

112TH CONGRESS  
2D SESSION

# H. R. 5381

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2012

Mr. FLAKE introduced the following bill; which was referred to the Committee  
on Energy and Commerce

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## 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 2012”.

6 **SEC. 2. AMENDMENTS TO THE EXCEPTIONAL EVENT PROVI-**  
7 **SION OF THE CLEAN AIR ACT.**

8 (a) EXCEPTIONAL EVENT DEMONSTRATION.—Sec-  
9 tion 319(b)(3)(B)(iv) of the Clean Air Act (42 U.S.C.  
10 7619(b)(3)(B)(iv)) is amended by striking “to petition the

1 Administrator to” and inserting “to submit a petition (in  
2 this section referred to as an ‘exceptional event dem-  
3 onstration’) to the Administrator to”.

4 (b) CRITERIA.—Section 319(b)(3) of the Clean Air  
5 Act (42 U.S.C. 7619(b)(3)) is amended by adding at the  
6 end the following:

7 “(C) CRITERIA FOR DETERMINATION OF  
8 EXCEPTIONAL EVENT DEMONSTRATION.—The  
9 criteria for evidence, analyses, and documenta-  
10 tion applicable to approval or disapproval of an  
11 exceptional event demonstration under the regu-  
12 lations under this section shall be stated with  
13 specificity in order to minimize the discretion of  
14 the Administrator in approving or disapproving  
15 such demonstration. The Administrator shall  
16 develop such criteria in conjunction with input  
17 from the States. Such criteria shall reflect the  
18 varying level of technical expertise and re-  
19 sources available in State and local agencies  
20 and the varying availability of meteorological  
21 and other monitoring data in rural areas, and  
22 may vary with respect to different regions. In  
23 developing such criteria, the Administrator shall  
24 also consider use of an expedited or streamlined  
25 approval process and conditions under which

1           exceptional event demonstrations may be suit-  
2           able for such a process.”.

3           (c) TIMING OF APPROVAL OR DISAPPROVAL OF EX-  
4   CEPTIONAL EVENT DEMONSTRATION.—Section 319(b)(3)  
5   of the Clean Air Act (42 U.S.C. 7619(b)(3)) is further  
6   amended by adding at the end the following:

7                   “(D) TIMING OF DETERMINATION OF EX-  
8   CEPTIONAL EVENT DEMONSTRATION.—

9                   “(i) DEADLINE FOR DETERMINA-  
10                  TION.—Not later than 90 days after sub-  
11                  mission of an exceptional event demonstra-  
12                  tion, the Administrator shall approve, dis-  
13                  approve, or request additional information  
14                  from a State regarding such an exceptional  
15                  event demonstration. If the Administrator  
16                  does not take any action with respect to an  
17                  exceptional event demonstration within  
18                  such 90-day period, such demonstration  
19                  shall be considered approved.

20                  “(ii) DEADLINE IF ADDITIONAL IN-  
21                  FORMATION REQUESTED.—If the Adminis-  
22                  trator requests additional information from  
23                  a State regarding an exceptional event  
24                  demonstration under clause (i), not later  
25                  than 90 days after the submission of such

1 additional information, the Administrator  
2 shall approve or disapprove such dem-  
3 onstration. If the Administrator does not  
4 approve or disapprove such a demonstra-  
5 tion for which additional information is  
6 submitted within such 90-day period, such  
7 demonstration shall be considered ap-  
8 proved.”.

9 (d) BURDEN OF PROOF.—Section 319(b)(3) of the  
10 Clean Air Act (42 U.S.C. 7619(b)(3)) is further amended  
11 by adding at the end the following:

12 “(E) BURDEN OF PROOF.—The regula-  
13 tions promulgated under this section shall pro-  
14 vide that a determination by the Administrator  
15 with respect to approval or disapproval of an  
16 exceptional event demonstration be based on a  
17 preponderance of the evidence. In making any  
18 such determination, the Administrator shall ac-  
19 cord substantial deference to the findings of the  
20 State exceptional event demonstration and may  
21 develop and use analyses and consider evidence  
22 not provided by such exceptional event dem-  
23 onstration.”.

1       (e) APPEALS.—Section 319(b)(3) of the Clean Air  
2 Act (42 U.S.C. 7619(b)(3)) is further amended by adding  
3 at the end the following:

4               “(F) APPEALS.—Approval or disapproval  
5               by the Administrator of an exceptional event  
6               demonstration shall be considered final action  
7               subject to judicial review under section  
8               307(b).”.

9       (f) REVISION OF REGULATIONS.—Not later than 180  
10 days after the date of enactment of this Act, the Adminis-  
11 trator of the Environmental Protection Agency shall revise  
12 the regulations under section 319(b) of the Clean Air Act  
13 (42 U.S.C. 7619(b)) to carry out the amendments made  
14 by this Act.

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