

# BUSINESS MEETING

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## MEETING

BEFORE THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 18, 2018

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FIFTEENTH CONGRESS  
SECOND SESSION

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## **BUSINESS MEETING**

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**TUESDAY, SEPTEMBER 18, 2018**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Moran, Rounds, Ernst, Sullivan, Shelby, Cardin, Whitehouse, Merkley, Gillibrand, Booker, and Van Hollen.

### **OPENING STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Good morning. I call this business meeting to order.

Today we are going to consider six bills, four GSA resolutions, and one nomination.

Senator Carper and I have agreed that we will begin voting at 10:15. At that time, I will call up the items on the agenda, including amendments for votes. We will not debate the items on the agenda while we are voting. Instead, we will debate the items on the agenda before we begin voting at 10:15.

I will also be very happy to recognize any member who still wishes to speak after the voting concludes.

The items on today's agenda include S. 1857, a bill to delay new source performance standards for wood and hydraulic heaters; S. 2461, Blocking Regulatory Interference from Closing Kilns Act of 2018; S. 2827, a bill to amend the Morris K. Udall and Stewart L. Udall Foundation Act; S. 1934, Alaska Remote Generator Reliability and Protection Act; S. 593, Target Practice and Marksmanship Training Support Act; S. 1537, Migratory Birds of the Americas Conservation Act; then, as well, Presidential Nomination 2347, which is Harold B. Parker of New Hampshire to be Federal Co-chairperson of the Northern Border Regional Commission; and four General Service Administration resolutions.

Now, it appears several members are present and would like to speak. In order to maximize everyone's time to debate the items on the agenda, I am going to defer any additional opening statements until other members have had the opportunity to speak. Members speak up until 10:15.

I will submit my opening statements for the record.  
Senator Carper.

[The prepared statement of Senator Barrasso was not received at time of print.]

**OPENING STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Thanks.

I have some comments I would like to give on my Amendment No. 1, which addresses S. 1857, Senator Capito's bill. Shelley and I were talking a little bit yesterday, and she indicated her staff hadn't received our amendment until a couple days ago, which I was just unhappy about. As it turns out, I talked with them, and they said, let's go back and look. Apparently, they said they met with your staff on July 25th, presented what we wanted to do on the 26th, and the actual language that came out tweaked it a little bit, but not too much. But the sum and substance of it was presented a couple months ago, which makes me feel better, because I don't like to give somebody something at the last minute. I just wanted to mention that.

I still remember my staff preparing me for last year's November legislative hearing on S. 1857. They told me there are over 11 million homes using residential wood heaters today, most of which are inefficient and without proper emission control technology. Older wood heaters are inefficient, produce a deadly mix of particulate matter known as PM, volatile organic compounds, and air toxics.

Pollution from these heaters is problematic in a number of States, including Alaska, Oregon, and Vermont, to name a few.

I also learned that sometimes it is hard for homeowners to upgrade wood heaters on their own; they often need financial incentives to do so.

Finally, I found out that the technology exists today to reduce the pollution from these wood heaters by up to 70 percent. That is seven-zero percent. That is when I stopped my staff, and I said to them, I think we have seen this movie before and know it pretty well. Back in 2005, I remember George Voinovich, our colleague, came to me with almost the very same situation—not about wood burning stoves, but about inefficient diesel engines. In 2005, George said, we have a great idea, the Diesel Emission Reduction Act, and he asked me to be his Democratic cosponsor, which I was pleased to do.

But DERA, as you all recall, didn't roll back emission standards for diesel engines. Instead, it created a program that incentivized the use of newer diesel technology. Together with Senator Inhofe and a couple of other colleagues, we went forth to establish one of the most successful clean air programs on the books. My statement here says one that is loved. I don't know that it is loved, but it is warmly embraced by retailers, by manufacturers, by States, and health groups alike.

My amendment today builds on what we know to be a successful formula. Instead of delaying standards that many in the industry are already meeting and States depend on for healthy air, the amendment I am offering today creates a 5-year, \$75 million wood heater replacement program mirrored after our successful DERA program.

What I am calling the Wood Heater Emission Reduction Act, or WHERA, allows States, it allows Tribes, it allows territories, and regional and local air agencies to apply for EPA funding to create residential wood heater programs that work for their State. Because rural areas and tribal areas have a disproportionate need, we require at least 4 percent of WHERA to go toward Tribes and require EPA to ensure that rural areas are represented in funding allocations.

The amendment doesn't stop there, though. We heard during our hearing in November that retailers needed a little more time to get the older products off their shelves. Giving retailers some extra time is also beneficial to manufacturers. So, my amendment today gives retailers an extra year to sell these so called Step 1 residential wood heaters. Thus, it moves the deadline from May 20th, 2020, to May 20th, 2021, which is almost 3 years from now.

This amendment also gives wood heater manufacturers some flexibility in the testing program.

Finally, my amendment codifies the manufacturers' Step 2 emission standards, keeping public health gains and giving States and manufacturers something they like, and that is certainty.

As we saw with DERA, delaying emission standards is not a recipe for success, so let's adopt a formula that we know works for public health, for States, for American jobs.

Mr. Chairman, I am going to be asking for a roll call vote on this amendment. I hope my colleagues will join me in supporting it today.

Thank you so much.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE

Today, our Committee favorably reported S. 593, the Target Practice and Marksmanship Training Support Act, a bipartisan bill. Our Committee previously favorably reported a slightly different version of this legislation as part of S. 1514, the HELP for Wildlife Act.

Ideally, our Committee would have considered and discussed those differences in a hearing. The stakeholder organizations that support the intended policy outcome support both versions. To date, no organizations have expressed public opposition to either version.

That said, we may need to better reconcile these differences now that both bills—S. 593 and S. 1514—have advanced to the full Senate. I look forward to working with my colleagues to that end.

Senator BARRASSO. Thank you, Senator Carper.  
Senator Capito.

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

Senator CAPITO. Thank you, Mr. Chairman.

I thank the Ranking Member. Thanks for the conversation yesterday. It seems we have a little dispute on when the final language actually reached our staffs, but we can debate about that later.

Senator CARPER. I think the final language actually reached them a couple of days ago, but the sum and substance I think actually did come in July.

Senator CAPITO. Right. Concepts were there. Like I said, we can get into that off the dais.

I just want to urge support for S. 1857 to provide regulatory relief to the wood and pellet stove heater and forced air furnace industry. This is a bipartisan bill that was introduced with Senators McCaskill, Shelby, and Manchin. It is very simple: it extends that deadline from 2020 to 2023. That extension is vital to the industry to be able to develop, engineer, test, manufacture, and distribute models that are compliant with Step 2 standards. It also provides that certainty to retailers that they can sell existing inventories through 2023 and to consumers.

The industry has already met the Step 1 standards, which, according to the Obama's EPA figures, achieved the vast majority—an estimated 90 percent or more—of the emissions reductions anticipated as part of the two-step regulation. Step 1 reduced emissions by 70 to 90 percent compared to the baseline. With Step 2, we are subject to the law of diminishing returns, with each reduction becoming costlier and more technologically difficult to achieve.

With that said, the bill would only delay—not modify—would only delay the strict Step 2 standards to ensure they can be plausibly met on time.

Members of this Committee have heard compelling testimony and received letters from industry that there is simply not enough time to fully engineer and certify. The certification part is very difficult in terms of certifying new products by the 2020 deadline. A 3-year delay would help alleviate logjams at the labs doing their certification and the EPA itself to ensure that the new models actually do meet the standards.

The Clean Air and Nuclear Safety Subcommittee, which I chair, heard testimony last November. It is September. Last November we had a legislative hearing to the effect that some manufacturers may only have one-third of their product lines in limited quantities available for sale to comply with 2020.

At the time of our hearing, of the 540 wood and pellet stove models that are compliant under Step 1, only 26 of those would meet the standard under Step 2. Retailers will be making their orders well ahead of the effective due date and will have to deal with the regulatory uncertainty of what will be available, as well as what will become of existing inventory that may become obsolete and unsellable.

The purchase of these appliances is seasonal, so units may be in the retailers' inventory for years. The outcome may be that of the 11.5 million homes using wood heaters as primary or secondary heating sources will continue to operate their older appliances, which is what we don't want, many of them not even compliant with Step 1 for additional years while supplies increase and prices come down on Step 2 compliant units.

We have already seen the rise in prices. A retailer in Prichard, West Virginia, had to double prices, from \$1,000 to \$2,000, for products compliant with Step 1 compared to previous revisions. In 2015, this retailer sold 42 warm air furnaces. In 2016, Step 1 induced price increase, he sold 11. By late 2017, only 8. Which means people are not changing out their existing units. That means that,



and they are not buying the new units. The impact for jobs and consumers is clear.

So, I would urge my colleagues to vote yes on S. 1857.

If the Chairman would allow, we still have a few minutes, to talk about the amendment.

Senator BARRASSO. Please. I know Senator Wicker wants to speak, as does Senator Whitehouse. Senator Whitehouse is first recognized, but go ahead.

Senator CAPITO. I will go very quickly here on the Carper amendment that Senator Carper spoke about.

We talked about the merits of it yesterday. Hopefully, we can arrive at some kind of compromise, but I don't think it is meeting the standards of regular order, so I urge its defeat.

It would establish the \$75 million new regulatory program with no budget offset and has not been completely vetted by members of this Committee. It would provide funding for buy backs, as the Senator said.

While it is well intentioned, it does not address the broader issue associated with Step 2, and instead, formalizes them into law. It does not address the fact that there will not be enough models approved, much less at an affordable cost, to meet consumers' needs.

A lot of the consumers that use it for their primary source are on the lower end of the economic scale, and that is a source of concern for me being from the State of West Virginia.

So, I am opposing his amendment. I have other issues I could add here, but in the interest of the Committee I will cut that short and say that I hope we can work together, Senator Carper, to try to find a compromise here, but in the short term I would urge defeat of the Carper amendment.

Thank you.

Senator BARRASSO. Thank you, Senator Capito. I also will be opposing the Carper amendment and supporting your bill.

Senator Whitehouse.

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

Senator WHITEHOUSE. Thank you, Chairman.

Mr. Chairman, the Associate Administrator for the Office of Air and Radiation at the Environmental Protection Agency, as we know, is a gentleman named Bill Wehrum. He was confirmed by the U.S. Senate on November 9th, 2017. He promised to document his compliance with his EPA ethics agreement within 90 days of his confirmation. That 90 days ran on February 14th, 2018.

Since that date, I have been trying to get his ethics statement, without success, in letter after letter, so I filed Whitehouse 1 as an amendment to S. 2461 to require recusal of this individual in matters where there would be the appearance of a conflict or undermining of public confidence in the EPA and requiring, as a matter of law, to provide a copy of his recusal letter to the Committee.

Well, lordy be, as of now, we have his recusal letter. It was not signed on February 14th, 2018; it was signed yesterday. So, we at least have it. Further inquiry to follow as to what the hell happened between February 14th, 2018, and September 17th, 2018, during which this individual, who is a walking conflict of interest,

appeared to be operating under no conflict of interest or recusal statement.

On the basis of that, I would first ask unanimous consent to put his recusal statement into the record.

Senator BARRASSO. Without objection.

[The referenced information was not received at time of print.]

Senator WHITEHOUSE. And second, ask consent to withdraw my amendment.

Senator BARRASSO. Without objection.

Thank you, Senator Whitehouse.

Senator WICKER.

Senator WICKER. Well, I appreciate Senator Whitehouse withdrawing his amendment. That will simply give us an opportunity to vote yes or no on the underlying bill, which is a good bill, and it provides legislative and regulatory relief for the over 7,700 people who work in brick manufacturing plants and the almost 90,000 Americans who are employed by the larger brick industry, not to mention all of the millions of construction jobs with brick based elements.

So, I am glad to see the amendment has been withdrawn, and I urge my colleagues to vote yes for the underlying bill, which is bipartisan, having sponsors such as Inhofe and Capito from this Committee and Donnelly, Heitkamp, and Manchin who are not on this Committee.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Wicker.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

I want to also thank Senator Whitehouse for withdrawing his amendment, but also for his dogged determination to get members of the executive branch to do what they said they were going to do. If they told us they were going to file a recusal statement, and they haven't done it, then I think it is good oversight on his part to get them to do that, so appreciate the hard work of a former attorney general.

Senator WHITEHOUSE. Said the former attorney general.

[Laughter.]

Senator BARRASSO. Senator Cardin, I know you also have a bill, the Migratory Birds of the Americas Conservation Act. Anything you would like to add at this point?

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,  
U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Just thank the Chairman and Ranking Member for including this on the markup today. It is a very important bill that deals with our international efforts, the U.S. participating in neotropical birds.

You have all heard me talk about this before. About 200 species are involved in the protection of habitat in our region to make sure that we, with other countries, do what is necessary and reasonable to protect their habitat. One of those neotropical birds is the Baltimore Oriole. For those of you who are following the baseball season, you know we need to pass this immediately.

[Laughter.]

Senator BARRASSO. We are waiting for one more member of the Committee to arrive.

Senator CARPER. Mr. Chairman.

Senator BARRASSO. Yes, Senator Carper.

Senator CARPER. Could I just have one last quick thing? Somebody asked me from the press yesterday, he said, why do you care about this wood burning stove legislation?

I will just say this; in Delaware alone we have a number of wood heaters, and you have them in your States, too. We are not the leader by any stretch of the imagination, but wood heaters in my State are the second largest source of particulate matter pollution—second largest source of particulate matter pollution. If you add together all the PM that we get from on-highway vehicles, electric utilities, petroleum industry combined, the particulate matter that comes from wood burning stoves in my State is more than all those three combined. All those three combined.

Senator BARRASSO. Thank you, Senator Carper.

We are waiting for one more member to arrive. I understand he is on the way.

Senator INHOFE. He is on the 14th Street Bridge.

[Laughter.]

Senator BARRASSO. The Ranking Member and I have agreed to bring up two bills for separate votes. The Ranking Member has requested that each of these two receive a roll call vote. The Ranking Member and I have agreed to vote on the remaining four bills, the nomination, and the GSA resolutions en bloc by voice vote. Members may choose to have their votes recorded after the voice vote.

So, I would like to bring up for call the en bloc passage of the items, the Barrasso substitute amendment to S. 2827, a bill to amend the Morris K. Udall and Stewart L. Udall Foundation Act; the Sullivan-Carper substitute amendment to S. 1934, Alaska Remote Generator Reliability and Protection Act; S. 593, Target Practice and Marksmanship Training Support Act; S. 1537, Migratory Birds of the Americas Conservation Act; Presidential Nomination 2347, Harold B. Parker of New Hampshire to be Federal Cochairperson of the Northern Border Regional Commission; and four General Service Administration resolutions en bloc.

I move to approve the Barrasso substitute amendment to S. 2827 and report S. 2827 as amended, approve the Sullivan-Carper substitute amendment to S. 1934 and report S. 1934 as amended, approve and report S. 593 and S. 1537 and Presidential Nomination 2347, and approve four GSA resolutions en bloc.

Is there a second?

Senator CARPER. Second.

Senator BARRASSO. All those in favor say aye.

[Chorus of ayes.]

Senator BARRASSO. Opposed, nay.

[No audible response.]

Senator BARRASSO. In the opinion of the Chair, the ayes have it. We have approved S. 2827, as amended; S. 1934, as amended; S. 593; S. 1537; and Presidential Nomination 2347, which will be reported favorably to the Senate. We have also approved four GSA resolutions.

Now I would like to call up S. 1857, a bill to delay new source performance standards for wood and hydraulic heaters that was circulated last Friday. Senator Carper has filed an amendment to S. 1857.

You are going to offer your amendment, and then we will have a roll call.

Senator CARPER. I offer the amendment. We have discussed it, and I would ask for a yes vote.

Thanks so much.

Senator BARRASSO. Members have already had an opportunity to speak on Carper No. 1 this morning. Additional members may speak, if they would like, after voting concludes.

Move to vote on the amendment. Is there a second?

Senator CARPER. Second.

Senator BARRASSO. The Clerk will call the roll.

The CLERK. Mr. Booker.

Senator BOOKER. No. Oh, yes.

Senator CARPER. Thank you.

The CLERK. Mr. Boozman.

Senator BOOZMAN. No.

The CLERK. Mrs. Capito.

Senator CAPITO. No.

The CLERK. Mr. Cardin.

Senator CARDIN. Aye.

The CLERK. Mr. Carper.

Senator CARPER. Aye.

The CLERK. Mrs. Duckworth.

Senator CARPER. Aye, by proxy.

The CLERK. Mrs. Ernst.

Senator ERNST. No.

The CLERK. Mrs. Fischer.

Senator FISCHER. No.

The CLERK. Mrs. Gillibrand.

Senator GILLIBRAND. Aye.

The CLERK. Mr. Inhofe.

Senator INHOFE. No.

The CLERK. Mr. Markey.

Senator CARPER. Aye, by proxy.

The CLERK. Mr. Merkley.

Senator MERKLEY. Aye.

The CLERK. Mr. Moran.

Senator MORAN. No.

The CLERK. Mr. Rounds.

Senator ROUNDS. No.

The CLERK. Mr. Sanders.

Senator CARPER. Aye, by proxy.

The CLERK. Mr. Shelby.

Senator SHELBY. No.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. No.

The CLERK. Mr. Van Hollen.

Senator VAN HOLLEN. Aye.

The CLERK. Mr. Whitehouse.

Senator WHITEHOUSE. Aye.

The CLERK. Mr. Wicker.  
 Senator WICKER. No.  
 The CLERK. Mr. Chairman.  
 Senator BARRASSO. No.  
 The Clerk will report.  
 The CLERK. Mr. Chairman, the nays are 11; the yeas are 10.  
 Senator BARRASSO. The yeas are 10; nays are 11. Carper No. 1  
 is not agreed to.  
 Now move to approve and report S. 1857 favorably to the Senate.  
 Is there a second?  
 Senator INHOFE. Second.  
 Senator BARRASSO. The Clerk will call the roll.  
 The CLERK. Mr. Booker.  
 Senator BOOKER. No.  
 The CLERK. Mr. Boozman.  
 Senator BOOZMAN. Yes.  
 The CLERK. Mrs. Capito.  
 Senator CAPITO. Yes.  
 The CLERK. Mr. Cardin.  
 Senator CARDIN. No.  
 The CLERK. Mr. Carper.  
 Senator CARPER. No.  
 The CLERK. Mrs. Duckworth.  
 Senator CARPER. No, by proxy.  
 The CLERK. Mrs. Ernst.  
 Senator ERNST. Yes.  
 The CLERK. Mrs. Fischer.  
 Senator FISCHER. Aye.  
 The CLERK. Mrs. Gillibrand.  
 Senator GILLIBRAND. No.  
 The CLERK. Mr. Inhofe.  
 Senator INHOFE. Aye.  
 The CLERK. Mr. Markey.  
 Senator CARPER. No, by proxy.  
 The CLERK. Mr. Merkley.  
 Senator MERKLEY. No.  
 The CLERK. Mr. Moran.  
 Senator MORAN. Aye.  
 The CLERK. Mr. Rounds.  
 Senator ROUNDS. Aye.  
 The CLERK. Mr. Sanders.  
 Senator CARPER. No, by proxy.  
 The CLERK. Mr. Shelby.  
 Senator SHELBY. Aye.  
 The CLERK. Mr. Sullivan.  
 Senator SULLIVAN. Aye.  
 The CLERK. Mr. Van Hollen.  
 Senator VAN HOLLEN. No.  
 The CLERK. Mr. Whitehouse.  
 Senator WHITEHOUSE. No.  
 The CLERK. Mr. Wicker.  
 Senator WICKER. Aye.  
 The CLERK. Mr. Chairman.  
 Senator BARRASSO. Aye.

The Clerk will report.

The CLERK. Mr. Chairman, the yeas are 10; the nays are 11.

Senator BARRASSO. This does pass.

The yeas were 11?

The CLERK. The yeas are 11; the nays were 10.

Senator BARRASSO. So, the motion, Senator Capito's bill, has passed.

Next, I would like to call up S. 2461, the Blocking Regulatory Interference from Closing Kilns Act, the BRICK Act. It was circulated last Friday. An amendment has been withdrawn.

I move to approve and report S. 2461 favorably to the Senate. Is there a second?

Senator WICKER. Second.

Senator BARRASSO. The Clerk will call the roll.

The CLERK. Mr. Booker.

Senator BOOKER. No.

The CLERK. Mr. Boozman.

Senator BOOZMAN. Yes.

The CLERK. Mrs. Capito.

Senator CAPITO. Yes.

The CLERK. Mr. Cardin.

Senator CARDIN. No.

The CLERK. Mr. Carper.

Senator CARPER. No.

The CLERK. Mrs. Duckworth.

Senator CARPER. No, by proxy.

The CLERK. Mrs. Ernst.

Senator ERNST. Aye.

The CLERK. Mrs. Fischer.

Senator FISCHER. Aye.

The CLERK. Mrs. Gillibrand.

Senator GILLIBRAND. No.

The CLERK. Mr. Inhofe.

Senator INHOFE. Aye.

The CLERK. Mr. Markey.

Senator CARPER. No, by proxy.

The CLERK. Mr. Merkley.

Senator MERKLEY. No.

The CLERK. Mr. Moran.

Senator MORAN. Aye.

The CLERK. Mr. Rounds.

Senator ROUNDS. Aye.

The CLERK. Mr. Sanders.

Senator CARPER. No, by proxy.

The CLERK. Mr. Shelby.

Senator SHELBY. Aye.

The CLERK. Mr. Sullivan.

Senator SULLIVAN. Aye.

The CLERK. Mr. Van Hollen.

Senator VAN HOLLEN. No.

The CLERK. Mr. Whitehouse.

Senator WHITEHOUSE. No.

The CLERK. Mr. Wicker.

Senator WICKER. Aye.

The CLERK. Mr. Chairman.

Senator BARRASSO. Aye.

The Clerk will report.

The CLERK. Mr. Chairman, the yeas are 11; the nays are 10.

Senator BARRASSO. The yeas are 11; the nays are 10. We have approved S. 2461, which will be reported favorably to the Senate.

The voting part of this business meeting is finished. I would be happy to recognize any members who wish to make a statement on the legislation, the nomination, or the resolutions that we have just approved.

Would any member like to be recognized? If not—yes, sir, Senator Carper.

Senator CARPER. Mr. Chairman, I want to take just a couple minutes, now that we have marked up today, to discuss some of the things that my Democratic colleagues and I sought to amend. As someone who always tries to look for the positive, we have a lot here that we have agreed on, and I am happy about that.

I was happy to see that we could come to a compromise on Senator Sullivan's Alaska diesel bill. I think we addressed a real tactical issue for remote areas of Alaska, while also trying to find ways we can better improve energy reliability and air quality for those areas. I thank Senator Sullivan and want to thank the Chairman and their staffs for working with our staff on this issue. I think it is a good compromise.

Additionally, I have advanced legislation to reauthorize the Neotropical Migratory Bird Conservation Act today, and I want to thank Senator Cardin for his leadership on this issue. I feel bad about the Orioles but good about his legislation. Neotropical migratory birds are special to both of our States; in fact, to many States. People travel to the First State of Delaware to observe the red knots, which benefit from the Neotropical Migratory Bird Conservation Act.

Further, we have considered Senator Capito's Target Practice and Marksmanship Training Support Act. This legislation enjoys bipartisan support. It is endorsed by the sportsman community as well.

I am also pleased that we were able to add the Udall Foundation reauthorization bill to our agenda today. It was last updated in 2004, but this reauthorization provides needed updates to the Foundation. One of the changes included in the substitute amendment would be to rename the U.S. Institute for Environmental Conflict Resolution in honor of our friend, the late Senator John McCain, which I believe is a great tribute. On behalf of all of our colleagues, I thank the Chairman for including this provision.

We also considered today the nomination of Harold Parker to be the Federal Cochair of the Northern Border Regional Commission. We heard from the nominee at a Transportation and Infrastructure Subcommittee hearing 2 weeks ago. I am pleased to support his nomination.

I mentioned this before, but it bears worth repeating. Old, inefficient residential wood heaters produce the heat that a lot of families need, but they also produce a deadly mix of air pollution that can trigger asthma attacks, cause lung damage, and create real problems for air quality. I mentioned this before.

I was stunned when I saw this. In Delaware alone, residential wood heaters are the second largest source of particulate matter pollution, second largest source, contributing more than on-highway vehicles plus electric utilities and petroleum industries combined. Think about that. Think about that.

A 3-year delay in the standards that manufacturers are already meeting today just doesn't make sense to me, and I think we can do better. I presented another option in Carper Amendment No. 1. Without these changes, I could not support Senator Capito's bill.

Second, we have Senator Wicker's bill, the BRICK Act, S. 2461. This legislation delays air toxic Clean Air Act standards for the brick industry by 2 years. These are standards that should have been in place almost two decades ago, and EPA has already stated they are going to give the industry an extra year to comply. I have concerns about the public health implications of delaying standards even further, which is why I voted no on that bill.

But Mr. Chairman, as you know, I am always pleased to work together with you and our colleagues whenever we can do so. As a result, we have made progress on a number of different fronts today. My thanks to everyone—our members and staffs alike—whose efforts helped make all that progress possible.

On the other issues on which we disagree, we live to fight another day, or maybe to find consensus. We will see.

Senator BARRASSO. Thank you, Senator Carper.

I do ask unanimous consent that the staff have authority to make technical and conforming changes to each of the matters approved today.

Senator Rounds.

**OPENING STATEMENT OF HON. MIKE ROUNDS,  
U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator ROUNDS. Thank you, Mr. Chairman.

Mr. Chairman, we have a pending nominee, Mr. Peter Wright, for Assistant Administrator of the EPA's Office of Land and Emergency Management. As you know, I chair the Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight.

In December 2017, we held a hearing on the challenges facing Superfund sites following natural disasters such as hurricanes. One of those challenges should not be a lack of personnel on hand to mitigate environmental damage. Yet even as we deal with the aftermath of Hurricane Florence, the Assistant Administrator of the EPA's Office of Land and Emergency Management, Peter Wright, has yet to be confirmed by the Senate.

Now, I understand that by my request I am not asking that we swiftly confirm him, but I would ask that we perhaps take up this matter in a more expeditious manner and confirm Mr. Wright so that our Federal Government can more effectively deal with the environmental impacts of natural disasters.

Senator BARRASSO. Thank you, Senator Rounds. I would like to agree. When you take a look at North Carolina, South Carolina, the catastrophic flooding over the last several days, Hurricane Florence has taken a tremendous toll in terms of human lives, as well as billions of dollars in damage.



In the midst of this suffering, the EPA has been without this Assistant Administrator for Land and Emergency Management, the Subcommittee which you chair. This is the official who is in charge of EPA's response to inland oil spills, chemical, biological, radiological releases, national emergencies, including hurricanes.

The President nominated Peter Wright March 6th of this year, so it has been 195 days. He was cleared from this Committee, certainly, but the Senate Democrats have blocked the nomination. In fact, he has had to wait longer than any of his predecessors in the last 20 years.

So, I agree it is time for the Democrats in the Senate to move and stop the blockage so we can get confirmation of Mr. Wright as soon as possible.

If there are no other Senators who wish to speak?

Senator CARPER. I have a couple of unanimous consent requests, Mr. Chairman.

Senator BARRASSO. Senator Carper.

Senator CARPER. I want to ask unanimous consent to submit for the record a letter from environmental groups that are opposed to Senator Wicker's S. 2461, which would extend the compliance date for air toxic standards for the brick industry. That would be one UC request.

Senator BARRASSO. Without objection.

[The referenced information follows:]

**Center for Biological Diversity \* Earthjustice  
Gasp \* League of Conservation Voters  
League of Women Voters of the United States  
Natural Resources Defense Council \* Sierra Club  
Southern Environmental Law Center**

September 17, 2018

Dear Senator,

On behalf of our millions of members, the undersigned organizations urge you to oppose the Blocking Regulatory Interference from Closing Kilns Act of 2018, or BRICK Act (S. 2461). This bill unjustifiably delays needed health protections and prolongs Americans exposure to dangerous toxic air pollution.

The Clean Air Act requires that the Environmental Protection Agency (EPA) set standards to limit toxic air pollution from brick manufacturing facilities. These facilities emit mercury, a dangerous neurotoxin that harms children's developing brains, acid gases, heavy metals including arsenic and chromium, and other dangerous toxins that are known to cause cancer.

Congress required the EPA to set these standards almost 18 years ago, and to require compliance no later than 2003. EPA did not finalize these standards until 2015, but even so the brick industry is still fighting to emit *more* toxic pollution well beyond when they should have complied with the Clean Air Act. Industry's attempt to challenge these standards was roundly and completely rejected by the D.C. Circuit in a unanimous decision that court issued earlier this year.

Unable to persuade a court that EPA's standards are unlawful or unreasonable in any way, the brick industry nonetheless asks Congress to excuse it from meeting these standards. The BRICK Act aims to help the polluters avoid regulation far longer than other industries have been allowed, since the bill seeks to *further* delay implementation of toxic air pollution standards for brick facilities, during which EPA's Air Office, now run by the brick industry's former lawyer, William Wehrum, could weaken the rules and extend the compliance date for another 3 years. The bill's ultimate effect would be to deprive people of protection from brick kilns' toxic emissions until 2023 – more than two decades after Congress intended that protection to be in place.

The Clean Air Act already contains a mechanism to delay implementation of a rulemaking during a lawsuit if the litigants can provide valid reasons; judges have long handled this situation and are familiar with what factors to consider.

Not only would the BRICK Act delay needed health protections, exposing Americans to more deadly toxic air pollution, but the BRICK Act also would insert the legislative branch into ongoing litigation and interfere with the authority of our judicial branch of government.

While the latest version of the Senate bill has been amended from its prior iterations, the bill's fundamental problems remain. Worse, the House counterpart bill (H.R. 1917) would be conferenced with S. 2461 passed the House in March, and remains unaltered from its original egregious form. That bill would provide a minimum three-year compliance delay, which would be extended until every polluter's lawsuit has been fully litigated and appealed, including to the Supreme Court—a multi-year process. This would have the effect of stalling these much needed and long overdue health protections for Americans, for as long as industry lawyers can keep a case alive. Even worse, H.R. 1917 would arbitrarily delay not just the current air toxic standards, but any *future* update to these standards that may be required under law.

Americans have been exposed to toxic air pollution from this industry far longer than the law allows. Every other industry in America has been in compliance with air toxics standards for years. We urge you to stand against further delay and oppose the BRICK Act.

Sincerely,

Center for Biological Diversity  
 Earthjustice  
 Gasp  
 League of Conservation Voters  
 League of Women Voters of the United States  
 Natural Resources Defense Council  
 Sierra Club  
 Southern Environmental Law Center

Senator CARPER. A second UC request, I would like to ask unanimous consent to submit for the record letters from 23 environmental health and State agency groups that are opposed to Senator Capito's wood heater legislation, S. 1857.

Senator BARRASSO. Without objection.  
[The referenced information follows:]



August 23, 2018

Dear Senator:

The undersigned public health and medical organizations urge you to oppose S. 1857, the "Relief from New Source Performance Standards Act." The bill delays lifesaving and long-overdue protections from air pollution from wood burning and would result in further harm to Americans' health from toxic pollutants.

Wood smoke from residential wood heaters is a significant source of air pollution that harms human health, especially for people with asthma and other lung diseases. Emissions from wood-burning boilers, furnaces and other similar high polluting devices include particulate matter, carbon monoxide, nitrogen oxides, volatile organic compounds, hazardous air pollutants and recognized carcinogens, including benzene and formaldehyde. These pollutants cause a range of adverse health effects including asthma attacks, heart attacks, lung cancer and premature deaths.

According to the most recent [National Air Toxics Assessment](#), residential wood heating accounted for 50 percent of all "area source" air toxic cancer risks nationwide in 2011. That means that the air toxics from residential wood heating accounted for as much cancer risk as all the other smaller sources that exist often in multiple sites in a community, like gas stations and dry cleaners.

In 2015, the U.S. Environmental Protection Agency (EPA) finalized new standards to limit pollution from new wood-burning boilers, furnaces, and stoves – the first updates to the standards for these types of devices in 27 years. Once fully in place in 2020, the standards will require new devices to incorporate technologies to cut harmful emissions, which will result in a nearly 70 percent reduction in fine particles and volatile organic compounds and a 62 percent reduction in carbon monoxide. The new standards reflect the improved technology currently widely in use that reduces emissions and improves fuel efficiency.

The standards apply to new devices, not existing ones, and incorporate several concessions to the wood heater manufacturing industry, including an unusually long phase-in period of five years before the 2020 new limits come into effect. Many manufacturers have devices that already meet the 2020 standards well in advance of the timeline. In the November 2017 list of devices certified under the 2015 standard, 171 devices report certified emission levels that currently meet the 2020 standards.

The legislation would unnecessarily delay for three additional years the full implementation of standards for new wood-burning boilers, furnaces, and stoves to reduce emissions. This delay would mean three additional years when families are allowed to purchase these higher polluting stoves. The problem would not end in three

years, unfortunately: due to the long lives of these devices, they would continue to spew toxic pollution into the air in their homes and neighborhoods for decades. The result would be years of premature deaths and health problems from wood smoke pollution that could have been prevented.

Please prioritize the health of your constituents. Delays in lifesaving protections from toxic wood smoke mean real harm for American families.

Sincerely,

Allergy & Asthma Network  
Alliance of Nurses for Healthy Environments  
American Lung Association  
American Public Health Association  
American Thoracic Society  
Asthma and Allergy Foundation of America  
Center for Climate Change and Health  
Environment and Human Health, Inc.  
Health Care Without Harm  
Trust for America's Health

September 17, 2018

RE: Protect Public Health – Oppose S. 1857

Dear Senator:

We write to ask that you oppose Senate Bill 1857. This legislation would unnecessarily leave communities vulnerable to a host of toxic air pollutants by delaying already long-overdue updates to standards for certain wood-burning stoves and boilers.

Smoke from residential woodstoves and boilers contains a mix of pollutants that are extremely harmful to human health – including particulate matter (soot), volatile organic compounds (VOCs), nitrogen oxides, benzene and formaldehyde. These emissions are a significant source of air pollution, particularly in communities and regions where some households continue to rely on burning wood for home heating. Despite the availability of better, more efficient technologies, tens of millions of Americans are routinely exposed to dirty air resulting from outdated woodstove designs that could make them sick, give them cancer, or even prematurely kill them. The risks are even greater for vulnerable and already overburdened populations, such as children, pregnant women, outdoor workers, low-income families and communities of color. We believe we can and must do better to protect our families.

In 2015, as required by the Clean Air Act, the Environmental Protection Agency (EPA) took action to improve air quality and better protect public health by updating performance standards for new wood-burning stoves, boilers and furnaces. These standards had remained unchanged since 1988 and did not reflect the availability of improved technologies that reduce emissions and increase efficiency. These stronger standards apply only to newly manufactured heaters and do not affect indoor fireplaces, existing in-home wood-burning furnaces, outdoor fireplaces, barbecues, or pizza ovens. Despite the narrow focus, once implemented, the updated standards will reap significant emissions reductions, better guarding communities against dangerous air pollution and helping many counties comply with health-based National Ambient Air Quality Standards (NAAQS) for fine particulates and ground-level ozone. EPA estimates that the updates will cost approximately \$46 million but will deliver \$3.4 to \$7.6 billion in public health benefits, meaning a net benefit of \$74 to \$165 for every dollar spent on compliance.

Senate Bill 1857 would needlessly delay compliance with these already long-overdue standards by an additional 3 years, until May 15, 2023. This extension is proposed despite affected industries having already been granted an unusually long phase-in window of 5 years. The updates were crafted transparently after significant input from the public and industry. In addition to the extended compliance window, EPA also included provisions to accommodate manufacturers, including a retailer sell-through provision and alternative compliance options. The agency also noted that nearly one-fifth of the boilers and heaters on the market already met the stronger standards. Accordingly, delaying compliance rewards bad actors at the

expense of those in the industry who have already made forward-looking investments to improve their products and better protect their consumers.

With so many communities still routinely exposed to unsafe air quality conditions, and with solutions at our fingertips, we cannot afford further foot-dragging or procrastination on these commonsense efforts. In order to prevent avoidable sickness and premature deaths, we urge you to support EPA's updated emission standards for woodstoves and reject this misguided and unnecessary delay bill.

Sincerely,

Alliance for Climate Education (ACE)  
California Safe Schools  
Center for Biological Diversity  
Doctors and Scientists Against Wood Smoke Pollution  
Environmental Defense Fund  
Environmental Law & Policy Center  
Earthjustice  
League of Conservation Voters  
Natural Resources Defense Council  
Sierra Club  
Utah Physicians for a Healthy Environment



Senator CARPER. And one more. I ask unanimous consent to enter into the record supplemental materials regarding the legislation we have advanced today.

Senator BARRASSO. Without objection.

Senator CARPER. Thank you so much.

[The referenced information follows:]



June 25, 2018

Senator John Barrasso  
Chair  
Senate Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Senator Tom Carper  
Ranking Member  
Senate Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Senator Shelley Moore Capito  
Chair  
Senate Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
United States Senate  
Washington, DC 20510

Senator Sheldon Whitehouse  
Ranking Member  
Senate Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
United States Senate  
Washington, DC 20510

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

The National Association of Clean Air Agencies (NACAA) respectfully provides the attached comments on certain technical issues contained in two bills currently under consideration by the Senate Committee on Environment and Public Works, S. 839 and S. 1857.

NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The members of NACAA have the primary responsibility under the Clean Air Act for implementing our nation's clean air program. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in this letter do not represent the positions of every state and local air pollution control agency in the country.

We appreciate your consideration of these perspectives.

If NACAA can be of further assistance, please do not hesitate to contact me at [mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org) or 202-624-7864.

Sincerely,

Miles Keogh  
Executive Director



**Comments of the National Association of Clean Air Agencies on  
Technical Provisions of  
S. 839, the "Blocking Regulatory Interference from Closing Kilns Act," and  
S. 1857, the "Relief from New Source Performance Standards Act"**

June 21, 2018

The National Association of Clean Air Agencies (NACAA) is providing these comments to express technical concerns with provisions of two bills currently pending before the Senate Environment and Public Works (EPW) Committee, S. 839 and S. 1857.

NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The members of NACAA have the primary responsibility under the Clean Air Act for implementing our nation's clean air program. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

S. 839 – the "Blocking Regulatory Interference from Closing Kilns Act" or "BRICK Act" – would prohibit EPA from requiring compliance with the Maximum Achievable Control Technology (MACT) standards for brick and structural clay products manufacturing and clay ceramics manufacturing (Brick and Clay MACT) until all judicial reviews of the regulations are complete.

S. 1857 – the "Relief from New Source Performance Standards Act" – would delay by three years, until May 2023, Step 2 of EPA's March 2015 New Source Performance Standards (NSPS) for new residential wood-burning heating devices.

S. 839 and S. 1857 had House companions – H.R. 1917 and H.R. 453, respectively. On March 7, 2018, the U.S. House of Representatives approved a version of H.R. 1917 (the BRICK Act) that incorporates the provisions of H.R. 453 (related to the NSPS for residential wood-burning heating devices). H.R. 1917 has been referred to the Senate.

The Senate EPW Subcommittee on Clean Air held a hearing on S. 839 and S. 1857 on November 14, 2017, but the bills have not gone before the Subcommittee or Committee for a vote. Should these bills become the subject of further Senate discussion – or should these issues be taken up in other legislation – we respectfully request that you give careful consideration to, and resolve, the issues we have identified before any action is taken.

**S. 839**

The "Blocking Regulatory Interference from Closing Kilns Act of 2017" would extend the compliance deadline for the Maximum Achievable Control Technology (MACT) standard for the brick and structural clay products manufacturing and clay ceramics manufacturing source categories (Brick and Clay MACT) – including rules promulgated in October and December 2015 and any final rule that may succeed or amend

those rules – until judicial review of all such rules is complete and they are “no longer subject to further appeal or review, in all actions.” This includes legal actions “that seek review of any aspect of such rule” filed within 60 days of the rule’s promulgation.

There are three points related to the compliance extension that should be considered and resolved before the Senate makes a determination on the passage of legislation.

First, state and local air pollution control agencies recognize the importance to regulated entities of certainty and clarity with respect to the timing of implementation. Although the bill is aimed at resolving judicial uncertainty, leaving the compliance deadline open-ended instead increases uncertainty. Judicial review can be protracted – sometimes lasting many years – creating a potential incentive for some to prolong the judicial process as long as possible, thereby extending uncertainty for regulated entities as well as for regulators. EPA might also issue successor rules or amendments, which could prolong the judicial process even further. While awaiting final court action, as S. 839 would require, the public, the regulated community and regulators would lack the essential assurances that a known deadline provides.

Second, a provision that postpones compliance until judicial review is complete would be precedent-setting and could be used in the future to justify lengthy and open-ended compliance delays for other rules. Such measures are unnecessary since the court of appeals is already empowered to stay the implementation of a regulation pending completion of judicial review on a case-by-case basis, if it determines a stay is warranted. In the case of the Brick and Clay MACT, the D.C. Circuit did not opt to issue such a stay, while in other cases it has.

Third, and perhaps most importantly, protracted and open-ended delays of regulations would have adverse public health consequences. In the case of the Brick and Clay MACT, for example, EPA estimates that the rule would reduce emissions of hazardous air pollutants from this source category by an additional 375 tons per year. These pollutants include hydrogen fluoride, hydrogen chloride and hazardous metals, exposure to which is associated with acute and chronic health effects, including cancer.<sup>1</sup> Without a clear compliance deadline, these additional emissions could continue causing harm to public health until the judicial process is exhausted, which could be an extensive period of time.

In summary, S. 839’s extension of the compliance deadline until the completion of judicial review creates the unintended consequence of being open-ended and potentially indefinite, and presents a potentially damaging and unnecessary precedent for future rules. Open-ended deadlines and their associated compliance delays would result in ongoing emissions of hazardous air pollutants.

#### **S. 1857**

The “Relief from New Source Performance Standards Act” would delay by three years, until May 15, 2023, Step 2 of EPA’s final March 16, 2015 New Source Performance Standards (NSPS) for new residential wood heaters, pellet stoves, hydronic heaters and forced air furnaces (80 Fed. Reg. 13,672). Multiple

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<sup>1</sup> Fact Sheet – Final Amendments to the Air Toxics Standards for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing, U.S. Environmental Protection Agency (September 2015) – [https://www.epa.gov/sites/production/files/2016-03/documents/20150924\\_factsheet\\_brick\\_clay\\_products.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/20150924_factsheet_brick_clay_products.pdf)

manufacturers have already met and surpassed the Step 2 standards that are to take effect in 2020. The proposed delay is unnecessary and unwarranted and would harm public health and the environment,

In 1988, EPA established an NSPS for woodstoves; most pellet stoves were exempt from those standards. In the March 2015 NSPS, EPA revised the 27-year-old emission standards for woodstoves, made these revised standards applicable to all pellet stoves and set the first-ever emission standards for hydronic heaters and forced air furnaces.

Wood smoke contains a mixture of harmful substances that penetrate deep into the lungs. The adverse health impacts of wood smoke can affect large areas as well as local neighborhoods, such as those in valleys where the wood smoke accumulates. In fact, a single wood-burning device can emit enough pollutants to place an entire neighborhood at risk.<sup>2</sup> Each year, residential wood combustion is responsible for hundreds of thousands of tons of PM<sub>2.5</sub> emissions. These emissions can increase the concentration of particle pollution to levels that cause serious health impacts ranging from exacerbation of cardiac and respiratory problems to premature death.<sup>3</sup> Further, PM<sub>2.5</sub> contributes significantly to our nation's regional haze problem. Residential wood smoke also contains volatile organic compounds, carbon monoxide and black carbon, as well as toxic air pollutants such as benzene, formaldehyde, dioxin and polycyclic organic matter (POM). EPA estimates that 44 percent of all stationary and mobile source POM, and almost a quarter of all area source air toxic cancer risks and 15 percent of non-cancer respiratory impacts, can be attributed to wood combustion.<sup>4</sup>

A few states have enacted legislation barring their jurisdictions from enforcing the March 2015 federal NSPS for residential wood-burning heating devices. However, emissions from residential wood combustion cause many counties across America to either exceed, or come precariously close to exceeding, the health-based National Ambient Air Quality Standards (NAAQS) for PM<sub>2.5</sub>. Many states are relying on the emission reductions that will result from the Step 2 NSPS to attain and maintain the NAAQS and/or meet other clean air goals, and have included these reductions in their State Implementation Plans. If EPA's Step 2 NSPS are delayed, these states will be left with a shortfall in emission reductions that could impede their attainment efforts and put nonattainment areas at risk of missing statutory deadlines and attainment areas at risk of violating the NAAQS.

There are complexities around regulating emissions from residential woodstoves at the state level because the devices are installed and operated in private homes. Consumers are able to purchase wood heaters and stoves outside their own state, which could enable them to purchase a device that does not meet the standards of the state where the device will be used. Nonetheless, in the face of a delay, some states and localities that depend on those reductions may – as an alternative to regulating other industries or source categories to offset the emission reduction shortfall (if such other industries or source categories are available) – have no choice but to pursue or build upon their own residential wood heater regulatory programs in order to ensure the anticipated reductions are realized.

In the final NSPS rule, EPA phased in the new emission requirements in two steps to provide manufacturers five years to adapt emission control technologies for Step 2 to their respective model lines.

<sup>2</sup> Bay Area Air Quality Management District

<sup>3</sup> *Strategies for Reducing Residential Wood Smoke*, U.S. Environmental Protection Agency (March 2013), p. 4 – <https://www.epa.gov/sites/production/files/documents/strategies.pdf>

<sup>4</sup> *Regulatory Impact Analysis (RIA) for Residential Wood Heater NSPS Revisions – Final Report*, U.S. Environmental Protection Agency (February 2015), p. 1-2 – <https://www.epa.gov/sites/production/files/2015-02/documents/20150204-residential-wood-heaters-ria.pdf>

Numerous manufacturers have now made investments enabling them to produce over 200 different models (in all categories – boilers, furnaces and stoves) of the cleaner devices necessary to meet the Step 2 standards in order to be ready for on-time compliance with the May 2020 regulatory deadline. A delay in the deadline would be unfair to those manufacturers by creating an uneven playing field, negating the value of their investment and harming their ability to provide high-paying jobs and contribute to the economy.

In short, the three-year extension to the Step 2 emission standards sought by S. 1857 is unnecessary and would adversely impact public health and the environment and undermine clean air efforts in certain states and local areas as well as harm the bottom line for most manufacturers that have already taken steps to comply.

### **Conclusion**

S. 839 and S. 1857 contain provisions that would create uncertainty, postpone the reduction of air pollutants that harm public health and the environment, frustrate the efforts of many states and localities to comply with their obligations under the Clean Air Act and have the potential to negatively affect manufacturing jobs and the economy. Should the Senate contemplate taking action on these bills, or move forward with these issues through other legislation, each of these concerns should be considered and resolved.

Thank you for considering NACAA's input. If our association can be of further assistance, please do not hesitate to contact Miles Keogh, NACAA's Executive Director, at [mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org) or 202-624-7864.

Senator BARRASSO. In closing, I am going to enter into the record a letter of support of S. 1857 from the Hearth and Home Technologies. By giving the industry a compliance extension, the letter says, S. 1857 would provide critical relief.  
[The referenced information follows:]



September 17, 2018

The Honorable John Barrasso  
Chair  
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  
Chair  
Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
U.S. Senate

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

RE: Support for S. 1857 and Relief for the Wood and Pellet Stove Industry

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

It is critical to the hearth industry, both manufacturers and specialty hearth retailers, that relief in the form of at least a three-year compliance extension is provided by voting yes on S. 1857, legislation that would extend the effective date from May 15, 2020 to May 15, 2023. Without this legislation, particularly for retailers, the wood and pellet hearth business will come to a halt in the next year.

The wood and pellet hearth business is highly seasonal with more than 60 percent of the business being done in the last four months of the year. We are a major manufacturer of these products selling to a variety of customers including specialty hearth retailers and wholesale distributors in the United States. Under the current conditions, these customers (especially the many small retailers), will be left with the old Step 1 inventory of these products, taking a substantial financial risk.

The wood and pellet hearth business is over \$320 million in the United States. As a manufacturer, we are investing heavily in new product development to meet the new compliance standards, which we fully support. We began working on these products more than 24 months ago and will have invested over \$6 million in product development and testing. For manufacturers, being compliant by 2020 is not enough. Without relief, we need all our products to be 2020 compliant prior to the 2018 season.

To put this in context, Hearth & Home Technologies has approximately 1200 dealers across the US who currently have over 11,500 Step 1 compliant displays of wood and pellet products on their retail floors. These compliant appliances are very clean burning, since they are the product of the Step 1 NSPS implemented in 2015. This display inventory is valued at \$21 million while we have another \$13 million in Step 1 compliant inventory in our distribution facilities. Furthermore, our retailers have their own inventory to sell through. The high seasonality of retail sales in this product category along with the



May 15, 2020 date is putting substantial financial risk on these small retail business as they work to sell all their inventory and displays by the current effective date.

We urge Congress to provide the much-needed relief that S. 1857 would achieve. Otherwise, the wood and pellet business in the United States will diminish within the next six months as retailers stop ordering these products from manufacturers so they can sell all their existing inventory and displays. Consumers will also be impacted as they experience lack of availability of these products and confusion on the reason for the shortage.

Granting this relief is a decision that will positively impact consumers, retailers and manufacturers across the United States. Thank you for your consideration of this important legislation for our communities and many businesses across the country.

Respectfully,

A handwritten signature in black ink that reads "V.P. Berger". The signature is written in a cursive, flowing style.

VP Berger, President  
Hearth & Home Technologies

Senator BARRASSO. With that, our business meeting is concluded,  
and we are adjourned.

[Whereupon, at 10:33 a.m. the Committee was adjourned.]

[Text of legislation and additional material follow:]

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.

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## 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. STEP 2 COMPLIANCE DEADLINE FOR NEW RESI-**  
4 **DENTIAL WOOD HEATERS, NEW RESIDENTIAL**  
5 **HYDRONIC HEATERS, AND FORCED-AIR FUR-**  
6 **NACES.**

7 (a) IN GENERAL.—With respect to the final rule enti-  
8 tled “Standards of Performance for New Residential

1 Wood Heaters, New Residential Hydronic Heaters and  
2 Forced-Air Furnaces” (80 Fed. Reg. 13672 (March 16,  
3 2015))), the compliance deadline for Step 2 emissions  
4 standards shall be May 15, 2023.

5 (b) TECHNICAL AND CONFORMING CHANGES.—Not  
6 later than 60 days after the date of enactment of this Act,  
7 the Administrator of the Environmental Protection Agen-  
8 cy shall finalize such technical and conforming changes to  
9 rules and guidance documents as may be necessary to im-  
10 plement subsection (a).

○

S. 1857, Carper #1

An amendment in the nature of a substitute to S. 1857 that reduces the regulatory burden for residential wood heater retailers and manufacturers, codifies critical residential wood heater emission standards, and establishes a \$75 million voluntary program to incentivize the removal and replacement of old, inefficient wood heaters.

MAZ18909

S.L.C.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.****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.

Referred to the Committee on \_\_\_\_\_ and  
 ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
 to be proposed by Mr. Carper

Viz:

1 Strike all after the enacting clause and insert the fol-  
 2 lowing:

3 **SECTION 1. DEFINITIONS.**

4 In this Act:

5 (1) ADMINISTRATOR.—The term “Adminis-  
 6 trator” means the Administrator of the Environ-  
 7 mental Protection Agency.

8 (2) AFFECTED WOOD HEATER MODEL.—The  
 9 term “affected wood heater model” means a model  
 10 of wood heater described in—

## 2

1 (A) section 60.530(a) of title 40, Code of  
2 Federal Regulations (or a successor regulation);  
3 and

4 (B) subsections (a) and (b) of section  
5 60.5472 of that title.

6 (3) EPA-CERTIFIED STEP 2 WOOD HEATER.—  
7 The term “EPA-certified Step 2 wood heater”  
8 means a wood heater that—

9 (A) has been certified or verified by the  
10 Administrator;

11 (B) meets or exceeds the Step 2 emission  
12 reductions standards described in the Final  
13 Rule; and

14 (C) is installed by a licensed or certified  
15 professional or verified by the State in which  
16 the wood heater is being installed.

17 (4) FINAL RULE.—The term “Final Rule”  
18 means the final rule entitled “Standards of Perform-  
19 ance for New Residential Wood Heaters, New Resi-  
20 dential Hydronic Heaters and Forced-Air Furnaces”  
21 (80 Fed. Reg. 13672 (March 16, 2015)).

22 (5) INDIAN TRIBE.—The term “Indian tribe”  
23 has the meaning given the term in section 4 of the  
24 Indian Self-Determination and Education Assistance  
25 Act (25 U.S.C. 5304).

## 3

1           (6) REGIONAL AGENCY.—The term “regional  
2   agency” means any regional or local government  
3   agency with jurisdiction over air quality.

4           (7) REPLACEMENT OF AN OLD WOOD HEAT-  
5   ER.—The term “replacement of an old wood heater”  
6   means the replacement of an existing wood heater  
7   that—

8           (A) does not meet the reductions standards  
9   described in paragraph (3)(B);

10          (B) is removed from a home or building in  
11   which the wood heater was the primary or sec-  
12   ondary source of heat; and

13          (C) is surrendered to a supplier, retailer,  
14   or other entity, as defined by the Adminis-  
15   trator, who shall render the existing wood heat-  
16   er inoperable and ensure the existing wood  
17   heater is disposed through—

18           (i) recycling; or

19           (ii) scrappage.

20          (8) STATE.—The term “State” means—

21           (A) each of the several States of the  
22   United States;

23           (B) the District of Columbia;

24           (C) the Commonwealth of Puerto Rico;

25           (D) Guam;



4

- 1 (E) the United States Virgin Islands;
- 2 (F) American Samoa; and
- 3 (G) the Commonwealth of the Northern
- 4 Mariana Islands.

5 (9) WOOD HEATER.—The term “wood heater”  
 6 means an enclosed, wood-burning appliance capable  
 7 of and intended for residential space heating or  
 8 space heating and domestic water heating that is an  
 9 affected wood heater model, including—

- 10 (A) a residential wood heater;
- 11 (B) a hydronic heater; and
- 12 (C) a forced-air furnace.

## 13 **TITLE I—STEP 2 RETAIL**

## 14 **COMPLIANCE**

### 15 **SEC. 101. STEP 2 RETAIL COMPLIANCE DEADLINE FOR NEW**

### 16 **RESIDENTIAL WOOD HEATERS, NEW RESI-**

### 17 **DENTIAL HYDRONIC HEATERS, AND FORCED-**

### 18 **AIR FURNACES.**

19 (a) IN GENERAL.—With respect to the Final Rule,  
 20 until May 15, 2021, retailers may sell an affected wood  
 21 heater model that is—

- 22 (1) manufactured before May 15, 2020; and
- 23 (2) certified as compliant with Step 1, but not
- 24 yet certified as compliant with Step 2, as described
- 25 in the Final Rule.

1 (b) REVISED TEST METHODS.—The 30-day notice of  
 2 the certification testing described in section 60.534(g) of  
 3 title 40, Code of Federal Regulations, may be waived by  
 4 a manufacturer of an affected wood heater model line if—

5 (1) testing of the affected wood heater model is  
 6 recorded; and

7 (2) all test data from the test under paragraph  
 8 (1)—

9 (A) is securely stored; and

10 (B) provided to the Administrator to verify  
 11 results.

12 (c) CODIFICATION OF STEP 2.—Subject to sub-  
 13 sections (a) and (b), the Administrator shall carry out,  
 14 without alteration, the Final Rule.

15 (d) TECHNICAL AND CONFORMING CHANGES.—Not  
 16 later than 60 days after the date of enactment of this Act,  
 17 the Administrator shall finalize such technical and con-  
 18 forming changes to rules and guidance documents as may  
 19 be necessary to implement subsections (a) and (b).

## 20 **TITLE II—WOOD HEATERS** 21 **EMISSIONS REDUCTIONS**

### 22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Wood Heaters Emis-  
 24 sions Reduction Act of 2018” or the “WHERA Act”.

1 **SEC. 202. ESTABLISHMENT OF GRANT PROGRAM FOR**  
2 **WOOD HEATER EMISSIONS REDUCTIONS.**

3 (a) IN GENERAL.—Subject to the availability of ap-  
4 propriations, the Administrator shall establish a grant  
5 program that provides funding for grant, rebate, and other  
6 programs administered by States, regional agencies, and  
7 Indian tribes that are designed—

8 (1) to provide financial incentives to home-  
9 owners for the replacement of old wood heaters that  
10 greatly contribute to particulate pollution with more  
11 efficient, cleaner-burning heaters that are—

12 (A) properly installed; and

13 (B) at least as efficient and clean-burning  
14 as EPA-certified Step 2 wood heaters;

15 (2) to achieve significant reductions in emis-  
16 sions from wood heaters in terms of pollution pro-  
17 duced by wood heaters and wood heater emissions  
18 exposure;

19 (3) to help homeowners transition to safer and  
20 more efficient sources of heat; and

21 (4) to support retailers and manufacturers that  
22 sell and make wood heaters that are more efficient  
23 and cleaner-burning.

24 (b) APPLICATIONS.—The Administrator shall—

25 (1) provide to States, regional agencies, and In-  
26 dian tribes guidance for use in applying for funding

## 7

1 under this section, including information regard-  
2 ing—

3 (A) the process and forms for applications;

4 (B) permissible uses of funds received  
5 under this section; and

6 (C) the cost-effectiveness of various emis-  
7 sion reduction wood heater technologies eligible  
8 for funds provided under this section;

9 (2) establish, for applications described in para-  
10 graph (1)—

11 (A) an annual deadline for submission of  
12 the applications;

13 (B) a process by which the Administrator  
14 shall approve or disapprove each application;

15 (C) a simplified application submission  
16 process to expedite the provision of funds; and

17 (D) a streamlined process by which a  
18 State, regional agency, or Indian tribe may  
19 renew an application described in paragraph (1)  
20 for subsequent fiscal years;

21 (3) require States or regional agencies applying  
22 for funding under this section to provide detailed in-  
23 formation on how the State or regional agency in-  
24 tends to carry out and verify projects under the

1 wood heater emissions reduction program of the  
2 State or regional agency, including—

3 (A) a description of the air quality in the  
4 State or the area in which the regional agency  
5 has jurisdiction;

6 (B) the means by which the project will  
7 achieve a significant reduction in wood heater  
8 emissions and air pollution, including the esti-  
9 mated quantity of—

10 (i) residences that depend on non-  
11 EPA-certified Step 2 wood heaters as a  
12 primary or secondary source of heat; and

13 (ii) air pollution produced by wood  
14 heaters in the State or the area in which  
15 the regional agency has jurisdiction;

16 (C) an estimate of the cost and economic  
17 benefits of the proposed project;

18 (D) the means by which the funds will be  
19 distributed, including a description of the in-  
20 tended recipients of the funds;

21 (E) a description of any efforts to target  
22 low-income individuals that own older wood  
23 heaters;

24 (F) provisions for the monitoring and  
25 verification of the project; and

1 (G) a description of how the program will  
2 carry out the replacement of old wood heaters,  
3 including—

4 (i) how the older units will be removed  
5 and placed out of service; and

6 (ii) how new heaters purchased with  
7 funding provided under this section will be  
8 installed; and

9 (4) require Indian tribes applying for funding  
10 under this section to provide detailed information on  
11 how the Indian tribe intends to carry out and verify  
12 projects under the wood heater emissions reduction  
13 program of the Indian tribe, including—

14 (A) the means by which the project will  
15 achieve a significant reduction in wood heater  
16 emissions;

17 (B) an estimate of the cost and economic  
18 benefits of the proposed project;

19 (C) the means by which the funds will be  
20 distributed, including a description of the in-  
21 tended recipients of the funds;

22 (D) a description of any efforts to target  
23 low-income individuals that own older wood  
24 heaters;

## 10

1 (E) provisions for the monitoring and  
2 verification of the project; and

3 (F) a description of how the program will  
4 carry out the replacement of old wood heaters,  
5 including—

6 (i) how the older units will be removed  
7 and placed out of service; and

8 (ii) how new heaters purchased with  
9 funding provided under this section will be  
10 installed.

11 (e) ALLOCATION OF FUNDS.—

12 (1) IN GENERAL.—For each fiscal year, the Ad-  
13 ministrator shall allocate funds made available to  
14 carry out this section—

15 (A) among States, regional agencies, and  
16 Indian tribes that submitted an application  
17 under this section that was approved by the Ad-  
18 ministrator;

19 (B) of which not less than 4 percent shall  
20 be allocated to Indian tribes to perform func-  
21 tions that include—

22 (i) addressing subsequent mainte-  
23 nance costs resulting from the installation  
24 of wood heaters under this section; and

## 11

1 (ii) training qualified installers and  
2 technicians; and

3 (C) among different geographic areas and  
4 varying population densities.

5 (2) ALLOCATION PRIORITY.—The Administrator  
6 shall provide to each State, regional agency, and In-  
7 dian tribe described in paragraph (1) for a fiscal  
8 year an allocation of funds, with priority given to  
9 States, regional agencies, and Indian tribes that will  
10 use the funds to support projects that—

11 (A) maximize public health benefits;

12 (B) are the most cost-effective;

13 (C) target the replacement of wood heaters  
14 that emit the most pollution;

15 (D) include EPA-certified Step 2 wood  
16 heaters and other heaters that achieve emission  
17 reductions and efficiency improvements beyond  
18 the Step 2 emission reductions standards, as  
19 described in the Final Rule;

20 (E) target low-income households;

21 (F) encourage the recycling of old wood  
22 heaters when replacing those heaters; and

23 (G) serve areas that—

24 (i) receive a disproportionate quantity  
25 of air pollution from wood heaters;



## 12

1 (ii) have a high percentage of resi-  
2 dents that use wood as their primary  
3 source of heat; or

4 (iii) are poor air quality areas, includ-  
5 ing areas identified by the Administrator  
6 as—

7 (I) in nonattainment or mainte-  
8 nance of national ambient air quality  
9 standards for particulate matter  
10 under section 109 of the Clean Air  
11 Act (42 U.S.C. 7409); or

12 (II) class I areas under section  
13 162(a) of that Act (42 U.S.C.  
14 7472(a)).

15 (3) UNOBLIGATED FUNDS.—Any funds that are  
16 not obligated by a State, regional agency, or Indian  
17 tribe by a date determined by the Administrator in  
18 a fiscal year shall be reallocated pursuant to the pri-  
19 orities described in paragraph (2).

20 (4) STATE, REGIONAL AGENCY, AND TRIBAL  
21 MATCHING INCENTIVE.—

22 (A) IN GENERAL.—Subject to subpara-  
23 graph (B), if a State, regional agency, or In-  
24 dian tribe agrees to match the allocation pro-  
25 vided to the State, regional agency, or Indian

1 tribe under paragraph (1) for a fiscal year, the  
2 Administrator shall provide to the State, re-  
3 gional agency, or Indian tribe for the fiscal year  
4 a matching incentive consisting of an additional  
5 amount equal to 30 percent of the allocation of  
6 the State, regional agency, or Indian tribe  
7 under paragraph (1).

8 (B) REQUIREMENT.—To receive a match-  
9 ing incentive under subparagraph (A), a State,  
10 regional agency, or Indian tribe—

11 (i) may not use funds received under  
12 this section to pay a matching share re-  
13 quired under this subsection; and

14 (ii) shall not be required to provide a  
15 matching share for any additional amount  
16 received under that subparagraph.

17 (d) ADMINISTRATION.—

18 (1) IN GENERAL.—Subject to paragraphs (2)  
19 and (3), States, regional agencies, and Indian tribes  
20 shall use any funds provided under this section—

21 (A) to develop and implement such pro-  
22 grams in the State or in areas under the juris-  
23 diction of the regional agency or Indian tribe as  
24 are appropriate to meet the needs and goals of  
25 the State, regional agency, or Indian tribe; and

1 (B) to the maximum extent practicable, to  
2 use the programs described in subparagraph  
3 (A) to give high priority to projects that serve  
4 areas described in subsection (c)(2)(G).

5 (2) APPORTIONMENT OF FUNDS.—The chief ex-  
6 ecutive officer of a State, regional agency, or Indian  
7 tribe that receives funding under this section may  
8 determine the portion of funds to be provided as  
9 grants and the portion to be provided as rebates.

10 (3) USE OF FUNDS.—A State, regional agency,  
11 or Indian tribe shall use funds provided under this  
12 section for—

13 (A) projects to complete the replacement of  
14 old wood heaters, including the installation of  
15 heaters and training of certified installers of  
16 heaters that—

17 (i) are at least as efficient and clean-  
18 burning as EPA-certified Step 2 wood  
19 heaters; and

20 (ii) meet the purposes described in  
21 subsection (a); and

22 (B) with respect to Indian tribes, the pur-  
23 poses described in subsection (c)(1)(B).

24 (4) SUPPLEMENT, NOT SUPPLANT.—Funds  
25 made available under this section shall be used to

1 supplement, not supplant, funds made available for  
2 existing State clean air programs.

3 (5) PUBLIC NOTIFICATION.—Not later than 60  
4 days after the date on which the Administrator  
5 makes funding available under this section each fis-  
6 cal year, the Administrator shall publish on the  
7 website of the Environmental Protection Agency—

8 (A) the total number of grants awarded  
9 and the amounts provided to States, regional  
10 agencies, and Indian tribes;

11 (B) a general description of each applica-  
12 tion of a State, regional agency, or Indian tribe  
13 that received funding; and

14 (C) the estimated number of wood heaters  
15 that will be replaced using funds made available  
16 under this section.

17 (6) REPORT.—Not later than 2 years after the  
18 date on which funds are first made available under  
19 this section, and biennially thereafter, the Adminis-  
20 trator shall submit to Congress a report evaluating  
21 the implementation of the program under this sec-  
22 tion.

23 **SEC. 203. OUTREACH AND INCENTIVES.**

24 The Administrator shall establish a program under  
25 which the Administrator shall—

1 (1) inform stakeholders of the benefits of re-  
 2 placing wood heaters that do not meet or exceed the  
 3 Step 2 emission reductions standards described in  
 4 the Final Rule;

5 (2) develop nonfinancial incentives to promote  
 6 the proper installation and use of EPA-certified Step  
 7 2 wood heaters; and

8 (3) consult with Indian tribes to carry out the  
 9 purposes of this title.

10 **SEC. 204. SUPPLEMENTAL ENVIRONMENTAL PROJECTS.**

11 (a) EPA AUTHORITY TO ACCEPT WOOD HEATER  
 12 EMISSIONS REDUCTION SUPPLEMENTAL ENVIRON-  
 13 MENTAL PROJECTS.—Section 1 of Public Law 110–255  
 14 (42 U.S.C. 16138) is amended—

15 (1) in the heading, by inserting “**AND WOOD**  
 16 **HEATER**” after “**DIESEL**”; and

17 (2) in the matter preceding paragraph (1), by  
 18 inserting “and wood heater” after “diesel”.

19 (b) SETTLEMENT AGREEMENT PROVISIONS.—Sec-  
 20 tion 2 of Public Law 110–255 (42 U.S.C. 16139) is  
 21 amended in the first sentence—

22 (1) by inserting “or wood heater” after “diesel”  
 23 each place it appears;

24 (2) by inserting “, as applicable,” before “if the  
 25 Administrator”; and

1           (3) by inserting “, as applicable” before the pe-  
2       riod at the end.

3   **SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

4       (a) IN GENERAL.—There is authorized to be appro-  
5   priated to carry out this title \$75,000,000 for each of fis-  
6   cal years 2019 through 2024, to remain available until ex-  
7   pended.

8       (b) MANAGEMENT AND OVERSIGHT.—The Adminis-  
9   trator may use not more than 1 percent of the amounts  
10  made available under subsection (a) for each fiscal year  
11  for management and oversight of the programs under this  
12  title.

115TH CONGRESS  
2D SESSION

# S. 2461

To allow for judicial review of certain final rules relating to national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with the rules by existing sources.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

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

---

## A BILL

To allow for judicial review of certain final rules relating to national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with the rules by existing sources.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Blocking Regulatory  
5 Interference from Closing Kilns Act of 2018”.

1 SEC. 2. EXTENSION OF EXISTING SOURCE COMPLIANCE  
2 DATES FOR CERTAIN FINAL RULES RELAT-  
3 ING TO BRICK AND STRUCTURAL CLAY PROD-  
4 UCTS AND CLAY CERAMICS MANUFAC-  
5 TURING.

6 (a) DEFINITIONS.—In this section:

7 (1) ACTION.—

8 (A) IN GENERAL.—The term “action”  
9 means any action relating to a final rule that—

10 (i) seeks judicial review of any aspect  
11 of the final rule; and

12 (ii) is filed during the 60-day period  
13 beginning on the date on which notice of  
14 issuance of the final rule was published in  
15 the Federal Register.

16 (B) INCLUSION.—The term “action” in-  
17 cludes an action described in subparagraph (A)  
18 that is filed pursuant to section 307 of the  
19 Clean Air Act (42 U.S.C. 7607).

20 (2) CONTESTED FINAL RULE.—The term “con-  
21 tested final rule” means a final rule subject to judi-  
22 cial appeal or review on December 26, 2017.

23 (3) EXISTING SOURCE COMPLIANCE DATE.—  
24 The term “existing source compliance date”, with  
25 respect to a final rule, means the date by which an  
26 existing source (within the meaning of the final rule



1 described in paragraph (4)(A)) (including such an  
2 existing source that is a unit of State, Tribal, or  
3 local government) is first required to comply with  
4 any requirement of the final rule.

5 (4) FINAL RULE.—The term “final rule”  
6 means—

7 (A) the final rule of the Environmental  
8 Protection Agency entitled “NESHAP for  
9 Brick and Structural Clay Products Manufac-  
10 turing; and NESHAP for Clay Ceramics Manu-  
11 facturing” (80 Fed. Reg. 65470 (October 26,  
12 2015)); and

13 (B) the final rule of the Environmental  
14 Protection Agency entitled “NESHAP for  
15 Brick and Structural Clay Products Manufac-  
16 turing; and NESHAP for Clay Ceramics Manu-  
17 facturing: Correction” (80 Fed. Reg. 75817  
18 (December 4, 2015)).

19 (b) EXTENSION OF EXISTING SOURCE COMPLIANCE  
20 DATES FOR CONTESTED FINAL RULES.—The existing  
21 source compliance date for a contested final rule shall be  
22 extended until the earlier of—

23 (1) the date that is 2 years after the date on  
24 which judgment becomes final, and no longer subject

1 to further appeal or review, in all actions relating to  
2 the contested final rule; and

3 (2) December 26, 2020.

4 (c) REGULATIONS.—In the case of a judgment en-  
5 tered against the Environmental Protection Agency relat-  
6 ing to a contested final rule, the Administrator shall final-  
7 ize, by not later than 1 year after the date on which the  
8 judicial review or appeal of the judgment concludes, new  
9 regulations under section 112 of the Clean Air Act (42  
10 U.S.C. 7412) with respect to national emissions standards  
11 for hazardous air pollutants for brick and structural clay  
12 products manufacturing and clay ceramics manufacturing.

○

Whitehouse #1

An amendment to S. 2461, the BRICK Act, that would convey the sense of Congress that the EPA Assistant Administrator for the Office of Air and Radiation should 1) abide by all relevant standards of ethical conduct; 2) recuse himself from matters where his involvement would result in or create the appearance of a conflict or undermine public confidence in the EPA; and 3) provide a copy of his recusal letter to the Committee.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

**S. 2461**

To allow for judicial review of certain final rules relating to national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with the rules by existing sources.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. WHITEHOUSE

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SENSE OF CONGRESS RELATING TO THE AS-**  
4 **SISTANT ADMINISTRATOR FOR THE OFFICE**  
5 **OF AIR AND RADIATION.**

6 It is the sense of Congress that the Assistant Admin-  
7 istrator for the Office of Air and Radiation of the Environ-  
8 mental Protection Agency should—

9 (1) abide by the ethical standards of conduct  
10 that are in place for all Federal employees under

## 2

1 part 2635 of title 5, Code of Federal Regulations,  
2 including not taking any action, whether specifically  
3 prohibited or not, that would result in or create the  
4 reasonable appearance of—

5 (A) giving preferential treatment to any  
6 organization or person;

7 (B) losing independence or impartiality of  
8 action; or

9 (C) adversely affecting the confidence of  
10 the public in the Environmental Protection  
11 Agency; and

12 (2) recuse himself from any matters in which  
13 recusal is appropriate based on the standards of con-  
14 duct described in paragraph (1) and provide a copy  
15 of the recusal document to the Committee on Envi-  
16 ronment and Public Works of the Senate.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

**S. 2827**

To amend the Morris K. Udall and Stewart L. Udall  
Foundation Act.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. FINDINGS.**

4 Congress finds the following:

5 (1) Since 1999, the Morris K. Udall and Stew-  
6 art L. Udall Foundation (referred to in this Act as  
7 the “Foundation”) has operated the Parks in Focus  
8 program to provide opportunities for the youth of  
9 the United States to learn about and experience the  
10 Nation’s parks and wilderness, and other outdoor  
11 areas.

1           (2) Since 2001, the Foundation has conducted  
2       research and provided education and training to Na-  
3       tive American and Alaska Native professionals and  
4       leaders on Native American and Alaska Native  
5       health care issues and tribal public policy through  
6       the Native Nations Institute for Leadership, Man-  
7       agement, and Policy.

8           (3) The Foundation is committed to continuing  
9       to make a substantial contribution toward public  
10      policy in the future by—

11           (A) playing a significant role in developing  
12      the next generation of environmental, public  
13      health, public lands, natural resource, and Na-  
14      tive American leaders; and

15           (B) working with current leaders to im-  
16      prove collaboration and decision-making on  
17      challenging environmental, energy, public  
18      health, and related economic problems and trib-  
19      al governance and economic development issues.

20 **SEC. 2. DEFINITIONS.**

21           (a) IN GENERAL.—Section 4 of the Morris K. Udall  
22      and Stewart L. Udall Foundation Act (20 U.S.C. 5602)  
23      is amended—

24           (1) in paragraph (2), by striking “the Udall  
25      Center for Studies in Public Policy established at

1 the University of Arizona in 1987” and inserting  
2 “the Udall Center for Studies in Public Policy estab-  
3 lished in 1987 at the University of Arizona, and in-  
4 cludes the Native Nations Institute”;

5 (2) by redesignating paragraphs (3) through  
6 (7), (8), and (9) as paragraphs (4) through (8),  
7 (11), and (12), respectively;

8 (3) by inserting after paragraph (2) the fol-  
9 lowing:

10 “(3) the term ‘collaboration’ means to work in  
11 partnership with other entities for the purpose of—

12 “(A) resolving disputes;

13 “(B) addressing issues that may cause or  
14 result in disputes; or

15 “(C) streamlining and enhancing Federal,  
16 State, or tribal environmental and natural re-  
17 source decision-making processes or procedures  
18 that may result in a dispute or conflict;”;

19 (4) in paragraph (7), as redesignated by para-  
20 graph (2)—

21 (A) by striking “United States Institute  
22 for Environmental Conflict Resolution” and in-  
23 serting “John S. McCain III United States In-  
24 stitute for Environmental Conflict Resolution”;  
25 and



## 4

1 (B) by striking “section 7(a)(1)(D)” and  
 2 inserting “section 7(a)(1)(B)”;

3 (5) in paragraph (8), as redesignated by para-  
 4 graph (2), by striking “section 1201(a)” and insert-  
 5 ing “section 101(a)”;

6 (6) by inserting after paragraph (8), as redesign-  
 7 ated by paragraph (2), the following:

8 “(9) the term ‘Nation’s parks and wilderness’  
 9 means units of the National Park System and com-  
 10 ponents of the National Wilderness Preservation  
 11 System;

12 “(10) the term ‘Native Nations Institute’  
 13 means the Native Nations Institute for Leadership,  
 14 Management, and Policy established at the Univer-  
 15 sity of Arizona in 2001;”.

16 (b) CONFORMING AMENDMENT.—Section 3(5)(B) of  
 17 the Morris K. Udall and Stewart L. Udall Foundation Act  
 18 (20 U.S.C. 5601(5)(B)) is amended by striking “the  
 19 United States Institute for Environmental Conflict Reso-  
 20 lution” and inserting “the Institute”.

21 **SEC. 3. ESTABLISHMENT OF MORRIS K. UDALL AND STEW-**

22 **ART L. UDALL FOUNDATION.**

23 Section 5(e) of the Morris K. Udall and Stewart L.  
 24 Udall Foundation Act (20 U.S.C. 5603(e)) is amended by

1 striking “Arizona.” and inserting “Arizona and the Dis-  
2 trict of Columbia.”.

3 **SEC. 4. PURPOSE OF THE FOUNDATION.**

4 Section 6 of the Morris K. Udall and Stewart L.  
5 Udall Foundation Act (20 U.S.C. 5604) is amended—

6 (1) in paragraph (4), by striking “establish a  
7 Program for Environmental Policy Research and  
8 Environmental Conflict Resolution and Training at  
9 the Center” and inserting “establish a program for  
10 environmental policy research at the Center and a  
11 program for environmental conflict resolution and  
12 training at the United States Institute for Environ-  
13 mental Conflict Resolution”;

14 (2) in paragraph (5), by inserting “, natural re-  
15 source, conflict resolution,” after “environmental”;

16 (3) in paragraph (7)—

17 (A) by inserting “at the Native Nations In-  
18 stitute” after “develop resources”; and

19 (B) by inserting “providing education to  
20 and” after “policy, by”; and

21 (4) in paragraph (8)—

22 (A) by inserting “John S. McCain III” be-  
23 fore “United States Institute for Environmental  
24 Conflict Resolution”; and

1 (B) by striking “resolve environmental”  
2 and inserting “resolve environmental issues,  
3 conflicts, and”.

4 **SEC. 5. AUTHORITY OF THE FOUNDATION.**

5 Section 7 of the Morris K. Udall and Stewart L.  
6 Udall Foundation Act (20 U.S.C. 5605) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1)—

9 (i) by striking subparagraphs (A)  
10 through (C) and inserting the following:

11 “(A) GENERAL PROGRAMMING AUTHOR-  
12 ITY.—The Foundation is authorized to identify  
13 and conduct, directly or by contract, such pro-  
14 grams, activities, and services as the Founda-  
15 tion considers appropriate to carry out the pur-  
16 poses described in section 6, which may in-  
17 clude—

18 “(i) awarding scholarships, fellow-  
19 ships, internships, and grants, by national  
20 competition or other method, to eligible in-  
21 dividuals, as determined by the Foundation  
22 and in accordance with paragraphs (2),  
23 (3), and (4), for study in fields related to  
24 the environment or Native American and  
25 Alaska Native health care and tribal policy;

## 7

1           “(ii) funding the Center to carry out  
2           and manage other programs, activities, and  
3           services; and

4           “(iii) other education programs that  
5           the Board determines are consistent with  
6           the purposes for which the Foundation is  
7           established.”;

8           (ii) by redesignating subparagraph  
9           (D) as subparagraph (B); and

10          (iii) in subparagraph (B), as redesign-  
11          nated—

12               (I) in the subparagraph heading,  
13               by striking “INSTITUTE FOR ENVI-  
14               RONMENTAL CONFLICT RESOLUTION”  
15               and inserting “JOHN S. MCCAIN III  
16               UNITED STATES INSTITUTE FOR ENVI-  
17               RONMENTAL CONFLICT RESOLUTION”;

18          (II) in clause (i)—

19               (aa) in subclause (I), by in-  
20               serting “John S. McCain III” be-  
21               fore “United States Institute for  
22               Environmental Conflict Resolu-  
23               tion”; and

24               (bb) in subclause (II)—

1 (AA) by inserting “col-  
2 laboration,” after “medi-  
3 ation,”; and  
4 (BB) by striking “to  
5 resolve environmental dis-  
6 putes.” and inserting the  
7 following: “to resolve—  
8 “(aa) environmental dis-  
9 putes; and  
10 “(bb) Federal, State, or  
11 tribal environmental or natural  
12 resource decision-making proc-  
13 esses or procedures that may re-  
14 sult in a dispute or conflict that  
15 may cause or result in disputes.”;  
16 and  
17 (III) in clause (ii), by inserting  
18 “collaboration,” after “mediation,”;  
19 (B) by striking paragraph (5);  
20 (C) by redesignating paragraphs (6) and  
21 (7) as paragraphs (7) and (8), respectively;  
22 (D) by inserting after paragraph (4) the  
23 following:  
24 “(5) PARKS IN FOCUS.—The Foundation  
25 shall—

1           “(A) identify and invite the participation  
2           of youth throughout the United States to enjoy  
3           the Nation’s parks and wilderness and other  
4           outdoor areas, in an education program in-  
5           tended to carry out the purpose of paragraphs  
6           (1) and (2) of section 6; and

7           “(B) provide training and education pro-  
8           grams and activities to teach Federal employ-  
9           ees, natural resource professionals, elementary  
10          and secondary school educators, and others to  
11          work with youth to promote the use and enjoy-  
12          ment of the Nation’s parks and wilderness and  
13          other outdoor areas.

14          “(6) SPECIFIC PROGRAMS.—The Foundation  
15          shall assist in the development and implementation  
16          of programs at the Center—

17               “(A) to provide for an annual meeting of  
18               experts to discuss contemporary environmental  
19               issues;

20               “(B) to conduct environmental policy re-  
21               search; and

22               “(C) to promote dialogue with visiting pol-  
23               icymakers on environmental, natural resource,  
24               and public lands issues.”;

1 (E) in paragraph (7), as redesignated by  
2 subparagraph (C), by striking “Morris K.  
3 Udall’s papers” and inserting “the papers of  
4 Morris K. Udall and Stewart L. Udall”; and

5 (F) by adding at the end the following:

6 “(9) NATIVE NATIONS INSTITUTE.—The Foun-  
7 dation shall provide direct or indirect assistance to  
8 the Native Nations Institute from the annual appro-  
9 priations to the Trust Fund in such amounts as  
10 Congress may direct to conduct research and provide  
11 education and training to Native American and  
12 Alaska Native professionals and leaders on Native  
13 American and Alaska Native health care issues and  
14 tribal public policy issues as provided in section  
15 6(7).”;

16 (2) by striking subsection (c) and inserting the  
17 following:

18 “(c) PROGRAM PRIORITIES.—

19 “(1) IN GENERAL.—The Foundation shall de-  
20 termine the priority of the programs to be carried  
21 out under this Act and the amount of funds to be  
22 allocated for such programs from the funds earned  
23 annually from the interest derived from the invest-  
24 ment of the Trust Fund, subject to paragraph (2).

1           “(2) LIMITATIONS.—In determining the amount  
2       of funds to be allocated for programs carried out  
3       under this Act for a year—

4           “(A) not less than 50 percent of such an-  
5       nual interest earnings shall be utilized for the  
6       programs set forth in paragraphs (2), (3), (4),  
7       and (5) of subsection (a);

8           “(B) not more than 17.5 percent of such  
9       annual interest earnings shall be allocated for  
10      salaries and other administrative purposes; and

11          “(C) not less than 20 percent of such an-  
12      nual interest earnings shall be appropriated to  
13      the Center for activities under paragraphs (7)  
14      and (8) of subsection (a).”; and

15          (3) by adding at the end the following:

16      “(d) DONATIONS.—Any funds received by the Foun-  
17      dation in the form of donations or grants, as well as any  
18      unexpended earnings on interest from the Trust Fund  
19      that is carried forward from prior years—

20          “(1) shall not be included in the calculation of  
21      the funds available for allocations pursuant to sub-  
22      section (c); and

23          “(2) shall be available to carry out the provi-  
24      sions of this Act as the Board determines to be nec-  
25      essary and appropriate.”.



1 **SEC. 6. USE OF INSTITUTE BY FEDERAL AGENCY OR OTHER**  
2 **ENTITY.**

3 Section 11 of the Morris K. Udall and Stewart L.  
4 Udall Foundation Act (20 U.S.C. 5607b) is amended—

5 (1) in subsection (a)—

6 (A) by inserting “collaboration,” after  
7 “mediation,”; and

8 (B) by striking “resources.” and inserting  
9 “resources, or with a Federal, State, or tribal  
10 process or procedure that may result in a dis-  
11 pute or conflict.”; and

12 (2) in subsection (c)(2)(C), by inserting “medi-  
13 ation, collaboration, and” after “agree to”.

14 **SEC. 7. ADMINISTRATIVE PROVISIONS.**

15 Section 12 of the Morris K. Udall and Stewart L.  
16 Udall Foundation Act (20 U.S.C. 5608) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (4), by striking “accept,  
19 hold, administer, and utilize gifts” and insert-  
20 ing “accept, hold, solicit, administer, and utilize  
21 donations, grants, and gifts”; and

22 (B) in paragraph (7), by striking “in the  
23 District of Columbia or its environs” and in-  
24 serting “in the District of Columbia and Tue-  
25 son, Arizona, or their environs”; and

1           (2) in subsection (b), by striking “, with the ex-  
2           ception of paragraph (4),”.

3 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

4           Section 13(b) of the Morris K. Udall and Stewart L.  
5 Udall Foundation Act (20 U.S.C. 5609(b)) is amended by  
6 striking “fiscal years 2004 through 2008” and inserting  
7 “fiscal years 2019 through 2024”.

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

**S. 1934**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. SULLIVAN (for himself and Mr.  
CARPER)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alaska Remote Gener-  
5 ator Reliability and Protection Act”.

6 **SEC. 2. REVISION OF REGULATIONS REQUIRED.**

7 (a) IN GENERAL.—The Administrator of the Envi-  
8 ronmental Protection Agency shall revise section  
9 60.4216(c) of title 40, Code of Federal Regulations (as  
10 in effect on the date of enactment of this Act), by striking  
11 “that was not certified” and all that follows through

1 “compared to engine-out emissions” and inserting “must  
2 have that engine certified as meeting at least Tier 3 PM  
3 standards”.

4 (b) EMISSIONS AND ENERGY RELIABILITY STUDY.—  
5 Not later than 1 year after the date of enactment of this  
6 Act, the Administrator of the Environmental Protection  
7 Agency, in consultation with the Secretary of Energy,  
8 shall submit to the Committee on Environment and Public  
9 Works of the Senate and the Committee on Energy and  
10 Commerce of the House of Representatives a report as-  
11 sessing options for the Federal Government to assist re-  
12 mote areas in the State of Alaska in meeting the energy  
13 needs of those areas in an affordable and reliable manner  
14 using—

- 15 (1) existing emissions control technology; or  
16 (2) other technology that achieves emissions re-  
17 ductions similar to the technology described in para-  
18 graph (1).

115TH CONGRESS  
1ST SESSION

# S. 593

To amend the Pittman-Robertson Wildlife Restoration Act to facilitate the establishment of additional or expanded public target ranges in certain States.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 9, 2017

Mrs. CAPITO (for herself, Mr. BOOZMAN, Mr. BENNET, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend the Pittman-Robertson Wildlife Restoration Act to facilitate the establishment of additional or expanded public target ranges in certain States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Target Practice and  
5 Marksmanship Training Support Act”.

### 6 SEC. 2. FINDINGS; PURPOSE.

7 (a) FINDINGS.—Congress finds that—

8 (1) the use of firearms and archery equipment  
9 for target practice and marksmanship training ac-

1       activities on Federal land is allowed, except to the ex-  
2       tent specific portions of that land have been closed  
3       to those activities;

4           (2) in recent years preceding the date of enact-  
5       ment of this Act, portions of Federal land have been  
6       closed to target practice and marksmanship training  
7       for many reasons;

8           (3) the availability of public target ranges on  
9       non-Federal land has been declining for a variety of  
10      reasons, including continued population growth and  
11      development near former ranges;

12          (4) providing opportunities for target practice  
13      and marksmanship training at public target ranges  
14      on Federal and non-Federal land can help—

15           (A) to promote enjoyment of shooting, rec-  
16      reational, and hunting activities; and

17           (B) to ensure safe and convenient locations  
18      for those activities;

19          (5) Federal law in effect on the date of enact-  
20      ment of this Act, including the Pittman-Robertson  
21      Wildlife Restoration Act (16 U.S.C. 669 et seq.),  
22      provides Federal support for construction and ex-  
23      pansion of public target ranges by making available  
24      to States amounts that may be used for construc-

1       tion, operation, and maintenance of public target  
2       ranges; and

3           (6) it is in the public interest to provide in-  
4       creased Federal support to facilitate the construction  
5       or expansion of public target ranges.

6       (b) PURPOSE.—The purpose of this Act is to facili-  
7       tate the construction and expansion of public target  
8       ranges, including ranges on Federal land managed by the  
9       Forest Service and the Bureau of Land Management.

10   **SEC. 3. DEFINITION OF PUBLIC TARGET RANGE.**

11       In this Act, the term “public target range” means  
12   a specific location that—

13           (1) is identified by a governmental agency for  
14       recreational shooting;

15           (2) is open to the public;

16           (3) may be supervised; and

17           (4) may accommodate archery or rifle, pistol, or  
18       shotgun shooting.

19   **SEC. 4. AMENDMENTS TO PITTMAN-ROBERTSON WILDLIFE**  
20       **RESTORATION ACT.**

21       (a) DEFINITIONS.—Section 2 of the Pittman-Robert-  
22       son Wildlife Restoration Act (16 U.S.C. 669a) is amend-  
23       ed—

24           (1) by redesignating paragraphs (2) through

25       (8) as paragraphs (3) through (9), respectively; and

1 (2) by inserting after paragraph (1) the fol-  
2 lowing:

3 “(2) the term ‘public target range’ means a  
4 specific location that—

5 “(A) is identified by a governmental agen-  
6 cy for recreational shooting;

7 “(B) is open to the public;

8 “(C) may be supervised; and

9 “(D) may accommodate archery or rifle,  
10 pistol, or shotgun shooting;”.

11 (b) EXPENDITURES FOR MANAGEMENT OF WILD-  
12 LIFE AREAS AND RESOURCES.—Section 8(b) of the Pitt-  
13 man-Robertson Wildlife Restoration Act (16 U.S.C.  
14 669g(b)) is amended—

15 (1) by striking “(b) Each State” and inserting  
16 the following:

17 “(b) EXPENDITURES FOR MANAGEMENT OF WILD-  
18 LIFE AREAS AND RESOURCES.—

19 “(1) IN GENERAL.—Except as provided in para-  
20 graph (2), each State”;

21 (2) in paragraph (1) (as so designated), by  
22 striking “construction, operation,” and inserting  
23 “operation”;

24 (3) in the second sentence, by striking “The  
25 non-Federal share” and inserting the following:



1           “(3) NON-FEDERAL SHARE.—The non-Federal  
2     share”;

3           (4) in the third sentence, by striking “The Sec-  
4     retary” and inserting the following:

5           “(4) REGULATIONS.—The Secretary”; and

6           (5) by inserting after paragraph (1) (as des-  
7     ignated by paragraph (1) of this subsection) the fol-  
8     lowing:

9           “(2) EXCEPTION.—Notwithstanding the limita-  
10    tion described in paragraph (1), a State may pay up  
11    to 90 percent of the cost of acquiring land for, ex-  
12    panding, or constructing a public target range.”.

13          (c) FIREARM AND BOW HUNTER EDUCATION AND  
14    SAFETY PROGRAM GRANTS.—Section 10 of the Pittman-  
15    Robertson Wildlife Restoration Act (16 U.S.C. 669h-1)  
16    is amended—

17           (1) in subsection (a), by adding at the end the  
18    following:

19           “(3) ALLOCATION OF ADDITIONAL AMOUNTS.—  
20    Of the amount apportioned to a State for any fiscal  
21    year under section 4(b), the State may elect to allo-  
22    cate not more than 10 percent, to be combined with  
23    the amount apportioned to the State under para-  
24    graph (1) for that fiscal year, for acquiring land for,  
25    expanding, or constructing a public target range.”;

1           (2) by striking subsection (b) and inserting the  
2 following:

3           “(b) COST SHARING.—

4           “(1) IN GENERAL.—Except as provided in para-  
5 graph (2), the Federal share of the cost of any activ-  
6 ity carried out using a grant under this section shall  
7 not exceed 75 percent of the total cost of the activ-  
8 ity.

9           “(2) PUBLIC TARGET RANGE CONSTRUCTION OR  
10 EXPANSION.—The Federal share of the cost of ac-  
11 quiring land for, expanding, or constructing a public  
12 target range in a State on Federal or non-Federal  
13 land pursuant to this section or section 8(b) shall  
14 not exceed 90 percent of the cost of the activity.”;  
15 and

16           (3) in subsection (c)(1)—

17           (A) by striking “Amounts made” and in-  
18 serting the following:

19           “(A) IN GENERAL.—Except as provided in  
20 subparagraph (B), amounts made”; and

21           (B) by adding at the end the following:

22           “(B) EXCEPTION.—Amounts provided for  
23 acquiring land for, constructing, or expanding a  
24 public target range shall remain available for  
25 expenditure and obligation during the 5-fiscal-

1           year period beginning on October 1 of the first  
2           fiscal year for which the amounts are made  
3           available.”.

4 **SEC. 5. LIMITS ON LIABILITY.**

5       (a) **DISCRETIONARY FUNCTION.**—For purposes of  
6 chapter 171 of title 28, United States Code (commonly  
7 referred to as the “Federal Tort Claims Act”), any action  
8 by an agent or employee of the United States to manage  
9 or allow the use of Federal land for purposes of target  
10 practice or marksmanship training by a member of the  
11 public shall be considered to be the exercise or perform-  
12 ance of a discretionary function.

13       (b) **CIVIL ACTION OR CLAIMS.**—Except to the extent  
14 provided in chapter 171 of title 28, United States Code,  
15 the United States shall not be subject to any civil action  
16 or claim for money damages for any injury to or loss of  
17 property, personal injury, or death caused by an activity  
18 occurring at a public target range that is—

- 19           (1) funded in whole or in part by the Federal  
20       Government pursuant to the Pittman-Robertson  
21       Wildlife Restoration Act (16 U.S.C. 669 et seq.); or  
22           (2) located on Federal land.

23 **SEC. 6. SENSE OF CONGRESS REGARDING COOPERATION.**

24       It is the sense of Congress that, consistent with appli-  
25 cable laws and regulations, the Chief of the Forest Service

1 and the Director of the Bureau of Land Management  
2 should cooperate with State and local authorities and  
3 other entities to carry out waste removal and other activi-  
4 ties on any Federal land used as a public target range  
5 to encourage continued use of that land for target practice  
6 or marksmanship training.

○

**UNITED STATES SENATE - OFFICE OF THE SECRETARY  
NOMINATION REFERENCE AND REPORT RECEIPT**

REFERRED TO COMMITTEE: Environment and Public Works HSOB-407

DATE DELIVERED: July 31, 2018 TRANSMITTED BY E-MAIL

Northern Border Regional Commission

PN2347

Harold B. Parker, of New Hampshire, to be Federal Cochairperson of the Northern Border Regional Commission, vice Mark Scarano, resigned.

**COMMITTEE RESOLUTION**

**CONSTRUCTION  
OTAY MESA U.S. LAND PORT OF ENTRY  
SAN DIEGO, CA  
PCA-BSC-SA18**

**RESOLVED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS OF  
THE UNITED STATES SENATE**

that pursuant to title 40 U.S.C. § 3307, appropriations are authorized for the construction of facilities of 404,026 gross square feet (including canopies and structured parking) to modernize and expand the Otay Mesa Land Port of Entry including expansion of the pedestrian processing facilities, construction of a commercial annex building, relocation of detention and Secure Electronic Network for Travelers Rapid Inspection (SENTRI) facilities and hazardous material processing, construction of surface or structured parking for employees and visitors, additional non-commercial primary inspection booths, and commercial import lot improvements at the Otay Mesa U.S. Land Port of Entry located in San Diego, California at an additional design cost of \$10,062,000, an estimated construction cost of \$100,718,000 and a management and inspection cost of \$11,068,000 for a total of \$121,848,000, which is in addition to funds provided pursuant to Public Law 111-5, a prospectus for which is attached hereto and by reference made part of this resolution, is approved.

*Provided*, that the Administrator shall provide to the Chairman or Ranking Member of the Committee on Environment and Public Works of the Senate, in a timely manner, requested documents and information regarding this prospectus and resulting contractual materials, without redaction other than redactions to exclude business confidential, proprietary, and/or procurement sensitive information.

*Provided further*, that the Administrator shall not delegate to any other agency the authority granted by this resolution.

---

**Chairman**

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**Ranking Member**

**Adopted: September 18, 2018**

COMMITTEE RESOLUTION

LEASE  
DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE  
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION  
DENVER, CO  
PCO-01-DE18

**RESOLVED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS OF  
THE UNITED STATES SENATE**

that pursuant to title 40 U.S.C. § 3307, a prospectus providing for a lease of approximately 125,000 rentable square feet of space, including 44 official parking spaces, for the Department of Treasury – Internal Revenue Service and Treasury Inspector General for Tax Administration to consolidate three separate leases in the Denver, Colorado at a proposed total annual cost of \$5,125,000 for a lease term of up to 20 years, a description of which is attached hereto and by reference made part of this resolution, is approved.

Approval of this prospectus constitutes authority to execute an interim lease for all tenants, if necessary, prior to execution of the new lease.

*Provided*, that to the maximum extent practicable, the Administrator of General Services shall require that the procurement include energy efficiency requirements as would be required for the construction of a federal building.

*Provided further*, that the Administrator shall require that the delineated area of the procurement is identical to the delineated area included in the prospectus, *except that*, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to the Committee on Environment and Public Works of the United States Senate prior to exercising any lease authority provided in this resolution.

*Provided further*, that the Administrator shall provide to the Chairman or Ranking Member of the Committee on Environment and Public Works of the Senate, in a timely manner, requested documents and information regarding this prospectus and resulting contractual materials, without redaction other than redactions to exclude business confidential, proprietary, and/or procurement sensitive information.

*Provided further*, the Administrator of General Services may not enter into this lease if it does not contain a provision barring any individual holding a Federally-elected office, regardless of whether such individual took office before or after execution of this lease, to directly participate in, or benefit from or under this lease or any part thereof and that such provision provide that if this lease is found to have been made in violation of the foregoing prohibition or it is found that this prohibition has been violated during the term of the lease, the lease shall be void, except that the foregoing limitation shall not apply if the lease is entered into with a publicly-held corporation or publicly-held entity for the general benefit of such corporation or entity.

*Provided further*, prior to entering into this lease or approving a novation agreement involving a change of ownership under this lease, the Administrator of General Services shall require the offeror or the parties requesting the novation, as applicable, to identify and disclose whether the owner of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign-owned entity; provided further, in such an instance, the Administrator of General Services shall notify the occupant agency(ies) in writing, and consult with such occupant agency(ies) regarding security concerns and necessary mitigation measures (if any) prior to award of the lease or approval of the novation agreement.

*Provided further*, that the Administrator shall not delegate to any other agency the authority granted by this resolution.

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**Chairman**

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**Ranking Member**

**Adopted:** September 18, 2018



COMMITTEE RESOLUTION

LEASE  
DRUG ENFORCEMENT ADMINISTRATION  
WESTON, FL  
PFL-04-WE18

RESOLVED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS OF  
THE UNITED STATES SENATE

that pursuant to title 40 U.S.C. § 3307, a prospectus providing for a lease of approximately 133,503 rentable square feet of space, including 480 official parking spaces, for the Department of Justice, Drug Enforcement Administration currently located at 2100 and 2200 North Commerce Parkway in Weston, Florida at a proposed total annual cost of \$5,354,805 for a lease term of up to 20 years, a description of which is attached hereto and by reference made part of this resolution, is approved.

Approval of this prospectus constitutes authority to execute an interim lease for all tenants, if necessary, prior to execution of the new lease.

*Provided*, that to the maximum extent practicable, the Administrator of General Services shall require that the procurement include energy efficiency requirements as would be required for the construction of a federal building.

*Provided further*, that the Administrator shall require that the delineated area of the procurement is identical to the delineated area included in the prospectus, *except that*, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to the Committee on Environment and Public Works of the United States Senate prior to exercising any lease authority provided in this resolution.

*Provided further*, that the Administrator shall provide to the Chairman or Ranking Member of the Committee on Environment and Public Works of the Senate, in a timely manner, requested documents and information regarding this prospectus and resulting contractual materials, without redaction other than redactions to exclude business confidential, proprietary, and/or procurement sensitive information.

*Provided further*, the Administrator of General Services may not enter into this lease if it does not contain a provision barring any individual holding a Federally-elected office, regardless of whether such individual took office before or after execution of this lease, to directly participate in, or benefit from or under this lease or any part thereof and that such provision provide that if this lease is found to have been made in violation of the foregoing prohibition or it is found that this prohibition has been violated during the term of the lease, the lease shall be void, except that the foregoing limitation shall not apply if the lease is entered into with a publicly-held corporation or publicly-held entity for the general benefit of such corporation or entity.

*Provided further*, prior to entering into this lease or approving a novation agreement involving a change of ownership under this lease, the Administrator of General Services shall require the offeror or the parties requesting the novation, as applicable, to identify and disclose whether the owner of the leased space, including an entity involved in the financing thereof, is a foreign person or a foreign-owned entity; provided further, in such an instance, the Administrator of General Services shall notify the occupant agency(ies) in writing, and consult with such occupant agency(ies) regarding security concerns and necessary mitigation measures (if any) prior to award of the lease or approval of the novation agreement.

*Provided further*, that the Administrator shall not delegate to any other agency the authority granted by this resolution.

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**Chairman**

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**Ranking Member**

**Adopted:** September 18, 2018

**COMMITTEE RESOLUTION**

**LEASE  
DEPARTMENT OF DEFENSE – ARMY CORPS OF ENGINEERS  
SACRAMENTO, CA  
PCA-01-SA18**

**RESOLVED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS OF  
THE UNITED STATES SENATE**

that pursuant to title 40 U.S.C. § 3307, a prospectus providing for a lease of approximately 233,000 rentable square feet of space, including 65 official parking spaces, for the Department of Defense, Army Corps of Engineers currently located at 1325 J Street in Sacramento, California at a proposed total annual cost of \$10,019,000 for a lease term of up to 20 years, a description of which is attached hereto and by reference made part of this resolution, is approved.

Approval of this prospectus constitutes authority to execute an interim lease for all tenants, if necessary, prior to execution of the new lease.

*Provided*, that to the maximum extent practicable, the Administrator of General Services shall require that the procurement include energy efficiency requirements as would be required for the construction of a federal building.

*Provided further*, that the Administrator shall require that the delineated area of the procurement is identical to the delineated area included in the prospectus, *except that*, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to the Committee on Environment and Public Works of the United States Senate prior to exercising any lease authority provided in this resolution.

*Provided further*, that the Administrator shall provide to the Chairman or Ranking Member of the Committee on Environment and Public Works of the Senate, in a timely manner, requested documents and information regarding this prospectus and resulting contractual materials, without redaction other than redactions to exclude business confidential, proprietary, and/or procurement sensitive information.

*Provided further*, the Administrator of General Services may not enter into this lease if it does not contain a provision barring any individual holding a Federally-elected office, regardless of whether such individual took office before or after execution of this lease, to directly participate in, or benefit from or under this lease or any part thereof and that such provision provide that if this lease is found to have been made in violation of the foregoing prohibition or it is found that this prohibition has been violated during the term of the lease, the lease shall be void, except that the foregoing limitation shall not apply if the lease is entered into with a publicly-held corporation or publicly-held entity for the general benefit of such corporation or entity.

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*Provided further*, that the Administrator shall not delegate to any other agency the authority granted by this resolution.

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**Chairman**

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**Ranking Member**

**Adopted:** September 18, 2018

## OPINION: Mirrors and Smoke, Smoke and Mirrors

By John Crouch | September 14, 2018

Recently, there has been some talk in the biomass community, including in the pages of Biomass Magazine, that suggests there is a possibility of a \$500 million woodstove change-out fund being created by Congress. While the Hearth, Patio & Barbecue Association agrees that there needs to be a program to help fund the removal of old, uncertified woodstoves, the current draft concept and efforts to promote it at this time are an illusion, or worse, a shell game.

HPBA is the trade association for all wood, pellet, and gas-fired heating products and their accessories, i.e. hearth products. We've worked to establish change-out programs to remove and replace old woodstoves since 1989, usually in partnership with local or state governments or tribes. Often, these programs are established with the support and participation of local chapters of the American Lung Association. We hope and expect that there will one day be a nationally funded woodstove change-out program, similar to the Diesel Emission Reduction Act, which was first enacted in 2005. It is an idea that HPBA has been working on with the U.S. Congress since 2007. Both industry and state air regulators want such a fund and are pushing to make it a reality.



Crouch

Right now, however, the concept is being dangled to try to

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divert attention from another important conversation, and that's just not right.

For almost two years, HPBA has been working on behalf of our entire industry to fix a major time-sensitive problem with the 2015 revision of the EPA's woodburning certification program, the New Source Performance Standards for New Residential Wood Heaters (i.e., wood and pellet stoves and inserts) and New Residential Hydronic Heaters and Forced-Air Furnaces.

The final rule established two deadlines: Step 1, effective in 2015, and Step 2, effective on May 15, 2020. The Step 2 standards contain fundamental problems. They set very difficult standards for new woodstoves and hydronic heaters, set a nearly impossible standard for new wood furnaces, and they tied the hands of the industry by requiring that on or after May 15, 2020 nothing could be made, sold, or transferred unless it met the new Step 2 standards. The new Step 2 emission standards are complicated, difficult to meet, and require months, or even years, of careful lab work. Most woodstove and hydronic heater manufacturers will be lucky to have even a few models ready by the deadline. And at this rate, consumers of wood furnaces will be lucky if they have more than a single model to choose from starting in May 2020.

Since retailers cannot be certain what and how much they'll sell in the winter of 2019-'20 (which also depends a lot on the weather!), they have radically cut back on orders of current models that meet Step 1. This, in turn, means reduced sales revenue for the manufacturers paired with the requirement to speed up further their expensive R&D efforts now. Even manufacturers that already had models that met the new Step 2 emissions target aren't exempt from the crunch. Since the EPA slightly changed the test, all models certified before 2015, including those that were clean and efficient enough to meet the Step 2 standards by most any metric, must be retested with the new method.

HPBA has moved a bill (H.R. 453) through the House and is poised with bipartisan support to move the Senate version (S. 1857) through the key Senate Committee on Environment and Public Works (EPW). The legislation would extend the Step 2 date of the NSPS by three years, from May 15, 2020 to May 15, 2023. This is the cleanest possible legislative edit to the regulation. Now, suddenly at this late hour, comes draft changeout program language by way of a proposed amendment that has been thrown together to sidetrack the conversation about the need for additional time to meet Step 2 of the NSPS.

9/17/2018

OPINION: Mirrors and Smoke, Smoke and Mirrors | Biomassmagazine.com

Rumors are that the authors of the draft change-out program language plan to offer it as an amendment to S. 1857, as a replacement of the original intent of the legislation: to provide extra time for industry to come into compliance with Step 2 targets. What hasn't been mentioned is that the proposed change-out program language would only *authorize* creation of such a program. It wouldn't actually appropriate those funds, which would require another step. Since this legislative session ends in January, any legislation that isn't signed into law over the past two years of this session of Congress will have to be reintroduced. To create such a new program will take years of work with Congress, not a few months at the end of a congressional session that is now consumed with an upcoming election. Simply put, the creation of an unfunded program would be an empty gesture that provides no benefit to the industry or consumers.

Our industry overwhelmingly supports the idea of a change-out program authorization, but any sincere effort to implement such a program needs to have a meaningful chance of passage and include industry input during the drafting process—not a hastily-drafted, diversionary amendment that lessens the chances of industry getting the relief it needs to ensure a viable generation of new, cleaner-burning woodstoves.



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September 14, 2018

The Honorable John Barrasso  
 Chair  
 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  
 Chair  
 Committee on Environment and Public Works  
 Subcommittee on Clean Air and Nuclear Safety  
 U.S. Senate

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

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

The Hearth, Patio & Barbecue Association (HPBA) strongly supports S. 1857, legislation introduced by Senator Shelley Moore Capito, which would extend the effective date of Step 2 of an EPA emissions rule for new residential wood heaters by three years, from May 15, 2020 to May 15, 2023. The rule, referred to as the New Source Performance Standards (NSPS) for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, was finalized in March 2015 with Step 1 of the rule coming into effect May 15, 2015. This was the first revision since 1988 and was greatly needed given the significant improvements in today's wood heater technologies. However, the rule essentially established two rules in one, with Step 2 of the rule set to come into effect May 15, 2020. Extension of the effective date is desperately needed in order to provide manufacturers enough time to complete R&D, testing, and purchase order fulfillment for retailers.

Members of our trade association include 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. HPBA and its members have been long-time champions of woodburning product innovation. Biomass-fueled heaters are important renewable home heating options and vital for U.S. households looking to reduce home heating costs while also being environmentally conscious. HPBA takes every opportunity to ensure the general public has a wide variety of woodburning appliances available.

To be clear, HPBA and the hearth industry strongly support federal standards. We need these standards to maintain a level playing field across the U.S. and ensure stability in the market for both industry and consumers. This industry simply needs more time to come into compliance with the Step 2 standards and to resolve key issues that undermine the effectiveness of the NSPS program for new residential wood heaters.

For woodstove manufacturers in particular, a compliance date extension gives them time to make the transition to the not-yet-finished cordwood test method (a test method using fuel more similar to what homeowners burn and, therefore, is more representative of actual emissions). This in turn helps the

environment because stoves tested to this new method will be more likely to achieve expected emissions reductions in consumers' homes.

More time also gives manufacturers the ability to continue fulfilling purchase orders on Step 1 products, which we must keep in mind are far cleaner than conventional woodstoves. Sales revenues from Step 1 products go towards funding R&D for stoves to meet Step 2. They are also necessary to help manufacturers, the vast majority of which are small businesses, to recoup their investments on Step 1 products. In short, without this revenue stream, and for small manufacturers who currently have only one (or in some cases, zero) Step 2 products to offer, the additional time is critical.

For retailers, they would have more time and products to continue selling until manufacturers near completion of R&D and testing of products for Step 2. Finally, additional compliance time helps keep prices down, as manufacturers can better spread out R&D costs. This in turn helps consumers and communities replace existing, older stoves. Consumers will have more product choices and be able to afford new, more efficient EPA-certified products to replace older, higher-polluting appliances, which are a much larger source of emissions than Step 1-certified appliances.

**Relatively few wood heaters meet the Step 2 standards today and even those that might be compliant may not be certified in time.**

If we compare the number of Step 1 certificates to the number of Step 2 certificates, as of July 2018, of the 571 currently-certified models of wood and pellet stoves, only 91 models are certified to meet the Step 2 (2020) standards.<sup>1</sup> It's even worse for hydronic heaters and forced-air furnaces: only 11 out of 113 hydronic heaters and one out of 19 forced-air furnaces are Step 2-certified.<sup>2,3</sup>

With R&D and test lab costs sometimes in the hundreds of thousands of dollars range, manufacturers are struggling to both achieve the standards and spread out costs of this process in the timeframe set by EPA. For this industry, the only way to pay for R&D and testing is through revenue from product sales. With the 2020 deadlines looming, Step 1 sales are suffering significantly. Without those sales, manufacturers are unable to continue working towards Step 2 certification. Many manufacturers (especially for hydronic heaters and forced-air furnaces) are facing the real prospect that they will have nothing to offer for sale in May 2020.

In addition to R&D costs, manufacturers must cover the costs of lab testing. Before scheduling time in one of only five accredited test labs in North America, a manufacturer must be sure that their product will pass the test. It is a waste of time and money to test a product before being certain that it will indeed pass. 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 (*attached*), arguably the largest EPA-accredited test lab for wood heaters in the U.S., attests 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

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<sup>1</sup> EPA. (July 2018). *List of EPA Certified Wood Stoves*. Retrieved from: <https://www.epa.gov/compliance/list-epa-certified-wood-stoves>

<sup>2</sup> EPA. (June 2018). *List of EPA Certified Hydronic Heaters*. Retrieved from: <https://www.epa.gov/compliance/list-epa-certified-hydronic-heaters>

<sup>3</sup> EPA. (June 2018). *List of EPA Certified Forced-Air Furnaces*. Retrieved from: <https://www.epa.gov/compliance/list-epa-certified-forced-air-furnaces>



testing will further slowdown 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.

**Product availability and affordability will suffer without an extension.**

Every affected wood heater sold today is EPA-certified. Extension of the Step 2 effective date does not change that and does not "rollback" any applicable standards. Rollback implies repealing, dismantling, or otherwise diminishing the effect of a law or regulation. S. 1857 is not a rollback. All it does is provide more time for an industry comprised of small businesses to come into compliance with regulation. Typically, EPA looks into whether to revise an emission rule every eight years. There are only five years between Step 1 (May 2015) and Step 2 (May 2020). In reality, due to the nature of the hearth industry business cycle, there is even less time.

The hearth industry is a seasonal business. Retailers submit purchase orders to manufacturers for the next heating season months in advance. Big box stores (e.g., Home Depot, Lowes, Menards, Tractor Supply) purchase even further in advance. HPBA has heard from several members that these big box stores told them as early as November 2017 that they would not be purchasing any products that did not meet Step 2. Many smaller retailers are now faced with this dilemma: buy Step 1-certified products, expecting a cold winter, or avoid the risk of being stranded with unsellable Step 1 inventory in 2020 and only buy Step 2-certified products. Some retailers who would like to buy Step 2 products are unable to because they still have large supplies of Step 1 products that they need to sell in order to be able to afford their order for Step 2 products (and to have space in their stores for a new range of products). This industry could be decimated without some kind of relief.

Without an additional three years to comply with Step 2 of the NSPS, there will be many fewer models available to consumers looking to upgrade from an existing stove (including conventional stoves that are not EPA-certified at any level) or simply interested in lowering their home heating costs. To be clear, a three-year extension is far more important than product sell-through relief (in this context, the ability to sell previously manufactured Step 1 products for a period of time after the Step 2 standards become applicable). Sell-through relief would not allow manufacturers to continue making Step 1 certified products, and isn't much of a help for manufacturers, especially very small manufacturers who may have severely limited Step 2 products to sell in 2020.

Consumers will be faced with higher prices and less variety in products. This is not good for air quality. Many families that heat with wood do so because it's affordable. These price-sensitive households will hang onto their older stoves (which may present safety and health hazards) rather than replace them with a more expensive EPA-certified product, or they may turn to heaters fueled by fossil fuels.

**Data on Wood and Pellet Stoves and Inserts Shipments in the U.S.**

Since this legislation (S.1857) only affects newly-manufactured and sold products, it is worthwhile to look at how many wood heaters (specifically wood and pellet stoves and inserts) are shipped across the U.S and where. HPBA's hearth shipments program keeps track of hearth product shipments across the U.S. and in Canada on an annual basis.

The shipment numbers from 2017 (Table 1) were collected from companies that account for about 75 percent of wood and pellet stoves and inserts sales. These are shipment numbers, not sales numbers, but are the best data source we can reference to show new products entering an individual state compared to nationwide shipments.

In 2017, 219,723 wood and pellet stoves and inserts were shipped across the U.S. It should be noted that these numbers don't reflect the home heating makeup for each state. Lower population states, by nature, will have fewer shipments since there are fewer customers in those states.

**Table 1. Shipment Numbers (2017) of Wood and Pellet Stoves and Inserts in States of Members of the Senate Environment and Public Works Committee**

State	% of National Shipments	State Shipments
Alabama	0.98%	2,150
Alaska	0.66%	1,450
Arkansas	0.84%	1,845
Delaware	1.17%	2,570
Illinois	1.92%	4,220
Iowa	0.79%	1,735
Kansas	0.31%	680
Maryland	2.25%	4,960
Massachusetts	1.42%	3,120
Mississippi	0.32%	710
Nebraska	0.60%	1,320
New Jersey	2.08%	4,570
New York	3.90%	8,570
Oklahoma	0.90%	1,980
Oregon	1.70%	3,735
Rhode Island	0.12%	265
South Dakota	0.31%	680
Vermont	0.23%	505
West Virginia	0.26%	575
Wyoming	0.24%	520

In states with the highest shipment numbers, it can be assumed that retailers or distributors are making product orders because they have sales orders to fulfill. States with lower shipment numbers can be attributed to (1) them being lower population states and/or (2) states with lower income populations who are unable to purchase newer EPA-certified stoves. The extension legislation will most impact them because an extension will help to lower the cost of appliances and enable manufacturers to certify more products.

**Air quality would not be drastically impacted by S. 1857.**

It has been asserted that any extension of the effective date of Step 2 will result in millions of pounds of additional PM being emitted into the air because we would be foregoing the emissions reductions that result from moving from Step 1 to Step 2. But those emissions reductions are grossly inflated because they are based on EPA shipment estimates that are exaggerated. Most of the EPA's estimated PM reductions from Step 1 to Step 2 come from implementation of the hydronic heater and furnace standards. Again, the particulate matter reduction estimates are based on EPA's estimated sales numbers for these products. EPA estimated that in 2017 alone, at least 30,000 furnaces would be

sold.<sup>4</sup> HPBA surveyed its furnace manufacturer members, who make up 5 out of the seven furnace manufacturers with EPA-certified models. Combined, these manufacturers sold only 5,000 furnaces in 2017. Unless the other two small furnace manufacturers sold 25,000 furnaces in 2017, EPA's PM reduction estimates are grossly overestimated.

Further related to emissions calculations, some western states have used these estimated emissions reductions from Step 2 to model and project attainment or maintenance of their National Ambient Air Quality Standards (NAAQS), meet other clean air goals, and/or have included these estimates in their State Implementation Plans (SIPs). It appears that EPA has allowed at least two PM non-attainment areas, Puget Sound and Fairbanks, to use the 2 g/h **laboratory number** in their computer models. In the past, EPA has asked states to rely on 'real-world' performance numbers in their SIP models, which naturally would be higher numbers. There is no evidence that the lower laboratory numbers translate into lower real-world emissions.

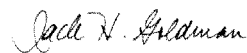
During the House Energy & Commerce Committee Subcommittee on the Environment hearing on H.R. 453 (House version of S. 1857), Congressman Scott Peters (D-CA-52) stated that "we don't want to have the perverse effect of not having better technology on the shelves because we couldn't achieve perfect."<sup>5</sup> As policymakers, the goal should be to improve the quality of our air and improve health outcomes of populations with high use of wood-fueled products. Retailers must have affordable, clean-burning, and reliable products for consumers in order to reach this goal. If the current standards remain on track to come into effect as planned, this goal will become much, much more difficult (and costlier) to achieve.

#### 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 considering these comments and your attention to S. 1857. We look forward to further discussion and hope to be a resource to you and your staff in the future.

Sincerely,



Jack Goldman  
President & CEO  
Hearth, Patio & Barbecue Association

Attachments: Letter from OMNI-Test Laboratories Regarding Test Lab Capacity

<sup>4</sup> Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division. (2015). *Regulatory Impact Analysis (RIA) for Residential Wood Heaters NSPS Revision: Final Report* (Table 4-4. Estimated Annual Shipments by Category, 2008-2020, p. 72). Retrieved from <https://www.epa.gov/sites/production/files/2015-02/documents/20150204-residential-wood-heaters-ria.pdf>

<sup>5</sup> *Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators: Hearing before the Subcommittee on the Environment of the Committee on Energy and Commerce, House of Representatives, 115<sup>th</sup> Cong. Preliminary Transcript*, 66 (September 13, 2017). <https://docs.house.gov/meetings/IF/IF18/20170913/106394/HHRG-115-IF18-Transcript-20170913.pdf>



November 14<sup>th</sup>, 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 4<sup>th</sup> 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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Industry Groups Support New BRICK Act to Extend EPA Emissions Regulations Timeline | 2018-03-28 | Ceramic Industry

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## Industry Groups Support New BRICK Act to Extend EPA Emissions Regulations Timeline

The bill would address time concerns associated with the Maximum Achievable Control Technology (MACT) rule reissued in 2015 for brick and structural clay manufacturers.

*March 28, 2018*

New bipartisan legislation would help the nation's brick, clay and tile producers avoid premature and devastating investments to comply with the Environmental Protection Agency's (EPA) national emissions regulations. Recently introduced by U.S. Senators Roger Wicker (R-Miss.) and Joe Donnelly (D-Ind.), the Blocking Regulatory Interference from Closing Kilns (BRICK) Act would allow two years for the judicial review of final rules on the EPA's increasingly strict emissions regulations before compliance is required.

The bill would address time concerns associated with the Maximum Achievable Control Technology (MACT) rule reissued in 2015 for brick and structural clay manufacturers. "It's critical to complete the full legal review before manufacturers must spend millions for controls that may not be needed and could force some of them out of business," said Ray Leonhard, president and CEO of the Brick Industry Association (BIA).

Past burdens incurred show that compliance deadlines for disputed regulations are often too short for the legal process to run its course. Manufacturers must make investments to comply with rules that may be thrown out by the courts.

"After investing \$100 million since 2003 to comply with EPA regulations that were overturned just four years later, the nation's brick manufacturers need certainty," said Davis Henry, BIA chairman and president of Henry Brick, Selma, Ala. "On behalf of the entire brick industry, I'd like to thank Senators Wicker and Donnelly for their bipartisan leadership on this critical issue."

"America's tile manufacturers support the BRICK Act," said Eric Astrachan, executive director of the Tile Council of North America (TCNA). "The EPA has admitted that its recent rule would yield no air quality environmental benefits, while imposing costs on tile manufacturers. It's simply common sense to delay implementation of the rule while the courts weigh challenges to it and EPA has a chance to reconsider this rulemaking. The last thing tile manufacturers need is a completely unnecessary government regulation."

The bill would limit the compliance date extension to December 26, 2020; if a court decision vacates the EPA's rule, the legislation would require the EPA to finalize a follow-up rule within one year. The compromise would ensure that businesses have the time and certainty they need to comply while ensuring that those investments in clean air technology are made in a timely manner.

In 2003, the EPA finalized the original MACT rule for the brick and structural clay ceramics manufacturing industry, requiring brick companies to comply by installing new equipment to help control emissions. In 2007, after companies spent more than \$100 million on these controls, the U.S. Court of Appeals for the D.C. Circuit vacated the rule. In 2015, the EPA finalized a new revised rule that uses the emission reductions achieved by the control devices installed under the vacated 2003 rule as the baseline for further emission reduction requirements. This rule is now under review by the courts.

"We greatly appreciate the bipartisan recognition of the need for a rule that both protects the environment and allows industry to continue to recover and thrive," said Susan Miller, the BIA's vice president for Environment, Health and Safety. "One round of compliance with a non-moving, defensible target will

ensure both goals are attained.”

For more information, visit [www.gobrick.com](http://www.gobrick.com) or [www.tcnatile.com](http://www.tcnatile.com).

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