

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Clean Air Act to clarify standards for emissions emanating from outside of the United States, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Ms. LUMMIS introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Clean Air Act to clarify standards for emissions emanating from outside of the United States, 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 “Foreign Emissions and  
5       Nonattainment Clarification for Economic Stability Act”  
6       or the “FENCES Act”.

**7 SEC. 2. EMISSIONS BEYOND CONTROL.**

8       (a) CLARIFICATION OF EMISSIONS COVERED.—Sec-  
9       tion 179B of the Clean Air Act (42 U.S.C. 7509a) is  
10      amended—

1 (1) by inserting “(regardless of whether such  
2 emissions result from human activity)” after “but  
3 for emissions emanating from outside of the United  
4 States” each place it appears; and

9 (b) DESIGNATIONS.—Section 179B of the Clean Air  
10 Act (42 U.S.C. 7509a) is amended by adding at the end  
11 the following:

12        "(e) DESIGNATIONS.—Notwithstanding any other  
13 provision of law, an area within a State may not be des-  
14 ignated as a nonattainment area with respect to any new  
15 or revised primary or secondary national ambient air qual-  
16 ity standard for a pollutant if such State establishes to  
17 the satisfaction of the Administrator that such area would  
18 be in attainment with such national ambient air quality  
19 standard for such pollutant but for emissions emanating  
20 from outside of the United States (regardless of whether  
21 such emissions result from human activity).".

22 (c) APPLICABILITY OF SANCTIONS AND FEES IF  
23 EMISSIONS BEYOND CONTROL.—Subpart 1 of part D of  
24 title I of the Clean Air Act is amended by inserting after  
25 section 179 (42 U.S.C. 7509) the following:

1   **“SEC. 179A. APPLICABILITY OF SANCTIONS AND FEES IF**  
2                   **EMISSIONS BEYOND CONTROL.**

3       “(a) IN GENERAL.—Notwithstanding any other pro-  
4    vision of this Act, with respect to any nonattainment area  
5    that is classified under section 181 as a Severe Area or  
6    an Extreme Area for ozone or under section 188 as a Seri-  
7    ous Area for particulate matter, no sanction or fee under  
8    section 179 or 185 shall apply with respect to a State (or  
9    an area or source therein) on the basis of a deficiency de-  
10   scribed in section 179(a), or the failure to attain a na-  
11   tional ambient air quality standard for ozone or particu-  
12   late matter by the applicable attainment date, if the State  
13   demonstrates that the State would have avoided such defi-  
14   ciency, or such standard would have been attained, but  
15   for one or more of the following:

16       “(1) Emissions emanating from outside the  
17    nonattainment area.

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

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

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

24               “(B) the State is fully implementing such  
25    measures as are within the authority of the

1                   State to control emissions from the mobile  
2                   sources.

3                “(b) NO EFFECT ON UNDERLYING STANDARDS.—  
4   The inapplicability of sanctions or fees with respect to a  
5   State (or an area or source therein) pursuant to sub-  
6   section (a) does not affect the obligation of a State, area,  
7   source, or other entity under other provisions of this Act  
8   to establish and implement measures to attain a national  
9   ambient air quality standard for ozone or particulate mat-  
10   ter.

11               “(c) PERIODIC RENEWAL OF DEMONSTRATION.—  
12   For subsection (a) to continue to apply with respect to  
13   a State (or an area or source therein), the State involved  
14   shall renew the demonstration required by subsection (a)  
15   at least once every 5 years.”.