industry claims.

> "I don't see what we're taking away from you if we deny your motion," he said, adding that EPA would still be able to revise the standards in a new rulemaking regardless of the court's decision.[30]

Legislation

S. 839 aims to help industrial emitters avoid regulation by seeking to *further* delay implementation of seventeen years-overdue hazardous air pollution standards for brick and clay products manufacturing facilities. The legislation would delay compliance deadlines until every lawsuit has been fully litigated and appealed, including to the Supreme Court. This would have

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[27] "Judges scoff as EPA requests more time for rule due in 2000," Amanda Reilly, E&E News (Nov. 9, 2017).
[28] *Id.*
[29] *Id.*
[30] *Id.*

the effect of stalling these much needed and overdue health protections for as long as industry lawyers can keep a case alive, no matter how lacking in merit legal challenges may be. The already-harmful legislative delay now would be exacerbated by obvious manipulation and indefinite delay of the industry lawsuit by the current administration, with the full support of the industry litigants, as shown by events of the past six weeks. Congress should not reward these tactics.

Federal Courts already have the authority to stay the effectiveness of a rule during a court's review, but industry has not met—nor even attempted—the exacting legal standard to justify any stay. Far more often, as here, the regulations remain in effect or may take effect while parties challenge the rule. The standard to delay a rulemaking's effectiveness requires a party to show that: (1) it is likely to prevail on the merits of the appeal; (2) without relief, it will be irreparably harmed; (3) issuance of the stay would not substantially harm other parties interested in the proceedings: and (4) the stay would favor the public interest. As noted, none of the industry litigants have even asked the court to stay the rule, presumably because they recognize that they do not meet the legal requirements.

Incentivizing the types of delay tactics that the BRICK Act would condone sets precisely the wrong legal precedent. The bill's language allows for delays relating to "any rule" for brick kilns under section 112 of the Act, including any that "succeeds or amends" the 2015 standards. This sets up the judiciary and the American people for an endless merry-go-round that never results in lawfully required hazardous air pollution reductions. We urge Senators to vote against S. 839.

S. 1857 – A Bill to establish a compliance deadline of May 15, 2023, for Step 2 emissions standards for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces

S. 1857 delays compliance deadlines for Clean Air Act standards for new wood heaters until May 15, 2023. In so doing, the bill would reward laggards in the industry by allowing them to avoid compliance with standards that most manufacturers currently meet. Moreover, the underlying standards are already flexible and have a lengthy transition period. This bill and its resulting delays would harm air quality and health in the communities where these devices are most used. S. 1857 also disadvantages manufacturers who played by the rules and are already meeting the standards. The legislation thus discourages desirable innovation and responsible corporate steps, in addition to increasing air pollution and harming Americans' health.

Background

In 2015, EPA updated Clean Air Act New Source Performance Standards (NSPS) for residential wood heating devices. EPA last updated the standards in 1988. The Clean Air Act requires that EPA review and revise these types of standards as necessary every eight years, following their adoption in 1988. EPA did not undertake this review until 2015, making the updated standards 21 years overdue.

The 2015 standards will reduce fine particle pollution and VOCs from new wood heaters by almost 70%. The standards cut carbon monoxide pollution by 62%.[31] These reductions will especially benefit communities where wood smoke is a major contributor to deadly fine particle pollution. The standards also will make heaters more efficient, allowing homeowners to use less wood and save money. EPA estimated that the benefits of these cleaner residential wood heaters

[31] U.S. EPA, Fact Sheet: Overview of Final Updates to Air Emissions Requirements for New Residential Wood Heaters, *available at* https://www.epa.gov/residential-wood-heaters/fact-sheet-overview-final-updates-air-emissions-requirements-new

range between $3.4 to $7.6 billion annually, with costs estimated at $46 million. This means $74 to $165 in benefits for every $1 in costs.[32] The Agency noted that the rule has an unusually large net benefit due to the costly health impacts associated with wood smoke and the comparative affordability of pollution reductions from new wood heaters.[33]

In promulgating the 2015 standards, EPA built in five years for manufacturers to comply with stronger emissions control technology requirements. This phased approach started in 2015 with Step 1 of the rulemaking. Step 2 compliance deadlines begin in 2020. There is a long list of devices that already meet these Step 2 standards, and Congress should not reward the laggards.[34] Moreover, some manufacturers oppose delaying the standards. The Hearth, Patio & Barbecue Association, along with the Northeast States for Coordinated Air Use Management (NESCAUM), wrote to members of the U.S. House of Representatives about H.R. 694, a companion bill in the House. These groups voiced strong support for compliance by 2020, noting that EPA's standards will:

> save consumers money, many of whom are low-income households, by lowering fuel costs through increased appliance efficiency. Replacing non-EPA-certified stoves with today's modern stoves will reduce health risks from exposure to wood smoke, but this can only be done if products are clean burning, fuel efficient, and affordable. Finally, this program will ensure continued innovation in U.S. manufacturing that will help keep domestic companies competitive in the solid fuel industry.[35]

Reducing the adverse air quality and health hazards from non-compliant wood stoves is critically important.

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[32] *Id.*
[33] *Id.*
[34] U.S. EPA. Compliance, List of EPA Certified Wood Stoves, October 2017 *available at* https://www.epa.gov/compliance/list-epa-certified-wood-stoves.
[35] Letter from The Northeast States for Coordinated Air Use Management (NESCAUM) and the Hearth, Patio, and Barbeque Association, May 8, 2017 *available at* http://www.nescaum.org/documents/nescaum-hpba-joint-letter-to-congress-wood-device-nsps-20170508.pdf.

Health Impacts

Wood stoves are a significant source of air pollution. According to the American Lung Association:

> Residential wood heaters include open fireplaces, outdoor and indoor wood-fired boilers, indoor heaters, furnaces, masonry heaters and wood and pellet stoves. The U.S. Census [] reports that nearly two percent of all U.S. households use wood as a primary heat source. In 2006, one study estimated that approximately 14 to 17 million such devices were then in use in the United States. [] Annual sales of outdoor wood boilers grew ten-fold between 2000 and 2005—a rate suggesting that 500,000 outdoor wood boilers may have been in use by 2010[].[36]

The health impacts from these devices are real and harmful. Extending compliance deadlines only further delays the cleanups that should have occurred decades ago. Wood stove smoke contains deadly fine particle pollution, but it also contains carbon monoxide, volatile organic compounds, black carbon, and hazardous air pollutants, such as cancer-causing benzene.

Particulate Matter

The EPA recognizes wood smoke as a major source of fine particulate matter emissions, making up 7% of anthropogenic emissions of primary $PM_{2.5}$ in 2002.[37] Fine particulate matter causes premature death, cardiovascular disease and respiratory harms. In particular, EPA's Integrated Science Assessment for particulate matter found that wood smoke was associated with an increased risk of cardiovascular mortality, as well as more emergency department visits from cardiovascular disease and respiratory diseases. In late 2013, the International Agency for Research on Cancer, part of the World Health Organization, concluded that particulate matter

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[36] American Lung Association, Comments on U.S. Environmental Protection Agency Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced Air Furnaces and New Residential Masonry Heaters, EPA Docket ID NO. EPA-HQ-OAR-2009-0734 *available at* http://www.lung.org/assets/documents/advocacy-archive/comments-to-epa-woodburning.pdf

[37] U.S. EPA. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-08/139F, 2009, *available at* https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=216546.

could cause lung cancer.[38] The IARC reviewed the most recent research and reported that the risk of lung cancer increases as fine particle levels rise.[39]

Carbon Monoxide

Wood smoke is a primary source of carbon monoxide.[40] Research has shown that short-term levels of carbon monoxide can be fatal, and contribute to over 20,000 nonfatal emergency room visits each year in the U.S.[41] EPA's Integrated Science Assessment concluded that short-term ambient levels of carbon monoxide are likely to cause cardiovascular morbidity, may contribute to adverse birth outcomes and developmental effects, and cause harm to the central nervous and respiratory systems, even at low levels.[42] The Agency for Toxic Substances and Disease Registry concluded that "[a]lthough there may be an exposure level that can be tolerated with minimal risk of adverse effects, the currently available toxicological and epidemiological data do not identify such minimal risk levels." [43]

Nitrogen Oxides

The EPA recognized wood smoke, including residential wood burning, as a source of nitrogen oxides in the 2008 *Integrated Science Assessment of Oxides of Nitrogen—Health*

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[38] International Agency for Research on Cancer, World Health Organization, Press Release: Outdoor air pollution a leading environmental cause of cancer deaths, October 17, 2013 *available at* https://www.iarc.fr/en/media-centre/iarcnews/pdf/pr221_E.pdf.
[39] *Id.*
[40] U.S. EPA. Integrated Science Assessment for Carbon Monoxide (Final Report, Jan 2010). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-09/019F, 2010, *available at* https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=218686.
[41] *Id.*
[42] *Id.*
[43] Agency for Toxic Substances and Disease Registry (ATSDR) 2012 Toxicological Profile of Carbon Monoxide, p. 23, *available at* https://www.atsdr.cdc.gov/toxprofiles/TP.asp?id=1145&tid=253 .

Criteria (NOx ISA, 2008). The NOx ISA estimated that residential wood burning produced 40,000 metric tons of nitrogen oxides in 2002 (Table 2.2-1).[44]

Hazardous Air Pollutants

Wood smoke contains at least 26 pollutants specified in the Clean Air Act as hazardous. Some, such as benzene and formaldehyde, are known carcinogens. Others have non-carcinogenic impacts. These gases can also irritate the eyes, skin, and respiratory tract, impair lung function, and affect vital organs.

Conclusion

The damage from S. 1857 will persist not simply for the three years of delay proposed in the bill, but for years and decades to come, if new and noncompliant higher-polluting wood heaters sold between 2020 and 2023 continue to emit more pollution over the entire lifespan of the equipment. We urge Senators to vote against S. 1857.

S. 1934 – The "Alaska Remote Generator Reliability and Protection Act"

EPA regulations list special requirements for certain types of generators in Alaska.[45] S. 1934 specifically exempts *non-emergency* compression ignition internal combustion engines (CI ICE) that were made after 2014, from complying with Tier 4 particulate matter standards, or installing a particulate matter pollution control device. The bill would eliminate those requirements for engines made after 2014, and would allow for emission control devices only when and if the Administrator determines that "such a requirement will not negatively affect electricity or energy reliability in any remote area of the State of Alaska."

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[44] U.S. EPA, Integrated Science Assessment for Oxides of Nitrogen – Health Criteria (Final Report, Jul 2008). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-08/071, 2008, *available at* https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=194645.
[45] 40 C.F.R. 60.4216(c).

This equipment emits nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide, and hydrocarbons, all of which are extremely harmful to human health. EPA notes that:

> Stationary internal combustion engines are common combustion sources that collectively can have a significant impact on air quality and public health. The air toxics emitted from stationary engines include formaldehyde, acrolein, acetaldehyde and methanol. Exposure to these air toxics may produce a wide variety of health difficulties for people including irritation of the eyes, skin and mucous membranes, and central nervous system problems. Engines also emit the conventional air pollutants created when fuel is burned including carbon monoxide (CO), nitrogen oxides (NOx), volatile organic compounds (VOCs), and particulate matter (PM). The health effects of these pollutants include a range of respiratory (breathing) issues, especially asthma among children and seniors.[46]

The U.S. EPA finalized standards for these and other facilities in July of 2016. In doing so, EPA adopted a definition for what was a "remote area of Alaska" consistent with previous rulemakings. 88 Fed. Reg. 44,215 *et seq.* (July 7, 2017).

S. 1934 explicitly excuses regulatory requirements for these types of new engines that are classified as *non-emergency* from compliance with clean air requirements. Though the purposes of the bill seem to suggest some sort of justification based on "electricity or energy reliability in remote areas of Alaska," in section 2(b), there are no legislative findings that support this suggestion. Nor is the legislation accompanied by any legislative finding or evidence that regulations for post-2014, cleaner-burning engines will create demonstrated risks to electricity or energy reliability.

It is a dangerous legislative precedent to prohibit cleaner-burning engines in the absence of thorough legislative investigation and proof of harm that outweighs the clean air and public health benefits. S. 1934 would delay adoption of cleaner diesel engines indefinitely in the relevant areas of Alaska. We are not aware of proven reliability threats that would justify such

[46] U.S. EPA, Fact Sheet "Basic Information for Stationary Engines," *available at* https://www.epa.gov/stationary-engines/basic-information-stationary-engines.

indefinite delay, especially for non-emergency engines. The legislation further creates an inequity for sources that must comply with updated clean air standards. We urge Senators to vote against S. 1934.

Senator CAPITO. Thank you, Mr. Walke.

I will begin questioning. I appreciate the testimony of you all.

Mr. Williams, I wanted to talk with you about S. 1857. I am interested in the comment that Mr. Walke just made that 73 percent of the wood pellet stoves are already in compliance with Step 2.

I understand from your testimony there has not been developed by EPA a sufficient testing compliance standard or testing regime. Can you clarify that difference?

Mr. WILLIAMS. I think some of the confusion is that when you look at the October listing of the EPA certified appliances, there are over 500 appliances that currently meet Step 1. Of that, roughly less than 10 percent actually qualifies for the Step 2 emission standards.

Senator CAPITO. Of the Step 1, only 10 percent qualify for the Step 2?

Mr. WILLIAMS. Yes, I think the latest number was something like 20 and 26 or something that actually qualify. They have not all gone through the test yet.

The pellet stove test standard, we think will be a low hanging fruit and qualify. They qualified under the Step 1 standard, but Step 2 will require that they all be re-tested. That test will require significant cost of another $5,000 per.

On the wood stove front, while there is an approved consensus based test method for everything, it is a crib based method. One of the avenues people in the EPA want to explore and really want to go to is a cord wood, real world test method, how people actually burn their cord wood, their real wood stoves. That test method has not been approved yet. That is something still in the works.

Senator CAPITO. It would be hard to be compliant if you don't have a test to know whether you are compliant.

Mr. WILLIAMS. That is a challenge that we have. As I stated, we have been forced by the retailers to whom we sell that they will not start stocking products as early as next year if they are not 2020. They do not want to be burdened with product they cannot sell in 2020. Any leftover inventory, they will not take.

Senator CAPITO. Let me clarify, too, that this bill simply asks for a 3 year extension. You are not asking to not comply with Step 2?

Mr. WILLIAMS. That is correct. We are small businesses in rural communities. We welcome the Clean Air Act. We helped develop the data that crafted the NSPS. All we are asking for is a little bit of time so that we don't jeopardize the manufacturers, the employees, the retailers, and the end consumer.

Senator CAPITO. It seems to me as well that if you do not have the correct protocol in place, you could run the risk from the consumer standpoint of running their old stoves, keeping something that may have gone through its shelf life, you cannot afford a new one and maybe have worse environmental circumstances than if you got it right the first time and had the Step 2 compliance correct. Am I assuming that correctly?

Mr. WILLIAMS. Yes. I think we are already seeing that from the example in Prichard, West Virginia.

Senator CAPITO. Right.

Mr. WILLIAMS. With 742 furnaces. Now if people do not have an affordable option, they are going to hold onto their older, dirtier stoves.

Senator CAPITO. Mr. Kersting, on S. 203, West Virginia University was very, very instrumental in detecting the emissions defeat devices. We are very proud of that in our State. I think we are comparing two major issues here with what is actually going on in a narrow slice of life in terms of racing cars.

Could you make a distinction, if you can, on cheating on emissions on a broad scale, like we saw, and what your sports enthusiasts are really doing?

Mr. KERSTING. The VW instance is a case where vehicle manufacturers are required to certify vehicles before they go out on the road. Those vehicles then have systems in them that will help maintain that vehicle and certify compliance.

VW, like many manufacturers, put millions of vehicles on the road. VW had an intentional program to hide a defeat device in the system for vehicles being sold new where no one would see or know that defeat device was there.

In the case of the racing industry converting a vehicle, those products are marketed and are known. In the case of products that end up on the street as illegal tampering, again, those products are marketed. EPA has access to see those products, and that is why enforcement action does take place under the Act in the cases of street tampering.

The situation here is that EPA has proposed a ban against all activity that would convert a certified vehicle for any purpose, including racing. That makes enforcement for EPA, with regard to street tampering, a pretty simple matter. It throws the baby out with the bath water.

Senator CAPITO. Let me ask a quick question. You mentioned the 1,300 race tracks. I know this is kind of a tough question. How many vehicles would there be?

Mr. KERSTING. I actually don't have a specific number of vehicles. We could round that up.

Senator CAPITO. I would be interested in seeing that.

Mr. KERSTING. There are thousands and thousands of race vehicles out there, and more every day.

Senator CAPITO. Thank you.

Mr. Whitehouse.

Senator WHITEHOUSE. As long as we are on the subject of the motor sports bill, let me ask unanimous consent to enter in the record technical assistance received from the Trump administration EPA making suggestions to improve this bill so that it is clear that it does, in fact, deal with race vehicles.

Senator CAPITO. Without objection.

[The referenced information follows:]

These EPA staff-level comments are being provided solely as technical assistance to the Senate Environment and Public Works Committee. The comments should not be construed in any way as representing the policy positions of the agency or the Administration on this bill.

U.S. EPA Technical Assistance on S. 203, the "Recognizing the Protection of Motorsports Act of 2017" or the "RPM Act of 2017"
September 2017

1. EPA supports an exemption from the tampering provisions of 42 U.S.C. § 7522(a)(3)(A) for the modification of certified motor vehicles into vehicles used solely for competition motorsports.

2. EPA supports an exemption from the defeat device provisions of 42 U.S.C. § 7522(a)(3)(B) for components used to modify certified motor vehicles into vehicles used solely for competition motorsports.

3. EPA has observed a growing market in electronic devices that can be used to render inoperative or remove the emission controls of certified motor vehicles.

4. While some of these devices may be used to modify certified motor vehicles into vehicles used solely for competition motorsports, EPA has observed that the same or similar electronic devices can unlawfully be used to defeat emission controls in vehicles *not* used solely for competition motorsports (e.g., to render inoperative or remove the emission control systems in light-duty diesel trucks). This unlawful use can result in significant excess air pollution.

5. This technical assistance therefore aims to regularize the sale and use of these electronic devices on vehicles used solely for competition motorsports, while retaining the prohibition against their use in other contexts.

6. EPA believes that if an end user wants to render inoperative or remove the emission controls of a certified motor vehicle in order to race, the vehicle should no longer be registered for use on streets or highways. If an end user wants to retain the vehicle's registration for on-road use, the defeat device should not be installed, even temporarily.

7. EPA therefore recommends an exemption in Section 2 of S.203 from the tampering and defeat device prohibitions of the Act for vehicles that are no longer registered to be operated on a street or highway.

8. This is a bright line test applicable at the point of sale and enforceable by a comparison of vehicle identification numbers collected at the point of sale to state motor vehicle registration information. Those that install these electronic devices on a vehicle registered for on-road use would be subject to the tampering prohibition of 42 U.S.C. § 7522(a)(3)(A). Those that manufacture or sell those devices without taking adequate precautions that emission controls would be defeated only on vehicles not registered for on-road use would be subject to the defeat device prohibition of 42 U.S.C. § 7522(a)(3)(B).

These EPA staff-level comments are being provided solely as technical assistance to the Senate Environment and Public Works Committee. The comments should not be construed in any way as representing the policy positions of the agency or the Administration on this bill.

9. EPA would discourage an approach that focuses solely on the end use of the modified vehicle (e.g., by excluding from the definition of "motor vehicle" vehicles *used* solely for competition) because of the profound difficulty in policing the end use of vehicles. For example, though the end use approach excludes competition vehicles from *non-road* emission standards under 42 U.S.C. § 7550(10), EPA cannot determine how many of the approximately 85,000 competition dirt bikes lawfully imported each year are actually used "solely for competition." Accordingly, EPA proposes that Section 3 of S.203 be removed.

10. EPA proposes a two-year deadline in which to promulgate implementing regulations.

These EPA staff-level comments are being provided solely as technical assistance to the Senate Environment and Public Works Committee. The comments should not be construed in any way as representing the policy positions of the agency or the Administration on this bill.

115TH CONGRESS
1ST SESSION

S. 203

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JANUARY 24, 2017

Mr. BURR (for himself, Mr. ROUNDS, Mr. RUBIO, Mr. TILLIS, Mr. CRAPO, Mr. HELLER, Mr. GRAHAM, Mr. BOOZMAN, Mr. MORAN, Mrs. ERNST, Mr. MANCHIN, Mr. INHOFE, Mrs. FISCHER, Mr. TESTER, and Mr. DONNELLY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Recognizing the Protection of Motorsports Act of 2017" or the "RPM Act of 2017".

SEC. 2. ~~EXCLUSION~~ EXEMPTION FROM ANTI-TAMPERING PROVISIONS.

Section 203(a) of the Clean Air Act (42 U.S.C. 7522(a)) is amended by adding at the end the following: "No action with respect to any device or element of design described in paragraph

These EPA staff-level comments are being provided solely as technical assistance to the Senate Environment and Public Works Committee. The comments should not be construed in any way as representing the policy positions of the agency or the Administration on this bill.

(3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of modifying a motor vehicle that is no longer registered to be operated on a street or highway ~~into a vehicle~~ and is to be used solely for competition.".

~~**SEC. 3. DEFINITION OF MOTOR VEHICLE.**~~

~~Section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)) is amended—~~

~~(1) by striking "(2) The term" and inserting the following:~~

~~"(2) MOTOR VEHICLE.—~~

~~"(A) IN GENERAL.—The term";~~ ~~and~~

~~(2) by adding at the end the following:~~

~~"(B) EXCLUSION.—The term 'motor vehicle' does not include a vehicle used solely for competition, including a vehicle used solely for competition that was converted from a motor vehicle.".~~

SEC. 34. REGULATIONS.

Within ~~Not later than 1~~ 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall ~~finalize~~ promulgate ~~any~~ regulations necessary to implement the amendments made by this Act.

Senator WHITEHOUSE. The testimony from Senator Burr was intended to focus on vehicles; to quote him, "used exclusively for racing and used only on the race track." If that is true, then I think we have language from Trump's own EPA that could resolve that issue. Then perhaps we can move forward.

If this is designed to create a back door for street registered vehicles to violate the Clean Air Act, then we are going to have a problem. I think that as long as we are focusing only on those vehicles that are track vehicles, then we can find a solution.

More generally, I observe yet again that in this hearing, it is customarily only one side of the ledger that gets attention. Whenever pollution is being cleaned up, there is almost inevitably a cost to the polluters to clean up their pollution, but there is also often a benefit to the public from not having to breathe in the polluted air.

Over and over again, instead of this Committee looking at both sides of the ledger, we hear only about one side of the ledger. In fact, I think we could provide a wonderful market for one-eyed accountants who can only see one side of the ledger here in this Committee.

Let me ask, with respect to the wood heaters, if Ms. Hammond or Mr. Walke have any idea what has been established as the cost-benefit ratio for those regulations.

Mr. WALKE. Senator, I do not have that at my disposal. I can provide it to you after the fact. The agency has found that standards such as these save lives and avoid asthma attacks. The agency responsibly assigns a high value to those and has consistently found those benefits outweigh the compliance costs.

Senator WHITEHOUSE. For what it is worth, I have information that the EPA has estimated the benefits of this requirement for new residential wood heaters at $3.4 billion to $7.6 billion annually. That is billion with a B, whereas the cost of compliance was estimated at $46 million annually, $46 million with an M. The net benefit is $74 to $165 in benefits for every $1 spent to comply.

In most places, when you spend a dollar and get $74 to $165 in benefits, that is considered a pretty good deal. However, it does require you looking at both sides of the ledger and to have public health benefits actually count for something, which over and over again, this Committee seems unable to bring itself to do.

One of the things I want to question about the Brick Kiln Act is that it would indefinitely postpone this new rule, as I understand it, while pending litigation continues. I would ask Ms. Hammond or Mr. Walke what this means in terms of the industry's ability to manipulate the deadline by simply keeping litigation alive for the sake of pushing out the end point of the rule.

Mr. WALKE. Senator Whitehouse, let me give two answers to that. First of all, the bill is written in such a way that not just the pending litigation over the rules from 2015 but future litigation over future rules would also continue to delay those standards protecting Americans.

Senator WHITEHOUSE. The industry could truly litigate this into the indefinite future, for time immemorial. Our great grandchildren could still have no rule because the litigation never stopped?

Mr. WALKE. If the rules keep getting relitigated, it is just like that.

The other thing I should note is that just last week, the Trump administration agreed to put the industry lawsuits on ice, not to dismiss them, but to ensure they would continue, therefore fueling this bill's delay even more. Federal judges were quite angry at that move and indicated they may just go ahead and resolve the lawsuits in the next 2 to 3 months.

We could have the end of the litigation and therefore, the end of any uncertainty period, and Americans could be given the protections promised by the Clean Air Act.

Senator WHITEHOUSE. Get used to it because, in my view, this EPA is going to regularly work with industry to create artificial delay and defeat the courts because, in effect, the industry is on both sides of the litigation when it is industry versus Trump EPA.

Senator CAPITO. Senator Wicker.

Senator WICKER. Thank you.

Thank you, Mr. Henry, for your testimony. In your written testimony, you mentioned a constituent of mine, Mr. Puckett. You mentioned that basically he had to sell a generations-old business because he just couldn't make the compliance costs. Would you explain that to the members of the Subcommittee?

Mr. HENRY. Certainly. The brick industry news travels pretty fast. A few weeks ago, it came out that Columbus Brick had decided to sell to General Shale, a large, multi-national conglomerate.

Al and I spoke about it. Al said one of the mitigating factors was continually increasing costs to comply with new regulations. He said, with his age and where his family business was, they could not commit the $4 million to $6 million he felt it was going to cost him to comply in the future with not only this rule but other rules being considered for our industry.

He felt his only choice—based on that and some other factors—was to sell.

Senator WICKER. When we weigh the pluses and minuses of any of these things, we need to weigh the cost of the loss of jobs against the benefit. I am sure everyone would agree with that also.

You are also a small business, Mr. Henry. You employ 58 people. You would like to get back to 95 people, but that would require bringing Plant 2 back online. You are just not willing to do that with the compliance cost, is that correct?

Mr. HENRY. Well, that is part of it. A lot of it is economy driven, also. The building sector has been through a horrible 9 to 10 years. It has been no fun. Certainly, one of the considerations in the soft market is things you would possibly have to do to bring that in line.

One of the frustrating things for us as a company, I think, is we currently, and have been since 2005, have been capturing 95 percent of our HAPs. We capture 95 percent of our pollutants. This new rule is dealing with 3 to 4 percent.

To spend that kind of money on a 3 to 4 percent more capture rate and not know if the final rule is going to stay as it is, it is kind of scary.

Senator WICKER. Let's make sure we understand. There was a rule that went into place in 2003, correct?

Mr. HENRY. Yes.

Senator WICKER. You got about the business of complying with that rule?

Mr. HENRY. Yes.

Senator WICKER. Many of your colleagues around the industry did so. In the meantime, there a lawsuit which took until 2007 to be resolved, and it turns out the court ruled that the EPA was wrong and the rule could not go into effect. Am I correct so far?

Mr. HENRY. That is correct.

Senator WICKER. Now, in 2015, that you have 95 percent of your emissions controlled, EPA comes up with another regulation that says you have to do better, and there is a lawsuit about that?

Mr. HENRY. Yes.

Senator WICKER. That is the moving target you are talking about?

Mr. HENRY. Exactly.

Senator WICKER. I see. I hope there is some way we can do the balancing act that Mr. Whitehouse talked about. We always have to balance the cost versus the benefit. I am sorry my colleague has missed the acknowledgment on both sides of the dais that we need to do that.

Electricity can kill you. There is no question about it, but we take risks in our society. Without electricity, our economy would grind to a halt, so we establish a correct balance of this terrible force called electricity that can kill you and the benefit to society.

Reducing the speed limit to 30 miles an hour nationwide would save lives, no question about it, but we have taken the position, as a society, that would just be too harmful to the economy, and so we are willing to take that risk and get our speed limit up to 70 miles an hour on interstates and whatever the States decide to do on State regulated roads. That is a balancing act.

That is all we are asking EPA to do. I am sure that is all the plaintiffs are doing in this lawsuit. Give us something that will allow this 40 percent extra number of employees you would like to put back to work to have a living.

I hope we can work on this legislation and achieve that sort of sensible balance.

Thank you, Madam Chair.

Senator CAPITO. Thank you.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Madam Chairwoman.

For Ms. Hammond, while each of the bills we are considering today addresses a niche industry concern with clean air regulations that seem minor and relatively noncontroversial, if we carved out exemptions for every industry that claimed compliance with clean air regulations was too burdensome, what would that do to the Clean Air Act?

Ms. HAMMOND. It would certainly undermine everything this institution envisioned when it passed the Clean Air Act which was not just a sector by sector approach at getting us to a basic level of clean air, but improving our air over time. We should expect those standards to increase over time as we get better at what we do.

Senator GILLIBRAND. What impact would these bills have on the air quality in States like New York?

Ms. HAMMOND. In States like New York, for example, if we look at the residential wood heaters, we would see increases in particulate emissions and increases in premature deaths. As Senator Whitehouse noted, the cost-benefit analysis here put the benefits at about 100 to 1 over cost.

In any State where we have kiln manufacturing and wood heaters that are emitting that dangerous particulate matter, we would see significant costs.

Senator GILLIBRAND. Mr. Walke, if S. 203 were to be enacted, are there any assurances that EPA would be able to prevent cars equipped with emissions defeat devices for racing purposes from driving on the roads and highways?

Mr. WALKE. No, and you put your finger on the bill. The problem with the bill and the purpose standard, which is a significant and extreme retreat from the standard the Justice Department has always employed, which is to be able to prosecute companies that were selling products they should have known would be used on the roadways.

No one is concerned or troubled by exclusive use for racing. We are concerned about a significant departure from the standard the Government has successfully used to prosecute companies that should have known their products were being misused. That is where the bill creates a problem that does not exist today.

The problem is not with racing cars. No one is here arguing that people shouldn't be able to use cars for racing with these types of devices.

Senator GILLIBRAND. Is there any way to tell that a vehicle is equipped with a defeat device once it has been installed?

Mr. WALKE. There would be if we had the Government walking into garages and looking at individual drivers. I do not think anyone wants that. That is why the Government has never brought enforcement cases against individual drivers.

Instead, once these illegal defeat devices are sold and installed on cars, we cannot, we do not, and I submit this Senate probably doesn't even want EPA going out there trying to track down individual drivers to prosecute them for using these defeat devices.

You have to target the behavior before they are sold or when they are sold by the manufacturers, which is why manufacturers should have known their products would be used by individual drivers. That is where the liability should attach.

Senator GILLIBRAND. Are there any changes that can be made to S. 203 that would give you more confidence that the exemption in this bill could not be exploited by those who would install defeat devices on vehicles driven on roads and highways?

Mr. WALKE. I would strongly recommend two changes to the current bill that I think would meet everyone's needs and goals.

The first is not to allow these defeat devices to be sold for registered vehicles, vehicles registered on roads and highways. The second point I think is even more important. That is to eliminate this purpose standard, this purpose language in the bill, because that is the language that allows willful disregard of sales of defeat

devices for registered vehicles. Knowing sales and constructive knowledge is the language that the bigger problem.

Again, I think those two fixes would meet everyone's objectives.

Senator GILLIBRAND. Thank you very much.

Thank you, Madam Chairwoman.

Senator CAPITO. Thank you.

I would like to turn to Senator Shelby.

Senator SHELBY. Thank you.

Mr. Henry, thank you for appearing here. I have been to your business many, many times and know your family.

You have spoken to it and been asked a lot of questions. What will a little time do for you because you need certainty. I know this. You have come a long way in dealing with air pollution in the manufacture of bricks, right, all over the country?

Mr. HENRY. Yes.

Senator SHELBY. What would a little time do for you?

Mr. HENRY. This is 2017, October, November now. We have to be in compliance by December 2018, a little over a year from now. There are a lot of control devices that supposedly work to control some of these emissions that are not proven technologies yet.

As I stated earlier, we currently capture 95 percent. To capture the other 3 to 4 percent, we just want to make sure that whatever is proposed works and that the rule to capture the last little bit does not change. That is all the time gives us.

Senator SHELBY. It is also a big expenditure for your company, is it not?

Mr. HENRY. If we went the route of complying with the new MACT, it could mean our spending $8 million to comply. To become a synthetic source, as we are right now, would mean we would have to reduce our production capacity.

Senator SHELBY. What do you mean by a synthetic source?

Mr. HENRY. The EPA is saying if you can stay under the 10 ton limit, you become a synthetic source, you go off the radar, and you no longer have to comply with the MACT. We can do that with the control devices we have if we reduce our capacity of production.

The unfortunate thing there is we all know in production, the last bit is where you "make your profits." As you reduce your capacity, you reduce your ability to make money.

Senator SHELBY. Mr. Williams, I know you have been asked these questions. You have over 100 and some employees there in Alabama and Tennessee. People have been promoting and saying, my gosh, we need to burn pellets, we need the self-sustaining wood and all this. Would some of this put you out of business, basically?

Mr. WILLIAMS. We have been in business for 150 years.

Senator SHELBY. I know.

Mr. WILLIAMS. We are very proud of that fact. We are in our fourth generation.

Senator SHELBY. You should be.

Mr. WILLIAMS. I see the fifth generation running through the halls occasionally, so we are very excited about that.

There are brand names a lot of you may have grown up with like Ashley, King, and Wonderwood, and Vogelzang. We have made stoves that emitted black, billowing smoke that you would know when your neighbor was burning.

Today, we are very proud of the fact that you cannot tell when one of our stoves is burning. There are no visible emissions. Step 1 has made products like warm air furnaces, that were unregulated before, 70 percent more efficient.

All we are asking for is a little bit of time so that these 70 percent more efficient stoves can remain in the marketplace. I am afraid if we do not get this extension, it is going to jeopardize our rural communities and our jobs.

We have already started to see the same thing in Prichard, West Virginia, a reduction in sales. That is going to affect retailers, it is going to affect employees, and finally affects the end user.

Senator SHELBY. Ms. Hammond, do you know, of your own knowledge, whether or not EPA did a cost-benefit analysis before they came with this rule that is causing trouble for a lot of people?

Ms. HAMMOND. The kiln, the MACT rule?

Senator SHELBY. A cost-benefit analysis?

Ms. HAMMOND. Yes, EPA is required to do a cost-benefit analysis.

Senator SHELBY. Have you seen that, and could you furnish a copy of that for the record?

Ms. HAMMOND. I could certainly furnish a copy.

Senator SHELBY. Mr. Henry, don't you think a cost-benefit analysis is important before any regulation or law goes into effect that would affect the economy, jobs, and health, everything?

Mr. HENRY. Oh, certainly but I think that some of the things we look at that they are proposing from a cost standpoint are not realistic. I think some of the costs are undervalued in what is shown from the EPA. To be honest with you, that is the scary thing. They have shown the cost at the floor with unproven technologies, and you don't know where the cost could potentially go.

Senator SHELBY. Bricks have been around a long time. I hope they will be here a long time because they are extensively used everywhere. To put the brick folks out of business, I don't think, in the long run, would be smart.

We all want good air, a good environment, and a balance there. You have never advocated not good environment, have you?

Mr. HENRY. No, Senator. I think we all want a good environment. We all want a healthy place for our children and for me some day, grandchildren, to live. There has to be a cost-benefit to it. I am not sure we know that full answer right now.

Senator SHELBY. Thank you.

Thank you, Madam Chair.

Senator CAPITO. Thank you.

Senator Inhofe.

Senator INHOFE. Thank you, Madam Chairman.

First of all, I support all four of the bills. In fact, I am a co-sponsor of all four of the bills, including yours, Madam Chairman.

Mr. Kersting, you may have talked about this before, but we are competing with the Senate Armed Services Committee right now. I am concerned about this because we are really a NASCAR State.

Love's Travel Stops is the largest family owned truck stop in America. I remember when they first started. They are in Oklahoma. In fact, they were in my office this last week. They are the primary sponsor of the NASCAR No. 34 car driven by Landon Castle.

We know the language the EPA has considered, and it makes those involved in the racing industry nervous. Opponents of the RPM bill and the Obama EPA claimed they were going to go after individuals or NASCAR, and there is nothing to worry about. We just heard Mr. Walke say essentially the same thing. The EPA's language makes it possible for them to do so, don't you think?

Mr. KERSTING. The current EPA interpretation of the law renders any conversion activity illegal, whether you are a business involved in converting that certified vehicle to use in motor sports or you are an individual involved in that. It is an activity that is deemed illegal now.

Similar to your constituent, I hear from our SEMA member companies they are quite concerned. These are small businesses. They are in a position right now working under a cloud of illegality. They are hesitant in moving forward and need resolution to this.

Senator INHOFE. You are familiar with Love's?

Mr. KERSTING. Yes.

Senator INHOFE. Your observation is correct because there are all kinds of things in the Oklahoma media, just because they are looking for something to write, that they could be on that border. It is bad for them.

Mr. KERSTING. For certain. A point was raised about this matter of there being a loophole, a purpose or that the matter of intent somehow in this bill would create a new enforcement standard.

I want to make very clear that the language in the RPM Act is actually drawn and reflects language that is in this section of the Clean Air Act for other exemptions. The word "purpose" is in the law currently. Very importantly, the word "intent" is in the prohibition currently.

I think Mr. Walke raised the Casper case in his written testimony. The Casper case is a great example, and there are others, where a manufacturer of a product made a claim that the product is intended, in that case, for off-road use only. Others might say for race use only.

That use of the words "intent" or "purpose," they are interchangeable here, is not a shield against enforcement. In fact, EPA has successfully enforced against those who claim my intention was for this product to be a race use product or an off-road product.

There is no loophole. Illegality is illegality. If that product ends up as a street tamper, EPA has the enforcement authority to go after it, and they do so successfully.

Senator INHOFE. I know that concern is there.

Mr. Henry, I am concerned about the impact of the EPA's MACT. The rule would have the brick industry in Oklahoma really concerned. Are you familiar with Oklahoma's brick industry?

Mr. HENRY. Yes.

Senator INHOFE. They are all small. We don't have the giants; they are small businesses, family owned businesses, the kind we really encourage. We have 1,400 people employed in that industry. Most of the companies are very small, very similar to yours.

The issue reminds me of the EPA's mercury rule that the Supreme Court overturned in 2015 because the agency did not take the cost of the rule into account. It is required by law that they do that. I think we are looking at the same thing here.

The EPA has not been concerned about losing since the industry had already made the investments to comply with the illegal rule because the courts did not stay the rule. The courts are the proper venue for the issue, but as seen with the EPA's mercury rule, stays do not always happen. Was there a stay of the rule in the original case against the 2003 rule, Mr. Henry?

Mr. HENRY. Not to my knowledge, no. We had to be in compliance by 2006. The rule was vacated in 2007. In our case, we had spent $1.5 million to comply with a rule that vanished.

Senator INHOFE. Just your company?

Mr. HENRY. Yes.

Senator INHOFE. Do you have any ideas for the old industry?

Mr. HENRY. I can get that number for you. Offhand, I don't have that.

Senator INHOFE. For the record, let's do that because I need that for my material.

Thank you, Madam Chairman.

Senator CAPITO. Thank you.

Senator CARPER. Thank you, Madam Chair.

Thanks to all the witnesses.

Mr. Walke, I haven't seen you in almost 48 hours. We are going to have to start putting you on a retainer if you keep showing up like this.

Welcome, one and all. We are glad you are here.

I want to follow up on what Senator Inhofe was pursuing. This would be a question for Mr. Henry and maybe Mr. Walke.

Do you believe the EPA always has the needed industry information to write technology based standards? The second half of that question would be could industry do better in giving EPA a complete picture of their industry before regulations are written?

Ms. Hammond.

Ms. HAMMOND. EPA does use technology based standards. For example, MACT stands for Maximum Achievable Control Technology. That is a strict, standards based approach because it is for regulating toxics.

Yes, the industry does provide information to EPA for all of its rulemakings when it involves regulating industry. It collects most of its data from the industry and looks to see what is achievable within that industry.

Senator CARPER. Thank you.

Mr. Walke.

Mr. WALKE. Senator Carper, I have been a Clean Act attorney for 20 years, including at the EPA. During that time, EPA has been allowed by the Office of Management and Budget just once to go out and solicit data and real world information from industry about what technology they are using to comply with these air toxic standards.

What we see is industry trade associations run to block that from happening, so unfortunately we get an incomplete picture of the full array of technology.

For the brick and kiln rule, for example, by breaking the law in 2003, we left 106 out of 147 kilns in this country completely uncontrolled. The brick industry's trade association pushed a legal stand-

ard that was plainly unlawful. The D.C. Circuit overturned it unanimously and even vacated the rule.

They knew what they were getting into. They wanted a rule that produced 106 out of 147 units uncontrolled. That is what they got, and unfortunately, that is why we are here today.

Senator CARPER. What role did Bill Wehrum play in the event? Do you remember? Was he at EPA at that time?

Mr. WALKE. Yes, sir, I do remember all too well. I was involved in that lawsuit. Mr. Wehrum was the senior counsel for the Air Office and subsequently, the head of the Air Office when that unlawful standard was issued after four different court opinions had overturned the almost identical legal interpretation.

When he left EPA, Mr. Wehrum chose to go to work for the brick industry trade association to represent them in suing over the rules EPA was required to issue by the court as a result of Mr. Wehrum's being overturned. We have a bit of a door going on here.

Senator CARPER. Maybe just a coincidence.

Mr. WALKE. I will not speak to that.

Senator CARPER. The Diesel Emission Reduction Act, DERA, is one of my favorite pieces of legislation. Senator Voinovich, Senator Inhofe, and I worked on this for a number of years.

Mr. Walke, with all of the work we have done on clean diesel, I know the diesel generators can be replaced and retrofitted to reduce emissions by, I am told, about 90 percent. I also knew these clean diesel generators are reliable.

It sounds like Alaska may not only need a little more time to comply with the Clean Air requirements, but maybe a lot more DERA funds to help the State quickly transition their diesel fleet. Do you have any thoughts on that?

Mr. WALKE. Yes, sir, Senator. DERA is one of the most important clean air bills ever introduced in this country. I hope we would see more widespread use of the funds going to clean up dirty diesel engines.

The Alaska bill may be a special case. They may just need some additional funds to make sure those diesel generators are getting into remote areas. The air quality impact of this bill is certainly much, much less than others.

It is unclear from the State of Alaska how many of these generators actually are operating. They are non-emergency generators, so they are not really going to critical crisis needs, but I think a DERA solution would be a well tailored one.

Senator CARPER. I have one last question, if I could, Madam Chair.

This will be for the whole panel. I would like to hear from each of you briefly, if you could. Could any of these bills before us be improved upon to ensure we continue to meet the public health benefits of the original regulation while also giving industry a little more flexibility to comply than was maybe initially provided?

Mr. Henry, do you want to lead off just briefly?

Mr. HENRY. What is being proposed for us is a timeline to give us the ability to make sure the technology is there. I don't think it is an endless ask. I think there have been some discussions of a 3 year instead of an open ended target.

I think with the 3 year window, we could do a lot of things to ensure we could comply with the new brick MACT.

Senator CARPER. Thanks very much.

Mr. KERSTING. I think we have been able to hear there is consensus. There isn't much objection to the matter of the core purpose of the RPM Act, which is to allow conversion of street vehicles to use in racing.

If there are some concerns with the specifics of the language, good faith concerns, in terms of how the bill is written or structured, SEMA stands ready to engage in constructive conversation about that.

In that regard, I think we feel the bill is well tailored. It is very narrow, and it basically would just restore the status quo.

Senator CARPER. Thanks.

Mr. Williams.

Mr. WILLIAMS. All of our businesses are small businesses in rural communities. Our customers are rural users. We approve of the State and the regulations. We helped craft the information that crafted the NSPS.

All this ruling is going to do for us is allow us a little extra time so we can meet Step 2. We are already making products that are 70 percent more efficient. All we are asking for is those continue on so we don't jeopardize the manufacturers, the employees, and eventually the end user.

Senator CARPER. All right.

Ms. Hammond.

Ms. HAMMOND. I agree with Mr. Walke's suggestions for the RPM bill. I think that would be an improvement. Along with everyone else, I have no disagreement over the purpose of the bill as written.

I do want to note with the other three that in all of the underlying EPA rulemakings, that agency set forth a guide path to ensure that industry did have time to comply. It is my view that all of those bills would further extend something the agency already worked with industry to develop which is a reasonable timeframe for compliance.

Senator CARPER. All right.

Mr. Walke, last word.

Mr. WALKE. First of all, I appreciate Mr. Kersting's constructive offer for dialogue to preserve the status quo. I do think there is a fix here that can be made that would meet all parties' objectives. I am not hearing real disagreement on outcomes here. It is just a matter of drafting, and I think there is a fix that can be done.

On the wood stove bill, I am hearing concerns and valid concerns about inventory pass through and the extent to which already manufactured stoves might not be sold into the marketplace. That is not really a reason to extend emission limits for the entire industry of stoves.

I think there is actually a compromise and fix that could address a legitimate concern about inventory rather than broadly extending the compliance dates for emission limits for the entire industry, including manufacturers already manufacturing compliance stoves.

Senator CARPER. Thanks so much.

Madam Chair, thank you for being so generous with the time.

Our thanks to each of you for helping us develop consensus, which is what we need. Thank you.

Senator CAPITO. Thank you, Senator.

I want to again thank all the witnesses for participating in today's hearing.

Committee members will have 2 weeks to submit materials and questions for the record.

This hearing is adjourned. Thank you.

[Whereupon, at 11:26 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

II

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

115TH CONGRESS
1ST SESSION

S. 1857

To establish a compliance deadline of May 15, 2023, for Step 2 emissions standards for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2017

Mrs. CAPITO (for herself, Mrs. MCCASKILL, Mr. MANCHIN, and Mr. SHELBY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To establish a compliance deadline of May 15, 2023, for Step 2 emissions standards for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STEP 2 COMPLIANCE DEADLINE FOR NEW RESIDENTIAL WOOD HEATERS, NEW RESIDENTIAL HYDRONIC HEATERS, AND FORCED-AIR FURNACES.

(a) IN GENERAL.—With respect to the final rule entitled "Standards of Performance for New Residential

Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces'' (80 Fed. Reg. 13672 (March 16, 2015)), the compliance deadline for Step 2 emissions standards shall be May 15, 2023.

(b) TECHNICAL AND CONFORMING CHANGES.—Not later than 60 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall finalize such technical and conforming changes to rules and guidance documents as may be necessary to implement subsection (a).

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II

115TH CONGRESS
1ST SESSION

S. 203

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2017

Mr. BURR (for himself, Mr. ROUNDS, Mr. RUBIO, Mr. TILLIS, Mr. CRAPO, Mr. HELLER, Mr. GRAHAM, Mr. BOOZMAN, Mr. MORAN, Mrs. ERNST, Mr. MANCHIN, Mr. INHOFE, Mrs. FISCHER, Mr. TESTER, and Mr. DONNELLY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To reaffirm that the Environmental Protection Agency may not regulate vehicles used solely for competition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Recognizing the Protection of Motorsports Act of 2017" or the "RPM Act of 2017".

SEC. 2. EXCLUSION FROM ANTI-TAMPERING PROVISIONS.

Section 203(a) of the Clean Air Act (42 U.S.C. 7522(a)) is amended by adding at the end the following: "No action with respect to any device or element of design described in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of modifying a motor vehicle into a vehicle to be used solely for competition.".

SEC. 3. DEFINITION OF MOTOR VEHICLE.

Section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)) is amended—

(1) by striking "(2) The term" and inserting the following:

"(2) MOTOR VEHICLE.—

"(A) IN GENERAL.—The term"; and

(2) by adding at the end the following:

"(B) EXCLUSION.—The term 'motor vehicle' does not include a vehicle used solely for competition, including a vehicle used solely for competition that was converted from a motor vehicle.".

SEC. 4. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Pro-

tection Agency shall finalize any regulation necessary to implement the amendments made by this Act.

○

II

115TH CONGRESS
1ST SESSION

S. 839

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, APRIL 4), 2017

Mr. WICKER (for himself, Mrs. CAPITO, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Blocking Regulatory Interference from Closing Kilns Act of 2017".

SEC. 2. EXTENDING COMPLIANCE DATES (PENDING JUDICIAL REVIEW) OF RULES ADDRESSING NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING OR CLAY CERAMICS MANUFACTURING.

(a) EXTENSION OF COMPLIANCE DATES.—

(1) EXTENSION.—Each compliance date of any final rule described in subsection (b) is deemed to be extended by the time period equal to the time period described in subsection (c).

(2) DEFINITION.—In this subsection, the term "compliance date" means, with respect to any requirement of a final rule described in subsection (b), the date by which any State, local, or tribal government or other person is first required to comply.

(b) FINAL RULES DESCRIBED.—A final rule described in this subsection is any final rule to address national emission standards for hazardous air pollutants (NESHAP) for brick and structural clay products manufacturing or clay ceramics manufacturing under section 112 of the Clean Air Act (42 U.S.C. 7412), including—

(1) the final rule entitled "NESHAP for Brick and Structural Clay Products Manufacturing; and

NESHAP for Clay Ceramics Manufacturing" published at 80 Fed. Reg. 65469 (October 26, 2015);

(2) the final rule entitled "NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing: Correction" published at 80 Fed. Reg. 75817 (December 4, 2015); and

(3) any final rule that succeeds or amends the rule described in paragraph (1) or (2).

(c) PERIOD DESCRIBED.—The time period described in this subsection is the period of days that—

(1) begins on the date that is 60 days after the day on which notice of promulgation of a final rule described in subsection (b) appears in the Federal Register; and

(2) ends on the date on which judgment becomes final, and no longer subject to further appeal or review, in all actions (including actions that are filed pursuant to section 307 of the Clean Air Act (42 U.S.C. 7607))—

(A) that are filed during the 60 days described in paragraph (1); and

(B) that seek review of any aspect of such rule.

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II

115TH CONGRESS
1ST SESSION

S. 1934

To prevent catastrophic failure or shutdown of remote diesel power engines due to emission control devices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2017

Mr. SULLIVAN (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To prevent catastrophic failure or shutdown of remote diesel power engines due to emission control devices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alaska Remote Generator Reliability and Protection Act".

SEC. 2. REVISION OF REGULATIONS REQUIRED.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall revise section

60.4216(c) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act), by striking ", except that for 2014 model year" and all that follows through "compared to engine-out emissions".

(b) ELECTRICITY AND ENERGY RELIABILITY.—A revision of section 60.4216 of title 40, Code of Federal Regulations, may require the installation of emission control devices only if, after consultation with the Secretary of Energy, the Administrator of the Environmental Protection Agency determines that such a requirement will not negatively affect electricity or energy reliability in any remote area of the State of Alaska.

○

May 15, 2017

EPA Office of Policy Regulatory Reform
Mail Code 1803A
1200 Pennsylvania Avenue
NW Washington DC, 20460

Attention: Docket ID No. EPA-HQ-OA-2017-0190

Re: Marine Tier 3 engine PM emission control device requirement

Regulatory Reform Task Force:

The Alaska Energy Authority (AEA), on behalf of rural Alaska communities is hereby submitting comments pursuant to the above-referenced docket and Executive Order 13777. The purpose of EO 13777 is to alleviate unnecessary regulatory burdens on the American people. The Alaska Energy Authority is the state's energy office and lead agency for statewide energy policy and program development. AEA's mission is to "reduce the cost of energy in Alaska." AEA supports energy infrastructure and provides technical assistance to over 195 remote, islanded-grid, rural Alaska communities.

AEA respectfully requests that the EPA rescind the particulate matter (PM) emission control device requirement for marine Tier 3 engines used in prime power applications in rural areas of Alaska. It is well known that PM emissions create health risks, and EPA's actions have effectively reduced PM emissions under the NSPS rule. However, the emission control device requirement (related to Tier 3 marine engines) is ineffective and burdensome in rural Alaska.

Since 2007, AEA has worked with the Alaska Department of Environmental Conservation (DEC) to submit comments and provide documentation to support EPA's rulemaking applicable to remote areas of Alaska under 40 CFR 60, Subpart IIII (NSPS) and 40 CFR 63, Subpart ZZZZ (RICE NESHAP). The costs of bringing a certified technician to a remote Alaska village to repair or maintain an emission control device far outweighs the benefit in PM emissions reduction. New marine Tier 3 engines are significantly cleaner than marine Tier 2 and nonroad Tier 3 engines. Requiring a PM device to be added to a marine Tier 3 engine in a remote setting imposes an unnecessary burden on the residents of rural Alaska, including many tribal entities.

40 CFR 60.4216 of the final NSPS IIII rule, published June 28, 2011, permits "remote areas of Alaska" to install marine engines certified to 40 CFR 94 or 40 CFR 1042. However, 2014 model year and later engines that do not meet Tier 4 PM standards must install a PM emission control device that achieves emission reductions of 85% compared to engine-out emissions. Emissions standards for marine Tier 3 engines were not finalized in 2007 when the Alaska Alternative Implementation Plan was developed. It is significant to note that once EPA finalized the marine Tier 3 standards, it became apparent that marine Tier 3 engines do not warrant additional PM emissions reduction.

813 West Northern Lights Boulevard Anchorage, Alaska 99503 T 907.771.3000 Toll Free (Alaska Only) 888.300.8534 F 907.771.3044

The number of diesel engines operating in remote communities of Alaska is significantly fewer than that in U.S. urban areas. In many cases, the only diesel engine running in an area encompassing hundreds of square miles is a single power plant engine. The population density in rural areas is significantly less than one resident per square mile.

EPA has previously recognized the unique circumstances of rural Alaska and provided needed regulatory relief and this request is complementary to, and consistent with those previous requests, which have been appreciatively granted.

AEA, again, respectfully requests that EPA rescind the emission control device requirement for new marine Tier 3 engines used in prime power applications in remote areas of Alaska.

For additional information, please contact David Lockard P.E. at (907) 771-3062.

Sincerely,

Michael E. Lamb, CPA, CGFM, CGMA
Executive Director

cc: Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young
Governor Bill Walker
Commissioner Chris Hladick, State of Alaska, DCCED
Commissioner Larry Hartig, State of Alaska, DEC
Commissioner Joel Niemeyer, Denali Commission
Thomas Turner, Environmental Program Manager, State of Alaska, DEC

November 13, 2017

The Honorable Shelley Moore Capito
Chair
Subcommittee on Clean Air and Nuclear Safety
Committee on Environment and Public Works
Dirksen Senate Office Building, SD-410
Washington, DC 20510

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Clean Air and Nuclear Safety
Committee on Environment and Public Works
Dirksen Senate Office Building, SD-456
Washington, DC 20510

Dear Chairwoman Capito & Ranking Member Whitehouse:

The undersigned organizations respectfully thank the Subcommittee on Clean Air and Nuclear Safety for its consideration of S. 203, the "Recognizing the Protection of Motorsports Act of 2017" (RPM Act). As representatives of race sanctioning bodies, motorsports participants, and companies that manufacture, sell and install race parts, we ask for your assistance in providing certainty to the racing community and the thousands of people who work in the industry.

The Clean Air Act (CAA) of 1970 established authority for the U.S. Environmental Protection Agency (EPA) to regulate motor vehicles used on the highways and prevent modifications that would take those vehicles out-of-compliance with emission regulations. However, Congress did not intend for the law to apply to race vehicles.

In 2015, the EPA included clarifying language within the proposed rule for greenhouse gas emissions from trucks and buses, stating that it is illegal to modify the emissions system of a motor vehicle out of its certified configuration even if it is converted exclusively for race use. This interpretation was inconsistent with 45 years of previous agency policy, practice and industry understanding of the law as it applies to dedicated race vehicles.

The EPA withdrew the clarification language from the final greenhouse gas rule, although the agency noted that it stands by its interpretation that the Clean Air Act does not permit performance modifications to race vehicles converted from a motor vehicle. Consequently, any business that makes or supplies the parts and services that modify the emissions system of these race vehicles is subject to EPA enforcement.

The RPM Act provides clarity to industry and the racing community that the Clean Air Act allows motor vehicles to be converted into dedicated race vehicles and that such conversions are not an act of tampering. The bill protects tens of thousands of jobs and racers' ability to purchase the parts and equipment that enable them to compete. It also protects an American tradition.

If you have any questions, please feel free to contact Stuart Gosswein, SEMA's Sr. Director, Federal Government Affairs at (202) 777-1220 or stuartg@sema.org.

Sincerely,

American Motorcyclist Association (AMA)
Auto Care Association (Auto Care)
Automotive Warehouse Distributors Association (AWDA)
California Automotive Wholesalers Association (CAWA)
Harley-Davidson Motor Company (Harley)
International Hot Rod Association (IHRA)
LKQ Corporation (LKQ Corp)
Motor and Equipment Manufacturers Association (MEMA)
Motorcycle Industry Council (MIC)
Motorcycle Riders Foundation (MRF)
North American Trailer Dealers Association (NATDA)
National Association of Trailer Manufacturers (NATM)
Off-Road Business Association (ORBA)
Service Station Dealers of America and Allied Trades (SSDA-AT)
Specialty Equipment Market Association (SEMA)
Tire Industry Association (TIA)

November 14th, 2017

RE: Test Lab Capacity and Future Backlogs Impacting Wood Heaters

To Whomever It May Concern,

This letter serves as confirmation that OMNI-Test Laboratories (OMNI) has the capacity to accommodate the test methods prescribed by the Environmental Protection Agency (EPA) for its New Source Performance Standards (NSPS), which address appliances such as: "New Residential Wood Heaters," "New Residential Hydronic Heaters," and "Forced-Air Furnaces." This letter also conveys the current (and upcoming) issues that our Lab, as well as many others, is(are) currently experiencing, as well as examples of ways in which certain aspects of the testing process can lead to significant delays that can have a significant impact on an appliance manufacturers' ability to bring their product to North American markets.

OMNI has two standard-sized active testing stands for conducting emissions tests on Wood and Pellet Stoves, as well as a single (larger) testing stand for products with wider dimensions, such as Wood Furnaces and Hydronic Heaters. With a total of 3 active stands dedicated to EPA emissions testing, as well as a 4th stand that can be converted (if necessary) for active use, OMNI can be considered the largest accredited "Wood Heater Test Lab" approved by the EPA in North America.

OMNI representatives have estimated the average amount of time that it can take for one of our qualified Technicians to complete testing for each type of appliance. We've estimated that, on average, the physical testing portion of the Pellet Stove test method takes approximately one full day to complete. It was also estimated that the other "heater" test methods, such as those for Wood Stoves, Hydronic Heaters, and Forced-Air Furnaces, can take approximately one full work week to complete the physical testing (pending firebox sizes, additional options, etc., that could add to this time). These estimates are based on completion of the test method without any non-compliances or deficiencies.

In the past 12 months, OMNI has tested 14 Wood Heaters. Of those 14 units, there was a single appliance that did not pass the first run of the certification test series. The manufacturer was notified, and they requested the Wood Heater to be sent back to their facility to adjust the design and to continue their research and development (R&D) before sending it back for certification testing.

Considering the current state of the industry, we estimate that there will be hundreds of Wood Heaters that will need to be tested and certified before May 2020. This is taking into account both units that still need testing and expected release of new units in the coming years. As was experienced during the initial "Step 1" of the NSPS, which took effect in 2015, we anticipate a similar rush of applications from manufacturers to reserve testing space in the coming months. To prevent massive delays, the manufacturers must schedule projects months in advance. However, at times, some manufacturers decide to cancel a project that has already been planned and scheduled. This decision seems to arise when a manufacturer's R&D work extends past their own completion timelines. OMNI strives to maintain a dynamic and flexible Test Schedule. Unfortunately, this type of issue can dramatically affect our ability to maintain that flexibility. Other scheduling limitations can occur when an appliance fails to meet specific parameters in the test methods, [at times] midway through a test series, resulting in runs that were once deemed "compliant" (from an individual standpoint), having to then be considered "invalid" when taking the entire series into

consideration. Factors that contribute to failures during testing can (but are not limited to) the following: Equipment malfunctions, stoves burning too hot during a cycle that is supposed to be cooler, etc.

Regardless of whether a manufacturer decides to cancel (or push out) their requested test stand time, or whether there is a test failure that would provide an opportunity for OMNI to begin on a separate manufacturer's appliance (reducing delay time), we cannot do so based on the EPA CFR's requirement that the Lab give a 30 days' notice before conducting tests. It is understood that the requirement is intended to give EPA representatives the opportunity to observe testing in-person if they so choose.

Although it is possible to increase a Lab's capacity to conduct EPA certification tests, should a "backlog" develop due to a sudden increase in demand, the lead-time and additional resources needed to implement this increase (for what may only be a limited time; essentially pushing Labs into a risky and unfruitful long-term investment) is significant. This does not include the long training time and resources needed to adequately qualify additional staff to address the upcoming logjam. We believe that these concerns are not unique to OMNI and are being experienced by the other EPA-approved Test Labs. We are proposing a cooperative effort between EPA and the Labs to help prevent another event resulting in significant delays for the manufacturers.

Thank you for your time and consideration.

Sincerely,

Alex Tiegs
President
OMNI-Test Laboratories, Inc.

AT/sb

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November 28, 2017

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
U.S. Senate

The Honorable Thomas Carper
Ranking Member
Committee on Environment and Public Works
U.S. Senate

The Honorable Shelley Moore Capito
Chairman
Committee on Environment and Public Works
Subcommittee on Clean Air and Nuclear Safety

The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment and Public Works
Subcommittee on Clean Air and Nuclear Safety

Dear Chairman Barrasso, Ranking Member Carper, Chairwoman Capito, and Ranking Member Whitehouse:

As the trade association representing manufacturers, retailers, distributors, and servicers of wood and pellet stoves and inserts, hydronic heaters, and wood furnaces, in addition to other sectors of the hearth, patio, and barbecue industries, we are writing to express our ardent support for the legislation S. 1857, which was reviewed by the Subcommittee on Clean Air and Nuclear Safety on November 14, 2017. This letter also responds to some of the allegations made during the hearing that we know to be false.

HPBA and its members have been long-time champions of woodburning product innovation through more efficient and cleaner burning technology. Biomass, such as wood, is an important renewable home heating option. HPBA takes every opportunity to ensure the general public has a wide variety of woodburning appliances available.

The New Source Performance Standards (NSPS) rule for new residential wood and pellet stoves, hydronic heaters, and wood furnaces was finalized in 2015 and has two sets of standards. Manufacturers already have met the Step 1 standards. However, to meet Step 2 standards, manufacturers must research and develop new technologies, test them for durability, send them to an EPA-approved test lab for testing and approval, and then finally have their products certified by the EPA. To have these products in stores by the current Step 2 May 2020 deadline, the typical business cycle necessitates at least two years, meaning manufacturers currently need to complete the full process by the summer of 2018 to ensure they have Step 2-compliant products ready to be pitched to and purchased by retailers for the 2019-2020 heating season. Retailers are not going to purchase products that can't be sold in the next heating season, since it can sometimes take five years to sell a wood heater.

S. 1857 would extend the effective date of Step 2 of the EPA's NSPS by three years, from May 15, 2020 to May 15, 2023. Without this extension, at least 6,500 manufacturing jobs in mostly rural communities across the country are at risk. Many manufacturers currently have few or no products that can meet the Step 2 standard, and some may never be able to meet the standard. For those who can, Step 2-compliant wood heaters will be more expensive and less affordable for middle class families looking for a reliable and inexpensive heating option. More people will keep their older, dirtier, non-EPA-certified products due to the increase in prices, which would delay improvements in air quality.

The underlying NSPS is not flexible and does not have a lengthy transition period.
In Mr. Walke's written statement, he states that "the underlying standards are already flexible and have a lengthy transition period."[1] These standards are prescribed and are not flexible, unless EPA grants a manufacturer's request to meet an alternative requirement. However, it is unclear to the public which products have been granted special dispensations, reducing transparency for consumers looking for clean burning products tested to the same standard. Nor does the rule provide for lengthy transition periods. Many manufacturers, especially those who make furnaces, had to scramble to certify products to meet the Step 1 standards as recently as [large WAF effective date]. Those manufacturers must now immediately refocus on trying to meet the considerably more stringent Step 2 standards in time. Many manufacturers may never get there at all, let alone on time.

Delaying the effective date of Step 2 of the NSPS will enable more innovation, cleaner burning products, and products that are affordable and easy to use by consumers.
In Mr. Walke's written statement, he states that "the bill will reward laggards in the industry by allowing them to avoid compliance with standards that most manufacturers currently meet."[2] Extension of the Step 2 effective date will not remove the Step 1 standards that are currently in place. All manufacturers of wood heaters today are in compliance with Step 1, but most manufacturers do not currently meet Step 2. Extending the effective date of Step 2 will allow manufacturers to finish research and development and product testing without having to rush through the R&D stage. Without more time, consumers will not have many affordable, clean-burning heating options. Rushing through product development to meet the 2020 standards will only create more expensive, less user-friendly products that will need more frequent repairs to sensitive emissions controls components. More time allows manufacturers to develop more affordable, elegant solutions for meeting Step 2.

The legislation (S.1857) would help improve air quality and health in communities where these products are used most.
In Mr. Walke's written statement, he states that "this bill and its resulting delays would harm air quality and health in the communities where these devices are most used."[3] Delaying this rule will enable manufacturers to develop affordable, clean burning and efficient wood heaters that consumers will want to buy. If Step 2 goes into effect as is, product offerings will dip significantly, the prices of products will increase, and so it will become more difficult (if not impossible) for consumers in mostly rural communities to upgrade their existing appliance to a newer, EPA-certified model. Contrary to Mr. Walke's assertion, making it more difficult for consumers to buy efficient products will have the perverse effect of delaying air quality improvements. Most of the emissions reductions in the U.S. from wood heat come from changing out older, non-EPA-certified stoves and replacing them with cleaner and more efficient heating options. For example, Libby, MT, the town had 1,130 older woodstoves replaced

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[1] *Legislative Hearing on S. 1857, S. 203, S. 839, and S. 1934: Hearing before the Subcommittee on Clean Air and Nuclear Safety of the Senate Committee on Environment and Public Works*, 115th Cong. 17 (2017) (testimony of John Walke). Retrieved from https://www.epw.senate.gov/public/_cache/files/1/0/105c5824-6dcf-42c5-b135-f3ae0efeb146/57B3BAB97CD92A72B94BCDC5E690D6C9.walke-testimony-11.14.17.pdf

[2] *Legislative Hearing on S. 1857, S. 203, S. 839, and S. 1934: Hearing before the Subcommittee on Clean Air and Nuclear Safety of the Senate Committee on Environment and Public Works*, 115th Cong. 17 (2017) (testimony of John Walke). Retrieved from https://www.epw.senate.gov/public/_cache/files/1/0/105c5824-6dcf-42c5-b135-f3ae0efeb146/57B3BAB97CD92A72B94BCDC5E690D6C9.walke-testimony-11.14.17.pdf

[3] *Legislative Hearing on S. 1857, S. 203, S. 839, and S. 1934: Hearing before the Subcommittee on Clean Air and Nuclear Safety of the Senate Committee on Environment and Public Works*, 115th Cong. 17 (2017) (testimony of John Walke). Retrieved from https://www.epw.senate.gov/public/_cache/files/1/0/105c5824-6dcf-42c5-b135-f3ae0efeb146/57B3BAB97CD92A72B94BCDC5E690D6C9.walke-testimony-11.14.17.pdf

with newer EPA-certified stoves. As a result, indoor air quality improved by 70 percent while outdoor air quality improved by 30 percent.[4]

There are very few wood heaters that already meet the Step 2 standards.
In Mr. Walke's written statement, he states that "there is a long list of devices that already meet these Step 2 standards, and Congress should not reward the laggards."[5] If one looks at the list of currently EPA-certified stoves, which is linked to in Mr. Walke's written statement, you see a list of about 550 wood and pellet stoves.[6] These are the stoves that meet Step 1, not Step 2. To determine which of these stoves meet Step 2, the stove's emissions limit must be less than or equal to 2.0 g/hr (if tested with crib wood) and it also must have a carbon monoxide (CO) measurement. Of the 550 stoves that meet Step 1, only 46 stoves (20 woodstoves and 26 pellet stoves) – fewer than 10% – meet these criteria. For hydronic heaters, the number of models that comply with Step 2 are even more dramatic. As of June 2017, there are 125 hydronic heater models that meet Step 1.[7] Of that number, we know of only seven which meet Step 2. For wood furnaces (also known as forced-air furnaces), only 15 models meet Step 1. Of those 15 models, only one model meets Step 2 – even then, the model does not meet the test method prescribed in the NSPS; rather it was granted an alternative test method in order to do so.[8]

HPBA supports the NSPS Step 1 standards and does not support a full repeal of the NSPS.
In Mr. Walke's written statement, he states that HPBA, along with the Northeast States for Coordinated Air Use Management (NESCAUM), "wrote to members of the U.S. House of Representatives about H.R. 694, a companion bill in the House. These groups voiced support for compliance by 2020."[9] H.R. 694 is not the companion bill to S. 1857, the legislation discussed during the November 14, 2017 hearing. The companion bill to S. 1857 is H.R. 453.[10] The bill Mr. Walke referred to, H.R. 694, is the legislation in the House which would repeal the 2015 NSPS rule in its entirety, meaning that most appliance categories (*i.e.*, anything that was not subject to the 1988 rule) would not be federally regulated.[11] We do not support H.R. 694, which was expressed in a joint letter with NESCAUM sent to the U.S. House of Representatives on May 8, 2017. The letter generally supports the NSPS and opposes a full repeal of the standards. It cannot be said that the letter shows "strong support for compliance by 2020," as stated by Mr. Walke. The 2020 deadline is never mentioned in that letter, which is attached as part of this statement.

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[4] Hearth, Patio & Barbecue Association. (2008). Preliminary Report: Clearing the Smoke: The Woodstove Changeout in Libby, Montana. Retrieved from https://www.hpba.org/Portals/26/Documents/Government%20Affairs/Libby_Report-Final.pdf?ver=2017-06-13-082448-233

[5] *Legislative Hearing on S. 1857, S. 203, S. 839, and S. 1934: Hearing before the Subcommittee on Clean Air and Nuclear Safety of the Senate Committee on Environment and Public Works*, 115th Cong. 18 (2017) (testimony of John Walke). Retrieved from https://www.epw.senate.gov/public/_cache/files/1/0/105c5824-6dcf-42c5-b135-f3ae0efeb146/57B3BAB97CD92A72B94BCDC5E690D6C9.walke-testimony-11.14.17.pdf

[6] *See* U.S. EPA. Compliance, List of EPA Certified Wood Stoves. (October 2017). Retrieved from https://www.epa.gov/compliance/list-epa-certified-wood-stoves

[7] *See* U.S. EPA. Compliance, List of EPA Certified Hydronic Heaters. (June 2017). Retrieved from https://www.epa.gov/compliance/list-epa-certified-hydronic-heaters

[8] *See* U.S. EPA. Compliance, List of EPA Certified Forced-Air Furnaces. (October 2017). Retrieved from https://www.epa.gov/compliance/list-epa-certified-forced-air-furnaces

[9] *Legislative Hearing on S. 1857, S. 203, S. 839, and S. 1934: Hearing before the Subcommittee on Clean Air and Nuclear Safety of the Senate Committee on Environment and Public Works*, 115th Cong. 18 (2017) (testimony of John Walke). Retrieved from https://www.epw.senate.gov/public/_cache/files/1/0/105c5824-6dcf-42c5-b135-f3ae0efeb146/57B3BAB97CD92A72B94BCDC5E690D6C9.walke-testimony-11.14.17.pdf

[10] S. 1857, 115th Cong. (2017). Related bills. Accessed November 27, 2017. https://www.congress.gov/bill/115th-congress/senate-bill/1857/related-bills

[11] Stop EPA Overregulation of Rural Americans Act of 2017. H.R. 694, 115th Cong. (2017).

Additional Points
With only five EPA-approved test labs, the industry faces a logjam getting products tested by EPA-approved labs. As the deadline gets closer, hundreds of appliances will need EPA testing and certification in a very short timeframe. There is not enough capacity to get through the process in time. A letter from OMNI-Test Laboratories, arguably the largest EPA-accredited test lab for wood heaters in the U.S., is attached, attesting to the upcoming test lab logjam. Once a valid test by an approved lab is complete and a manufacturer receives a certificate of conformity, EPA must review the certification application, which can take more than 60 days if there are questions. The surge in products needing testing will further slow down the process to final EPA certification. As a result, not all compliant products will be available on the effective date of Step 2, May 15, 2020.

There is no sell-through provision to allow Step 1 products already at retailers on May 15, 2020 to be sold while EPA approves new Step 2 products. The effects would be devastating to small businesses. Many companies, both large and small, already are laying off workers to divert capital necessary to fund the expensive research and development costs. With research and development costs ranging from $200,000 to $500,000 per product (plus an additional $20,000 fee per official laboratory test), companies are working to raise the capital needed to meet the new regulations with small companies being hit the hardest. For large companies that may have as many as 30 products, this investment could be more than $10 million. For virtually all manufacturers in the industry, the only viable means of getting the funds needed for this type of investment is to increase the price of products. For smaller companies, it is even more difficult to make these up-front investments in a short period of time since they don't have as many products to spread across this cost. As a result, many companies will have to contemplate downsizing both staff and product offerings or may go out of business, further limiting the choices available to consumers.

Rural communities would be particularly hard hit. Many impacted businesses were founded in rural communities to meet home heating and business needs. If small businesses close, those communities will lose jobs. In addition, rural communities are primary users of woodburning appliances. The end result for areas where our members have operated for generations would be fewer and more expensive products, stunted improvements in air quality, and increased unemployment.

Conclusion
An extension not only provides manufacturers with equal opportunity and necessary access to testing labs, but also would ensure stability in the retailer market, an important staple to healthy local economies. Additional time will allow for the continued development of more efficient and reliable woodburning hydronic heaters, wood and pellet stoves, and wood furnaces for American homes.

Thank you for your consideration of S. 1857 and the testimony of Paul Williams, Vice President of Business Intelligence at U.S. Stove Company. We look forward to further discussion and hope to be a resource to you and your staff in the future.

Sincerely,

Jack V. Goldman

Jack Goldman
President & CEO
Hearth, Patio & Barbecue Association

Attachments: HPBA and NESCAUM May 8, 2017 Letter to U.S. House of Representatives
Letter from OMNI-Test Laboratories Regarding Test Lab Capacity

ATTACHMENT 1
HPBA and NESCAUM May 8, 2017 Letter to U.S. House of Representatives





May 8, 2017

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives

The Honorable Greg Walden
Chairman
Committee on Energy & Commerce
U.S. House of Representatives

The Honorable Frank Pallone
Ranking Member
Committee on Energy & Commerce
U.S. House of Representatives

The Honorable John Shimkus
Chairman
Committee on Energy & Commerce
Subcommittee on Environment
U.S. House of Representatives

The Honorable Paul Tonko
Ranking Member
Committee on Energy & Commerce
Subcommittee on Environment
U.S. House of Representatives

Dear Speaker Ryan, Minority Leader Pelosi, Chairman Walden, Ranking Member Pallone, Chairman Shimkus, and Ranking Member Tonko:

The Northeast States for Coordinated Air Use Management (NESCAUM) and the Hearth, Patio & Barbecue Association (HPBA) are writing to express our joint concern with H.R. 694 that would rescind the 2015 New Source Performance Standards (NSPS) for residential wood heating devices promulgated by the U.S. Environmental Agency (EPA). Our associations represent state environmental agencies and the wood heating appliance manufacturers.

The federal Clean Air Act requires EPA to review and update the NSPS, if appropriate, at least every 8 years, yet the original Residential Wood Heater NSPS was not revisited for almost 30 years after its inception in 1988. Since that time, the universe of residential wood burning sources has greatly expanded. Under the 1988 NSPS, many categories of devices, including outdoor wood boilers, pellet stoves, single burn rate stoves, and wood furnaces, were not subject to regulation. The 2015 NSPS expands the scope of the regulation to include these product categories and recognizes that the technology of previously-covered devices has improved in regards to reduced emissions and increased efficiencies.

The 2015 NSPS program reflects today's modern wood heating devices that provide important benefits to millions of Americans, especially those living in rural communities.

The program fosters the market for wood, which is an important domestic source of heating fuel. It will save consumers money, many of whom are low-income households, by lowering fuel costs through increased appliance efficiency. Replacing non-EPA-certified stoves with today's modern stoves will reduce health risks from exposure to wood smoke,[1] but this can only be done if products are clean burning, fuel efficient, and affordable. Finally, this program will ensure continued innovation in U.S. manufacturing that will help keep domestic companies competitive in the solid fuel industry.

In refining technologies over the years, many companies have invested significant resources to improve the performance of appliances. The 2015 NSPS is already fostering industrial innovation by North American wood burning equipment manufacturers and there are many devices currently available in the market that address the requirements of today's standards. Eliminating the NSPS will punish the companies that have invested in technology innovation and reward those who have not.

Cleaner devices will generate greater public acceptance of wood fuels for heating. We have already seen that in the absence of modern technology requirements, a number of states and municipalities have acted on their own in response to citizen complaints to limit or ban the use of wood burning devices.[2] Without an updated federal standard, the continuing sale of products conforming only to the 1988 version of the NSPS will potentially relegate the industry to an undesirable regulatory landscape where numerous state and local jurisdictions promulgate differing rules on what products can and cannot be sold. On the other hand, by fostering the creation of a diverse set of consumer choices for clean burning and efficient devices, manufacturers may have access to expanded market opportunities for their products.

We urge you to oppose wholesale repeal of the 2015 residential wood heater NSPS. In doing so, you will promote public health protection, lower heating costs, help build markets for locally-sourced domestic fuels and devices, and support North American manufacturers in a competitive international market. Representatives from our associations can provide further information upon request.

Sincerely,

Jack Goldman, President & CEO
Hearth, Patio & Barbecue Association (HPBA)
1901 North Moore St, Suite 600
Arlington, VA 22209

Arthur Marin, Executive Director
Northeast States for Coordinated Air Use Management (NESCAUM)
89 South Street, Suite 602
Boston, MA 02111

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[1] *See generally* Curtis W. Noonan et al., *Assessing the Impact of a Wood Stove Replacement Program on Air Quality and Children's Health*, Health Effects Institute, Rep. No. 162 (December 2011), available at https://www.healtheffects.org/publications

[2] This includes, but is not limited to, parts of: Alaska, California, Colorado, Michigan, Oregon, Washington, Wisconsin, Vermont. *See* U.S. EPA, *Ordinances and Regulations for Wood Burning Appliances* (Accessed February 21, 2017), available at https://www.epa.gov/burnwise/ordinances-and-regulations-wood-burning-appliances.

ATTACHMENT 2
Letter from OMNI-Test Laboratories Regarding Test Lab Capacity

November 14th, 2017

RE: Test Lab Capacity and Future Backlogs Impacting Wood Heaters

To Whomever It May Concern,

This letter serves as confirmation that OMNI-Test Laboratories (OMNI) has the capacity to accommodate the test methods prescribed by the Environmental Protection Agency (EPA) for its New Source Performance Standards (NSPS), which address appliances such as: "New Residential Wood Heaters," "New Residential Hydronic Heaters," and "Forced-Air Furnaces." This letter also conveys the current (and upcoming) issues that our Lab, as well as many others, is(are) currently experiencing, as well as examples of ways in which certain aspects of the testing process can lead to significant delays that can have a significant impact on an appliance manufacturers' ability to bring their product to North American markets.

OMNI has two standard-sized active testing stands for conducting emissions tests on Wood and Pellet Stoves, as well as a single (larger) testing stand for products with wider dimensions, such as Wood Furnaces and Hydronic Heaters. With a total of 3 active stands dedicated to EPA emissions testing, as well as a 4th stand that can be converted (if necessary) for active use, OMNI can be considered the largest accredited "Wood Heater Test Lab" approved by the EPA in North America.

OMNI representatives have estimated the average amount of time that it can take for one of our qualified Technicians to complete testing for each type of appliance. We've estimated that, on average, the physical testing portion of the Pellet Stove test method takes approximately one full day to complete. It was also estimated that the other "heater" test methods, such as those for Wood Stoves, Hydronic Heaters, and Forced-Air Furnaces, can take approximately one full work week to complete the physical testing (pending firebox sizes, additional options, etc., that could add to this time). These estimates are based on completion of the test method without any non-compliances or deficiencies.

In the past 12 months, OMNI has tested 14 Wood Heaters. Of those 14 units, there was a single appliance that did not pass the first run of the certification test series. The manufacturer was notified, and they requested the Wood Heater to be sent back to their facility to adjust the design and to continue their research and development (R&D) before sending it back for certification testing.

Considering the current state of the industry, we estimate that there will be hundreds of Wood Heaters that will need to be tested and certified before May 2020. This is taking into account both units that still need testing and expected release of new units in the coming years. As was experienced during the initial "Step 1" of the NSPS, which took effect in 2015, we anticipate a similar rush of applications from manufacturers to reserve testing space in the coming months. To prevent massive delays, the manufacturers must schedule projects months in advance. However, at times, some manufacturers decide to cancel a project that has already been planned and scheduled. This decision seems to arise when a manufacturer's R&D work extends past their own completion timelines. OMNI strives to maintain a dynamic and flexible Test Schedule. Unfortunately, this type of issue can dramatically affect our ability to maintain that flexibility. Other scheduling limitations can occur when an appliance fails to meet specific parameters in the test methods, [at times] midway through a test series, resulting in runs that were once deemed "compliant" (from an individual standpoint), having to then be considered "invalid" when taking the entire series into

consideration. Factors that contribute to failures during testing can (but are not limited to) the following: Equipment malfunctions, stoves burning too hot during a cycle that is supposed to be cooler, etc.

Regardless of whether a manufacturer decides to cancel (or push out) their requested test stand time, or whether there is a test failure that would provide an opportunity for OMNI to begin on a separate manufacturer's appliance (reducing delay time), we cannot do so based on the EPA CFR's requirement that the Lab give a 30 days' notice before conducting tests. It is understood that the requirement is intended to give EPA representatives the opportunity to observe testing in-person if they so choose.

Although it is possible to increase a Lab's capacity to conduct EPA certification tests, should a "backlog" develop due to a sudden increase in demand, the lead-time and additional resources needed to implement this increase (for what may only be a limited time; essentially pushing Labs into a risky and unfruitful long-term investment) is significant. This does not include the long training time and resources needed to adequately qualify additional staff to address the upcoming logjam. We believe that these concerns are not unique to OMNI and are being experienced by the other EPA-approved Test Labs. We are proposing a cooperative effort between EPA and the Labs to help prevent another event resulting in significant delays for the manufacturers.

Thank you for your time and consideration.

Sincerely,

Alex Tiegs
President
OMNI-Test Laboratories, Inc.

AT/sb

OMNI-Test Laboratories, Inc.
Product Testing & Certification
www.omni-test.com

Mailing: Post Office Box 301367 • 97294
Street: 13327 NE Airport Way • 97230
Portland, Oregon • USA

Phone: (503) 643-3788
Fax: (503) 643-3799
Email: atiegs@omni-test.com

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The Honorable Senator Dan Sullivan
702 Hart Senate Office Building
Washington DC 20510

Re: Negative Effect of Tier 3 emissions requirements on diesel engines

Dear Senator Sullivan,

With this letter we would like to highlight some of the challenges rural communities in interior Alaska are facing with regard to implementing the requirements put forth by the EPA RICE rules and the effect of those requirements on our engines in Rural Alaska, which provide 100% of the electricity in most of our communities.

Cost: Most importantly **the cost of Diesel generators that many of our communities use has nearly doubled due to the regulations that the EPA has imposed**. Attached in Appendix 1. is an invoice from Alaska Diesel Electric in Anchorage showing the cost of a standard EPA Certified Tier 3 marine engine, which the marine industry is allowed to use for prime power on vessels but which rural villages cannot legal install without a Diesel Particulate Filter (DPF) due to requirements in ***40 CFR 60.4216***.

Cost of 99kW Diesel generator with accessories Before Diesel Particulate Filter: $39,681

Cost of same 99kW Diesel generator with Diesel Particulate Filter: $66,149

% increase in cost to bring into current EPA Regulations: **66% INCREASE IN COST**

Cost on the used market:
EPA requirements have also had a negative impact on the used market for diesel gensets. Recently the community of Chalkyitsik put out a bid for 2 new or low hour 99kW generator JD4045AFM85 manufactured before MY 2014 to be in compliance with 40 CFR 60.4216. The same genset package without a DPF that could have been purchased brand new for $39,681 was unavailable from 4 vendors who searched across the country. The one vendor who was able to supply these engines priced them at $67,750/ea. (Appendix 2.). **This represents a 70% increase in cost.**

Maintenance: The additional cost of maintaining a Diesel Particulate Filter is well known across the industry. If anything goes wrong with the Diesel Particulate Filter the generator shuts down. Only a factory trained service technician with the proper codes can fix the problem. In Rural Alaska these technicians are at least 1-2 days out and extremely expensive. It is not uncommon, especially in the fall and winter, for villages to be without flights due to weather or extreme cold for multiple days or weeks. If a failure in the powerhouse occurs during one of these times, the village could suffer significant damage to its infrastructure and potentially loss of life.

Alaska Diesel Electric salesman Kurt Tornberg relayed a story from Dutch Harbor's powerhouse, which had a DPF unit installed on one of their engines. A technician from AK Diesel Electric had to fly to Dutch Harbor (2 hour flight, $1000 r/t airline ticket) to clear codes on the DPF with the factory software then

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return without performing any additional work. Had bad weather moved in, the technician could have easily been there for 2+ days at a cost of $130/hr.

We will continue to collect and relay stories of hardship and increased cost that the EPA regulations are incurring on rural Alaskan communities and we appreciate the Senator's willingness to sponsor S. 1394 which seeks to address this issue in small rural communities.

Thank you,

Dave Messier
Rural Energy Coordinator
Tanana Chiefs Conference
122 1st Ave Suite 600
Fairbanks, AK 99701

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NORTHERN LIGHTS

Alaska Diesel Electric
1200 West Int'l Airport Road
Anchorage AK 99518
(907) 562-2222
www.northern-lights.com

QUOTE NUMBER	QUOTE DATE	SALES REP	EXPIRE DATE	CHANGE DATE	DATE PRINTED
[redacted]	May 17, 2016	[redacted]	Jun 16, 2016		May 17, 2016 2:51 PM

OPTIONS

QTY	INSTALLED	PART NO.	DESCRIPTION
1	Yes	22-49540	40' Powerview Extension Harness,Diagnostic Output Connection
1	Yes	22-60008	PMG Conversion Kit with MX341 A.C. Voltage Regulator
1	No	27-39516	Exhaust Flex S/S 4" X 18" 4" CAT Flange X 4" Floating Flange
1	Yes	37-00086	Powerview Module

OPTIONS SUB-TOTAL $3,709

All amounts are in US Dollars

PRICE RECAP

ITEM	AMOUNT
Base Model Price	$35,521
Options	$3,709
Order Sub-Total	$39,230
Plus Freight	$451
Total Sales Price (Freight COLLECT)	$39,681

Cost of a 99kW genset without DPF

All amounts are in US Dollars

DELIVERY AND CONTACT INFORMATION

SHIP FROM	CUSTOMER PO	TERMS	REQUESTED DELIVERY
ANCHORAGE		PAY PRIOR TO SHIPMENT	

TRANSPORTATION TYPE	TRANSPORTATION TERMS	TRANSPORTATION DETAILS
SURFACE	Freight Collect, Consignee pays freight charges	

CONTACT	TELEPHONE	FAX	E-MAIL
[redacted]	[redacted]	[redacted]	[redacted]

Requested ship date is subject to receiving an executed order, availability, and production scheduling approval.

The fuel supply and return, cooling, mounting, air supply, electrical connections, exhaust and other systems must be correctly designed and properly installed to assure safe and satisfactory operation. Please consult with Northern Lights or other qualified professionals to assure correct application and installation of this product.

LIMITATION OF WARRANTIES AND REMEDIES: CUSTOMER OR CUSTOMER'S AGENT ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTANDS THE LIMITATION OF WARRANTY AND REMEDIES INFORMATION FOR THE GOODS SOLD ON THIS ORDER OR INVOICE AND AGREES TO BE BOUND BY THE SAME. NORTHERN LIGHTS, INC.'S (ADE) RESPONSIBILITY IS LIMITED TO THE REPAIR OR REPLACEMENT OF ANY PART NLI (ADE) AGREES IS DEFECTIVE IN MATERIALS OR WORKMANSHIP UNDER NORMAL USE AND SERVICE DURING THE WARRANTY PERIOD. NLI (ADE) LIMITS REMEDIES TO THOSE PROVIDED IN THE APPLICABLE LIMITED WARRANTY STATEMENT AND EXPRESSLY EXCLUDES LIABILITY FOR LOST PROFITS, INCIDENTAL AND CONSEQUENTIAL DAMAGES. OTHER THAN THOSE WARRANTIES THAT APPEAR ON THE LIMITED WARRANTY STATEMENT, NLI (ADE) MAKES NO EXPRESS OR IMPLIED WARRANTIES RESPECTING ITS PRODUCTS, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS.

Proposal for a M99C13.2S to RAMPART VILLAGE Total sales price is $39,681

This proposal offered by _____ Customer acceptance by _____

Page 2

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Appendix 1. Quote from Alaska Diesel Electric With and Without EPA required DPF

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Alaska Diesel Electric
1200 West Int'l Airport Road
Anchorage AK 99518
(907) 562-2222
www.northern-lights.com

MARINE GENERATOR QUOTE

QUOTE NUMBER	QUOTE DATE	SALES REP	EXPIRE DATE	CHANGE DATE	DATE PRINTED
[redacted]	May 17, 2016	[redacted]	Jun 16, 2016		May 17, 2016 2:51 PM

To: RAMPART VILLAGE
PO BOX 29
RAMPART AK 99676

Ship To: RAMPART VILLAGE
PO BOX 29
RAMPART AK 99676

[redacted]

THIS IS THE UPDATED VERSION AND IS COMPLIANT WITH REQUEST FROM FLOYDD. THERE IS NOT AN EXTENDED RUN OIL PAN AVAILABLE FOR THIS MODEL.

- 1- JD 4045 TFM 85 genset, 68 ekW Prime, marine jacketed tier 3 engine, electronically governed
- 1 JD 4045 AFM 85 genset, 101eKW Prime, marine jacketed tier 3 genset, electronically governed
- Both generators mounted on skids with isolators
- Both Gen-ends to have voltage regulators 3.3 VDC Dry Contact Inputs
- Both Generators to include PMGs
- Both engines to have pre-installed, pre-wired murphy powerview PV101-C with 40 extension harness, diagnostic output connection
- 12 V operating system for both gensets
- 4 x 18 JD flex flange for exhaust s/s Cat Flange x 4 floating flange
- Shipping to Fairbanks, AK final location in Fairbanks TBD, assume there will be equipment available to offload the gensets from a truck
- Please include as an independent option for each generator a line item for an extended service oil pan kit to increase time between oil changes to 3000 hours, this MAY or MAY NOT be requested by the tribe during the final purchase but we would like it to be evaluated as an option
- Please include your organization s information on the gen-sets warranty
- **Commisioning of generator performed by Electric Power Constructors. If they are not chosen, commisioning will be performed byAlaska Diesel Electric with and additional cost of $2500.00**

QUANTITY	MODEL	PRODUCT NO.	DESCRIPTION
1	M99C13	M99C13.2S	99kW@1800RPM 3PH Keel Cooled SAE#3/#11-1/2 Tier 3 Specifications: 99KW Continuous 277/480 Volts 0.8PF 3 Phase 1800 RPM 60 Hertz Freshwater cooling with expansion tank 12 Volt DC electrical system Standard DC Ground (- to engine block)
BASE MODEL PRICE			$35,521

BASIC PRICE INCLUDES THESE STANDARD FEATURES:

- Heavy duty engine block with wet cylinder liners.
- Spin-on oil filter.
- Crankcase breather filter system.
- Dry element air filter.
- Fresh water cooled cast iron exhaust manifold / expansion tank and turbocharger.
- Freshwater cooling system with keel cooler connections OR heat exchanger cooling with raw water pump (as noted in model descriptions).
- Primary water separator & secondary fuel filter.
- 12 volt standard ground marine grade electrical system with 75 amp battery charging alternator.
- Basic engine control system with generator-mounted stop / start switches.
- Brushless generator.
- Belt guard.
- Steel base frame.
- Gray enamel finish.
- Load tested at factory.
- Operator's and parts manuals.
- Two year warranty on parts and labor in shop only. Travel paid for onsite repairs or work.

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NORTHERN LIGHTS

Alaska Diesel Electric
1200 West Int'l Airport Road
Anchorage AK 99518
(907) 562-2222
www.northern-lights.com

MARINE GENERATOR QUOTE

QUOTE NUMBER	QUOTE DATE	SALES REP	EXPIRE DATE	CHANGE DATE	DATE PRINTED
[redacted]	May 17, 2016	[redacted]	Jun 16, 2016		Jun 6, 2016 10:08 AM

To: RAMPART VILLAGE
PO BOX 29
RAMPART AK 99675

[redacted]

Ship To: RAMPART VILLAGE
122 First Ave
FAIRBANKS AK 99701

THIS IS THE UPDATED VERSION AND IS COMPLIANT WITH REQUEST FROM FLOYDD. THERE IS NOT AN EXTENDED RUN OIL PAN AVAILABLE FOR THIS MODEL.

- 1- JD 4045 TFM 85 genset, 68 ekW Prime, marine jacketed tier 3 engine, electronically governed
- 1 JD 4045 AFM 85 genset, 101eKW Prime, marine jacketed tier 3 genset, electronically governed
- Both generators mounted on skids with isolators
- Both Gen-ends to have voltage regulators 3.3 VDC Dry Contact Inputs
- Both Generators to include PMGs
- Both engines to have pre-installed, pre-wired murphy powerview PV101-C with 40 extension harness. diagnostic output connection
- 12 V operating system for both gensets
- 4 x 18 JD flex flange for exhaust s/s Cat Flange x 4 floating flange
- Shipping to Fairbanks, AK final location in Fairbanks TBD, assume there will be equipment available to offload the gensets from a truck
- Please include as an independent option for each generator a line item for an extended service oil pan kit to increase time between oil changes to 3000 hours, this MAY or MAY NOT be requested by the tribe during the final purchase but we would like it to be evaluated as an option
- Please include your organization s information on the gen-sets warranty
- **Commisioning of generator performed by Electric Power Constructors. If they are not chosen, commisioning will be performed byAlaska Diesel Electric with and additional cost of $2500.00**

*****THIS IS REVISION B INCLUDING THE DIESEL PARTICULATE FILTERS AND MONITORING SYSTEMS*****

QUANTITY	MODEL	PRODUCT NO.	DESCRIPTION
1	M99C13	M99C13.2S	99kW@1800RPM 3PH Keel Cooled SAE#3/#11-1/2 Tier 3 Specifications: 99KW Continuous 277/480 Volts 0.8PF 3 Phase 1800 RPM 60 Hertz Freshwater cooling with expansion tank 12 Volt DC electrical system Standard DC Ground (- to engine block)

BASE MODEL PRICE $35,521

BASIC PRICE INCLUDES THESE STANDARD FEATURES:

- Heavy duty engine block with wet cylinder liners.
- Spin-on oil filter.
- Crankcase breather filter system.
- Dry element air filter.
- Fresh water cooled cast iron exhaust manifold / expansion tank and turbocharger.
- Freshwater cooling system with keel cooler connections OR heat exchanger cooling with raw water pump (as noted in model descriptions).
- Primary water separator & secondary fuel filter.
- 12 volt standard ground marine grade electrical system with 75 amp battery charging alternator.
- Basic engine control system with generator-mounted stop / start switches.
- Brushless generator.
- Belt guard.
- Steel base frame.
- Gray enamel finish.
- Load tested at factory.

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Alaska Diesel Electric
1200 West Int'l Airport Road
Anchorage AK 99518
(907) 562-2222
www.northern-lights.com

QUOTE NUMBER	QUOTE DATE	SALES REP	EXPIRE DATE	CHANGE DATE	DATE PRINTED
[redacted]	May 17, 2016	[redacted]	Jun 16, 2016		Jun 6, 2016 10:08 AM

- Operator's and parts manuals.
- Two year warranty on parts and labor in shop only. Travel paid for onsite repairs or work.

OPTIONS

QTY	INSTALLED	PART NO	DESCRIPTION
1	No	03-31000	Diesel Exhaust Particulate Filter
1	No	03-91001	Exhaust Monitor / Data Logger with Display & Harness 10-30VDC
1	Yes	22-49540	40' Powerview Extension Harness,Diagnostic Output Connection
1	Yes	22-80008	PMG Conversion Kit with MX341 A.C. Voltage Regulator
1	No	27-39516	Exhaust Flex S/S 4" X 18" 4" CAT Flange X 4" Floating Flange
1	Yes	37-00086	Powerview Module

OPTIONS SUB-TOTAL $30,177

All amounts are in US Dollars

PRICE RECAP

ITEM	AMOUNT
Base Model Price	$35,521
Options	$30,177
Order Sub-Total	$65,698
Plus Freight	$451
Total Sales Price (Freight COLLECT)	$66,149

Cost of EPA complaint, 99kW genset with DPF

All amounts are in US Dollars

DELIVERY AND CONTACT INFORMATION

SHIP FROM	CONSIGNED TO	TERMS	REQUESTED DELIVERY
ANCHORAGE		PAY PRIOR TO SHIPMENT	

TRANSPORTATION TYPE	TRANSPORTATION TERMS	TRANSPORTATION DETAILS
SURFACE	Freight Collect, Consignee pays freight charges	

CONTACT	TELEPHONE	FAX	E-MAIL
[redacted]	[redacted]	[redacted]	[redacted]

Requested ship date is subject to receiving an executed order, availability, and production scheduling approval.

The fuel supply and return, cooling, mounting, air supply, electrical connections, exhaust and other systems must be correctly designed and properly installed to assure safe and satisfactory operation. Please consult with Northern Lights or other qualified professionals to assure correct application and installation of this product.

LIMITATION OF WARRANTIES AND REMEDIES: CUSTOMER OR CUSTOMER'S AGENT ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTANDS THE LIMITATION OF WARRANTY AND REMEDIES INFORMATION FOR THE GOODS SOLD ON THIS ORDER OR INVOICE AND AGREES TO BE BOUND BY THE SAME. NORTHERN LIGHTS, INC.'S (ADE) RESPONSIBILITY IS LIMITED TO THE REPAIR OR REPLACEMENT OF ANY PART NLI (ADE) AGREES IS DEFECTIVE IN MATERIALS OR WORKMANSHIP UNDER NORMAL USE AND SERVICE DURING THE WARRANTY PERIOD. NLI (ADE) LIMITS REMEDIES TO THOSE PROVIDED IN THE APPLICABLE LIMITED WARRANTY STATEMENT AND EXPRESSLY EXCLUDES LIABILITY FOR LOST PROFITS, INCIDENTAL AND CONSEQUENTIAL DAMAGES. OTHER THAN THOSE WARRANTIES THAT APPEAR ON THE LIMITED WARRANTY STATEMENT, NLI (ADE) MAKES NO EXPRESS OR IMPLIED WARRANTIES RESPECTING ITS PRODUCTS, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS.

Proposal for a M99C13.2S to RAMPART VILLAGE Total sales price is $66,149

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Appendix 2. Quote from CRE for 2 99kW JD4045AFM85 diesel genset packages MY 2014 or newer. Please note 4 other vendors responded they were unable to quote the project due to their inability to source the engines specified.

Bid Schedule

The Bidder shall insert a unit bid price or a lump sum price in figures opposite each pay item and total price for which an estimated quantity appears in the bid schedule. The estimated quantity of work for payment on a lump bum basis will be "all required" and as further specified in the contract.

Chalkyitsik Village Council	BID SCHEDULE	Chalkyitsik Generator Replacement Project
	Project ITB-CIK-17-01	
Item No.	Item Description	Amount Bid
001	Purchase and Shipment of 2 JD Generator Sets	155,500.00
002	Shipment of 2 generator to Chalkyitsik, AK	12,700.00
003	Labor associated with Replacement of Generators, Integration of generators into existing switchgears and repair of the waste heat system, cleaning and new glycol on the generator side of the system are required	64,750.00
004	Removal of the 2 replacement generators out of the powerhouse and into storage provided onsite	3,300.00
	Total Bid:	$ 216,250.00