

118TH CONGRESS  
1ST SESSION

# S. 2125

To amend the Clean Air Act to facilitate efficient State implementation of certain national ambient air quality standards, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mrs. CAPITO (for herself, Mr. WICKER, Mr. RICKETTS, Mr. SULLIVAN, Ms. LUMMIS, Mr. CORNYN, and Mr. BARRASSO) 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 amend the Clean Air Act to facilitate efficient State implementation of certain national ambient air quality standards, and for other purposes.

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 “National Ambient Air  
5 Quality Standards Implementation Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

4           (2) NATIONAL AMBIENT AIR QUALITY STAND-  
5           ARD.—The term “national ambient air quality  
6           standard” means a national ambient air quality  
7           standard promulgated under section 109 of the  
8           Clean Air Act (42 U.S.C. 7409).

9   **SEC. 3. FACILITATING STATE IMPLEMENTATION OF NA-**  
10                                   **TIONAL AMBIENT AIR QUALITY STANDARDS.**

11           (a) CONSIDERATION OF TECHNOLOGICAL FEASI-  
12           BILITY.—Section 109(b) of the Clean Air Act (42 U.S.C.  
13           7409(b)) is amended—

14                   (1) by striking “(b)(1) National” and inserting  
15           the following:

16           “(b) REQUIREMENTS.—

17                   “(1) IN GENERAL.—

18                                   “(A) PUBLIC HEALTH.—National”; and

19                   (2) in paragraph (1)(A) (as so designated), in  
20           the second sentence, by striking “Such primary  
21           standards” and inserting the following:

22                   “(B) TECHNOLOGICAL FEASIBILITY.—If  
23           the Administrator, in consultation with the  
24           independent scientific review committee ap-  
25           pointed under subsection (d), finds that a range

1 of levels of air quality for an air pollutant are  
 2 requisite to protect public health with an ade-  
 3 quate margin of safety, as described in subpara-  
 4 graph (A), the Administrator may consider, as  
 5 a secondary consideration, likely technological  
 6 feasibility in establishing and revising the na-  
 7 tional primary ambient air quality standard for  
 8 the pollutant.

9 “(C) REVISION.—National primary ambi-  
 10 ent air quality standards”.

11 (b) TIMELINE FOR REVIEW OF NATIONAL AMBIENT  
 12 AIR QUALITY STANDARDS.—

13 (1) 10-YEAR CYCLE FOR ALL CRITERIA AIR  
 14 POLLUTANTS.—Section 109(d) of the Clean Air Act  
 15 (42 U.S.C. 7409(d)) is amended—

16 (A) in paragraph (1), in the first sentence,  
 17 by striking “five-year intervals” and inserting  
 18 “10-year intervals”; and

19 (B) in paragraph (2)(B), by striking “five-  
 20 year intervals” and inserting “10-year inter-  
 21 vals”.

22 (2) CYCLE FOR NEXT REVIEW OF OZONE CRI-  
 23 TERIA AND STANDARDS.—Notwithstanding section  
 24 109(d) of the Clean Air Act (42 U.S.C. 7409(d)),  
 25 the Administrator shall not—

1 (A) complete, before December 31, 2030,  
2 any review of the criteria for ozone published  
3 under section 108 of that Act (42 U.S.C. 7408)  
4 or the national ambient air quality standard for  
5 ozone promulgated under section 109 of that  
6 Act (42 U.S.C. 7409); or

7 (B) propose, before December 31, 2030,  
8 any revisions to those criteria or standards.

9 (3) CYCLE FOR NEXT REVIEW OF PARTICULATE  
10 MATTER CRITERIA AND STANDARDS.—Notwith-  
11 standing section 109(d) of the Clean Air Act (42  
12 U.S.C. 7409(d)), the Administrator shall not—

13 (A) complete, before December 18, 2030,  
14 any review of the criteria for particulate matter  
15 published under section 108 of that Act (42  
16 U.S.C. 7408) or the national ambient air qual-  
17 ity standard for particulate matter promulgated  
18 under section 109 of that Act (42 U.S.C.  
19 7409); or

20 (B) propose, before December 18, 2030,  
21 any revisions to those criteria or standards.

22 (c) CONSIDERATION OF ADVERSE PUBLIC HEALTH,  
23 WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—  
24 Section 109(d)(2) of the Clean Air Act (42 U.S.C.

1 7409(d)(2)) is amended by adding at the end the fol-  
2 lowing:

3           “(D) ADVICE FROM SCIENTIFIC REVIEW  
4           COMMITTEE.—Before establishing or revising a  
5           national ambient air quality standard, the Ad-  
6           ministrators shall request, and the scientific re-  
7           view committee appointed under subparagraph  
8           (A) shall provide, advice under subparagraph  
9           (C)(iv) regarding any adverse public health,  
10          welfare, social, economic, or energy effects  
11          which may result from various strategies for at-  
12          tainment and maintenance of the national am-  
13          bient air quality standard.”.

14          (d) TIMELY ISSUANCE OF IMPLEMENTING REGULA-  
15          TIONS AND GUIDANCE.—Section 109 of the Clean Air Act  
16          (42 U.S.C. 7409) is amended by adding at the end the  
17          following:

18               “(e) TIMELY ISSUANCE OF IMPLEMENTING REGULA-  
19          TIONS AND GUIDANCE.—

20                       “(1) DEFINITIONS.—In this subsection:

21                               “(A) BEST AVAILABLE CONTROL TECH-  
22                               NOLOGY.—The term ‘best available control  
23                               technology’ has the meaning given that term in  
24                               section 169.

1           “(B) LOWEST ACHIEVABLE EMISSION  
2 RATE.—The term ‘lowest achievable emission  
3 rate’ has the meaning given that term in sec-  
4 tion 171.

5           “(C) PRECONSTRUCTION PERMIT.—

6           “(i) IN GENERAL.—The term  
7 ‘preconstruction permit’ means a permit  
8 that is required under part C or D for the  
9 construction or modification of a major  
10 emitting facility or major stationary  
11 source.

12           “(ii) INCLUSION.—The term  
13 ‘preconstruction permit’ includes any per-  
14 mit described in clause (i) issued by the  
15 Administrator or a State, local, or Tribal  
16 permitting authority.

17           “(2) GUIDANCE FOR IMPLEMENTATION.—In  
18 publishing any final rule establishing or revising a  
19 national ambient air quality standard, the Adminis-  
20 trator shall, as the Administrator determines nec-  
21 essary to assist States, permitting authorities, and  
22 permit applicants, concurrently publish final regula-  
23 tions and guidance for implementing the national  
24 ambient air quality standard, including information  
25 relating to submission and consideration of a

1 preconstruction permit application under the new or  
2 revised national ambient air quality standard.

3 “(3) APPLICABILITY OF NATIONAL AMBIENT  
4 AIR QUALITY STANDARD TO PRECONSTRUCTION PER-  
5 MITTING.—If the Administrator fails to publish the  
6 final regulations and guidance referred to in para-  
7 graph (2) that include information relating to sub-  
8 mission and consideration of a preconstruction per-  
9 mit application under a new or revised national am-  
10 bient air quality standard concurrently with the na-  
11 tional ambient air quality standard, the new or re-  
12 vised national ambient air quality standard shall not  
13 apply to the review and disposition of a  
14 preconstruction permit application until the date on  
15 which the Administrator publishes the final regula-  
16 tions and guidance.

17 “(4) RULES OF CONSTRUCTION.—Nothing in  
18 this subsection—

19 “(A) precludes the Administrator from  
20 issuing regulations and guidance to assist  
21 States, permitting authorities, and permit appli-  
22 cants in implementing a national ambient air  
23 quality standard after the publication of final  
24 regulations and guidance for the national ambi-  
25 ent air quality standard under paragraph (2);

1           “(B) eliminates the obligation of a  
2           preconstruction permit applicant to install best  
3           available control technology and lowest achiev-  
4           able emission rate technology, as applicable; or

5           “(C) limits the authority of a State, local,  
6           or Tribal permitting authority to impose more  
7           stringent emissions requirements pursuant to  
8           State, local, or Tribal law than the Federal na-  
9           tional ambient air quality standards established  
10          by the Administrator.”.

11          (e) CONTINGENCY MEASURES FOR EXTREME OZONE  
12          NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean  
13          Air Act (42 U.S.C. 7502(c)(9)) is amended—

14                 (1) in the first sentence, by striking “Such”  
15                 and inserting the following:

16                         “(A) SPECIFIC MEASURES.—A nonattain-  
17                         ment”;

18                 (2) in subparagraph (A) (as so designated), in  
19                 the second sentence, by striking “Such measures”  
20                 and inserting the following:

21                         “(B) CONTINGENCY MEASURES.—The spe-  
22                         cific measures referred to in subparagraph  
23                         (A)”;

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



1           “(C) EXTREME AREAS.—Notwithstanding  
2           subparagraphs (A) and (B) and any other pro-  
3           vision of this Act, the specific measures referred  
4           to in subparagraphs (A) and (B) shall not be  
5           required for any nonattainment area for ozone  
6           classified as an Extreme Area.”.

7           (f) PLAN SUBMISSIONS AND REQUIREMENTS FOR  
8           OZONE NONATTAINMENT AREAS.—Section 182 of the  
9           Clean Air Act (42 U.S.C. 7511a) is amended—

10           (1) in subsection (b)(1)(A)(ii)(III), by inserting  
11           “and economic feasibility” after “technological  
12           achievability”;

13           (2) in subsection (c)(2)(B)(ii), by inserting  
14           “and economic feasibility” after “technological  
15           achievability”; and

16           (3) in subsection (e)—

17           (A) in the matter preceding paragraph (1),  
18           by striking the second sentence and inserting  
19           “Paragraphs (6), (7), and (8) of subsection (c)  
20           (relating to de minimis rule and modification of  
21           sources) shall not apply in the case of an Ex-  
22           treme Area.”;

23           (B) in paragraph (5), in the matter pre-  
24           ceding subparagraph (A), by striking “, if the  
25           State demonstrates to the satisfaction of the

1 Administrator that—” and all that follows  
2 through “compliance with subsections (b)(1)  
3 and (c)(2)” in the undesignated matter fol-  
4 lowing subparagraph (B); and

5 (C) in the undesignated matter following  
6 paragraph (5), by striking “Any reference to”  
7 and inserting the following:

8 “(6) REFERENCES.—Any reference to”.

9 (g) PLAN REVISIONS FOR MILESTONES FOR PARTIC-  
10 ULATE MATTER NONATTAINMENT AREAS.—Section  
11 189(c)(1) of the Clean Air Act (42 U.S.C. 7513a(c)(1))  
12 is amended by inserting “, which take into account techno-  
13 logical achievability and economic feasibility,” after “re-  
14 designated attainment”.

15 (h) EXCEPTIONAL EVENTS.—Section 319(b)(1) of  
16 the Clean Air Act (42 U.S.C. 7619(b)(1)) is amended by  
17 striking subparagraph (B) and inserting the following:

18 “(B) EXCLUSIONS.—In this subsection,  
19 the term ‘exceptional event’ does not include—

20 “(i) ordinarily occurring stagnation of  
21 air masses;

22 “(ii) meteorological inversions; or

23 “(iii) air pollution relating to source  
24 noncompliance.”.

1 (i) REPORT ON EMISSIONS EMANATING FROM OUT-  
2 SIDE THE UNITED STATES.—Not later than 2 years after  
3 the date of enactment of this Act, the Administrator, in  
4 consultation with States, shall submit to Congress a report  
5 that describes—

6 (1) the extent to which foreign sources of air  
7 pollution, including emissions from sources located  
8 outside North America, impact—

9 (A) designations of areas (or portions of  
10 areas) as nonattainment, attainment, or  
11 unclassifiable under section 107(d) of the Clean  
12 Air Act (42 U.S.C. 7407(d)); and

13 (B) attainment and maintenance of na-  
14 tional ambient air quality standards;

15 (2) the procedures and timelines of the Admin-  
16 istrator for the disposition of petitions submitted  
17 under subsection (b) of section 179B of the Clean  
18 Air Act (42 U.S.C. 7509a);

19 (3) the total number of petitions received by the  
20 Administrator under that section (42 U.S.C. 7509a)  
21 and, for each petition—

22 (A) the date on which the petition was ini-  
23 tially submitted to the Administrator; and

24 (B) the date of final disposition by the Ad-  
25 ministrator; and

1           (4) whether the Administrator recommends any  
2           statutory changes to facilitate the more efficient re-  
3           view and disposition of petitions submitted under  
4           that section (42 U.S.C. 7509a).

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