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Committee on Environment
and Public Works Washington, D.C.

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

TUESDAY, NOVEMBER 14, 2017

U.S. SENATE

Committee on Environment and Public Works

Subcommittee on Clean Air and Nuclear Safety

Washington, D.C.

The subcommittee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Building, the Honorable Shelley Moore Capito [chairwoman of the subcommittee] presiding.

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

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

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

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

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

I will recognize myself for five minutes.

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES
SENATOR FROM THE STATE OF WEST VIRGINIA

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

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

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

Politicians, bureaucrats and the media have been fixated on the biggest, most headlining, grabbing regulations of the past few years, Obamacare implementation, Dodd-Frank, and the EPA's Clean Power Plan, to name a few. While these are massive regulatory expansions touching huge sectors of the economy, and

rightfully deserve public and political scrutiny, there are many more regulations being imposed outside the spotlight largely unnoticed.

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

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

Senator Wicker's S. 839, the BRICK Act, of which I am a co-

sponsor, will similarly extend the compliance deadline on rules relating to emissions from brick manufacturing until that litigation issue is complete.

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

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

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

Senator Whitehouse. Without objection.

[The referenced information follows:]

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

[The prepared statement of Senator Capito follows:]

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

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES
SENATOR FROM THE STATE OF RHODE ISLAND

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

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

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

EPA Administrator Scott Pruitt is the poster child for this mess. In the four months since his appointment, he has moved to

undo, delay or otherwise block more than 30 environmental rules. There has been no visible enforcement of anything. Science denial is rife.

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

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

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

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

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

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

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

I urge my colleagues to reach across the aisle to work with us. There is common ground to be found on a variety of

environmental issues. We shouldn't just deliver an industry wish list like the Murray Coal three-page plan we have not been allowed to see. Delaying air quality standards has real life consequences and they hit home in Rhode Island.

I look forward to today's discussion.

Thank you, Chairman Capito.

[The prepared statement of Senator Whitehouse follows:]

Senator Capito. Thank you, Senator.

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

STATEMENT OF THE HONORABLE RICHARD BURR, A UNITED STATES SENATOR
FROM THE STATE OF NORTH CAROLINA

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

I want to thank you for allowing me to come and speak in favor of a bill I introduced this year, S. 203, the Recognizing the Protection of Motorsports Act, the RPM Act. Let me say from the beginning that this is a bipartisan, common-sense approach to something that shouldn't have been a problem.

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

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

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

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

The bill I introduced is very straightforward. It reaffirms that the vehicles used solely for competition, including vehicles modified to be used exclusively for racing, will not sit in the garage because of an overly broad Washington rule. This was never Congress' intent which has, for years, expressly exempted these vehicles. The legislation would ensure that the original congressional intent is maintained into the future. I have been pleased with the bipartisan support this

legislation has garnered with a total of 38 co-sponsors, including 9 of my Democrat colleagues. I hope this broad support highlights the importance of the legislation across the Country.

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

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

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

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

[The prepared statement of Senator Burr follows.]

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

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

I would like to thank the second panel for joining us. I want to now recognize Senator Shelby to introduce two of our witnesses from the great State of Alabama.

STATEMENT OF THE HONORABLE RICHARD SHELBY, A UNITED STATES
SENATOR FROM THE STATE OF ALABAMA

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

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

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

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

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

hardships on both the producers and the consumers.

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

Thank you.

[The prepared statement of Senator Shelby follows:]

Senator Capito. Thank you, Senator.

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

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

STATEMENT OF DAVIS HENRY, PRESIDENT, HENRY BRICK COMPANY

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

As Senator Shelby said, my name is Davis Henry. I am the President of Henry Brick Company located in Selma, Alabama, a company that my grandfather founded in 1945. I represent the third generation of Henry's to operate this plant. I also currently serve as the Vice Chairman of the Brick Industry Association. I am here today to speak on behalf of both my company and my industry.

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

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

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

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

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

During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns. In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard, the EPA looked at the best performing kilns, including those new control devices that were the result of the 2003 MACT to establish the limits. Unfortunately, like

many who installed DLAs, our kilns cannot meet these new, more stringent limits.

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

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

There is a way to avoid MACT compliance. In fact, the EPA's first listed option for complying with the rule is to avoid the rule altogether by becoming a synthetic miner or synthetic area source. To become a synthetic area source, a facility accepts federally-enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like Henry Brick and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost.

Unfortunately, our most recent tests also demonstrate that

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

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

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

I would be happy to answer any questions.

[The prepared statement of Mr. Henry follows:]

Senator Capito. Thank you.

Mr. Kersting, you are recognized for five minutes.

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

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

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

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

In July of 2015, the EPA issued a proposed regulation declaring that the Clean Air Act prohibits converting a motor vehicle into a racecar. Manufacturing, selling and installing racing parts for the converted vehicle would also be a violation. Although the EPA did not finalize the proposed rule,

the agency stands by that interpretation. SEMA contends the interpretation contradicts over 47 years of previous EPA practice and it renders illegal the majority of current and future race cars and motorcycles.

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

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

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

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

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

There are about 1,300 racetracks across the Country. Most cater to thousands of organized amateur racing events which involve converted vehicles. These drivers, the race teams, and the spectators all help drive local economies, fill motel rooms and restaurants, and they shop at local stores. All these activities translate into tens of thousands of jobs and billions of dollars in economic activity, including annual sales of racing equipment.

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

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

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

in jeopardy.

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

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

[The prepared statement of Mr. Kersting follows:]

Senator Capito. Thank you.

Mr. Williams, you are recognized for five minutes.

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

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

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

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

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

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

Here is the situation. The EPA finalized this rule in 2015 and there are two steps. Manufacturers have already met Step 1

standards, in most cases, by reducing product emissions by 70 percent or more. Step 2 standards are even more stringent and must be met by May 2020. Products not meeting Step 2 cannot be made or sold after May 2020.

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

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

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

Let us talk about the real life impacts. United States Stove offers 46 products. If the current timeline stands, we

will be lucky to have 17 products ready for sale in May of 2020. Two-thirds of our product line will not be ready. Since retailers don't want to get stuck with Step 1 products they are not allowed to sell, the closer we get to 2020, they will cut purchases to keep inventory low.

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

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

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

In a rush to improve air quality, we are creating incentive

to hold on to older products longer. This will actually slow air quality improvements.

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

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

Thank you for your time.

[The prepared statement of Mr. Williams follows:]

Senator Capito. Thank you.

Ms. Hammond.

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

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

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

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

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

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

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

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

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

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

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

Given its mandate to regulate in the face of such a finding, EPA has undertaken several efforts to reduce the United States' contribution to the global problem. These efforts used the social cost of carbon in their cost benefit analyses which was developed by an interagency working group, subjected to peer review, and upheld in federal court.

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

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

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

For example, S. 1857 would increase black carbon and greenhouse gas emissions as well as premature deaths due to

particulate matter exposure. S. 839 would increase emissions of hazardous air pollutants like mercury and dioxins.

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

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

[The prepared statement of Ms. Hammond follows:]

Senator Capito. Thank you.

Mr. Walke.

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

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

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

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

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

The current bill makes it effectively impossible for the Federal Government to stop or enforce after the fact the sale of vehicle pollution control defeat devices as long as a company claims that they intend the device to be used for racing.

Companies may simply claim under the bill that on-road, non-competition use of defeat devices was not their purpose when selling the devices, even if they knew, even if they should have known, or even if they acted in willful disregard of whether those defeat devices were being used on roads and highways.

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

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

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

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

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

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

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

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

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

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

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

[The prepared statement of Mr. Walke follows:]

Senator Capito. Thank you, Mr. Walke.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Capito. Right.

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

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

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

Mr. Kersting. The VW instance is a case where vehicle manufacturers are required to certify vehicles before they go

out on the road. Those vehicles then have systems in them that will help maintain that vehicle and certify compliance.

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

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

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

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

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

Senator Capito. I would be interested in seeing that.

Mr. Kersting. There are thousands and thousands of race

vehicles out there and more every day.

Senator Capito. Thank you.

Mr. Whitehouse.

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

Senator Capito. Without objection.

[The referenced information follows:]

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

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

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

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

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

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

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

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

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

the rule?

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

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

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

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

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

Senator Whitehouse. Get used to it because, in my view, this EPA is going to regularly work with industry to create artificial delay and defeat the courts because, in effect, the

industry is on both sides of the litigation when it is industry versus Trump EPA.

Senator Capito. Senator Wicker.

Senator Wicker. Thank you.

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

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

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

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

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

that also.

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

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

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

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

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

Mr. Henry. Yes.

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

Mr. Henry. Yes.

Senator Wicker. Many of your colleagues around the

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

Mr. Henry. That is correct.

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

Mr. Henry. Yes.

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

Mr. Henry. Exactly.

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

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

Reducing the speed limit to 30 miles a hour nationwide

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

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

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

Thank you, Madam Chair.

Senator Capito. Thank you.

Senator Gillibrand.

Senator Gillibrand. Thank you, Madam Chairwoman.

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

Ms. Hammond. It would certainly undermine everything this institution envisioned when it passed the Clean Air Act which

was not just a sector by sector approach at getting us to a basic level of clean air, but improving our air over time. We should expect those standards to increase over time as we get better at what we do.

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

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

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

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

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

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

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

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

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

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

You have to target the behavior before they are sold or when they are sold by the manufacturers, which is why manufacturers should have known their products would be used by

individual drivers. That is where the liability should attach.

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

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

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

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

Senator Gillibrand. Thank you very much.

Thank you, Madam Chairwoman.

Senator Capito. Thank you.

I would like to turn to Senator Shelby.

Senator Shelby. Thank you.

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

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

Mr. Henry. Yes.

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

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

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

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

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

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

Mr. Henry. The EPA is saying if you can stay under the 10

ton limit, you become a synthetic source, you go off the radar and you no longer have to comply with the MACT. We can do that with the control devices we have if we reduce our capacity of production.

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

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

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

Senator Shelby. I know.

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

Senator Shelby. You should be.

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

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

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

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

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

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

Ms. Hammond. The kiln, the MACT rule?

Senator Shelby. A cost benefit analysis?

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

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

Ms. Hammond. I could certainly furnish a copy.

Senator Shelby. Mr. Henry, don't you think a cost benefit

analysis is important before any regulation or law goes into effect that would affect the economy, jobs and health, everything?

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

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

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

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

Senator Shelby. Thank you.

Thank you, Madam Chair.

Senator Capito. Thank you.

Senator Inhofe.

Senator Inhofe. Thank you, Madam Chairman.

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

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

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

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

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

an activity that is deemed illegal now.

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

Senator Inhofe. You are familiar with Love's?

Mr. Kersting. Yes.

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

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

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

I think Mr. Walke raised the Casper case in his written testimony. The Casper case is a great example, and there are others, where a manufacturer of a product made a claim that the

product is intended, in that case, for off-road use only.

Others might say for race use only.

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

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

Senator Inhofe. I know that concern is there.

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

Mr. Henry. Yes.

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

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

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

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

Senator Inhofe. Just your company?

Mr. Henry. Yes.

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

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

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

Thank you, Madam Chairman.

Senator Capito. Thank you.

Senator Carper. Thank you, Madam Chair.

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

all. We are glad you are here.

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

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

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

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

Senator Carper. Thank you.

Mr. Walke.

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

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

For the brick and kiln rule, for example, by breaking the law in 2003, we left 106 out of 147 kilns in this Country completely uncontrolled. The brick industry's trade association pushed a legal standard that was plainly unlawful. The D.C. Circuit overturned it unanimously and even vacated the rule.

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

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

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

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

Senator Carper. Maybe just a coincidence.

Mr. Walke. I will not speak to that.

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

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

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

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

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

It is unclear from the State of Alaska how many of these generators actually are operating. They are non-emergency generators, so they are not really going to critical crisis

needs, but I think a DERA solution would be a well tailored one.

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

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

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

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

Senator Carper. Thanks very much.

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

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

constructive conversation about that.

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

Senator Carper. Thanks.

Mr. Williams.

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

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

Senator Carper. All right.

Ms. Hammond.

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

I do want to note with the other three that in all of the underlying EPA rulemakings, that agency set forth a guide path to ensure that industry did have time to comply. It is my view

that all of those bills would further extend something the agency already worked with industry to develop which is a reasonable timeframe for compliance.

Senator Carper. All right.

Mr. Walke, last word.

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

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

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

Senator Carper. Thanks so much.

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

Our thanks to each of you for helping us develop consensus

which is what we need. Thank you.

Senator Capito. Thank you, Senator.

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

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

This hearing is adjourned. Thank you.

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