

115TH CONGRESS
1ST SESSION

S. 263

To facilitate efficient State implementation of ground-level ozone standards,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2017

Mrs. CAPITO (for herself, Mr. FLAKE, Mr. MANCHIN, Mrs. FISCHER, Mr. CORNYN, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To facilitate efficient State implementation of ground-level
ozone 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 “Ozone Standards Im-
5 plementation Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) 2015 OZONE STANDARDS.—The term “2015
9 ozone standards” means the ozone standards de-
10 scribed in the final rule entitled “National Ambient

1 Air Quality Standards for Ozone” (80 Fed. Reg.
2 65292 (October 26, 2015)).

3 (2) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (3) BEST AVAILABLE CONTROL TECH-
7 NOLOGY.—The term “best available control tech-
8 nology” has the meaning given the term in section
9 169 of the Clean Air Act (42 U.S.C. 7479).

10 (4) LOWEST ACHIEVABLE EMISSION RATE.—
11 The term “lowest achievable emission rate” has the
12 meaning given the term in section 171 of the Clean
13 Air Act (42 U.S.C. 7501).

14 (5) NATIONAL AMBIENT AIR QUALITY STAND-
15 ARD.—The term “national ambient air quality
16 standard” means a national ambient air quality
17 standard promulgated under section 109 of the
18 Clean Air Act (42 U.S.C. 7409).

19 (6) PRECONSTRUCTION PERMIT.—

20 (A) IN GENERAL.—The term “preconstruc-
21 tion permit” means a permit that is required
22 under part C or D of title I of the Clean Air
23 Act (42 U.S.C. 7470 et seq.) for the construc-
24 tion or modification of a major emitting facility
25 or major stationary source.

(B) INCLUSION.—The term “preconstruction permit” includes a permit described in subparagraph (A) issued by the Administrator or a State, local, or tribal permitting authority.

SEC. 3. FACILITATING STATE IMPLEMENTATION OF EXISTING OZONE STANDARDS.

(a) DESIGNATIONS.—

(1) DESIGNATION SUBMISSION.—Notwithstanding the deadline specified in paragraph (1)(A) of section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), not later than October 26, 2024, the Governor of each State shall designate in accordance with that section all areas (or portions of areas) of the State as attainment, nonattainment, or unclassifiable with respect to the 2015 ozone standards.

(2) DESIGNATION PROMULGATION.—Notwithstanding the deadline specified in paragraph (1)(B) of section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), not later than October 26, 2025, the Administrator shall promulgate a final designation under that section for all areas in all States with respect to the 2015 ozone standards, including any modifications to the designations submitted under paragraph (1).

1 (3) STATE IMPLEMENTATION PLANS.—Notwith-
 2 standing the deadline specified in section 110(a)(1)
 3 of the Clean Air Act (42 U.S.C. 7410(a)(1)), not
 4 later than October 26, 2026, each State shall submit
 5 to the Administrator an implementation plan under
 6 that section with respect to the 2015 ozone stand-
 7 ards.

8 (b) CERTAIN PRECONSTRUCTION PERMITS.—

9 (1) IN GENERAL.—The 2015 ozone standards
 10 shall not apply to the review and disposition of a
 11 preconstruction permit application if—

12 (A) the Administrator or the State, local,
 13 or tribal permitting authority, as applicable, de-
 14 termines the application to be complete on or
 15 before the date of promulgation of final des-
 16 ignations under subsection (a)(2); or

17 (B) the Administrator or the State, local,
 18 or tribal permitting authority, as applicable,
 19 publishes a public notice of a preliminary deter-
 20 mination or draft permit for the application be-
 21 fore the date that is 60 days after the date of
 22 promulgation of the final designation of the rel-
 23 evant area under subsection (a)(2).

24 (2) RULES OF CONSTRUCTION.—Nothing in
 25 this section—

(A) eliminates the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable; or

(B) limits the authority of a State, local, or tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or tribal law than the Federal national ambient air quality standards established by the Administrator.

SEC. 4. FACILITATING STATE IMPLEMENTATION OF NATIONAL AMBIENT AIR QUALITY STANDARDS.

(a) CONSIDERATION OF TECHNOLOGICAL FEASIBILITY.—Section 109(b) of the Clean Air Act (42 U.S.C. 7409(b)) is amended—

(1) by striking “(b)(1) National” and inserting the following:

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) PUBLIC HEALTH.—National”; and

(2) in paragraph (1)(A) (as so designated), in the second sentence, by striking “Such” and inserting the following:

“(B) TECHNOLOGICAL FEASIBILITY.—If

the Administrator, in consultation with the

1 independent scientific review committee ap-
 2 pointed under subsection (d), finds that a range
 3 of levels of air quality for an air pollutant are
 4 requisite to protect public health with an ade-
 5 quate margin of safety, as described in subpara-
 6 graph (A), the Administrator may consider, as
 7 a secondary consideration, likely technological
 8 feasibility in establishing and revising the na-
 9 tional primary ambient air quality standard for
 10 the pollutant.”.

11 (b) TIMELINE FOR REVIEW OF NATIONAL AMBIENT
 12 AIR QUALITY STANDARDS.—

13 (1) 10-YEAR CYCLE FOR ALL CRITERIA AIR
 14 POLLUTANTS.—Section 109(d) of the Clean Air Act
 15 (42 U.S.C. 7409(d)) is amended—

16 (A) in paragraph (1), by striking “five-
 17 year intervals” and inserting “10-year inter-
 18 vals”; and

19 (B) in paragraph (2)(B), by striking “five-
 20 year intervals” and inserting “10-year inter-
 21 vals”.

22 (2) CYCLE FOR NEXT REVIEW OF OZONE CRI-
 23 TERIA AND STANDARDS.—Notwithstanding section
 24 109(d) of the Clean Air Act (42 U.S.C. 7409(d)),
 25 the Administrator shall not—

(A) complete, before October 26, 2025, any review of the criteria for ozone published under section 108 of that Act (42 U.S.C. 7408) or the national ambient air quality standard for ozone promulgated under section 109 of that Act (42 U.S.C. 7409); or

(B) propose, before October 26, 2025, any revisions to those criteria or standards.

(c) CONSIDERATION OF ADVERSE PUBLIC HEALTH, WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—Section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409(d)(2)) is amended by adding at the end the following:

“(D) ADVICE FROM SCIENTIFIC REVIEW COMMITTEE.—Before establishing or revising a national ambient air quality standard, the Administrator shall request, and the scientific review committee appointed under subparagraph (A) shall provide, advice under subparagraph (C)(iv) regarding any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of the national ambient air quality standard.”.

1 (d) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
 2 TIONS AND GUIDANCE.—Section 109 of the Clean Air Act
 3 (42 U.S.C. 7409) is amended by adding at the end the
 4 following:

5 “(e) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
 6 TIONS AND GUIDANCE.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) BEST AVAILABLE CONTROL TECH-
 9 NOLOGY.—The term ‘best available control
 10 technology’ has the meaning given that term in
 11 section 169.

12 “(B) LOWEST ACHIEVABLE EMISSION
 13 RATE.—The term ‘lowest achievable emission
 14 rate’ has the meaning given that term in sec-
 15 tion 171.

16 “(C) PRECONSTRUCTION PERMIT.—

17 “(i) IN GENERAL.—The term ‘precon-
 18 struction permit’ means a permit that is
 19 required under part C or D for the con-
 20 struction or modification of a major emit-
 21 ting facility or major stationary source.

22 “(ii) INCLUSION.—The term ‘precon-
 23 struction permit’ includes any permit de-
 24 scribed in clause (i) issued by the Adminis-

trator or a State, local, or tribal permitting authority.

“(2) GUIDANCE FOR IMPLEMENTATION.—In publishing any final rule establishing or revising a national ambient air quality standard, the Administrator shall, as the Administrator determines necessary to assist States, permitting authorities, and permit applicants, concurrently publish final regulations and guidance for implementing the national ambient air quality standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised national ambient air quality standard.

“(3) APPLICABILITY OF NATIONAL AMBIENT AIR QUALITY STANDARD TO PRECONSTRUCTION PERMITTING.—If the Administrator fails to publish the final regulations and guidance referred to in paragraph (2) that include information relating to submission and consideration of a preconstruction permit application under a new or revised national ambient air quality standard concurrently with the national ambient air quality standard, the new or revised national ambient air quality standard shall not apply to the review and disposition of a preconstruction permit application until the date on which the

1 Administrator publishes the final regulations and
2 guidance.

3 “(4) RULES OF CONSTRUCTION.—Nothing in
4 this subsection—

5 “(A) precludes the Administrator from
6 issuing regulations and guidance to assist
7 States, permitting authorities, and permit appli-
8 cants in implementing a national ambient air
9 quality standard after the publication of final
10 regulations and guidance for the national ambi-
11 ent air quality standard under paragraph (2);

12 “(B) eliminates the obligation of a precon-
13 struction permit applicant to install best avail-
14 able control technology and lowest achievable
15 emission rate technology, as applicable; or

16 “(C) limits the authority of a State, local,
17 or tribal permitting authority to impose more
18 stringent emissions requirements pursuant to
19 State, local, or tribal law than the Federal na-
20 tional ambient air quality standards established
21 by the Administrator.”.

22 (e) CONTINGENCY MEASURES FOR EXTREME OZONE
23 NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean
24 Air Act (42 U.S.C. 7502(c)(9)) is amended—

1 (1) in the first sentence, by striking “Such”
2 and inserting the following:

3 “(A) SPECIFIC MEASURES.—A nonattain-
4 ment”;

5 (2) in the second sentence, by striking “Such
6 measures” and inserting the following:

7 “(B) CONTINGENCY MEASURES.—The spe-
8 cific measures referred to in subparagraph
9 (A)”;

10 (3) by adding at the end the following:

11 “(C) EXTREME AREAS.—Notwithstanding
12 subparagraphs (A) and (B) and any other pro-
13 vision of this Act, the specific measures referred
14 to in subparagraphs (A) and (B) shall not be
15 required for any nonattainment area for ozone
16 classified as an Extreme Area.”.

17 (f) 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”; and

1 (3) in subsection (e)—

2 (A) in the matter preceding paragraph (1),
 3 by striking the second sentence and inserting
 4 “Paragraphs (6), (7), and (8) of subsection (c)
 5 (relating to de minimis rule and modification of
 6 sources) shall not apply in the case of an Ex-
 7 treme Area.”; and

8 (B) in paragraph (5), in the matter pre-
 9 ceding subparagraph (A), by striking “, if the
 10 State demonstrates to the satisfaction of the
 11 Administrator that—” and all that follows
 12 through “Any reference to” in the last sentence
 13 of the undesignated matter following subpara-
 14 graph (B) and inserting the following:

15 “(6) REFERENCES.—Any reference to”.

16 (g) 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,” after “re-
 21 designated attainment”.

22 (h) EXCEPTIONAL EVENTS.—Section 319(b)(1) of
 23 the Clean Air Act (42 U.S.C. 7619(b)(1)) is amended by
 24 striking subparagraph (B) and inserting the following:

1 “(B) EXCLUSIONS.—In this subsection,
 2 the term ‘exceptional event’ does not include—
 3 “(i) ordinarily occurring stagnation of
 4 air masses;
 5 “(ii) meteorological inversions; or
 6 “(iii) air pollution relating to source
 7 noncompliance.”.

8 (i) REPORT ON EMISSIONS EMANATING FROM OUT-
 9 SIDE THE UNITED STATES.—Not later than 2 years after
 10 the date of enactment of this Act, the Administrator, in
 11 consultation with States, shall submit to Congress a report
 12 that describes—

13 (1) the extent to which foreign sources of air
 14 pollution, including emissions from sources located
 15 outside North America, impact—

16 (A) designations of areas (or portions of
 17 areas) as nonattainment, attainment, or unclas-
 18 sifiable under section 107(d) of the Clean Air
 19 Act (42 U.S.C. 7407(d)); and

20 (B) attainment and maintenance of na-
 21 tional ambient air quality standards;

22 (2) the procedures and timelines of the Admin-
 23 istrator for the disposition of petitions submitted
 24 under subsection (b) of section 179B of the Clean
 25 Air Act (42 U.S.C. 7509a);

1 (3) the total number of petitions received by the
2 Administrator under that section (42 U.S.C. 7509a)
3 and, for each petition—

4 (A) the date on which the petition was ini-
5 tially submitted to the Administrator; and

6 (B) the date of final disposition by the Ad-
7 ministrator; and

8 (4) whether the Administrator recommends any
9 statutory changes to facilitate the more efficient re-
10 view and disposition of petitions submitted under
11 that section (42 U.S.C. 7509).

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