

115TH CONGRESS
1ST SESSION

S. 454

To amend the Clean Air Act with respect to exceptional event demonstrations,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2017

Mr. FLAKE (for himself, Mr. MCCAIN, and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Clean Air Act with respect to exceptional
event demonstrations, 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 “Commonsense Legisla-
5 tive Exceptional Events Reforms Act of 2017”.

6 **SEC. 2. CLEAN AIR ACT EXCEPTIONAL EVENTS.**

7 Section 319(b) of the Clean Air Act (42 U.S.C.
8 7619(b)) is amended—

9 (1) in paragraph (1)(B)—

1 (A) in clause (i), by inserting “or” after
2 the semicolon;

3 (B) by striking clause (ii); and

4 (C) by redesignating clause (iii) as clause
5 (ii); and

6 (2) in paragraph (3)—

7 (A) in subparagraph (B)(iv), by striking
8 “to petition the Administrator to” and inserting
9 “to submit a petition (in this section referred to
10 as an ‘exceptional event demonstration’) to the
11 Administrator to”; and

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

13 “(C) CRITERIA FOR DETERMINATION OF
14 EXCEPTIONAL EVENT DEMONSTRATION.—

15 “(i) IN GENERAL.—The criteria for
16 evidence, analyses, and documentation ap-
17 plicable to approval or disapproval of an
18 exceptional event demonstration under the
19 regulations under this section shall be stat-
20 ed with specificity in order to minimize the
21 discretion of the Administrator in approv-
22 ing or disapproving that demonstration.

23 “(ii) STATE PARTICIPATION.—The
24 Administrator shall develop the criteria in
25 conjunction with input from the States.

1 “(iii) CONTENTS.—The criteria shall
2 reflect the varying levels of technical exper-
3 tise and resources available in State and
4 local agencies and the varying availability
5 of meteorological and other monitoring
6 data in rural areas, and may vary with re-
7 spect to different regions.

8 “(iv) CONSIDERATIONS.—In devel-
9 oping the criteria, the Administrator shall
10 consider the use of an expedited or stream-
11 lined approval process and conditions
12 under which exceptional event demonstra-
13 tions may be suitable for such a process.

14 “(D) TIMING OF DETERMINATION OF EX-
15 CEPTIONAL EVENT DEMONSTRATION.—

16 “(i) DEADLINE FOR DETERMINA-
17 TION.—

18 “(I) IN GENERAL.—Not later
19 than 90 days after submission of an
20 exceptional event demonstration, the
21 Administrator shall approve, dis-
22 approve, or request additional infor-
23 mation from a State regarding the ex-
24 ceptional event demonstration.

1 “(II) ADMINISTRATION.—If the
2 Administrator does not approve, dis-
3 approve, or request additional infor-
4 mation relating to an exceptional
5 event demonstration within the 90-day
6 period described in subclause (I), the
7 demonstration shall be considered to
8 be approved on the day after the date
9 on which that 90-day period ends.

10 “(ii) DEADLINE IF ADDITIONAL IN-
11 FORMATION REQUESTED.—

12 “(I) IN GENERAL.—If the Ad-
13 ministrator requests additional infor-
14 mation from a State regarding an ex-
15 ceptional event demonstration under
16 clause (i), not later than 90 days after
17 the submission of that additional in-
18 formation, the Administrator shall ap-
19 prove or disapprove the demonstra-
20 tion.

21 “(II) ADMINISTRATION.—If the
22 Administrator does not approve or
23 disapprove a demonstration for which
24 additional information is submitted
25 within the 90-day period described in

1 subclause (I), the demonstration shall
2 be considered to be approved.

3 “(E) BURDEN OF PROOF.—The regula-
4 tions promulgated under this section shall pro-
5 vide that—

6 “(i) a determination by the Adminis-
7 trator with respect to approval or dis-
8 approval of an exceptional event dem-
9 onstration be based on a preponderance of
10 the evidence; and

11 “(ii) in making a determination, the
12 Administrator—

13 “(I) shall accord substantial def-
14 erence to the findings of the State ex-
15 ceptional event demonstration; and

16 “(II) may develop and use anal-
17 yses and consider evidence not pro-
18 vided in the exceptional event dem-
19 onstration, subject to the condition
20 that the analyses are developed by the
21 Environmental Protection Agency.

22 “(F) APPEALS.—

23 “(i) DISAPPROVAL.—

24 “(I) IN GENERAL.—Subject to
25 subclause (II), disapproval by the Ad-

1 administrator of an exceptional event
2 demonstration shall be considered
3 final action subject to judicial review
4 under section 307(b).

5 “(II) LIMITATION.—Notwith-
6 standing subclause (I), disapproval by
7 the Administrator of an exceptional
8 event demonstration shall only be sub-
9 ject to appeal by the State that sub-
10 mitted the exceptional event dem-
11 onstration.

12 “(ii) APPROVAL.—Approval by the
13 Administrator of an exceptional event dem-
14 onstration shall not be subject to appeal or
15 other judicial action.”.

16 **SEC. 3. REVISION OF REGULATIONS.**

17 After providing for a notice and comment period, but
18 not later than 180 days after the date of enactment of
19 this Act, the Administrator of the Environmental Protec-
20 tion Agency shall revise the regulations under section
21 319(b) of the Clean Air Act (42 U.S.C. 7619(b)) to carry
22 out the amendments made by this Act.

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