

114TH CONGRESS  
1ST SESSION

# S. 638

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 2015

Mr. FLAKE (for himself, Mr. MCCAIN, Mr. LEE, Mr. CRAPO, Mr. CORNYN,  
Mr. INHOFE, and Mr. VITTER) 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 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 2015”.

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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