

Union Calendar No. 157

115TH CONGRESS
1ST SESSION

H. R. 806

[Report No. 115–222]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2017

Mr. OLSON (for himself, Mr. FLORES, Mr. LATTA, Mr. BISHOP of Georgia, Mr. MCCARTHY, Mr. CUELLAR, Mr. SCALISE, Mr. COSTA, Mr. CRAMER, Mr. LONG, Mr. JENKINS of West Virginia, Mr. BURGESS, Mr. RENACCI, Mr. HENSARLING, Mr. MCKINLEY, Mr. GUTHRIE, Mr. BUCSHON, Mr. JOHNSON of Ohio, Mr. WEBER of Texas, and Mr. BABIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

JULY 14, 2017

Additional sponsors: Mr. ROKITA, Mr. VALADAO, Mr. SESSIONS, Mr. GROTHMAN, and Mr. SMITH of Texas

JULY 14, 2017

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on February 1, 2017]

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 Imple-*
5 *mentation Act of 2017”.*

6 **SEC. 2. FACILITATING STATE IMPLEMENTATION OF EXIST-**
7 **ING OZONE STANDARDS.**

8 *(a) DESIGNATIONS.—*

9 *(1) DESIGNATION SUBMISSION.—Not later than*
10 *October 26, 2024, notwithstanding the deadline speci-*
11 *fied in paragraph (1)(A) of section 107(d) of the*
12 *Clean Air Act (42 U.S.C. 7407(d)), the Governor of*
13 *each State shall designate in accordance with such*
14 *section 107(d) all areas (or portions thereof) of the*
15 *Governor’s State as attainment, nonattainment, or*
16 *unclassifiable with respect to the 2015 ozone stand-*
17 *ards.*

18 *(2) DESIGNATION PROMULGATION.—Not later*
19 *than October 26, 2025, notwithstanding the deadline*
20 *specified in paragraph (1)(B) of section 107(d) of the*
21 *Clean Air Act (42 U.S.C. 7407(d)), the Administrator*
22 *shall promulgate final designations under such sec-*
23 *tion 107(d) for all areas in all States with respect to*
24 *the 2015 ozone standards, including any modifica-*

1 *tions to the designations submitted under paragraph*
2 *(1).*

3 *(3) STATE IMPLEMENTATION PLANS.—Not later*
4 *than October 26, 2026, notwithstanding the deadline*
5 *specified in section 110(a)(1) of the Clean Air Act (42*
6 *U.S.C. 7410(a)(1)), each State shall submit the plan*
7 *required by such section 110(a)(1) for the 2015 ozone*
8 *standards.*

9 *(b) CERTAIN PRECONSTRUCTION PERMITS.—*

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

13 *(A) the Administrator or the State, local, or*
14 *Tribal permitting authority, as applicable, deter-*
15 *mines the application to be complete on or before*
16 *the date of promulgation of the final designation*
17 *of the area involved under subsection (a)(2); or*

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

1 (2) *RULES OF CONSTRUCTION.*—*Nothing in this*
 2 *section shall be construed to—*

3 (A) *eliminate the obligation of a*
 4 *preconstruction permit applicant to install best*
 5 *available control technology and lowest achiev-*
 6 *able emission rate technology, as applicable; or*

7 (B) *limit the authority of a State, local, or*
 8 *Tribal permitting authority to impose more*
 9 *stringent emissions requirements pursuant to*
 10 *State, local, or Tribal law than national ambi-*
 11 *ent air quality standards.*

12 **SEC. 3. FACILITATING STATE IMPLEMENTATION OF NA-**
 13 **TIONAL AMBIENT AIR QUALITY STANDARDS.**

14 (a) *TIMELINE FOR REVIEW OF NATIONAL AMBIENT*
 15 *AIR QUALITY STANDARDS.*—

16 (1) *TEN-YEAR CYCLE FOR ALL CRITERIA AIR*
 17 *POLLUTANTS.*—*Paragraphs (1) and (2)(B) of section*
 18 *109(d) of the Clean Air Act (42 U.S.C. 7409(d)) are*
 19 *amended by striking “five-year intervals” each place*
 20 *it appears and inserting “10-year intervals”.*

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

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

(B) propose, before such date, any revisions to such criteria or standard.

(b) *CONSIDERATION OF TECHNOLOGICAL FEASIBILITY.*—Section 109(b)(1) of the Clean Air Act (42 U.S.C. 7409(b)(1)) is amended by inserting after the first sentence the following: “If the Administrator, in consultation with the independent scientific review committee appointed under subsection (d), finds that a range of levels of air quality for an air pollutant are requisite to protect public health with an adequate margin of safety, as described in the preceding sentence, the Administrator may consider, as a secondary consideration, likely technological feasibility in establishing and revising the national primary ambient air quality standard for such pollutant.”.

(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:

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

8 (d) *TIMELY ISSUANCE OF IMPLEMENTING REGULA-*
 9 *TIONS AND GUIDANCE.—Section 109 of the Clean Air Act*
 10 *(42 U.S.C. 7409) is amended by adding at the end the fol-*
 11 *lowing:*

12 “(e) *TIMELY ISSUANCE OF IMPLEMENTING REGULA-*
 13 *TIONS AND GUIDANCE.—*

14 “(1) *IN GENERAL.—In publishing any final rule*
 15 *establishing or revising a national ambient air qual-*
 16 *ity standard, the Administrator shall, as the Admin-*
 17 *istrator determines necessary to assist States, permit-*
 18 *ting authorities, and permit applicants, concurrently*
 19 *publish regulations and guidance for implementing*
 20 *the standard, including information relating to sub-*
 21 *mission and consideration of a preconstruction per-*
 22 *mit application under the new or revised standard.*

23 “(2) *APPLICABILITY OF STANDARD TO*
 24 *PRECONSTRUCTION PERMITTING.—If the Adminis-*
 25 *trator fails to publish final regulations and guidance*

1 *that include information relating to submission and*
2 *consideration of a preconstruction permit application*
3 *under a new or revised national ambient air quality*
4 *standard concurrently with such standard, then such*
5 *standard shall not apply to the review and disposi-*
6 *tion of a preconstruction permit application until the*
7 *Administrator has published such final regulations*
8 *and guidance.*

9 “(3) *RULES OF CONSTRUCTION.*—

10 “(A) *Nothing in this subsection shall be con-*
11 *strued to preclude the Administrator from*
12 *issuing regulations and guidance to assist States,*
13 *permitting authorities, and permit applicants in*
14 *implementing a national ambient air quality*
15 *standard subsequent to publishing regulations*
16 *and guidance for such standard under para-*
17 *graph (1).*

18 “(B) *Nothing in this subsection shall be*
19 *construed to eliminate the obligation of a*
20 *preconstruction permit applicant to install best*
21 *available control technology and lowest achiev-*
22 *able emission rate technology, as applicable.*

23 “(C) *Nothing in this subsection shall be con-*
24 *strued to limit the authority of a State, local, or*
25 *Tribal permitting authority to impose more*

1 *stringent emissions requirements pursuant to*
 2 *State, local, or Tribal law than national ambi-*
 3 *ent air quality standards.*

4 “(4) *DEFINITIONS.—In this subsection:*

5 “(A) *The term ‘best available control tech-*
 6 *nology’ has the meaning given to that term in*
 7 *section 169(3).*

8 “(B) *The term ‘lowest achievable emission*
 9 *rate’ has the meaning given to that term in sec-*
 10 *tion 171(3).*

11 “(C) *The term ‘preconstruction permit’—*

12 “(i) *means a permit that is required*
 13 *under this title for the construction or*
 14 *modification of a stationary source; and*

15 “(ii) *includes any such permit issued*
 16 *by the Environmental Protection Agency or*
 17 *a State, local, or Tribal permitting author-*
 18 *ity.”.*

19 (e) *CONTINGENCY MEASURES FOR EXTREME OZONE*
 20 *NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean*
 21 *Air Act (42 U.S.C. 7502(c)(9)) is amended by adding at*
 22 *the end the following: “Notwithstanding the preceding sen-*
 23 *tences and any other provision of this Act, such measures*
 24 *shall not be required for any nonattainment area for ozone*
 25 *classified as an Extreme Area.”.*

1 (f) *PLAN SUBMISSIONS AND REQUIREMENTS FOR*
 2 *OZONE NONATTAINMENT AREAS.*—*Section 182 of the Clean*
 3 *Air Act (42 U.S.C. 7511a) is amended—*

4 (1) *in subsection (b)(1)(A)(ii)(III), by inserting*
 5 *“and economic feasibility” after “technological*
 6 *achievability”;*

7 (2) *in subsection (c)(2)(B)(ii), by inserting “and*
 8 *economic feasibility” after “technological*
 9 *achievability”;*

10 (3) *in subsection (e), in the matter preceding*
 11 *paragraph (1)—*

12 (A) *by striking “The provisions of clause*
 13 *(ii) of subsection (c)(2)(B) (relating to reduc-*
 14 *tions of less than 3 percent), the provisions of*
 15 *paragraphs” and inserting “The provisions of*
 16 *paragraphs”;* and

17 (B) *by striking “, and the provisions of*
 18 *clause (ii) of subsection (b)(1)(A) (relating to re-*
 19 *ductions of less than 15 percent)”;* and

20 (4) *in paragraph (5) of subsection (e), by strik-*
 21 *ing “, if the State demonstrates to the satisfaction of*
 22 *the Administrator that—” and all that follows*
 23 *through the end of the paragraph and inserting a pe-*
 24 *riod.*

1 (g) *PLAN REVISIONS FOR MILESTONES FOR PARTICU-*
 2 *LATE MATTER NONATTAINMENT AREAS.*—Section 189(c)(1)
 3 *of the Clean Air Act (42 U.S.C. 7513a(c)(1)) is amended*
 4 *by inserting “, which take into account technological*
 5 *achievability and economic feasibility,” before “and which*
 6 *demonstrate reasonable further progress”.*

7 (h) *EXCEPTIONAL EVENTS.*—Section 319(b)(1)(B) of
 8 *the Clean Air Act (42 U.S.C. 7619(b)(1)(B)) is amended—*
 9 (1) *in clause (i)—*

10 (A) *by striking “(i) stagnation of air*
 11 *masses or” and inserting “(i)(I) ordinarily oc-*
 12 *curring stagnation of air masses or (II)”;* and

13 (B) *by inserting “or” after the semicolon;*

14 (2) *by striking clause (ii); and*

15 (3) *by redesignating clause (iii) as clause (ii).*

16 (i) *REPORT ON EMISSIONS EMANATING FROM OUT-*
 17 *SIDE THE UNITED STATES.*—Not later than 24 months
 18 *after the date of enactment of this Act, the Administrator,*
 19 *in consultation with States, shall submit to the Congress*
 20 *a report on—*

21 (1) *the extent to which foreign sources of air pol-*
 22 *lution, including emissions from sources located out-*
 23 *side North America, impact—*

24 (A) *designations of areas (or portions there-*
 25 *of) as nonattainment, attainment, or*

1 *unclassifiable under section 107(d) of the Clean*
2 *Air Act (42 U.S.C. 7407(d)); and*

3 *(B) attainment and maintenance of na-*
4 *tional ambient air quality standards;*

5 *(2) the Environmental Protection Agency's pro-*
6 *cedures and timelines for disposing of petitions sub-*
7 *mitted pursuant to section 179B(b) of the Clean Air*
8 *Act (42 U.S.C. 7509a(b));*

9 *(3) the total number of petitions received by the*
10 *Agency pursuant to such section 179B(b), and for*
11 *each such petition the date initially submitted and*
12 *the date of final disposition by the Agency; and*

13 *(4) whether the Administrator recommends any*
14 *statutory changes to facilitate the more efficient re-*
15 *view and disposition of petitions submitted pursuant*
16 *to such section 179B(b).*

17 *(j) STUDY ON OZONE FORMATION.—*

18 *(1) STUDY.—The Administrator, in consultation*
19 *with States and the National Oceanic and Atmos-*
20 *pheric Administration, shall conduct a study on the*
21 *atmospheric formation of ozone and effective control*
22 *strategies, including—*

23 *(A) the relative contribution of man-made*
24 *and naturally occurring nitrogen oxides, volatile*
25 *organic compounds, and other pollutants in*

1 *ozone formation in urban and rural areas, in-*
 2 *cluding during wildfires, and the most cost-effec-*
 3 *tive control strategies to reduce ozone; and*

4 *(B) the science of wintertime ozone forma-*
 5 *tion, including photochemical modeling of win-*
 6 *tertime ozone formation, and approaches to cost-*
 7 *effectively reduce wintertime ozone levels.*

8 *(2) PEER REVIEW.—The Administrator shall*
 9 *have the study peer reviewed by an independent panel*
 10 *of experts in accordance with the requirements appli-*
 11 *cable to a highly influential scientific assessment.*

12 *(3) REPORT.—The Administrator shall submit to*
 13 *Congress a report describing the results of the study,*
 14 *including the findings of the peer review panel.*

15 *(4) REGULATIONS AND GUIDANCE.—The Admin-*
 16 *istrator shall incorporate the results of the study, in-*
 17 *cluding the findings of the peer review panel, into*
 18 *any Federal rules and guidance implementing the*
 19 *2015 ozone standards.*

20 **SEC. 4. APPLICABILITY OF SANCTIONS AND FEES IF EMIS-**
 21 **SIONS BEYOND CONTROL.**

22 *The Clean Air Act (42 U.S.C. 7401 et seq.) is amended*
 23 *by inserting after section 179B the following new section:*

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

3 “(a) *IN GENERAL.*—Notwithstanding any other provi-
4 sion of this Act, with respect to any nonattainment area
5 that is classified under section 181 as severe or extreme for
6 ozone or under section 188 as serious for particulate matter,
7 no sanction or fee under section 179 or 185 shall apply
8 with respect to a State (or a local government or source
9 therein) on the basis of a deficiency described in section
10 179(a), or the State’s failure to attain a national ambient
11 air quality standard for ozone or particulate matter by the
12 applicable attainment date, if the State demonstrates that
13 the State would have avoided such deficiency or attained
14 such standard but for one or more of the following:

15 “(1) *Emissions emanating from outside the non-*
16 *attainment area.*

17 “(2) *Emissions from an exceptional event (as de-*
18 *fin ed in section 319(b)(1)).*

19 “(3) *Emissions from mobile sources to the extent*
20 *the State demonstrates that—*

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

23 “(B) *the State is fully implementing such*
24 *measures as are within the authority of the State*
25 *to control emissions from the mobile sources.*

1 “(b) *NO EFFECT ON UNDERLYING STANDARDS.*—The
 2 *inapplicability of sanctions or fees with respect to a State*
 3 *pursuant to subsection (a) does not affect the obligation of*
 4 *the State (and local governments and sources therein) under*
 5 *other provisions of this Act to establish and implement*
 6 *measures to attain a national ambient air quality standard*
 7 *for ozone or particulate matter.*

8 “(c) *PERIODIC RENEWAL OF DEMONSTRATION.*—For
 9 *subsection (a) to continue to apply with respect to a State*
 10 *or local government (or source therein), the State involved*
 11 *shall renew the demonstration required by subsection (a)*
 12 *at least once every 5 years.”.*

13 **SEC. 5. DEFINITIONS.**

14 *In this Act:*

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

18 (2) *BEST AVAILABLE CONTROL TECHNOLOGY.*—
 19 *The term “best available control technology” has the*
 20 *meaning given to that term in section 169(3) of the*
 21 *Clean Air Act (42 U.S.C. 7479(3)).*

22 (3) *HIGHLY INFLUENTIAL SCIENTIFIC ASSESS-*
 23 *MENT.*—The term “highly influential scientific assess-
 24 *ment” means a highly influential scientific assess-*
 25 *ment as defined in the publication of the Office of*

1 *Management and Budget entitled “Final Information*
 2 *Quality Bulletin for Peer Review” (70 Fed. Reg. 2664*
 3 *(January 14, 2005)).*

4 (4) *LOWEST ACHIEVABLE EMISSION RATE.*—*The*
 5 *term “lowest achievable emission rate” has the mean-*
 6 *ing given to that term in section 171(3) of the Clean*
 7 *Air Act (42 U.S.C. 7501(3)).*

8 (5) *NATIONAL AMBIENT AIR QUALITY STAND-*
 9 *ARD.*—*The term “national ambient air quality stand-*
 10 *ard” means a national ambient air quality standard*
 11 *promulgated under section 109 of the Clean Air Act*
 12 *(42 U.S.C. 7409).*

13 (6) *PRECONSTRUCTION PERMIT.*—*The term*
 14 *“preconstruction permit”—*

15 (A) *means a permit that is required under*
 16 *title I of the Clean Air Act (42 U.S.C. 7401 et*
 17 *seq.) for the construction or modification of a*
 18 *stationary source; and*

19 (B) *includes any such permit issued by the*
 20 *Environmental Protection Agency or a State,*
 21 *local, or Tribal permitting authority.*

22 (7) *2015 OZONE STANDARDS.*—*The term “2015*
 23 *ozone standards” means the national ambient air*
 24 *quality standards for ozone published in the Federal*
 25 *Register on October 26, 2015 (80 Fed. Reg. 65292).*

1 **SEC. 6. NO ADDITIONAL FUNDS AUTHORIZED.**

2 *No additional funds are authorized to be appropriated*
3 *to carry out the requirements of this Act and the amend-*
4 *ments made by this Act. Such requirements shall be carried*
5 *out using amounts otherwise authorized.*

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