

DISCUSSION DRAFT

119TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

M____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Clean Air Act to facilitate State implementation of 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 “Clean Air and Eco-
5 nomic Advancement Reform Act” or the “CLEAR Act”.

1 **SEC. 2. FACILITATING STATE IMPLEMENTATION OF NA-**
2 **TIONAL AMBIENT AIR QUALITY STANDARDS.**

3 (a) TIMELINE FOR REVIEW OF NATIONAL AMBIENT
4 AIR QUALITY STANDARDS.—Paragraphs (1) and (2)(B)
5 of section 109(d) of the Clean Air Act (42 U.S.C.
6 7409(d)) are amended by striking “five-year intervals”
7 each place it appears and inserting “10-year intervals”.

8 (b) CONSIDERATION OF ATTAINABILITY.—Section
9 109(b)(1) of the Clean Air Act (42 U.S.C. 7409(b)(1))
10 is amended by inserting after the first sentence the fol-
11 lowing: “If the Administrator, in consultation with the
12 independent scientific review committee appointed under
13 subsection (d), finds that a range of levels of air quality
14 for an air pollutant are requisite to protect public health
15 with an adequate margin of safety, as described in the
16 preceding sentence, the Administrator may, as a sec-
17 ondary consideration in establishing and revising the na-
18 tional primary ambient air quality standard for such air
19 pollutant, consider likely attainability of the standard.”.

20 (c) OPPORTUNITY FOR STATES TO CORRECT DEFI-
21 CIENCY PRIOR TO PROMULGATION OF FEDERAL IMPE-
22 MENTATION PLAN.—Section 110(c)(1) of the Clean Air
23 Act (42 U.S.C. 7410(c)(1)) is amended—

24 (1) by striking “at any time”; and

25 (2) by adding at the end the following: “Before
26 promulgating the Federal implementation plan, the

1 Administrator shall give the State at least one year
2 after such finding or disapproval to submit a plan or
3 plan revision to correct the deficiency. If the State
4 submits a plan or plan revision to correct the defi-
5 ciency, the Administrator may, notwithstanding the
6 2-year deadline under this paragraph to promulgate
7 a Federal implementation plan, take up to 3 years
8 after such finding or disapproval to promulgate a
9 Federal implementation plan.”.

10 (d) CONTINGENCY MEASURES FOR EXTREME OZONE
11 NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean
12 Air Act (42 U.S.C. 7502(c)(9)) is amended by adding at
13 the end the following: “Notwithstanding the preceding
14 sentences and any other provision of this Act, such meas-
15 ures shall not be required for any nonattainment area for
16 ozone classified as an Extreme Area.”.

17 (e) PLAN SUBMISSIONS AND REQUIREMENTS FOR
18 OZONE NONATTAINMENT AREAS.—Section 182 of the
19 Clean Air Act (42 U.S.C. 7511a) is amended—

20 (1) in subsection (b)(1)(A)(ii)(III), by inserting
21 “and economic feasibility” after “technological
22 achievability”;

23 (2) in subsection (c)(2)(B)(ii), by inserting
24 “and economic feasibility” after “technological
25 achievability”;

1 (3) in subsection (e), in the matter preceding
2 paragraph (1)—

3 (A) by striking “The provisions of clause
4 (ii) of subsection (c)(2)(B) (relating to reduc-
5 tions of less than 3 percent), the provisions of
6 paragraphs” and inserting “The provisions of
7 paragraphs”; and

8 (B) by striking “, and the provisions of
9 clause (ii) of subsection (b)(1)(A) (relating to
10 reductions of less than 15 percent)”; and

11 (4) in paragraph (5) of subsection (e), by strik-
12 ing “, if the State demonstrates to the satisfaction
13 of the Administrator that—” and all that follows
14 through the end of the paragraph and inserting a
15 period.

16 (f) PLAN REVISIONS FOR MILESTONES FOR PARTIC-
17 ULATE MATTER NONATTAINMENT AREAS.—Section
18 189(c)(1) of the Clean Air Act (42 U.S.C. 7513a(c)(1))
19 is amended by inserting “, which take into account techno-
20 logical achievability and economic feasibility,” before “and
21 which demonstrate reasonable further progress”.

22 **SEC. 3. EMISSIONS BEYOND CONTROL.**

23 (a) EXCEPTIONAL EVENTS.—Section 319(b) of the
24 Clean Air Act (42 U.S.C. 7619(b)) is amended—

1 (1) in the subsection heading, by inserting “OR
2 ACTIONS TO MITIGATE WILDFIRE RISK” after
3 “EVENTS”;

4 (2) in paragraph (1)—

5 (A) in the paragraph heading, by striking
6 “DEFINITION OF EXCEPTIONAL EVENT” and in-
7 serting “DEFINITIONS”;

8 (B) in subparagraph (A), by redesignating
9 clauses (i) through (iv), as subclauses (I)
10 through (IV), respectively;

11 (C) by striking “(A)” and all that follows
12 through “an event that—” and inserting the
13 following:

14 “(A) EXCEPTIONAL EVENT.—

15 “(i) IN GENERAL.—The term ‘excep-
16 tional event’ means an event that—”;

17 (D) by amending subclause (III) of sub-
18 paragraph (A)(i), as redesignated, to read as
19 follows:

20 “(III) is an event that is—

21 “(aa) a natural event;

22 “(bb) caused by a human
23 activity that is intended to mirror
24 the occurrence or reoccurrence of
25 a natural event; or

1 “(cc) caused by a human ac-
2 tivity that is unlikely to recur;
3 and”;

4 (E) by striking subparagraph (B) and in-
5 serting the following:

6 “(ii) EXCLUSIONS.—In this sub-
7 section, the term ‘exceptional event’ does
8 not include—

9 “(I) ordinarily occurring stagna-
10 tion of air masses;

11 “(II) meteorological inversions;
12 or

13 “(III) air pollution relating to
14 source noncompliance.”; and

15 (F) by adding at the end the following:

16 “(B) ACTION TO MITIGATE WILDFIRE
17 RISK.—The term ‘action to mitigate wildfire
18 risk’ means a prescribed fire or similar meas-
19 ure, undertaken in accordance with State ap-
20 proved practices, to reduce the risk and severity
21 of wildfires.”;

22 (3) in paragraph (2)—

23 (A) in subparagraph (A)—

1 (i) by striking “March 1, 2006” and
2 inserting “18 months after the date of en-
3 actment of the CLEAR Act”;

4 (ii) by inserting “revisions to” before
5 “regulations”; and

6 (iii) by adding “or actions to mitigate
7 wildfire risk” before the period at the end;
8 (B) in subparagraph (B)—

9 (i) by inserting “or action to mitigate
10 wildfire risk” after “an exceptional event”;
11 and

12 (ii) by striking “paragraph (3)” and
13 inserting “this section”;

14 (C) by adding at the end the following:

15 “(C) REGIONAL ANALYSIS.—When more
16 than one State notifies the Administrator of its
17 intent to submit a petition for an exceptional
18 event or an action to mitigate wildfire risk for
19 the same air quality event, the Administrator
20 shall conduct regional modeling and analysis,
21 upon request by one or more States, to satisfy
22 the analysis required for an exceptional event or
23 an action to mitigate wildfire risk petition for
24 such air quality event.

1 “(D) TRANSPARENCY.—Not later than 12
2 months after the date of enactment of the
3 CLEAR Act, the Administrator shall establish
4 and update monthly a public website describing
5 the status of all submitted petitions for excep-
6 tional events and actions to mitigate wildfire
7 risk.”;

8 (4) in paragraph (3)(A)—

9 (A) by redesignating clauses (ii) through
10 (v) as clauses (iii) through (vi), respectively;
11 and

12 (B) by inserting after clause (i) the fol-
13 lowing:

14 “(ii) the principle that actions to miti-
15 gate wildfire risk can play an important
16 role in reducing the magnitude and fre-
17 quency of wildfires;”;

18 (5) in paragraph (3)(B)—

19 (A) in clause (i), by inserting “or action to
20 mitigate wildfire risk” before “must be”;

21 (B) by amending clause (ii) to read as fol-
22 lows:

23 “(ii) a clear causal relationship must
24 exist, or be reasonably expected to exist,
25 between the measured exceedances of a na-

1 tional ambient air quality standard and the
2 exceptional event or action to mitigate
3 wildfire risk to demonstrate that the excep-
4 tional event or action to mitigate wildfire
5 risk caused a specific air pollution con-
6 centration at a particular air quality moni-
7 toring location;” and

8 (C) by amending clause (iv) to read as fol-
9 lows:

10 “(iv) there are criteria and procedures
11 for the Governor of a State to petition the
12 Administrator to exclude air quality moni-
13 toring data that is directly due to excep-
14 tional events or actions to mitigate wildfire
15 risk from use in determinations by the Ad-
16 ministrator with respect to—

17 “(I) area or source exceedances
18 or violations of the national ambient
19 air quality standards;

20 “(II) the designation, redesigna-
21 tion, classification, or reclassification
22 of an area;

23 “(III) the demonstration by a
24 State of attainment of a national am-
25 bient air quality standard;

1 “(IV) attainment determinations;
2 “(V) attainment date extensions;
3 “(VI) finding a State implemen-
4 tation plan to be inadequate; or
5 “(VII) preconstruction dem-
6 onstrations under section 165(a)(3).”;
7 and

8 (6) by striking paragraph (4).

9 (b) APPLICABILITY OF SANCTIONS AND FEES IF
10 EMISSIONS BEYOND CONTROL.—The Clean Air Act (42
11 U.S.C. 7401 et seq.) is amended by inserting after section
12 179B the following new section:

13 **“SEC. 179C. APPLICABILITY OF SANCTIONS AND FEES IF**
14 **EMISSIONS BEYOND CONTROL.**

15 “(a) IN GENERAL.—Notwithstanding any other pro-
16 vision of this Act, with respect to any nonattainment area
17 that is classified under section 181 as a Severe Area or
18 an Extreme Area for ozone or under section 188 as a Seri-
19 ous Area for particulate matter, no sanction or fee under
20 section 179 or 185 shall apply with respect to a State (or
21 an area or source therein) on the basis of a deficiency de-
22 scribed in section 179(a), or the failure to attain a na-
23 tional ambient air quality standard for ozone or particu-
24 late matter by the applicable attainment date, if the State
25 demonstrates that the State would have avoided such defi-

1 ciency, or such standard would have been attained, but
2 for one or more of the following:

3 “(1) Emissions emanating from outside the
4 nonattainment area.

5 “(2) Emissions from an exceptional event (as
6 defined in section 319(b)(1)).

7 “(3) Emissions from mobile sources to the ex-
8 tent the State demonstrates that—

9 “(A) such emissions are beyond the control
10 of the State to reduce or eliminate; and

11 “(B) the State is fully implementing such
12 measures as are within the authority of the
13 State to control emissions from the mobile
14 sources.

15 “(b) NO EFFECT ON UNDERLYING STANDARDS.—
16 The inapplicability of sanctions or fees with respect to a
17 State (or an area or source therein) pursuant to sub-
18 section (a) does not affect the obligation of a State, area,
19 source, or other entity under other provisions of this Act
20 to establish and implement measures to attain a national
21 ambient air quality standard for ozone or particulate mat-
22 ter.

23 “(c) PERIODIC RENEWAL OF DEMONSTRATION.—
24 For subsection (a) to continue to apply with respect to
25 a State (or an area or source therein), the State involved

1 shall renew the demonstration required by subsection (a)
2 at least once every 5 years.”.

3 **SEC. 4. CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE.**

4 (a) COMPOSITION OF INDEPENDENT SCIENTIFIC RE-
5 VIEW COMMITTEE.—Section 109(d)(2)(A) of the Clean
6 Air Act (42 U.S.C. 7409(d)(2)(A)) is amended—

7 (1) by striking “one person representing State
8 air pollution control agencies” and inserting “three
9 persons representing State air pollution control
10 agencies”; and

11 (2) by adding at the end the following: “The
12 persons representing State air pollution control
13 agencies shall be from geographically diverse areas
14 with at least one person representing a State located
15 in Region 1, 2, 3, or 5 of the Environmental Protec-
16 tion Agency, one person representing a State located
17 in Region 4, 6, or 7 of the Environmental Protection
18 Agency, and one person representing a State located
19 in Region 8, 9, or 10 of the Environmental Protec-
20 tion Agency.”.

21 (b) CONSIDERATION OF ADVERSE PUBLIC HEALTH,
22 WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—
23 Section 109(d)(2) of the Clean Air Act (42 U.S.C.
24 7409(d)(2)) is amended by adding at the end the fol-
25 lowing:

1 “(D) Prior to establishing or revising a national am-
2 bient air quality standard, the Administrator shall re-
3 quest, and such committee, after receiving public com-
4 ments, shall assess and provide advice under subpara-
5 graph (C)(iv) regarding any adverse public health, welfare,
6 social, economic, or energy effects which may result from
7 various strategies for attainment and maintenance of such
8 national ambient air quality standard.”.