

108TH CONGRESS
1ST SESSION

H. R. 3133

To preserve the ability of States, Indian tribes, municipalities, and air pollution control agencies to protect the public health and the environment by affording them discretion as to whether or not to implement new source review revisions promulgated by the Environmental Protection Agency on August 27, 2003.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2003

Mr. UDALL of Colorado (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To preserve the ability of States, Indian tribes, municipalities, and air pollution control agencies to protect the public health and the environment by affording them discretion as to whether or not to implement new source review revisions promulgated by the Environmental Protection Agency on August 27, 2003.

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 “Freedom to Establish
5 State High Air Quality (FrESH AIR Quality) Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) on August 27, 2003, the United States En-
4 vironmental Protection Agency (EPA) finalized revi-
5 sions to the new source review regulations under the
6 Clean Air Act excluding from review equipment
7 changes involving fixed capital costs and repair costs
8 that are 20 percent or less of the total replacement
9 value of the affected process unit;

10 (2) there are serious concerns about the ex-
11 pected air pollution consequences of the revisions to
12 the new source review regulations and it is estimated
13 that 17,000 industrial facilities nationwide are af-
14 fected by the regulatory revisions;

15 (3) in a report dated August 22, 2003, the
16 United States General Accounting Office found that
17 EPA has relied on anecdotal information from the
18 industries most affected by the new source review
19 program to support its conclusion that the program
20 discouraged some energy efficiency projects because
21 the Agency lacked more comprehensive data;

22 (4) the National Academy of Public Adminis-
23 trators, an independent, nonpartisan organization
24 chartered by Congress to improve government,
25 issued an April 21, 2003 report examining the new
26 source review program and recommended that ef-

1 forts to reform the program should ensure both that
2 new source review provides enhanced protection of
3 health and the environment and should carefully
4 avoid creating even broader loopholes or more ex-
5 emptions from the program's requirements;

6 (5) the EPA's August 27, 2003 final revisions
7 to the new source review regulations require adop-
8 tion by states, Indian tribes or municipalities having
9 approved new source review programs within three
10 years and will automatically apply within 60 days of
11 publication of the final revisions in states, Indian
12 tribes and municipalities not having an approved
13 program;

14 (6) the State and Territorial Air Pollution Pro-
15 gram Administrators and the Association of Local
16 Air Pollution Control Officials have stated that
17 states and local governments should be allowed to
18 make their own choices regarding the adoption of
19 EPA's revisions to the new source review program
20 based upon the state's or locality's own judgment of
21 what will best serve its local air quality needs; and

22 (7) States, Indian tribes, municipalities, and air
23 pollution control agencies should not be required to
24 implement EPA's August 27, 2003 new source re-
25 view revisions if they consider that the result would

1 be to lessen the protection of public health or the en-
2 vironment.

3 (b) PURPOSE.—The purpose of this Act is to preserve
4 the ability of states, Indian tribes, municipalities, and air
5 pollution control agencies to protect the public health and
6 the environment by affording them discretion as to wheth-
7 er or not to implement the August 27, 2003 new source
8 review revisions.

9 **SEC. 3. PRESERVATION OF STATE AND TRIBAL AUTHORITY.**

10 (a) PROHIBITIONS.—(1) No State, Indian tribe, mu-
11 nicipality, or air pollution control agency shall be required
12 to implement or to have implemented in their jurisdiction,
13 the Environmental Protection Agency’s August 27, 2003
14 new source review revisions.

15 (2) No revision of a Federal implementation plan
16 pursuant to the August 27, 2003 new source review revi-
17 sions shall take effect until the affected State, Indian
18 tribe, municipality, or air pollution control agency notifies
19 the Environmental Protection Agency that it agrees to
20 such revision.

21 (3) Failure of a State, Indian tribe, municipality, or
22 air pollution control agency to implement the August 27,
23 2003 new source review revisions, or to consent to revision
24 of a Federal implementation plan pursuant to the August
25 27, 2003 new source review revisions, shall not subject

1 such State, tribe, municipality, or agency to sanctions, the
2 revocation of an approved state implementation plan
3 under the Clean Air Act, or imposition of a new or revised
4 Federal implementation plan under the Clean Air Act.

5 (b) DEFINITIONS.—For purposes of this Act:

6 (1) The terms “air pollution control agency”,
7 “State”, “municipality”, and “Indian tribe” shall
8 have the same meaning as provided in subsections
9 (b), (d), (f), and (r) of section 302 of the Clean Air
10 Act (42 U.S.C. 7602(b), (d), (f), and (r)).

11 (2) The term “August 27, 2003 new source re-
12 view revisions” means the exclusion to the new
13 source review requirements under the Clean Air Act
14 entitled “Prevention of Significant Deterioration
15 (PSD) and Nonattainment New Source Review
16 (NSR): Equipment Replacement Provision of the
17 Routine Maintenance, Repair and Replacement Ex-
18 clusion” promulgated by the Environmental Protec-
19 tion Agency on August 27, 2003.

20 (3) The term “Federal implementation plan”
21 shall have the same meaning as provided in sub-
22 section (c)(1) of section 110 of the Clean Air Act
23 (42 U.S.C. 7410(c)(1)) and subsection (y) of section
24 302 of the Clean Air Act (42 U.S.C. 7602(y)).

1 (c) EFFECT OF ACT.—Nothing in this Act affects the
2 retention of State authority under section 116 of the Clean
3 Air Act (42 U.S.C. 7416).

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