

## Calendar No. 256

112TH CONGRESS  
1ST SESSION**H. R. 1633**

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IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2011

Received and read the first time

DECEMBER 13, 2011

Read the second time and placed on the calendar

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**AN ACT**

To establish a temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter, to limit Federal regulation of nuisance dust in areas in which such dust is regulated under State, tribal, or local law, 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 “Farm Dust Regulation  
5 Prevention Act of 2011”.

1 **SEC. 2. TEMPORARY PROHIBITION AGAINST REVISING ANY**  
2 **NATIONAL AMBIENT AIR QUALITY STANDARD**  
3 **APPLICABLE TO COARSE PARTICULATE MAT-**  
4 **TER.**

5 Before the date that is one year after the date of the  
6 enactment of this Act, the Administrator of the Environ-  
7 mental Protection Agency may not propose, finalize, im-  
8 plement, or enforce any regulation revising the national  
9 primary ambient air quality standard or the national sec-  
10 ondary ambient air quality standard applicable to particu-  
11 late matter with an aerodynamic diameter greater than  
12 2.5 micrometers under section 109 of the Clean Air Act  
13 (42 U.S.C. 7409).

14 **SEC. 3. NUISANCE DUST.**

15 Part A of title I of the Clean Air Act (42 U.S.C. 7401  
16 et seq.) is amended by adding at the end the following:  
17 **“SEC. 132. REGULATION OF NUISANCE DUST PRIMARILY BY**  
18 **STATE, TRIBAL, AND LOCAL GOVERNMENTS.**

19 “(a) IN GENERAL.—Except as provided in subsection  
20 (b), this Act does not apply to, and references in this Act  
21 to particulate matter are deemed to exclude, nuisance  
22 dust.

23 “(b) EXCEPTION.—Subsection (a) does not apply  
24 with respect to any geographic area in which nuisance  
25 dust is not regulated under State, tribal, or local law inso-

1 far as the Administrator, in consultation with the Sec-  
2 retary of Agriculture, finds that—

3 “(1) nuisance dust (or any subcategory of nui-  
4 sance dust) causes substantial adverse public health  
5 and welfare effects at ambient concentrations; and

6 “(2) the benefits of applying standards and  
7 other requirements of this Act to nuisance dust (or  
8 such subcategory of nuisance dust) outweigh the  
9 costs (including local and regional economic and em-  
10 ployment impacts) of applying such standards and  
11 other requirements to nuisance dust (or such sub-  
12 category).

13 “(c) DEFINITION.—In this section—

14 “(1) the term ‘nuisance dust’ means particulate  
15 matter that—

16 “(A) is generated primarily from natural  
17 sources, unpaved roads, agricultural activities,  
18 earth moving, or other activities typically con-  
19 ducted in rural areas;

20 “(B) consists primarily of soil, other nat-  
21 ural or biological materials, or some combina-  
22 tion thereof;

23 “(C) is not emitted directly into the ambi-  
24 ent air from combustion, such as exhaust from

1 combustion engines and emissions from sta-  
2 tionary combustion processes; and

3 “(D) is not comprised of residuals from  
4 the combustion of coal; and

5 “(2) the term ‘nuisance dust’ does not include  
6 radioactive particulate matter produced from ura-  
7 nium mining or processing.”.

8 **SEC. 4. SENSE OF CONGRESS.**

9 It is the sense of the Congress that the Administrator  
10 of the Environmental Protection Agency should implement  
11 an approach to excluding so-called “exceptional events”,  
12 or events that are not reasonably controllable or prevent-  
13 able, from determinations of whether an area is in compli-  
14 ance with any national ambient air quality standard  
15 (NAAQS) applicable to coarse particulate matter that—

16 (1) maximizes transparency and predictability  
17 for States, tribes, and local governments; and

18 (2) minimizes the regulatory and cost burdens  
19 States, tribes, and local governments bear in exclud-  
20 ing such events.

1 **SEC. 5. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**  
2 **PLOYMENT AND ECONOMIC ACTIVITY IN THE**  
3 **AGRICULTURE COMMUNITY.**

4 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-  
5 MENT AND ECONOMIC ACTIVITY IN THE AGRICULTURE  
6 COMMUNITY.—

7 (1) ANALYSIS.—Before taking a covered action,  
8 the Administrator shall analyze the impact,  
9 disaggregated by State, of the covered action on—

10 (A) employment levels in the agriculture  
11 industry; and

12 (B) agricultural economic activity, includ-  
13 ing estimated job losses and decreased economic  
14 activity related to agriculture.

15 (2) ECONOMIC MODELS.—

16 (A) IN GENERAL.—In carrying out para-  
17 graph (1), the Administrator shall utilize the  
18 best available economic models.

19 (B) ANNUAL GAO REPORT.—Not later  
20 than December 31 of each year, the Comp-  
21 troller General of the United States shall sub-  
22 mit to Congress a report on the economic mod-  
23 els used by the Administrator to carry out this  
24 subsection.

1           (3) AVAILABILITY OF INFORMATION.—With re-  
2       spect to any covered action, the Administrator  
3       shall—

4           (A) post the analysis under paragraph (1)  
5       as a link on the main page of the public Inter-  
6       net Web site of the Environmental Protection  
7       Agency;

8           (B) request the Secretary of Agriculture to  
9       post the analysis under paragraph (1) as a link  
10      on the main page of the public Internet Web  
11      site of the Department of Agriculture; and

12          (C) request that the Governor of any State  
13      experiencing more than a de minimis negative  
14      impact post such analysis in the Capitol of such  
15      State.

16       (b) PUBLIC HEARINGS.—

17          (1) IN GENERAL.—If the Administrator con-  
18      cludes under subsection (a)(1) that a covered action  
19      will have more than a de minimis negative impact on  
20      agricultural employment levels or agricultural eco-  
21      nomic activity in a State, the Administrator shall  
22      hold a public hearing in each such State at least 30  
23      days prior to the effective date of the covered action.

24          (2) TIME, LOCATION, AND SELECTION.—A pub-  
25      lic hearing required under paragraph (1) shall be

1 held at a convenient time and location for impacted  
2 residents. In selecting a location for such a public  
3 hearing, the Administrator shall give priority to loca-  
4 tions in the State that will experience the greatest  
5 number of job losses.

6 (c) NOTIFICATION.—If the Administrator concludes  
7 under subsection (a)(1) that a covered action will have  
8 more than a de minimis negative impact on agricultural  
9 employment levels or agricultural economic activity in any  
10 State, the Administrator shall give notice of such impact  
11 to the State’s Congressional delegation, Governor, and  
12 Legislature at least 45 days before the effective date of  
13 the covered action.

14 (d) DEFINITIONS.—In this section, the following defi-  
15 nitions apply:

16 (1) ADMINISTRATOR.—The term “Adminis-  
17 trator” means the Administrator of the Environ-  
18 mental Protection Agency.

19 (2) COVERED ACTION.—The term “covered ac-  
20 tion” means any of the following actions taken by  
21 the Administrator under the Clean Air Act (42  
22 U.S.C. 7401 et seq.) relating to agriculture and the  
23 national primary ambient air quality standard or the  
24 national secondary ambient air quality standard for  
25 particulate matter:

1           (A) Issuing a regulation, policy statement,  
2           guidance, response to a petition, or other re-  
3           quirement.

4           (B) Implementing a new or substantially  
5           altered program.

6           (3) MORE THAN A DE MINIMIS NEGATIVE IM-  
7           PACT.—The term “more than a de minimis negative  
8           impact” means the following:

9           (A) With respect to employment levels, a  
10          loss of more than 100 jobs related to the agri-  
11          culture industry. Any offsetting job gains that  
12          result from the hypothetical creation of new  
13          jobs through new technologies or government  
14          employment may not be used in the job loss cal-  
15          culation.

16          (B) With respect to economic activity, a  
17          decrease in agricultural economic activity of  
18          more than \$1,000,000 over any calendar year.  
19          Any offsetting economic activity that results  
20          from the hypothetical creation of new economic  
21          activity through new technologies or govern-



1           ment employment may not be used in the eco-  
2           nomic activity calculation.

Passed the House of Representatives December 8,  
2011.

Attest:

KAREN L. HAAS,  
*Clerk.*

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1<sup>ST</sup> Session

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