

119TH CONGRESS
2D SESSION

S. 5363

To amend sections 111, 169, and 171 of the Clean Air Act to clarify when a physical change in, or change in the method of operation of, a stationary source constitutes a modification or construction, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 7, 2026

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

A BILL

To amend sections 111, 169, and 171 of the Clean Air Act to clarify when a physical change in, or change in the method of operation of, a stationary source constitutes a modification or construction, 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 “New Source Review
5 Permitting Improvement Act”.

1 **SEC. 2. CLARIFICATION OF DEFINITION OF A MODIFICA-**
 2 **TION: EMISSION RATE INCREASES, POLLU-**
 3 **TION CONTROL, EFFICIENCY, SAFETY, AND**
 4 **RELIABILITY PROJECTS.**

5 Paragraph (4) of section 111(a) of the Clean Air Act
 6 (42 U.S.C. 7411(a)) is amended—

7 (1) by inserting “(A)” before “The term”;

8 (2) by adding at the end the following: “For
 9 purposes of the preceding sentence, a change in-
 10 creases the amount of any air pollutant emitted by
 11 such source only if the maximum hourly emission
 12 rate of an air pollutant that is achievable by such
 13 source after the change is higher than the maximum
 14 hourly emission rate of such air pollutant that was
 15 achievable by such source during any hour in the 10-
 16 year period immediately preceding the change.”; and

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

18 “(B) Notwithstanding subparagraph (A), the
 19 term ‘modification’ does not include a change at a
 20 stationary source that is designed—

21 “(i) to reduce the amount of any air pol-
 22 lutant emitted by the source per unit of produc-
 23 tion; or

24 “(ii) to restore, maintain, or improve the
 25 reliability of operations at, or the safety of, the
 26 source,

1 except, with respect to either clause (i) or (ii), when
 2 the change would be a modification as defined in
 3 subparagraph (A) and the Administrator determines
 4 that the increase in the maximum achievable hourly
 5 emission rate of a pollutant from such change would
 6 cause an adverse effect on human health or the envi-
 7 ronment.”.

8 **SEC. 3. CLARIFICATION OF DEFINITION OF CONSTRUCTION**
 9 **AND APPLICABILITY OF PRECONSTRUCTION**
 10 **REQUIREMENTS FOR PREVENTION OF SIG-**
 11 **NIFICANT DETERIORATION.**

12 (a) APPLICABILITY TO CONSTRUCTION ACTIVI-
 13 TIES.—Section 165 of the Clean Air Act (42 U.S.C. 7475)
 14 is amended by adding at the end the following:

15 “(f) APPLICABILITY TO CONSTRUCTION.—

16 “(1) IN GENERAL.—The requirements of sub-
 17 section (a) that apply with respect to authorizing
 18 construction of a major emitting facility shall apply
 19 only with respect to construction that involves phys-
 20 ical construction of the discrete parts of an emis-
 21 sions unit at a major emitting facility, regardless of
 22 whether the construction involves other physical on-
 23 site activities at the major emitting facility, includ-
 24 ing any such other physical on-site activity that—

25 “(A) may be costly;

1 “(B) may significantly alter the site;

2 “(C) is permanent in nature; or

3 “(D) is to accommodate an installation to
4 an emissions unit.

5 “(2) DEFINITION OF EMISSIONS UNIT.—In this
6 subsection, the term ‘emissions unit’ means any part
7 of a stationary source that emits, or has the poten-
8 tial to emit, any air pollutant that is regulated under
9 this title.”.

10 (b) DEFINITION.—Section 169(2) of the Clean Air
11 Act (42 U.S.C. 7479(2)) is amended by striking subpara-
12 graph (C) and inserting the following:

13 “(C) The term ‘construction’, when used in con-
14 nection with a major emitting facility, includes a
15 modification (as defined in section 111(a)) at such
16 facility, except that for purposes of this subpara-
17 graph a modification does not include a change at
18 a major emitting facility that does not result in a
19 significant emissions increase, or a significant net
20 emissions increase, in annual actual emissions at
21 such facility.”.

1 **SEC. 4. CLARIFICATION OF DEFINITION OF MODIFICA-**
2 **TIONS AND MODIFIED AND APPLICABILITY**
3 **TO CONSTRUCTION FOR NONATTAINMENT**
4 **AREAS.**

5 (a) DEFINITION.—Section 171 of the Clean Air Act
6 (42 U.S.C. 7501) is amended by striking paragraph (4)
7 and inserting the following:

8 “(4) The terms ‘modifications’ and ‘modified’
9 mean a modification as defined in section 111(a),
10 except that such terms do not include a change at
11 a major emitting facility that does not result in a
12 significant emissions increase, or a significant net
13 emissions increase, in annual actual emissions at
14 such facility.”.

15 (b) APPLICABILITY TO CONSTRUCTION.—Section
16 172(c)(5) of the Clean Air Act (42 U.S.C. 7502(c)(5)) is
17 amended by adding at the end the following: “The con-
18 struction for which a permit is required under this para-
19 graph is construction that involves physical construction
20 of the discrete parts of an emissions unit (as defined in
21 section 165(f)(2)) at a major stationary source, regardless
22 of whether the construction involves other physical on-site
23 activities at the major stationary source, including any
24 such other physical on-site activity that—

25 “(A) may be costly;

26 “(B) may significantly alter the site;

1 “(C) is permanent in nature; or

2 “(D) is to accommodate an installation to
3 an emissions unit.”.

4 **SEC. 5. RULE OF CONSTRUCTION.**

5 Nothing in this Act or the amendments made by this
6 Act shall be construed to treat any change as a modifica-
7 tion for purposes of any provision of the Clean Air Act
8 (42 U.S.C. 7401 et seq.) if such change would not have
9 been so treated on the day before the date of enactment
10 of this Act.

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