115TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
115–222

OZONE STANDARDS IMPLEMENTATION ACT OF 2017

JULY 14, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 806]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 806) to facilitate efficient State implementation of ground-level ozone standards, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

69–006

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ozone Standards Implementation Act of 2017".

SEC. 2. FACILITATING STATE IMPLEMENTATION OF EXISTING OZONE STANDARDS.

(a) DESIGNATIONS.—

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

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

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

(b) CERTAIN PRECONSTRUCTION PERMITS.—

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

(A) the Administrator or the State, local, or Tribal permitting authority, as applicable, determines the application to be complete on or before the date of promulgation of the final designation of the area involved under subsection (a)(2); or

(B) the Administrator or the State, local, or Tribal permitting authority, as applicable, publishes a public notice of a preliminary determination or draft permit for the application before the date that is 60 days after the date of promulgation of the final designation of the area involved under subsection (a)(2).

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

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

(B) limit the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or Tribal law than national ambient air quality standards.

SEC. 3. FACILITATING STATE IMPLEMENTATION OF NATIONAL AMBIENT AIR QUALITY STANDARDS.

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

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

(2) CYCLE FOR NEXT REVIEW OF OZONE CRITERIA AND STANDARDS.—Notwithstanding section 109(d) of the Clean Air Act (42 U.S.C. 7409(d)), the 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:

"(D) Prior to establishing or revising a national ambient air quality standard, the Administrator shall request, and such committee 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 such national ambient air quality standard.".

(d) TIMELY ISSUANCE OF IMPLEMENTING REGULATIONS AND GUIDANCE.—Section 109 of the Clean Air Act (42 U.S.C. 7409) is amended by adding at the end the following:

"(e) TIMELY ISSUANCE OF IMPLEMENTING REGULATIONS AND GUIDANCE.—

"(1) IN GENERAL.—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 regulations and guidance for implementing the standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised standard.

"(2) APPLICABILITY OF STANDARD TO PRECONSTRUCTION PERMITTING.—If the Administrator fails to publish final regulations and guidance 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 such standard, then such standard shall not apply to the review and disposition of a preconstruction permit application until the Administrator has published such final regulations and guidance.

"(3) RULES OF CONSTRUCTION.—

"(A) Nothing in this subsection shall be construed to preclude the Administrator from issuing regulations and guidance to assist States, permitting authorities, and permit applicants in implementing a national ambient air quality standard subsequent to publishing regulations and guidance for such standard under paragraph (1).

"(B) Nothing in this subsection shall be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable.

"(C) Nothing in this subsection shall be construed to limit the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or Tribal law than national ambient air quality standards.

"(4) DEFINITIONS.—In this subsection:

"(A) The term 'best available control technology' has the meaning given to that term in section 169(3).

"(B) The term 'lowest achievable emission rate' has the meaning given to that term in section 171(3).

"(C) The term 'preconstruction permit'—

"(i) means a permit that is required under this title for the construction or modification of a stationary source; and

"(ii) includes any such permit issued by the Environmental Protection Agency or a State, local, or Tribal permitting authority.".

(e) CONTINGENCY MEASURES FOR EXTREME OZONE NONATTAINMENT AREAS.—Section 172(c)(9) of the Clean Air Act (42 U.S.C. 7502(c)(9)) is amended by adding at the end the following: "Notwithstanding the preceding sentences and any other provision of this Act, such measures shall not be required for any nonattainment area for ozone classified as an Extreme Area.".

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

(1) in subsection (b)(1)(A)(ii)(III), by inserting "and economic feasibility" after "technological achievability";

(2) in subsection (c)(2)(B)(ii), by inserting "and economic feasibility" after "technological achievability";

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

(A) by striking "The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragaphs" and inserting "The provisions of paragraphs"; and

(B) by striking ", and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent)"; and

(4) in paragraph (5) of subsection (e), by striking ", if the State demonstrates to the satisfaction of the Administrator that—" and all that follows through the end of the paragraph and inserting a period.

(g) PLAN REVISIONS FOR MILESTONES FOR PARTICULATE MATTER NONATTAINMENT AREAS.—Section 189(c)(1) of the Clean Air Act (42 U.S.C. 7513a(c)(1)) is amended by inserting ", which take into account technological achievability and economic feasibility," before "and which demonstrate reasonable further progress".

(h) EXCEPTIONAL EVENTS.—Section 319(b)(1)(B) of the Clean Air Act (42 U.S.C. 7619(b)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking "(i) stagnation of air masses or" and inserting "(i)(I) ordinarily occurring stagnation of air masses or (II)"; and

(B) by inserting "or" after the semicolon;

(2) by striking clause (ii); and

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

(i) REPORT ON EMISSIONS EMANATING FROM OUTSIDE THE UNITED STATES.—Not later than 24 months after the date of enactment of this Act, the Administrator, in consultation with States, shall submit to the Congress a report on—

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

(A) designations of areas (or portions thereof) as nonattainment, attainment, or unclassifiable under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); and

(B) attainment and maintenance of national ambient air quality standards;

(2) the Environmental Protection Agency's procedures and timelines for disposing of petitions submitted pursuant to section 179B(b) of the Clean Air Act (42 U.S.C. 7509a(b));

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

(4) whether the Administrator recommends any statutory changes to facilitate the more efficient review and disposition of petitions submitted pursuant to such section 179B(b).

(j) STUDY ON OZONE FORMATION.—

(1) STUDY.—The Administrator, in consultation with States and the National Oceanic and Atmospheric Administration, shall conduct a study on the atmospheric formation of ozone and effective control strategies, including—

(A) the relative contribution of man-made and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation in urban and rural areas, including during wildfires, and the most cost-effective control strategies to reduce ozone; and

(B) the science of wintertime ozone formation, including photochemical modeling of wintertime ozone formation, and approaches to cost-effectively reduce wintertime ozone levels.

(2) PEER REVIEW.—The Administrator shall have the study peer reviewed by an independent panel of experts in accordance with the requirements applicable to a highly influential scientific assessment.

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

(4) REGULATIONS AND GUIDANCE.—The Administrator shall incorporate the results of the study, including the findings of the peer review panel, into any Federal rules and guidance implementing the 2015 ozone standards.

SEC. 4. APPLICABILITY OF SANCTIONS AND FEES IF EMISSIONS BEYOND CONTROL.

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

"SEC. 179C. APPLICABILITY OF SANCTIONS AND FEES IF EMISSIONS BEYOND CONTROL.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to any nonattainment area that is classified under section 181 as severe or extreme for ozone or under section 188 as serious for particulate matter, no sanction or fee under section 179 or 185 shall apply with respect to a State (or a local government or source therein) on the basis of a deficiency described in section 179(a), or the State's failure to attain a national ambient air quality standard for ozone or particulate matter by the applicable attainment date, if the State demonstrates that the State would have avoided such deficiency or attained such standard but for one or more of the following:

"(1) Emissions emanating from outside the nonattainment area.

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

"(3) Emissions from mobile sources to the extent the State demonstrates that—

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

"(B) the State is fully implementing such measures as are within the authority of the State to control emissions from the mobile sources.

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

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

SEC. 5. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

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

(3) HIGHLY INFLUENTIAL SCIENTIFIC ASSESSMENT.—The term "highly influential scientific assessment" means a highly influential scientific assessment as defined in the publication of the Office of Management and Budget entitled "Final Information Quality Bulletin for Peer Review" (70 Fed. Reg. 2664 (January 14, 2005)).

(4) LOWEST ACHIEVABLE EMISSION RATE.—The term "lowest achievable emission rate" has the meaning given to that term in section 171(3) of the Clean Air Act (42 U.S.C. 7501(3)).

(5) NATIONAL AMBIENT AIR QUALITY STANDARD.—The term "national ambient air quality standard" means a national ambient air quality standard promulgated under section 109 of the Clean Air Act (42 U.S.C. 7409).

(6) PRECONSTRUCTION PERMIT.—The term "preconstruction permit"—

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

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

(7) 2015 OZONE STANDARDS.—The term "2015 ozone standards" means the national ambient air quality standards for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

SEC. 6. NO ADDITIONAL FUNDS AUTHORIZED.

No additional funds are authorized to be appropriated to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized.

PURPOSE AND SUMMARY

H.R. 806, the Ozone Standards Implementation Act, was introduced on February 1, 2017, by Rep. Pete Olson (R–TX), together with Rep. Bill Flores (R–TX), Rep. Robert Latta (R–OH), Rep. Sanford Bishop (D–GA), Majority Leader Kevin McCarthy (R–CA), Rep. Henry Cuellar (D–TX), Majority Whip Steve Scalise (R–LA), Rep. Jim Costa (D–CA), Rep. Kevin Cramer (R–ND), Rep. Billy Long (R–MO) Rep. Evan Jenkins (R–WV), Rep. Michael Burgess (R–TX), Rep. James Renacci (R–OH), Rep. Jeb Hensarling (R–TX), Rep. David McKinley (R–WV), Rep. Brett Guthrie (R–KY), Rep. Larry Bucshon (R–IN), Rep. Bill Johnson (R–OH), Rep. Randy Weber (R–TX), and Rep. Brian Babin (R–TX). The bill would provide additional time for States and localities to implement new ozone standards, and address other challenges under the National Ambient Air Quality Standards (NAAQS) program.

BACKGROUND AND NEED FOR LEGISLATION

Under the Clean Air Act's NAAQS program, the Environmental Protection Agency (EPA) Administrator sets standards for criteria pollutants, including ground-level ozone.[1] According to EPA, since 1980 ozone levels have declined by 32 percent.[2]

EPA initially established ozone standards in 1971, and subsequently revised the standards in 1979, 1997, and 2008.[3] The standards set in 2008 established an 8-hour standard of 75 parts per billion (ppb), replacing a 1997 standard equivalent to 84 ppb. EPA did not publish its implementing regulations for the 2008 standards until March 2015, nearly 7 years after these standards had been issued by the agency.

In October 2015, the EPA Administrator also promulgated a new 8-hour ozone standard of 70 ppb.[4] Under the Clean Air Act's statutory schedule, States were required to submit designation recommendations by October 1, 2016 and EPA had planned to promulgate final nonattainment designations by October of 2017. However, in June 2017, the EPA, using its authority under the Clean Air Act, extended the deadline for final nonattainment designations by one year until October 1, 2018.[5] Based on the agency's monitoring data for 2012 to 2014, 241 counties with ozone monitors in 33 States would violate the new standard.[6] These projections do not include counties that currently do not have monitors, or contiguous counties that do not exceed 70 ppb but that may also be designated to be in nonattainment.[7]

Prior to EPA's issuance of the 2015 ozone standards, nearly 700 national, state, and local organizations and stakeholders representing businesses and jobs across the country had requested that EPA retain the 2008 standards.[8] In comments on the proposed rule, many State environmental regulators also raised concerns about any revision to the 2008 standards, and specifically regarding the role of background ozone, both naturally-occurring and internationally transported contributions, and limitations to the ex-

---

[1] The other criteria pollutants are carbon monoxide, lead, nitrogen dioxide, particulate matter, and sulfur dioxide. The Clean Air Act requires that EPA set national primary and secondary standards for criteria pollutants that, "allowing an adequate margin of safety," are requisite to protect public health and welfare. 42 U.S.C. 7409.

[2] *See* National Trends in Ozone Levels available at https://www.epa.gov/air-trends/ozone-trends.

[3] For background on EPA's ozone standards, see Memorandum of the Energy and Commerce Committee, Majority Staff dated March 22, 2017 and available at http://docs.house.gov/meetings/IF/IF18/20170322/105754/HHRG-115-IF18-20170322-SD020.pdf.

[4] 80 Fed. Reg. 65,292 (Oct. 26, 2015).

[5] 82 Fed. Reg. 29,246 (June 28, 2017). *See also* EPA *memo* dated Oct. 1, 2015 available at https://www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf and *guidance* dated Feb. 25, 2016 available at https://www.epa.gov/sites/production/files/2016-02/documents/ozone-designations-guidance-2015.pdf.

[6] *See* EPA *"County-level Design Values for the 2015 Ozone Standards"* available at https://www.epa.gov/sites/production/files/2015-10/documents/20151001_bynumbers.pdf. Of the 241 counties, *213* are outside of California.

[7] The Clean Air Act established ozone classification and attainment dates for the initial ozone standards of 3 years for "Marginal," 6 years for "Moderate," 9 years for "Serious," 15 years for "Severe," and 20 years for "Extreme." 42 U.S.C. 7511. These deadlines have applied to subsequent ozone standards. *See, e.g. NRDC v. EPA*, Case No. 12–1321, U.S. Court of Appeals for the District of Columbia Circuit (Dec. 23, 2014).

[8] *See* July 29, 2015 Letter to Chief of Staff Denis McDonough from Energy and Commerce Committee Members and enclosure available at https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Letters/20150729WHUpdated.pdf.

ceptional events exclusion and other Clean Air Act tools that EPA had highlighted for regulatory relief to address background ozone.[9]

In addition to challenges relating to implementing the new ozone standards, State and local air agencies are increasingly confronting other challenges under the statutory construct of the NAAQS program. For example, in 2012, the Energy and Commerce Committee held forums with many State and local air regulators to examine lessons of Clean Air Act implementation.[10] At these forums, State regulators identified a number of implementation challenges that have emerged since the 1990 Clean Air Act Amendments. These challenges ranged from the agency's failure to issue timely implementation regulations and guidance when standards are revised to specific issues relating to emissions beyond State regulatory control, including Federal motor vehicle engine standards, foreign emissions, and exceptional events, such as wildfires. The States identified challenges with statutory provisions interpreted to require States to pursue measures that may not be technologically or economically feasible and with the current statutory requirement that EPA review all NAAQS no later than every 5 years.

WHAT THE LEGISLATION WOULD DO

H.R. 806 seeks to address concerns raised by State and local air agencies and facilitate more efficient implementation of ozone standards, and the NAAQS program generally.[11] Key provisions would:

- Phase in implementation of the 2015 ozone standards by extending the date for final designations from the current 2018 to 2025, and aligning permitting requirements;
- Revise the time for mandatory review of NAAQS from 5 to 10 years, while allowing the EPA Administrator discretion to issue revised standards earlier;
- Authorize the EPA Administrator to consider technological feasibility, as a secondary consideration, when establishing or revising NAAQS;
- Direct the EPA Administrator to obtain advice from the agency's scientific advisory committee regarding potential adverse effects prior to revising NAAQS, as required by section 109 of the Clean Air Act;
- Direct the EPA Administrator to issue implementation regulations and guidance concurrently when revising NAAQS, including with respect to permitting requirements;
- Ensure that for certain ozone and particulate matter nonattainment areas, States are not required to include economically infeasible measures in their implementation plans;

---

[9] *See, e.g. State Environmental Agency Perspectives on Background Ozone and Regulatory Relief* (June 2015) available at http://www.csg.org/aapca_site/documents/AAPCASurvey-StateEnvironmentalAgencyPerspectivesonBackgroundOzoneandRegulatoryRelief-June201.pdf.

[10] See Clean Air Act Forum (Part I) available at https://energycommerce.house.gov/hearings-and-votes/event/clean-air-act-forum-part-i; Clean Air Act Forum (Part II) available at https://energycommerce.house.gov/hearings-and-votes/event/clean-air-act-forum-part-ii; Clean Air Act Forum (Part III) available at https://energycommerce.house.gov/hearings-and-votes/event/clean-air-act-forum-part-iii.

[11] The legislation is substantially similar to HR 4775 passed by the House in the 114th Congress also entitled the "Ozone Standards Implementation Act of 2016." A legislative hearing was held on April 14, 2016 (*see* hearing webpage available at https://energycommerce.house.gov/hearings-and-votes/hearings/hr-4775-ozone-standards-implementation-act-2016 and Hearing Record, Serial No. 114–134 available at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg20589/pdf/CHRG-114hhrg20589.pdf). The bill passed the House on June 8, 2016 by a recorded vote of *234–177*.

- Revise the definition of exceptional events under section 319 of the Clean Air Act to include droughts and extraordinary stagnation;
- Direct EPA to submit two reports to Congress including (i) a report regarding the impacts of foreign emissions on NAAQS compliance and related matters; and (ii) a report regarding ozone formation and effective control strategies; and
- Limit the applicability of particular sanctions and fees on certain ozone and particulate matter nonattainment areas if States demonstrate the reason for nonattainment is for emissions beyond the States' regulatory control.

The specific provisions of the bill are addressed below:

Section 2—Additional Time to Implement 2015 Ozone Standards

Section 2 of the bill would provide additional time for States and localities to implement the 2015 ozone standards by extending the date for final designations from 2018 to 2025 and aligning permitting requirements with the designations.

Providing additional time to implement the 2015 standards will allow EPA and States time to fully implement the 2008 ozone standards. It will also allow EPA time to review and develop all of its necessary implementation regulations and guidance to implement the new standards.[12] It will also ensure that hundreds of counties already on track to meet the standards can come into compliance without being subjected unnecessarily to new regulatory burdens, paperwork requirements, and restrictions.[13]

Aligning permitting requirements with the designations will also encourage domestic manufacturing. As reflected in testimony, the 2015 ozone standards are already affecting permitting for domestic manufacturing even though nonattainment designations have not been promulgated.[14] Further, to the extent areas are designated by

---

[12] EPA took nearly 7 years to finalize implementing regulations for the 2008 ozone standards. Similarly, for the agency's particulate matter standards announced in 2012, implementing regulations were not finalized for approximately three and one-half years. In addition, an extension of time would allow the agency more time to address any backlogs with respect to other pending state implementation plans for ozone or other standards. For example, as of the end of FY 2016, there were 322 backlogged plans. *See* EPA Congressional Justification, at p. 561, available at https://www.epa.gov/sites/production/files/2017-05/documents/fy-2018-congressional-justification.pdf.

[13] EPA has projected "the vast majority of U.S. counties will meet the [2015 ozone standards] by 2025 just with the rules and programs now in place or underway." *See* EPA Fact Sheet available at https://www.epa.gov/sites/production/files/2015-10/documents/20151001designations_permitting.pdf.

[14] *See*, e.g. EPA Oct. 15, 2012 Memo, available at https://www.epa.gov/sites/production/files/2015–07/documents/timely.pdf, ("new or revised NAAQs "apply to any final permit issued after the effective dates of the requirements unless the EPA has provided for grandfathering of the specific requirements for applications pending on the effective date of the new requirement"); *see also* April 1, 2010 Memo available at https://www.epa.gov/sites/production/files/2015–07/documents/psdnaaqs.pdf ("EPA generally interprets the CAA and EPA's PSD permitting program regulations to require that each final PSD decision reflect consideration of any NAAQS that is in effect at the time the permitting authority issues a final permit.") At a February 16, 2017 hearing before the Subcommittee on Environment, Ross Eisenberg, Vice President for Energy and Resources Policy for the National Association of Manufacturers, testified regarding the impact of the 2015 standards on domestic manufacturing: "It was a 2015 problem for domestic manufacturing. So the minute, literally the minute the new standards had the goalposts removed and the new ozone standards come into place, for permitting that is, that is what you have to hit. And so even though you have a couple years, and it really isn't that many years, but a couple years to start working on state implementation plans, for permitting purposes day one, the day EPA goes final, you've got to hit those limits." *See* Testimony available at http://docs.house.gov/meetings/IF/IF18/20170216/105582/HHRG-115-IF18-Transcript-20170216.pdf.

the agency as being in nonattainment with the new standards, this is likely to deter investment by companies in these areas.[15]

Additional time would also allow for judicial review of legal challenges by States and other regulated entities pending in the D.C. Circuit.[16] In addition to the concerns about whether the new standards are achievable for many counties,[17] there are concerns about the costs of implementation, which are estimated by EPA to be $2 billion annually in 2025,[18] but may be significantly higher.[19] Questions have also been raised regarding EPA's projections of benefits.[20]

While some commenters on the legislation have raised concerns that this or other provisions of the bill would "roll back" provisions of the Clean Air Act or harm our nation's efforts to protect air quality, nothing in H.R. 806 changes any existing air quality standards or regulations.[21] The bill simply provides additional time and flexibility to implement standards under the NAAQS program in a

---

[15] For example, at a February 16, 2017 hearing before the Subcommittee on Environment, Kevin Sunday, Director of Government Affairs for the Pennsylvania Chamber of Business and Industry, testified: ". . . if we see non-attainment, for a lot of companies the location just gets crossed right off the list, before you even evaluate workforce, location, infrastructure . . ." *See* Testimony available at http://docs.house.gov/meetings/IF/IF18/20170216/105582/HHRG-115-IF18-Transcript-20170216.pdf.

[16] *Murray Energy Corporation v. EPA*, No. 15–1385 (consolidated with 15–1392, 15–1490, 15–1491 & 15–1494), United States Court of Appeals for the District of Columbia Circuit. States challenging the standards include Arizona, Arkansas, North Dakota, New Mexico, Oklahoma, Utah, Wisconsin, Kentucky and Texas.

[17] For example, at the April 14, 2016 legislative hearing on H.R. 4775, which was substantially similar to H.R. 806, and included the same provisions to extend compliance dates for the 2015 standards, the State of Arizona's Director of Environmental Quality, Misael Cabrera, testified: "We believe that the new standard is simply not achievable in many areas of our State. Although the Clean Air Act has five mechanisms to bring nonattainment areas in to compliance, these mechanisms are inadequate for Arizona and likely other Western states."

[18] While EPA has not provided any cost estimates for earlier years, the agency provides an annualized cost estimate of $2 billion in 2025, including $1.4 billion for all States except California, and an additional $800 million for California post-2025. EPA's cost estimate in the final rule is significantly lower than its estimate in the proposed rule, where it estimated annual costs for a 70 ppb standard to be $3.9 billion (except California) in 2025. *See* November 2014 Regulatory Impact Analysis for Proposed Rule at ES–14, ES–15 available at https://www3.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf.

[19] For example, at the legislative hearing on the predecessor bill, H.R. 4775, the Chairman of the Texas Commission on Environmental Quality testified regarding EPA's cost estimates: "My agency's analysis suggests those figures are dramatically incorrect. For example, the EPA only includes industry's costs in their analysis, not the states' or taxpayer's costs. Nor do they look at economic impacts like increased electricity costs." Further, EPA projected that "unidentified controls" would be needed in some areas to meet a 70 ppb standard, including for 100 percent of the NOx emissions reductions needed in California. See October 2015 Regulatory Impact Analysis for Final Rule at Table 4–9 at 4–40, 4A–5 at 4A–6 and 4A–6 at 4A–6; Tables 3–9- and 3–10 (California) at 3–24 available at https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0169-0057.

[20] *See* Testimony of Louis Anthony Cox, Jr. Chief Sciences Officer, Nexthealth Technologies available at http://docs.house.gov/meetings/IF/IF03/20150616/103610/HHRG-114-IF03-Wstate-CoxL-20150616.pdf and Hearing Record, Serial No. 114–56 available at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg97678/pdf/CHRG-114hhrg97678.pdf; April 14, 2016 Testimony of Bryan Shaw, Chairman, Texas Commission on Environmental Quality, at pp. 1–2, available at http://docs.house.gov/meetings/IF/IF03/20160414/104778/HHRG-114-IF03-Wstate-ShawB-20160414.pdf and Hearing Record, Serial No. 114–134 available at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg20589/pdf/CHRG-114hhrg20589.pdf

[21] Commenters on the legislation have also raised concerns that under the bill, the public will not know if the air that they are breathing is unhealthy. The Air Quality Index is EPA's tool for providing the public with the most up-to-date information about air quality where they live. *See* EPA Fact Sheet available at https://www.epa.gov/sites/production/files/2015-10/documents/20151001_air_quality_index_updates.pdf. Nothing in the bill changes federal regulations (40 CFR 58.50) requiring that States and local agencies report Air Quality Index information to the general public on a daily basis.µNothing in the bill changes any requirements to monitor, measure, and report air quality data.

manner that avoids unnecessary costs or restrictions on economic and job growth.[22]

Section 3(a)—Timeline for Review of NAAQS

Section 3(a) would change the mandatory review of NAAQS from 5 to 10 years, while allowing the EPA Administrator discretion to issue revised standards earlier. Under the section, the Administrator would not be precluded from considering new evidence earlier than 10 years if warranted.

Providing additional time for the EPA Administrator and the agency to complete the agency's mandatory reviews of NAAQS would address concerns regarding the current review cycle raised by numerous air regulators,[23] and supported at the legislative hearing on the bill.[24] Allowing additional time is reasonable because the agency does not typically complete its review within the current statutory time frame.[25] As set forth on the agency website, the review process is "a lengthy undertaking," which involves a "Planning" phase, "Integrated Science Assessment," "Risk/Exposure Assessment," "Policy Assessment," and a rulemaking process for each review—which itself can be a multi-year process.

Providing the EPA Administrator with additional time to review the standards is also reasonable because, as noted above, EPA itself can take years to develop the regulations and guidance needed to implement the standards being reviewed. Yet, under the current five year schedule, the review process must begin long before the standards being reviewed have even begun to be implemented. For example, EPA set its 2008 ozone standards in March of that

---

[22] At the legislative hearing on H.R. 806, the San Joaquin Valley Air Pollution Control District Executive Director testified "There is nothing in this bill that would roll back even a single measure that we have already put in place or will hold back anything that we have to do and we are planning to do moving forward to meet the current standards." At the legislative hearing on the predecessor bill, H.R. 4775, he testified: "H.R. 4775, in my opinion, provides for much needed streamlining of the implementation of the Clean Air Act. It does not roll back anything that is already in the Clean Air Act in the form of protections for public health, safeguarding public health and it does nothing to roll back any of the progress that has been made and it will not impede or slow down our progress as we move forward to reduce air pollution and improve public health." The Chairman of the Texas Commission on Environmental Quality similarly testified that the bill "simply provides for additional time with the implementation of the latest standard but it does not roll back those requirements that are in place."

[23] *See* March 22, 2017 Memorandum, *supra* n. 3, at footnote 21.

[24] At the legislative hearing on H.R. 806, the President of the Association of Air Pollution Control Agencies and Kentucky's air quality director, testified "H.R. 806 provides for a more practical and attainable 10-year interval for the review and potential revision of air quality standards. Moving forward, this time period will be essential to achieve the most difficult, the most expensive remaining increments of air quality improvement." The Director of Maine's Bureau of Air Quality testified: "The changes, as proposed in HR 806 . . . to extend the time frame for standard review from every five years to every ten years, including concurrently published, clearly defined implementing regulations, would allow for due process to be followed and fulfilled. This would more effectively and efficiently utilize federal, state, and individual facility resources to establish a standard and work for the improvement of air quality and protection of the people of our nation." At the legislative hearing on the predecessor bill, H.R. 4775, the Chairman of the Texas Commission on Environmental Quality testified: "By lengthening the required review period from five to ten years, it will ensure the EPA does not rush to lower given standards only to comply with a statutory deadline. Furthermore, it will give states more time to comply with previous standards before getting saddled with more stringent standards and facing economic and developmental sanctions for nonattainment." The Executive Director of the Utah Dept. of Environmental Quality also testified: "In general, extending the 5-year NAAQS review cycle so that it better aligns with the prescribed NAAQS implementation timelines is appropriate." The Executive Director of the San Joaquin Valley Air Pollution Control District also testified: "H.R. 4775 helps reduce the current chaotic nature of the transition between standards by requiring that EPA issue guidance on implementing new standards in a timely manner and extending the timeframe to review new standards from 5 years to 10 years."

[25] EPA's current process for reviewing NAAQS is described by the agency on its website at https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards. For the list of current NAAQS and links to the specific review periods for each criteria pollutants, see https://www.epa.gov/criteria-air-pollutants/naaqs-table.

year, and then began the process to review those standards in September of that same year, only six months after the standards had been published.[26]

The NAAQS review process, moreover, requires States to expend substantial resources, including review of scientific assessments and proposed rules, while at the same time they are also implementing multiple existing standards. For example, States and local air agencies are currently required to implement standards for ozone, particulate matter, and sulfur dioxide. For each of these new standards, States must make designations and then prepare and comply with implementation plans. Under the current five-year review cycle, States and local air regulators may be required to divert resources away from implementing an existing standard to focus on the review of that same standard that has yet to be implemented.

Section 3(b)—Consideration of Technological Feasibility

Section 3(b) would authorize the EPA Administrator to consider technological feasibility when selecting among a range of potential standards that are supported by public health data. In particular, this section states that if the EPA Administrator, in consultation with EPA's independent scientific advisory committee, finds a range of levels of air quality are requisite to protect public health with an adequate margin of safety, then "the Administrator *may* consider, as a secondary consideration, likely technological feasibility in establishing and revising the national primary ambient air quality standard for his pollutant." (Emphasis added).

Section 3(b) does not change the Clean Air Act's requirement that standards be based on protection of public health. The bill simply clarifies that the EPA Administrator has the discretion to consider technological feasibility when choosing among a range of levels identified and supported by the science as protective of public health. This is a clarification for future Administrators that Congress considers technological feasibility to be a reasonable part of the decision-making process when policy choices must be made among a range of scientifically valid options.[27]

Section 3(c)—Consideration of Potential Adverse Effects

Section 3(c) would direct the EPA Administrator to consider potential adverse effects when setting NAAQS standards. In particular, under section 109 of the Clean Air Act, EPA's independent scientific advisory committee is required to provide advice to the agency about the potential adverse effects of implementing new air quality standards. 42 U.S.C. 7409(d)(2)(C)(iv). While the Act ex-

---

[26] *See* Notice of Workshop and Call for Information on Integrated Science Assessment for Ozone, 73 Fed. Reg. 56581 (Sept. 29, 2008).

[27] At the legislative hearing on the predecessor bill, H.R. 4775, the Executive Director of the San Joaquin Valley Air Pollution Control District testified: "I believe that standards should be set with science only and I don't think this bill really goes away from that. What it says is that when CASAC makes a recommendation and they give a range to the administration to consider, right now it goes through the administration. Depending on who's in charge they make these various assumptions and set the standard where it needs to be and then they come up with something. This really brings some order, some law into how you can actually pick within that range what is an appropriate standard." Similarly, the Chairman of the Texas Commission on Environmental Quality testified: "The [Clean Air] Act's requirement that the EPA ignore technological and economic considerations might have made sense forty years ago when it was initially passed. However, pollution levels have been lowered to such a degree that the law of diminishing returns has made it more and more difficult to continue to reduce pollutant levels at all, much less in a way that is not burdensome economically."

pressly requires that the Clean Air Scientific Advisory Committee (CASAC) "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards," EPA does not currently implement this statutory provision. To the contrary, in May 2015, the Government Accountability Office issued a report indicating CASAC has never provided such advice because EPA has never requested it, and that EPA has no plans to ask CASAC to provide advice on potential adverse effects.[28]

Such advice would help inform the NAAQS process and is relevant to developing and implementing new standards. In a survey by the Association of Air Pollution Control Agencies, 80 percent of State air agencies said that CASAC advice on potential adverse public health, welfare, social, economic, or energy effects would be helpful to their agency.[29] Section 3(c) of the bill will ensure this occurs by directing the EPA Administrator, prior to establishing or revising a NAAQS, to request, and CASAC to provide, such advice.[30]

Section 3(d)—Timely Implementing Regulations and Guidance

Section 3(d) requires EPA to issue implementation guidance when it issues new standards.[31] Under the bill, if EPA fails to provide such information, the standards will not apply to preconstruction permits until such guidance has been promulgated. This simply creates an incentive for EPA to be more efficient, and provides relief for States and regulated entities burdened by regulatory deadlines and a lack of needed guidance from the agency.[32]

---

[28] *See* GAO Report entitled "EPA SCIENCE ADVISORY PANELS, Preliminary Observations on the Processes for Providing Scientific Advice," GAO–15–636T, May 20, 2015 available at http://gao.gov/assets/680/670288.pdf.

[29] The survey is available at http://www.csg.org/aapca_site/events/documents/SurveyResults_000.pdf.

[30] Concerns have been raised by States regarding the agency's failure to implement this statutory provision. *See, e.g.* May 14, 2014 *Letter* from Senator Vitter available at https://web.archive.org/web/20141208042421/http:/www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=999cb305-9457-4fdd-a918-aebf11658e14; *see also Response* from Louisiana Dept. of Environmental Quality available at https://web.archive.org/web/20150110124050/http:/www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=78659f58-83aa-4c06-9832-86d90efb0b7d; *Response* from Mississippi Dept. of Environmental Quality available at https://web.archive.org/web/20150110124050/http:/www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=78659f58-83aa-4c06-9832-86d90efb0b7d; *Response* from North Carolina Department of Environment and Natural Resources available at https://web.archive.org/web/20150110133105/http:/www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=0ba945cc-f16f-4e95-ab47-8427c20a9f94; *Response* from Texas Commission on Environmental Quality available at https://web.archive.org/web/20150110123616/http:/www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=e3c917db-ccf9-4c22-8d8b-d783458fd5fe.

[31] At a February 16, 2017 hearing before the Subcommittee, Kevin Sunday, Director of Government Affairs for the Pennsylvania Chamber of Business and Industry, testified, "[n]ew regulatory obligations are being handed down faster than it takes to get a permit, and the obligations have become inordinately complex. State regulators are tied up due to a lack of guidance coming from federal agencies, and we would encourage Congress to take a hard look at how national ambient air quality standards are revised and implemented." *See* Testimony available at http://docs.house.gov/meetings/IF/IF18/20170216/105582/HHRG-115-IF18-Transcript-20170216.pdf.

[32] During the Committee's Clean Air Act Forums in 2012, State regulators specifically raised concerns about the lack of timely implementing regulations and guidance on planning.[32] *See, e.g.* Response of Martha Rudolph, Colorado Dept. of Public Health and the Environment, available at https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CAAforum/20121129/Rudolph.pdf) ("The absence of timely implementation guidance produces a lack of clarity on [state implementation plan] expectations, and often creates considerable uncertainty in the planning process . . ."); *see also, e.g.* Response of Teresa Marks of the Arkansas Department of Environmental Quality available at https://energycommerce.house.gov/

While this would ensure EPA has an incentive to take timely action, this subsection also expressly provides that nothing prevents States, local, or tribal permitting authorities from imposing more stringent permitting requirements for preconstruction permit applications.

Under this subsection, furthermore, new manufacturing and industrial facilities would continue to be required to install best available control technology to reduce emissions even where EPA fails to issue timely implementation regulations. The subsection expressly provides that it may not be construed "to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable."

Section 3(e)—Contingency Measures

Currently, the Clean Air Act requires that States and localities include "contingency measures" in their compliance plans for nonattainment areas. While "contingency measures" may be reasonable for "Moderate" or "Serious" nonattainment areas, for "Extreme" ozone nonattainment areas States and localities should be pursuing all available control measures.[33] Currently, however, failure to include contingency measures in "Extreme" areas may prevent approval of compliance plans. Section 3(e) would simply eliminate the mandate for holding back measures as contingencies in areas classified as Extreme nonattainment.

Section 3(f), (g)—Plan Submissions and Requirements

Sections 3(f) and (g) clarify that economic feasibility, in addition to technological achievability, can be taken into consideration in certain requirements for plans for certain ozone and particulate matter nonattainment areas.[34] These provisions will help to ensure meaningful consideration of economic feasibility for States and localities working to implement new standards.

Section 3(h)—Exceptional Events

Section 3(h) would modify the definition of "exceptional events" in section 319 of the Clean Air Act to include droughts and extraor-

---

sites/republicans.energycommerce.house.gov/files/analysis/CAAforum/20120731/Marks.pdf) ("Too often 'standards' are promulgated without the technical implementation rules in place. This places States in an extremely difficult position . . .")

[33] At the legislative hearing on H.R. 806 the Executive Director of the San Joaquin Air Pollution Control District noted that "[t]he requirement to have contingency measures in areas that are designed as extreme or classified as extreme nonattainment is actually detrimental to air quality and getting clean air as rapidly as possible." He testified this was a "classic case of the well-intentioned provisions that were included in the Clean Air Act over 25 years ago that are now leading to unintended consequences . . ." "By definition, a region is classified as extreme nonattainment if, despite implementing all available control measures, reductions achieved are not enough to meet the standard. The only way a region can meet the contingency requirements is to hold back on implementing clean air measures and save them for later as a contingency. Of course, this would result in delays in cleaning the air and reducing air pollution. As currently written, the requirements in the Clean Air Act that require extreme areas to include all available measures to ensure expeditious attainment and the requirement for holding back measures as contingency are contradictory."

[34] At the legislative hearing on the predecessor bill, H.R. 4775, the Executive Director of the San Joaquin Air Pollution Control District explained: "Meeting the new standards that approach background concentrations call for transformative measures that require time to develop and implement. These transformative measures require new technologies that in many cases are not yet commercially available or even conceived. . . . In establishing deadlines and milestones, the Act should be amended to require control measures that lead to the most expeditious attainment of health based standards while taking into account technological and economic feasibility."

dinary stagnation.[35] Specifically, this section of the bill would provide that an exceptional event may include stagnation of air masses that are not ordinarily occurring, and may also include a meteorological event involving high temperatures or lack of precipitation.[36]

Nothing in this subsection does away with the detailed statutory requirements under section 319 or the procedures and guidelines that EPA has laid out for demonstrating exceptional events.[37] Nor does anything in the bill do away with requirements to measure air quality, or to make that air quality data available to the public.

Section 3(i)—Foreign Emissions

Section 3(i) would require that EPA submit a report to Congress within 2 years on foreign emissions and their impact on compliance with the NAAQS in the United States. It would also require the agency to provide information regarding the agency's procedures and timelines for disposing of petitions for relief under 179B of the Clean Air Act, and whether the Administrator recommends any statutory changes to facilitate more efficient review and disposition of such petitions.

Currently, the impact of foreign emissions, particularly emissions transported from outside North America, is not fully understood but may be significant.[38] Further, while States and local air quality

---

[35] The "exceptional events" provision seeks to provide relief for areas that may have an exceedance or violate the standards due to events beyond their control. At the legislative hearing on H.R. 806, the Administrator for the Air Quality Division of the Wyoming Dept. of Environmental Quality testified: "Wyoming's experience has been that the exceptional event demonstration process has been costly and resource intensive. Specifying qualifying events and streamlining the process will reduce these costs. . . . When there is no action and exceptional event demonstrations are ignored, the result is inflated monitored data that misrepresents the prevailing air quality conditions included in modeling, unnecessarily delays permitting, and inaccurately characterizes air quality for the public." At the legislative hearing on the predecessor bill, H.R. 4775, the Director of the Arizona Dept. of Environmental Quality testified: "[T]he Clean Air Act will regulate an area that exceeds the standard on four days only the same as an area that exceeds the standard every day. So an area that exceeds the standards on these four days of the year versus an area that exceeds that standard every single day of the year get treated the same and that is the reason why you need exceptional events."

[36] At the legislative hearing on the predecessor bill, H.R. 4775, the Executive Director of the San Joaquin Air Pollution Control District testified: "Currently, the Clean Air Act does not allow stagnation or lack of precipitation to qualify as exceptional events. The West Coast recently experienced drought conditions that had not been experienced since the late 1800s with some locations breaking records over 100 years old. . . . Due to the extreme drought, stagnation, strong inversions, and historically dry conditions experienced over the winter of 2013/14, the Valley could not show attainment even if the Valley eliminated all sources of air pollution and had zero emissions of [fine particulate matter] released into the atmosphere for the following year. . . . Extraordinary circumstances that arise from 100-year droughts should qualify as exceptional events." The Director of the Arizona Dept. of Environmental Quality also testified to the need for relief relating to exceptional events: "[T]he exceptional events rule is of dubious value to Yuma County, if not the whole country. Although Arizona has been a national leader in the development of exceptional event documentation for dust events, the process for documenting and receiving EPA approval of ozone exceptional events has not been explained, will be almost certainly resource intensive, and is difficult to predict."

[37] Clean Air Act *Section 319(b)* requires a showing that an event has affected air quality in such a way that there was (i) a clear causal relationship between the specific event and the monitored exceedance or violation; (ii) the event was not reasonably controllable or preventable; and (iii) the event was caused by human activity that is unlikely to recur at a particular location or was a natural event. 42 U.S.C. 7619.

[38] At the legislative hearing on H.R. 806 Administrator for the Air Quality Division of the Wyoming Dept. of Environmental Quality testified: "By lowering the ozone standard without having a full understanding of the extent and magnitude of influence that internationally transported ozone and precursors has on areas in the Western US, placed an unreasonable burden on states that face impact from international pollution. International contribution also affects regions of the United States that do not directly border other countries. . . . It would be beneficial to states for EPA to conduct and review research in the area of long-range international transport and then translate those findings into the regulatory framework." At the legislative hearing on the predecessor bill, H.R. 4775, the Director of the Utah Dept. of Environmental Quality testified: "International transport can, at times, account for up to 85 percent of the 8-hour ambient

management agencies have requested relief under Section 179B, EPA has advised the Committee that only 5 petitions have ever been granted by the agency. Changes to promote more efficient disposition of such petitions would help to ensure that areas, particularly in the Western United States, are not subjected to penalties and sanctions under the Clean Air Act due to foreign emissions.

Section 3(j)—Ozone Formation and Control Strategies

Section 3(j) would require that the Administrator conduct a study on the atmospheric formation of ozone and effective control strategies, including with regard to the relative contribution of manmade and naturally occurring NOx, VOCs, and other pollutants in ozone formation in urban and rural areas, and with regard to wintertime ozone, that the study be peer reviewed in accordance with the requirements applicable to highly influential scientific assessments. Under this subsection, the Administrator is required to submit a report to Congress describing the results of the study and incorporate said results into any Federal rules and guidance implementing the 2015 ozone standards.[39]

Section 4—Applicability of Certain Sanctions and Fees

Section 4 limits the applicability of sanctions and fees if certain nonattainment areas are already imposing the most stringent emissions controls required under the Act, but cannot attain air quality standards because of emissions that are outside State and local regulatory control. The provision addresses concerns raised by State regulators that sanctions and fees intended to incentivize States and local governments to impose all required controls no longer make sense for areas in which all such controls—within their authority—are already in place.[40]

---

ozone concentration in some Western states. Many areas in the West have little chance of identifying sufficient controls to achieve attainment, leading to severe consequences." In February 2016, EPA held a two-day workshop in Phoenix on background ozone that considered, inter alia, international transport. For information on the workshop, see https://www.epa.gov/ozone-pollution/background-ozone-workshop-and-information.

[39] At the legislative hearing on H.R. 806 Administrator for the Air Quality Division of the Wyoming Dept. of Environmental Quality testified: "Background Ozone in the Western United States is not well understood. When EPA proposed the Ozone Standard that was ultimately adopted in 2015, it largely dismissed the data from the sole high-elevation site in the Denver urban area case study as an outlier . . . . By omitting that study, EPA failed to adequately consider or characterize background ozone conditions in higher elevations such as Wyoming. Without a better understanding of background and what the anthropogenic contribution is, it is difficult and ineffectual for rural intermountain western states to develop plans that control contributing sources. Background ozone is a reality in the mountain west and likely offsets some of the emission reductions achieved in the West. At the legislative hearing on the predecessor bill, H.R. 4775, the Executive Director of Utah's Department of Environmental Quality testified: "As a result of these significant [nitrogen oxide] emission reductions, ozone levels have been improving throughout the eastern U.S. Equivalent NOx emission reductions have also been occurring at western power plants . . . and mobile source emission reductions have also been substantial, but there have not been corresponding decreases in ozone levels in the west." Further, "[i]n rural areas where biogenic (natural source) emissions are the majority of the inventory . . . reductions in anthropogenic VOC are unlikely to have any effect on ambient ozone concentrations." The Director also testified: "Most scientific studies of ozone have focused on summertime ozone in urban areas; and the summer ozone-formation chemistry is well characterized. Wintertime ozone, on the other hand, is a relatively new phenomenon, limited to a few isolated basins in the intermountain west, and its causes are not fully understood."

[40] At the Committee's Clean Air Act Forums in 2012, the Executive Officer of California's South Coast Air Quality Management District commented on Section 185 penalties for areas in extreme ozone nonattainment: "In the South Coast region, major sources are already subject to the most stringent controls in the nation, and requirements for existing sources are continuously updated to reflect technology advances. In our region, the [section 185] fee is fundamentally unfair in that ALL stationary sources represent only about 10% of our region's NOx emissions, with mobile sources contributing 90%, yet mobile sources are not penalized. Twenty years ago,

Continued

The provision applies specifically to areas designated as severe or extreme ozone nonattainment or as serious particulate matter nonattainment. Under this provision, sanctions under section 179 for a deficiency in a State implementation plan or penalties under section 185 for failure to show the affected areas have attained the NAAQS by the applicable date will not apply if the State demonstrates that the deficiency or failure is due to emissions beyond its regulatory control. Such emissions include international and interstate emissions, emissions from exceptional events, and mobile source emissions, such as emissions from motor vehicles and other EPA-regulated engines.

The provision does not affect underlying obligations of State, or local air pollution control authorities to implement all the measures within their authority under the Clean Air Act to attain air quality standards. It also requires States that would use this provision to renew the demonstrations of their emissions beyond their regulatory control every five years. And the provision is consistent with existing Clean Air Act provisions, including section 110(a), section 126, section 179B, section 182 (h), and section 185 (e), which provide relief from adverse regulatory consequences for emissions outside of State or local authority to control.

HEARINGS

On March 22, 2017, the Subcommittee on Environment held a legislative hearing on H.R. 806. The hearing was entitled "H.R. 806, Ozone Standards Implementation Act of 2017," and the following witnesses testified:

- Sean Alteri, Director, Division of Air Quality, Kentucky Department of Environmental Protection;
- Marc A. R. Cone, P.E., Director, Bureau of Air Quality, Maine Department of Environmental Protection;
- Kurt Karperos, Deputy Executive Officer, California Air Resources Board;
- Nancy Vehr, Air Quality Administrator, Wyoming Department of Environmental Quality;
- Homer Boushey, M.D., Division of Pulmonary/Critical Care Medicine, University of California, San Francisco; and
- Seyed Sadredin, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District.

In the 115th Congress, the Subcommittee on Environment also held a hearing entitled "Modernizing Environmental Laws: Challenges and Opportunities for Expanding Infrastructure and Promoting Development" on February 16, 2017. That hearing examined, *inter alia,* potential challenges to expanding our nation's in-

---

Congress may have assumed that stationary sources would be a bigger percentage of the air pollution problem than they are; the [section 185] provision is now outdated." In the legislative hearing for HR 806, the Executive Director of the San Joaquin Air Pollution Control District stated for the record: "Through decades of implementing effective air quality strategies, air pollution from San Joaquin Valley businesses has been reduced by over 80% through investment of over $40 billion by regulated sources. The pollution released by industrial facilities, agricultural operations, and cars and trucks are at historical lows for all pollutants. San Joaquin Valley residents' exposure to high smog levels has been reduced by over 90%. Unfortunately, after all this investment and sacrifice, we have reached a point where we cannot attain the federal standards even if we eliminate all Valley businesses, agricultural operations, or trucks traveling through San Joaquin Valley. We believe that common sense and fairness dictate that federal law include an overriding provision in federal law to prohibit imposition of federal sanctions on local regions, including states, where their inability to attain federal standards is due to pollution from sources outside their regulatory authority."

frastructure and domestic manufacturing that are associated with the implementation of EPA's ozone and other national ambient air quality standards under the agency's NAAQS program.

In the 114th Congress, the Committee's Subcommittee on Energy and Power also held a hearing entitled "H.R. 4775, Ozone Standards Implementation Act of 2016," which included provisions substantially similar to those included in H.R. 806.[41] That Subcommittee also held a hearing entitled "EPA's Proposed Ozone Rule" on June 12, 2015, and a joint hearing with the Subcommittee on Commerce, Trade, and Manufacturing entitled "EPA's Proposed Ozone Rule: Potential Impacts on Manufacturing" on June 16, 2015.

In the 113th Congress, the Subcommittee on Energy and Power also held a hearing entitled "Promoting New Manufacturing Act" on May 21, 2014. That hearing examined a discussion draft of H.R. 4795, which was introduced by Rep. Scalise on May 30, 2014 and passed by the House of Representatives on November 20, 2014. That bill included provisions similar to those reflected in sections 2(a) and 3(d) of H.R. 806 relating to preconstruction permits.

COMMITTEE CONSIDERATION

On June 15, 2017, the Subcommittee on Environment met in open markup session to consider H.R. 806, and forwarded the bill to the full Committee, without amendment, by a record vote of 12 ayes and 8 nays. During the markup, two amendments were offered and rejected.

On June 28, 2017, the Committee on Energy and Commerce met in open markup session to consider H.R. 806. During the markup, three amendments were offered, of which one was offered and approved by voice vote, and two were offered and rejected by a roll call vote. A motion by Mr. Walden to order H.R. 806 reported to the House, as amended was agreed to by a record vote of 29 ayes and 24 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

[41] Witnesses at that hearing included: i) Bryan W. Shaw, Chairman, Texas Commission on Environmental Quality; ii) Seyed Sadredin, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District; iii) Misael Cabrera, Director, Arizona Department of Environmental Quality; iv) Alan Matheson, Executive Director, Utah Department of Environmental Quality; and Ali Mirzakhalili, Director, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control. EPA also provided a written statement for the record. See Written Statement of Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, EPA available at http://docs.house.gov/meetings/IF/IF03/20160414/104778/HHRG-114-IF03-Wstate-ShawB-20160414.pdf and Hearing Record, Serial No. 114–134 available at https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg20589/pdf/CHRG-114hhrg20589.pdf.

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 38

BILL: H.R. 806, Ozone Standards Implementation Act of 2017

AMENDMENT: An amendment offered by Ms. Castor, No. 2, to provide that section 2 shall not apply if the Clean Air Scientific Advisory Committee finds that the application of subsection (a) could increase asthma attacks, hospitalization and emergency room visits for those with respiratory disease or cardiovascular disease, the risk of preterm birth, babies born with low birth weight, or impaired fetal growth, the risk of heart attacks, stroke, premature death, or reproductive, developmental, or other serious harms to human health.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Upton		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Murphy		X		Mr. Green	X		
Mr. Burgess		X		Ms. DeGette	X		
Mrs. Blackburn		X		Mr. Doyle	X		
Mr. Scalise				Ms. Schakowsky	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Kinzinger		X		Mr. Tonko	X		
Mr. Griffith		X		Ms. Clarke	X		
Mr. Bilirakis		X		Mr. Loebsack	X		
Mr. Johnson		X		Mr. Schrader	X		
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas			
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters	X		
Mr. Mullin		X		Ms. Dingell	X		
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					
Mr. Walberg		X					
Mrs. Walters		X					
Mr. Costello		X					
Mr. Carter		X					

06/28/2017

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 39

BILL: H.R. 806, Ozone Standards Implementation Act of 2017

AMENDMENT: An amendment offered by Mr. McNerney, No. 3, to strike section 5 (related to funding).

DISPOSITION: NOT AGREED TO, by a roll call vote of 23 yeas and 29 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush	X		
Mr. Upton		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel			
Mr. Murphy		X		Mr. Green	X		
Mr. Burgess		X		Ms. DeGette	X		
Mrs. Blackburn		X		Mr. Doyle	X		
Mr. Scalise				Ms. Schakowsky	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Kinzinger		X		Mr. Tonko	X		
Mr. Griffith		X		Ms. Clarke	X		
Mr. Bilirakis		X		Mr. Loebsack	X		
Mr. Johnson		X		Mr. Schrader	X		
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas	X		
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters	X		
Mr. Mullin		X		Ms. Dingell	X		
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					
Mr. Walberg		X					
Mrs. Walters		X					
Mr. Costello		X					
Mr. Carter		X					

06/28/2017

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 40

BILL: H.R. 806, Ozone Standards Implementation Act of 2017

AMENDMENT: A motion offered by Mr. Walden to order H.R. 806 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 29 yeas and 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Upton	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Murphy	X			Mr. Green		X	
Mr. Burgess	X			Ms. DeGette		X	
Mrs. Blackburn	X			Mr. Doyle		X	
Mr. Scalise				Ms. Schakowsky		X	
Mr. Latta	X			Mr. Butterfield		X	
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Ms. Castor		X	
Mr. Lance	X			Mr. Sarbanes		X	
Mr. Guthrie	X			Mr. McNerney		X	
Mr. Olson	X			Mr. Welch		X	
Mr. McKinley	X			Mr. Lujan		X	
Mr. Kinzinger	X			Mr. Tonko		X	
Mr. Griffith	X			Ms. Clarke		X	
Mr. Bilirakis	X			Mr. Loebsack		X	
Mr. Johnson	X			Mr. Schrader		X	
Mr. Long				Mr. Kennedy		X	
Mr. Bucshon	X			Mr. Cardenas		X	
Mr. Flores	X			Mr. Ruiz		X	
Mrs. Brooks	X			Mr. Peters		X	
Mr. Mullin	X			Ms. Dingell		X	
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						

06/28/2017

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing on March 22, 2017, and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 806 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to facilitate more efficient implementation of the ozone standards and NAAQS generally.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 806 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 806 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee estimates that enacting H.R. 806 specifically directs to be completed no specific rulemakings within the meaning of 5 U.S.C. 551 that would not otherwise be issued by the agency.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

The legislation includes the following provisions:

Section 1. Short title

This section provides the short title of "Ozone Standards Implementation Act of 2017."

Section 2. Facilitating state implementation of existing ozone standards

This section provides a schedule for implementation of NAAQS for ground-level ozone published in 2015. Section 2(a) provides that States shall submit designations to implement the 2015 NAAQS for ground-level ozone not later than October 26, 2024. The EPA Administrator shall promulgate final designations with respect to those standards not later than October 26, 2025, and states shall submit implementation plans not later than October 26, 2026.

Section 2(b)(1) provides the standards shall not apply to the review and disposition of a preconstruction permit application required under title I of the Clean Air Act (CAA) (42 U.S.C. 7401 et seq.) if the Administrator or the State, local, or tribal permitting authority, as applicable, has determined the application to be complete prior to the date of promulgation of final designation of an area, or has published a public notice of a preliminary determination or draft permit before the date that is 60 days after the date of promulgation of final designation.

Section 2(b)(2) provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable, or limit the authority of a State, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

Section 3. Facilitating State implementation of National Ambient Air Quality Standards

This section includes provisions to facilitate more efficient implementation of NAAQS by States.

Section 3(a)(1) would extend the current NAAQS review cycle for criteria pollutants from five years to ten years. Section 3(a)(2) would provide that no revision of the ozone standards shall be proposed prior to October 26, 2025.

Section 3(b) provides that the Administrator, when establishing or revising a NAAQS, may consider, as a secondary consideration, likely technological feasibility.

Section 3(c) provides that the Administrator, prior to establishing or revising a NAAQS, shall request, and the Clean Air Scientific Advisory Committee shall provide, the advice provided for in CAA section 109(d)(2)(C)(iv) regarding any adverse public health, welfare, social, economic, or energy effects, which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

Section 3(d) provides that the Administrator, when establishing or revising a NAAQS, shall concurrently publish implementing regulations and guidance as necessary to assist States, permitting authorities, and permitting applicants, and that the new or revised NAAQS shall not apply to preconstruction permit applications until such final regulations and guidance have been published.

Section 3(e) provides that in Extreme ozone nonattainment areas, contingency measures are not required to be included in nonattainment plans.

Sections 3(f)(1), (2), and (3) ensure that economic feasibility, in addition to technological achievability, be taken into consideration in certain requirements for plans for Moderate, Serious, and Extreme ozone nonattainment areas. Section 3(f)(4) eliminates certain demonstration requirements in approving provisions of an implementation plan for an Extreme ozone nonattainment and which anticipates development of new control techniques or improvement of existing control technologies.

Section 3(g) provides that, for particulate matter nonattainment areas, the milestones that must be included in plans to show reasonable further progress must take into account technological achievability and economic feasibility.

Section 3(h) provides that, with respect to air quality monitoring data influenced by exceptional events, an exceptional event may include stagnation of air masses that are not ordinarily occurring, and may also include a meteorological event involving high temperatures or lack of precipitation.

Section 3(i) provides that within two years of enactment of the Act, the Administrator, in consultation with States, shall submit to Congress a report on (i) the extent to which foreign sources of air pollution impact the area designations and the attainment and maintenance of NAAQS; (ii) the EPA's procedures and timelines for disposing of petitions relating to emissions from sources emanating outside the United States that are submitted pursuant to section 179B(b) of the CAA; (iii) the total number of such petitions received by the agency and related information; and (iv) whether the Administrator recommends any statutory changes to facilitate more efficient review and disposition of such petitions.

Section 3(j) provides that the Administrator shall, in consultation with the National Oceanic and Atmospheric Administration, (i) conduct a study on the atmospheric formation of ozone and effective control strategies, including with regard to the relative contribution

of manmade and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation in urban and rural areas, and with regard to wintertime ozone; (ii) that the study be peer reviewed in accordance with the requirements applicable to highly influential scientific assessments; (iii) that the Administrator submit a report to Congress describing the results of the study; and (iv) that the Administrator incorporate the results of the study into any Federal rules and guidance implementing the 2015 ozone standards.

Section 4. Applicability of sanctions and fees if emissions beyond control

This section provides that, with respect to any nonattainment area classified as severe or extreme for ozone or as serious for particulate matter, sanctions for implementation plan deficiencies under section 179 or fees for failure to attain the air quality standard under section 185 will not apply if the State demonstrates that the State would have avoided the deficiencies or attained the standard but for (i) emissions emanating from outside the nonattainment area, (ii) emissions from an exceptional event, or (iii) emissions from mobile sources that are beyond the control of the State to reduce or eliminate. The inapplicability of sanctions and fees under this section does not affect any obligations under the Act to implement measures to attain national ambient air quality standards.

Section 5. Definitions

This section contains the following definitions:

(1) The term "Administrator" means the EPA Administrator.

(2) The term "Best Available Control Technology" has the meaning given that term in CAA section 169(3).

(3) The term "Highly Influential Scientific Assessment" means a highly influential scientific assessment as defined in the publication of the Office of Management and Budget entitled "Final Information Quality Bulletin for Peer Review" (70 Fed. Reg. 2664 (January 14, 2005)).

(4) The term "Lowest Achievable Emission Rate" has the meaning given that term in CAA section 171(3).

(5) The term "national ambient air quality standard" means a national ambient air quality standard promulgated pursuant to CAA section 109.

(6) The term "Preconstruction Permit" means a permit that is required under title I of the CAA (42 U.S.C. 7401 et seq.) for the construction or modification of a stationary source, and includes any such permit issued by the EPA or a State, local, or tribal permitting authority.

(7) The term "2015 Ozone Standards" means the national ambient air quality standard for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

Section 6. No Additional Funds Authorized

This section provides that no additional funds are authorized to carry out the requirements of the Act and amendments made by the Act, and that such requirements shall be carried out using amounts otherwise authorized.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CLEAN AIR ACT

TITLE I—AIR POLLUTION PREVENTION AND CONTROL

PART A—AIR QUALITY AND EMISSION LIMITATIONS

* * * * * * *

NATIONAL AMBIENT AIR QUALITY STANDARDS

SEC. 109. (a)(1) The Administrator—

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b)(1) National primary ambient air quality standards, prescribed, under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. *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.* Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed, under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public

welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) The Administrator shall, not later than one year after the date of the enactment of the Clean Air Act Amendments of 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 108(c), he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d)(1) Not later than December 31, 1980, and at [five-year intervals] *10-year intervals* thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at [five-year intervals] *10-year intervals* thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(D) Prior to establishing or revising a national ambient air quality standard, the Administrator shall request, and such committee 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 such national ambient air quality standard.

(e) TIMELY ISSUANCE OF IMPLEMENTING REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—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, concur-

rently publish regulations and guidance for implementing the standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised standard.

(2) APPLICABILITY OF STANDARD TO PRECONSTRUCTION PERMITTING.—If the Administrator fails to publish final regulations and guidance 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 such standard, then such standard shall not apply to the review and disposition of a preconstruction permit application until the Administrator has published such final regulations and guidance.

(3) RULES OF CONSTRUCTION.—

(A) Nothing in this subsection shall be construed to preclude the Administrator from issuing regulations and guidance to assist States, permitting authorities, and permit applicants in implementing a national ambient air quality standard subsequent to publishing regulations and guidance for such standard under paragraph (1).

(B) Nothing in this subsection shall be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable.

(C) Nothing in this subsection shall be construed to limit the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or Tribal law than national ambient air quality standards.

(4) DEFINITIONS.—In this subsection:

(A) The term "best available control technology" has the meaning given to that term in section 169(3).

(B) The term "lowest achievable emission rate" has the meaning given to that term in section 171(3).

(C) The term "preconstruction permit"—

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

(ii) includes any such permit issued by the Environmental Protection Agency or a State, local, or Tribal permitting authority.

* * * * * * *

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

Subpart 1—Nonattainment Areas in General

* * * * * * *

SEC. 172. NONATTAINMENT PLAN PROVISIONS IN GENERAL.

(a) CLASSIFICATIONS AND ATTAINMENT DATES.—

(1) CLASSIFICATIONS.—(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 107(d) with respect to any national ambient air quality standard (or any revised standard,

including a revision of any standard in effect on the date of the enactment of the Clean Air Act Amendments of 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 of the United States Code (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 110 (concerning action on plan submissions) or section 179 (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) ATTAINMENT DATES FOR NONATTAINMENT AREAS.—(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 107(d), except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 107(d).

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) SCHEDULE FOR PLAN SUBMISSIONS.—At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 107(d), the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 110(a)(2). Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 110(a)(2).

(c) NONATTAINMENT PLAN PROVISIONS.—The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) IN GENERAL.—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP.—Such plan provisions shall require reasonable further progress.

(3) INVENTORY.—Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) IDENTIFICATION AND QUANTIFICATION.—Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 173(a)(1)(B), from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) PERMITS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES.—Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173.

(6) OTHER MEASURES.—Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such

standard in such area by the applicable attainment date specified in this part.

(7) COMPLIANCE WITH SECTION 110(a)(2).—Such plan provisions shall also meet the applicable provisions of section 110(a)(2).

(8) EQUIVALENT TECHNIQUES.—Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) CONTINGENCY MEASURES.—Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator. *Notwithstanding the preceding sentences and any other provision of this Act, such measures shall not be required for any nonattainment area for ozone classified as an Extreme Area.*

(d) PLAN REVISIONS REQUIRED IN RESPONSE TO FINDING OF PLAN INADEQUACY.—Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 110(k)(5) (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 110 and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this Act, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before the date of the enactment of the Clean Air Act Amendments of 1990.

(e) FUTURE MODIFICATION OF STANDARD.—If the Administrator relaxes a national primary ambient air quality standard after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

* * * * * * *

SEC. 179C. APPLICABILITY OF SANCTIONS AND FEES IF EMISSIONS BEYOND CONTROL.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, with respect to any nonattainment area that is classified under

section 181 as severe or extreme for ozone or under section 188 as serious for particulate matter, no sanction or fee under section 179 or 185 shall apply with respect to a State (or a local government or source therein) on the basis of a deficiency described in section 179(a), or the State's failure to attain a national ambient air quality standard for ozone or particulate matter by the applicable attainment date, if the State demonstrates that the State would have avoided such deficiency or attained such standard but for one or more of the following:

(1) Emissions emanating from outside the nonattainment area.

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

(3) Emissions from mobile sources to the extent the State demonstrates that—

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

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

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

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

Subpart 2—Additional Provisions for Ozone Nonattainment Areas

* * * * * * *

SEC. 182. PLAN SUBMISSIONS AND REQUIREMENTS.

(a) MARGINAL AREAS.—Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of the date of the enactment of the Clean Air Act Amendments of 1990.

(1) INVENTORY.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator.

(2) CORRECTIONS TO THE STATE IMPLEMENTATION PLAN.—Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) REASONABLY AVAILABLE CONTROL TECHNOLOGY CORRECTIONS.—For any Marginal Area (or, within the Admin-

istrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 181(a), a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 172(b) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990), as interpreted in guidance issued by the Administrator under section 108 before the date of the enactment of the Clean Air Act Amendments of 1990.

(B) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE.—(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95–294, 95th Congress, 1st Session, 281–291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this Act, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 202(m)(3) (relating to

emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) PERMIT PROGRAMS.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 172(c)(5) and 173, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990), as interpreted in regulations of the Administrator promulgated as of the date of the enactment of the Clean Air Act Amendments of 1990.

(3) PERIODIC INVENTORY.—

(A) GENERAL REQUIREMENT.—No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

(B) EMISSIONS STATEMENTS.—(i) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 172(c)(9) (relating to contingency measures) shall not apply to Marginal Areas.

(b) MODERATE AREAS.—Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS.—

(A) GENERAL RULE.—(i) By no later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after the year in which the Clean Air Act Amendments of 1990 are enacted. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this Act. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability *and economic feasibility*.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) BASELINE EMISSIONS.—For purposes of subparagraph (A), the term "baseline emissions" means the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year of the enactment of the Clean Air Act Amendments of 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) GENERAL RULE FOR CREDITABILITY OF REDUCTIONS.—Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under title V.

(D) LIMITS ON CREDITABILITY OF REDUCTIONS.—Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by the date of the enactment of the Clean Air Act Amendments of 1990 or required to be promulgated under section 211(h).

(iii) Measures required under subsection (a)(2)(A) (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) to be submitted immediately after the date of the enactment of the Clean Air Act Amendments of 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) REASONABLY AVAILABLE CONTROL TECHNOLOGY.—The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 172(c)(1) with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of the enactment of the Clean Air Act Amendments of 1990 and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before the date of the enactment of the Clean Air Act Amendments of 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) GASOLINE VAPOR RECOVERY.—

(A) GENERAL RULE.—Not later than 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 325).

(B) EFFECTIVE DATE.—The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after the date of the enactment of the Clean Air Act Amendments of 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) REFERENCE TO TERMS.—For purposes of this paragraph, any reference to the term "adoption date" shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) MOTOR VEHICLE INSPECTION AND MAINTENANCE.—For all Moderate Areas, the State shall submit, immediately after the date of the enactment of the Clean Air Act Amendments of 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) (without regard to whether or not the area was required by section 172(b)(11)(B) (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to have included a specific schedule for implementation of such a program).

(5) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.15 to 1.

(c) SERIOUS AREAS.—Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area (or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) ENHANCED MONITORING.—In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) ATTAINMENT AND REASONABLE FURTHER PROGRESS DEMONSTRATIONS.—Within 4 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) ATTAINMENT DEMONSTRATION.—A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) REASONABLE FURTHER PROGRESS DEMONSTRATION.—A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) equal to the following amount averaged over each consecutive 3-year period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability *and economic feasibility*.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under section 182(g) and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1) (C) and (D) (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1), that exceed the 15-percent amount of reductions required under subsection (b)(1)(A).

(C) NO_xCONTROL.—The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1) (C) and (D)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) ENHANCED VEHICLE INSPECTION AND MAINTENANCE PROGRAM.—

(A) REQUIREMENT FOR SUBMISSION.—Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by

the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) EFFECTIVE DATE OF STATE PROGRAMS; GUIDANCE.—The State program required under subparagraph (A) shall take effect no later than 2 years from the date of the enactment of the Clean Air Act Amendments of 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 202; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) STATE PROGRAM.—The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 207(b) unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in title V).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before the date of the enactment of the Clean Air Act Amendments of 1990 whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this Act, will result in emission reductions which

equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) CLEAN-FUEL VEHICLE PROGRAMS.—(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of the date of the enactment of the Clean Air Act Amendments of 1990, a revision to the applicable implementation plan for each area described under part C of title II to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of title II, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of title II) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of title II.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of title II, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of title II, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this Act for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall approve or disapprove any such revision within 30 months of the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the require-

ments concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 of the United States Code (related to notice and comment). Where the Administrator approves such revision for any area, the State need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 179, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 179, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of title II.

(5) TRANSPORTATION CONTROL.—(A) Beginning 6 years after the date of the enactment of the Clean Air Act Amendments of 1990 and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 108(f) that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(e) and with the requirements of section 174(b) and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) DE MINIMIS RULE.—The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

(7) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING LESS THAN 100 TONS.—In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons

or more of volatile organic compounds per year), whenever any change (as described in section 111(a)(4)) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 173(a)(2) in the case of any such modification, the best available control technology (BACT), as defined in section 169, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING 100 TONS OR MORE.—In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 111(a)(4)) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 173(a)(2) (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) CONTINGENCY PROVISIONS.—In addition to the contingency provisions required under section 172(c)(9), the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to "attainment date" in subsection (b), which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) SEVERE AREAS.—Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) (relating to Serious

Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms "major source" and "major stationary source" include (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) VEHICLE MILES TRAVELED.—(A) Within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 108(f), and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 108(f) and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before the date of enactment of this sentence) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section

169(3)) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) ENFORCEMENT UNDER SECTION 185.—By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 185.

Any reference to the term "attainment date" in subsection (b) or (c), which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) EXTREME AREAS.—Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. [The provisions of clause (ii) of subsection (c)(2)(B) (relating to reductions of less than 3 percent), the provisions of paragaphs] *The provisions of paragraphs* (6), (7) and (8) of subsection (c) (relating to de minimus rule and modification of sources)[, and the provisions of clause (ii) of subsection (b)(1)(A) (relating to reductions of less than 15 percent)] shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes (in addition to the sources described in section 302) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 169(3)) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) MODIFICATIONS—Any change (as described in section 111(a)(4)) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 172(c)(5) and section 173(a), except that for purposes of complying with the offset requirement pursuant to section 173(a)(1), any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this Act.

(3) USE OF CLEAN FUELS OR ADVANCED CONTROL TECHNOLOGY.—For Extreme Areas, a plan revision shall be submitted within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990 to require, effective 8 years after such date, that each new, modified, and existing electric

utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term "primary fuel" means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978).

(4) TRAFFIC CONTROL MEASURES DURING HEAVY TRAFFIC HOURS.—For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) NEW TECHNOLOGIES.—The Administrator may, in accordance with section 110, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions[, if the State demonstrates to the satisfaction of the Administrator that—].

[(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after the date of the enactment of the Clean Air Act Amendments of 1990; and

[(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 110. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2), and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2).]

Any reference to the term "attainment date" in subsection (b), (c), or (d) which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO_x REQUIREMENTS.—(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in

section 302 and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 184 if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 185B.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 184, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 185B is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 184. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) MILESTONES.—

(1) REDUCTIONS IN EMISSIONS.—6 years after the date of the enactment of the Clean Air Amendments of 1990 and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) and the corresponding requirements of subsections (c)(2) (B) and (C), (d), and (e). Such reduction shall be referred to in this section as an applicable milestone.

(2) COMPLIANCE DEMONSTRATION.—For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) SERIOUS AND SEVERE AREAS; STATE ELECTION.—If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) ECONOMIC INCENTIVE PROGRAM.—(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar

measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f).

(B) Within 2 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) EXTREME AREAS.—If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) RURAL TRANSPORT AREAS.—(1) Notwithstanding any other provision of section 181 or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) RECLASSIFIED AREAS.—Each State containing an ozone nonattainment area reclassified under section 181(b)(2) shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except

that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) MULTI-STATE OZONE NONATTAINMENT AREAS.—

(1) COORDINATION AMONG STATES.—Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a "multi-State ozone nonattainment area") shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under section 182 (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 179 (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

* * * * * * *

Subpart 4—Additional Provisions for Particulate Matter Nonattainment Areas

* * * * * * *

SEC. 189. PLAN PROVISIONS AND SCHEDULES FOR PLAN SUBMISSIONS.

(a) MODERATE AREAS.—

(1) PLAN PROVISIONS.—Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 172(c)(5), a permit program providing that permits meeting the requirements of section 173 are required for

the construction and operation of new and modified major stationary sources of PM–10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after the date of the enactment of the Clean Air Act Amendments of 1990.

(2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of the date of the enactment of the Clean Air Act Amendments of 1990, for areas designated nonattainment under section 107(d)(4), except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 107(d)(4).

(b) SERIOUS AREAS.—

(1) PLAN PROVISIONS.—In addition to the provisions submitted to meet the requirements of paragraph (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the PM–10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 188(e), an extension of the attainment date beyond the date set forth in section 188(c), that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM–10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 188(b)(2), the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) MAJOR SOURCES.—For any Serious Area, the terms "major source" and "major stationary source" include any stationary source or group of stationary sources located within a

contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM–10.

(c) MILESTONES.—(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment*, which take into account technological achievability and economic feasibility,* and which demonstrate reasonable further progress, as defined in section 171(1), toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM–10, if there is no next milestone) by the applicable date.

(d) FAILURE TO ATTAIN.—In the case of a Serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM–10 PRECURSORS.—The control requirements applicable under plans in effect under this part for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

* * * * * * *

TITLE III—GENERAL

* * * * * * *

SEC. 319. AIR QUALITY MONITORING.

(a) IN GENERAL.—After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 110 shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

(1) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

(A) IN GENERAL.—The term "exceptional event" means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) EXCLUSIONS.—In this subsection, the term "exceptional event" does not include—

[(i) stagnation of air masses or**]** *(i) (I) ordinarily occurring stagnation of air masses or (II)* meteorological inversions; *or*

[(ii) a meteorological event involving high temperatures or lack of precipitation; or**]**

[(iii)**]** *(ii)* air pollution relating to source noncompliance.

(2) REGULATIONS.—

(A) PROPOSED REGULATIONS.—Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations

governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) PRINCIPLES AND REQUIREMENTS.—

(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

(4) INTERIM PROVISION.—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM–10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

* * * * * * *

DISSENTING VIEWS

The Clean Air Act (CAA) has driven important progress in improving air quality and public health. The history of the CAA continues to demonstrate the success of our nation's current approaches and utilization of valuable tools for measuring air quality.

House Republicans claim that the goal of H.R. 806, the "Ozone Standards Implementation Act of 2017" is to facilitate a more efficient implementation of the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards (NAAQS) by states and to provide states additional time to implement the new ozone standards. But, H.R. 806 is an irresponsible compilation of attacks that in reality strikes directly at the heart of the CAA. This bill would undermine decades of progress on cleaning up air pollution and protecting public health from all criteria pollutants—not just ozone. It would cause irreparable harm to public health and the environment.

EPA'S 2015 NATIONAL AMBIENT AIR QUALITY STANDARD FOR OZONE

The CAA requires EPA to set NAAQS for certain pollutants that endanger public health and the environment.[1] These health-based standards are the cornerstone of the CAA. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an "adequate margin of safety." For the six criteria pollutants—lead, particulate matter ($PM_{2.5}$ or PM_{10}), ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide—the primary NAAQS identifies the level of ambient air pollution that is "safe" to breathe. While costs are not considered in establishing these standards, costs can be and are considered in developing plans to achieve the necessary pollution reductions to meet the standards. EPA must review each NAAQS every five years and make revisions as appropriate.

On October 1, 2015, EPA issued a final rule strengthening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[2] This decision was based on the review of thousands of studies showing ozone's effects on public health and welfare. Ozone, also known as smog, has a number of health impacts, ranging from increased asthma attacks and cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and ecosystems. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science sup-

[1] Clean Air Act at § 109.

[2] U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule) (hereinafter "ozone NAAQS").

ports a standard within a range of 70 ppb down to 60 ppb.[3] The estimated net benefits of the updated ozone NAAQS are up to $4.5 billion, excluding California where the estimated net benefits are up to $1.3 billion.

EPA Administrator Pruitt has been a vocal opponent of the 2015 ozone NAAQS, and has directed the Agency to review and potentially revise the final rule.[4] To that end, EPA recently announced a one-year delay of its statutory deadline to make final attainment area designations, citing the need for more time to complete its review of the standard.[5] Drastic cuts proposed by EPA's FY 2018 budget would also undermine the 2015 ozone NAAQS, especially for states who depend on critical grant funding to improve air quality and implement the CAA.[6]

ANALYSIS

The overall effect of the proposed changes to the CAA included in H.R. 806 will be to delay the implementation of health-based air quality standards, make achievement of more protective standards more difficult, and inject cost and technological feasibility considerations into the standard-setting process. The bill would also fundamentally alter those CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date scientific data, findings, and knowledge about air pollutants and their health and environmental impacts. Below is an analysis of the most egregious provisions of H.R. 806.

Section 2(a) would drastically extend statutory deadlines associated with implementing the 2015 ozone NAAQS by up to eight years.[7] This would ensure that the outdated ozone standard would remain in effect—a standard that was found to be insufficient to protect public health.

Section 3(a) extends the review period for all criteria air pollutant NAAQS from every five years to every ten years. A NAAQS review cycle of ten years would subvert the purpose of these standards, which is to establish a level of emissions that adequately protects public health based on the latest scientific knowledge. The current five-year cycle provides a reasonable amount of time for the development and review of new studies, and EPA is only required to make changes to a NAAQS if the latest information supports doing so to protect public health with "an adequate margin of safety." Extending the deadline would result in fewer reviews, and less

[3] *See* U.S. EPA, *Overview of EPA's Updates to the Air Quality Standards for Ground-Level Ozone* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/overview_of_2015_rule.pdf).

[4] *See Pruitt v. EPA:* 14 *Challenges of EPA Rules by the Oklahoma Attorney General*, New York Times (Jan. 14, 2017) (www.nytimes.com/interactive/2017/01/14/us/politics/document-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html#document/p335/a334755); *Trump may change for scrap Obama ozone standard,* Greenwire (Apr. 10, 2017) (*www.eenews.net/greenwire/stories/1060052869/*).

[5] U.S. EPA, *EPA to Extend Deadlines for 2015 Ozone NAAQS Area Designations* (Jun. 6, 2017) (www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations).

[6] *See* National Association of Clean Air Agencies, *Impacts of Proposed FY 2018 Budget Cuts on State and Local Air Quality Agencies* (May 22, 2017) (www.4cleanair.org/sites/default/files/Documents/NACAAFundingReport-FY2018.pdf).

[7] State recommendations on nonattainment areas would not be due to EPA until October 26, 2024, and EPA would have until October 26, 2025, to finalize designations. SIPs would then be due to EPA by October 26, 2026. The statutory deadlines under the CAA are October 1, 2016, October 1, 2017, and October 1, 2020 to October 1, 2021, respectively. EPA recently announced a one year delay of their October 2017 deadline for finalizing designations.

up-to-date scientific information supporting air quality decisions. The longer review period would also result in much longer periods of exposure to dangerous air pollutants in cases where scientific studies demonstrate the need for stronger standards to protect public health.

Section 3(b) changes the long-standing criteria for establishing an air quality standard from one that is based solely on protecting public health to one that includes a consideration of the "technological feasibility" of the standard. This provision removes the important firewall separating the setting of the standards from their implementation, turning a NAAQS into a reflection of how much public health protection we can afford, not what is "safe" to breathe. Although the bill's sponsors assert this would be a minor change, adding this consideration would fundamentally alter the CAA in a manner that would erode public health and environmental protections. Considerations of cost and technological feasibility are—and should remain—separate from the identification of the appropriate standard to ensure the air we breathe is safe. Costs and technological feasibility as well as other non-risk factors are already considered in the selection of options for attaining the necessary standard.

Section 3(d) would create a loophole in the preconstruction permitting process, by establishing arbitrary procedural requirements for EPA to follow when setting a new air quality standard. If EPA does not issue rules and guidance concurrently with an updated NAAQS, then a new or expanding facility can apply for a preconstruction permit based on the old air quality standard, which is not adequate to protect public health. As a practical matter, it is not always feasible or advisable for EPA to issue concurrent implementation regulations and guidance when revising a NAAQS, since most guidance develops organically as a result of consultation with state and local air agencies and affected sources after they begin the process of implementing the NAAQS. Ultimately, this section could give new sources of pollution "amnesty" from new air quality standards leaving existing facilities with a burden to do more to reduce their emissions if the area is near or in nonattainment—worsening air quality and raising the economy-wide cost of cleaning up pollution.

Section 3(e) would exempt extreme nonattainment areas from having to establish contingency measures if they fail to make progress toward achieving the ozone standard. Without these contingency measures, there would be no incentive for extreme nonattainment areas to even attempt to control their emissions. This may result in the area not meeting the ozone standard indefinitely or having to make any progress toward achieving the standard.

Section 3(h) drastically expands the list of circumstances that are included in the definition of "exceptional events" to include common conditions and occurrences that are not, in fact, exceptional—such as high temperatures or drought. Allowing states to seek relief by claiming additional exceptional events will artificially reduce reporting on the severity of air pollution in the area. It would also all but ensure that areas having stagnant air masses; experiencing meteorological inversions, heat waves, or droughts; and that have poor air quality would remain in nonattainment. Further, changing

air quality monitoring protocols in ways that lead to under-reporting of poor air quality conditions will cause areas with poor air quality to appear much better under conditions of extreme heat and drought. Given that ozone levels are often higher on hotter days, such an expansion of the exceptional events definition would be a significant change.

Finally, section 4 would give two areas in extreme nonattainment a free pass on pollution that comes from outside the state, from exceptional events, and from pollution beyond their regulatory control. These exemptions would apply to states that are simply not trying to improve air quality, as well as those acting in good faith. This section amounts to a regulatory giveaway, allowing high levels of dangerous air pollution to continue, without any incentive to fix the problem. Further, EPA already has a process in place to ensure states aren't penalized for what they can't control, so there is no need for the broad exemption provided in this section.

Ultimately, H.R. 806 does nothing to address the real constraints that states and the EPA face in their efforts to implement the new ozone standards—resources. In fact, section 5 actually blocks any additional funds from being appropriated to carry out this act. Much of the permitting and implementing of air quality standards is done by the states, with the experts at EPA providing guidance and technical assistance. Without adequate funding and staff, it is difficult for EPA to do this in an efficient manner, and the additional requirements of this bill only make this situation worse. Taking into account the proposed draconian cuts to EPA's FY 2018 budget, section 5 would make it virtually impossible to ensure the American public is protected from dangerous air pollution, or that state and local governments would receive federal assistance to achieve healthy air quality for their residents.

We could and should do far more to support states' efforts to control dangerous air pollution by providing EPA with adequate resources to support state activities rather than by providing regulatory relief to polluters.

H.R. 806: AN IRRESPONSIBLE, CYNICAL AND UNNECESSARY ATTACK ON THE CLEAN AIR ACT

In conclusion, H.R. 806 offers no constructive improvements to the CAA. It is designed to erode public health and environmental protections in the guise of regulatory relief. Poor air quality is a significant threat to human health and the environment. Other nations are realizing now what we learned long ago, that unregulated emission of dangerous air pollutants is unsustainable. The CAA has helped us to make dramatic improvements in air quality over the past decades. Our economy has grown during this same period demonstrating that we can have both healthy air and a vibrant economy. H.R. 806 is an unnecessary and dangerous bill that

should not become law. For the reasons stated above, we dissent from the views contained in the Committee's report.

FRANK PALLONE, Jr.,
Ranking Member.
PAUL TONKO,
Ranking Member, Subcommittee on Environment.

○