



March 2018

Summary of H.R. 1917, Section 2

BLOCKING REGULATORY INTERFERENCE FROM CLOSING KILNS ACT

Committee on Energy and Commerce, Democratic Staff

Section 2 of H.R. 1917, also known as the BRICK Act, represents an effort by the Republicans to delay implementation of EPA's final Brick and Structural Clay Products rule and the final Clay Ceramics Manufacturing rule (Brick and Clay MACT) by extending all compliance deadlines based on pending judicial review. If this bill were to become law, compliance with the Brick and Clay MACT would be delayed until "judgment becomes final, and no longer subject to further appeal or review." **The Committee on Energy and Commerce reported H.R. 1917 on a party line vote of 31-23 with all Democrats voting against the bill.**

EPA's Brick and Clay MACT. The Environmental Protection Agency (EPA) issued the Brick and Clay MACT rule in 2015 under section 112 of the Clean Air Act (CAA), which sets maximum achievable control technology, or MACT, standards for distinct sources based on what is already being achieved at similar facilities. The rule included flexible compliance options to reduce the effect on small businesses, and EPA provided three years for compliance with the rule – the maximum time allowed under the law. Administrator Pruitt has announced plans to reconsider the Brick and Clay MACT rule, which is expected to be finalized in 2019. At that point, the pollution control standards for brick and clay facilities will be almost two decades late.

Section 2 of H.R. 1917 Indefinitely Delays the Brick and Clay MACT. The bill automatically delays implementation of EPA's final Brick and Clay MACT rule by extending all deadlines by however long it takes to complete all possible litigation. This blanket extension would be given to all facilities covered by the final rule, without regard for the merits of the legal challenges or their final outcome. Opponents of the Brick and Clay MACT rule would be given an incentive to "run the clock" on frivolous litigation, simply to put off having to comply with the rule. If H.R. 1917 were to become law, it would encourage other industries to seek open-ended compliance extensions through legislation. This represents bad policy, and passing it would create a dangerous precedent.

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

Putting Polluters Before Public Health. Brick and clay plants, if left unregulated, can be major sources of toxic air pollutants like hydrogen fluoride, hydrogen chloride, and hazardous metals – pollutants that are associated with a variety of acute and chronic health effects, including cancer. It is estimated that the final Brick and Clay MACT rule will reduce nationwide air toxics by approximately 375 tons per year. **Section 2 of the BRICK Act represents another attempt by Republicans to put the wishes and profits of polluters before the health and safety of Americans.**