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1ST SESSION

S. 1203

To require the Administrator of the Environmental Protection Agency to establish a program under which the Administrator shall defer the designation of an area as a nonattainment area for purposes of the 8-hour ozone national ambient air quality standard if the area achieves and maintains certain standards under a voluntary early action compact plan.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2017

Mr. HATCH (for himself and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To require the Administrator of the Environmental Protection Agency to establish a program under which the Administrator shall defer the designation of an area as a nonattainment area for purposes of the 8-hour ozone national ambient air quality standard if the area achieves and maintains certain standards under a voluntary early action compact plan.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 In this Act:

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

4 (2) EARLY ACTION COMPACT PROGRAM.—The
 5 term “Early Action Compact Program” means the
 6 program established under section 2(a).

7 (3) EPISODE.—The term “episode” has the
 8 meaning given the term in the Clean Air Act (42
 9 U.S.C. 7401 et seq.).

10 (4) OZONE STANDARD.—The term “ozone
 11 standard” means the 8-hour ozone standard national
 12 ambient air quality standard under the Clean Air
 13 Act (42 U.S.C. 7401 et seq.).

14 (5) STATE IMPLEMENTATION PLAN.—The term
 15 “State implementation plan” means a State or tribal
 16 implementation plan, as those terms are used in the
 17 Clean Air Act (42 U.S.C. 7401 et seq.).

18 **SEC. 2. EARLY ACTION COMPACT PROGRAM.**

19 (a) ESTABLISHMENT.—Not later than 1 year after
 20 the date of enactment of this Act, the Administrator shall
 21 establish a program, to be known as the “Early Action
 22 Compact Program”, under which State, local, and tribal
 23 governments may develop early action compact plans de-
 24 signed to achieve and maintain the ozone standard.

25 (b) NOTIFICATION.—

1 (1) IN GENERAL.—To be eligible to participate
2 in the Early Action Compact Program, a State,
3 local, or tribal government shall submit to the Ad-
4 ministrator—

5 (A) on the date on which the applicable
6 State submits to the Administrator the non-
7 attainment recommendations of the State, a no-
8 tice of the intent of the State, local, or tribal
9 government to participate in the Early Action
10 Compact Program; and

11 (B) not later than 1 year after the date on
12 which the State, local, or tribal government
13 submits the notice under subparagraph (A), an
14 early action compact plan in accordance with
15 section 3.

16 (2) LIMITATION ON NONATTAINMENT STA-
17 TUS.—In the case of an area under the jurisdiction
18 of a State, local, or tribal government that provides
19 a notice under paragraph (1)(A), the Administrator
20 may not designate the area as a nonattainment area
21 under section 107 of the Clean Air Act (42 U.S.C.
22 7407) until after the Administrator has issued a de-
23 cision on an early action compact plan of the area
24 under section 4.

1 (c) MINIMUM REQUIREMENTS.—The Early Action
2 Compact Program shall include, at a minimum, provisions
3 to ensure—

4 (1) the use of best available science;

5 (2) participation by State, local, and tribal gov-
6 ernments through locally crafted solutions;

7 (3) the voluntary development and implementa-
8 tion by the State, local, and tribal governments of
9 early action compact plans;

10 (4) that if a State implementation plan is re-
11 quired due to designation of an area as a nonattain-
12 ment area following the implementation of an early
13 action compact plan in accordance with this section,
14 the Administrator shall provide credit to applicable
15 State, local, or tribal governments and industry par-
16 ticipants for actions and investments carried out
17 pursuant to the Early Action Compact Program to-
18 ward ozone attainment; and

19 (5) that, in the case of the failure of an area
20 to achieve ozone attainment, the Administrator shall
21 defer designation of the area as a nonattainment
22 area for ground-level ozone under section 107 of the
23 Clean Air Act (42 U.S.C. 7407) if that area—

24 (A) is participating in the Early Action
25 Compact Program; and

1 (B) is an area in which an early action
2 compact plan is being implemented to improve
3 the air quality of the area.

4 **SEC. 3. EARLY ACTION COMPACT PLAN REQUIREMENTS.**

5 (a) IN GENERAL.—Subject to section 6, an early ac-
6 tion compact plan entered into under the Early Action
7 Compact Program shall include—

8 (1) general provisions to ensure—

9 (A) public involvement in the development
10 of the plan, including—

11 (i) public comment on a proposed
12 early action compact plan in accordance
13 with the standard State implementation
14 plan revision process as implemented by
15 the applicable State; and

16 (ii) the provision to the public of in-
17 formation, updates, awareness, and other
18 opportunities for public involvement;

19 (B) that, in the case of the failure of an
20 area to achieve ozone attainment, an area is
21 credited under the standard State implementa-
22 tion plan process for all emission reductions
23 that result from measures implemented under
24 the early action compact plan for that area; and

1 (C) that amendments to the early action
2 compact plan accommodate adaptive approaches
3 that reflect developing science, monitoring, and
4 control mechanisms;

5 (2) measurable milestones, including—

6 (A) completion of emissions inventories
7 and modeling using best available science and
8 Environmental Protection Agency modeling
9 guidance and tools;

10 (B) adoption of control strategies that
11 demonstrate attainment;

12 (C) if necessary, completion and adoption
13 of early action State implementation plan revi-
14 sions;

15 (D) subject to subsection (b) and section
16 6(b)(2)(B), attainment with the ozone standard
17 (including any applicable revised ozone stand-
18 ards that are finalized after the date on which
19 the early action compact plan is approved by
20 the Administrator) by not later than 10 years
21 after the date on which the Administrator ap-
22 proves the early action compact plan; and

23 (E) a post-attainment plan;

24 (3) emissions inventories that—

1 (A) use the most current tools available
2 and will be completed for at least 1 recent epi-
3 sode so as to support the early action compact
4 plan; and

5 (B) include—

6 (i) at least 1 recent episode reflective
7 of a typical ozone season exceedance that
8 meets the episode selection guidance of the
9 Administrator to ensure that representa-
10 tive meteorological regimes are considered;

11 (ii) baseline data to accurately meas-
12 ure ozone reductions of control measures
13 implemented through the early action com-
14 pact plan; and

15 (iii) continuing episode inventories—

16 (I) to inform appropriate control
17 measures; and

18 (II) to improve understanding of
19 emission trends and the contributors
20 to ozone production in the area;

21 (4) modeling emissions inventories—

22 (A) to develop State implementation plan
23 quality modeling episodes that—

1 (i) perform within the margin of accu-
2 racy determined by the Administrator
3 based on best practices; and

4 (ii) include a base case and future
5 case on or before the date of approval by
6 the Administrator of the early action com-
7 pact plan; and

8 (B) that sufficiently account for projected
9 growth in ozone precursor emissions, particu-
10 larly from stationary, nonroad, and on-road mo-
11 bile sources;

12 (5) continuing development of episodes to rep-
13 resent a variety of situations that contribute to
14 ozone production in a manner that—

15 (A) supports the early action compact
16 plan;

17 (B) determines control strategies;

18 (C) demonstrates relative effectiveness of
19 control measures; and

20 (D) demonstrates attainment within the
21 early action compact plan period;

22 (6) the applicable Federal, State, local, and
23 tribal control strategies that—

1 (A) demonstrate attainment not later than
 2 the attainment date of the early action compact
 3 plan;

4 (B) are designed and implemented by the
 5 community with full stakeholder participation;

6 (C) following the adoption of Federal and
 7 State controls to be implemented by the attain-
 8 ment date of the early action compact, identify
 9 local control strategies that are—

10 (i) specific;

11 (ii) quantifiable;

12 (iii) permanent; and

13 (iv) enforceable; and

14 (D) shall be—

15 (i) incorporated by the applicable
 16 State or Indian tribe into the State imple-
 17 mentation plan; and

18 (ii) submitted to the Administrator for
 19 approval; and

20 (7) maintenance for growth provisions—

21 (A) to address increases in emissions at
 22 least 5 years beyond the attainment date of the
 23 early action compact plan to ensure the area re-
 24 mains in attainment of ozone standards; and

1 (B) to require continuing planning proc-
2 esses, including—

3 (i) modeling updates;

4 (ii) identification of actual new point
5 sources;

6 (iii) impacts from growth; and

7 (iv) future transportation patterns
8 and the impact on ozone levels.

9 (b) EFFECT OF UPDATED OZONE STANDARDS.—

10 (1) REVISED PLANS.—

11 (A) IN GENERAL.—In any case in which,
12 during the 10-year effective period of an early
13 action compact plan approved under this Act,
14 the Administrator finalizes a new, updated, or
15 modified ozone standard that is applicable to
16 the early action compact plan, the affected
17 State, local, or tribal government shall submit
18 to the Administrator, by not later than 1 year
19 after the date of finalization of the new, up-
20 dated, or modified ozone standard, a revised
21 early action compact plan that incorporates ad-
22 justed milestones to meet the new, updated, or
23 modified ozone standard, in accordance with
24 paragraph (2).

(B) FAILURE TO SUBMIT.—If an affected State, local, or tribal government fails to submit to the Administrator a revised early action compact plan by the applicable deadline under subparagraph (A), the Administrator shall withdraw approval of the early action compact plan.

(2) DEADLINES.—

(A) MODIFICATION TO OZONE STANDARDS DURING INITIAL 5-YEAR PERIOD.—If the Administrator finalizes a new, updated, or modified ozone standard that is applicable to an early action compact plan during the 5-year period beginning on the date of approval of the early action compact plan under section 4, the revised early action compact plan under paragraph (1) shall ensure achievement by the affected areas of attainment during the 10-year period beginning on the date of approval of the original early action compact plan.

(B) MODIFICATION TO OZONE STANDARDS DURING FINAL PERIOD.—

(i) DEFINITION OF FINAL PERIOD.—

In this subparagraph, the term “final period”, with respect to an early action compact plan, means the period—

1 (I) beginning on the date that is
2 5 years after the date of approval of
3 the early action compact plan under
4 section 4; and

5 (II) ending on the date that is 10
6 years after that date of approval.

7 (ii) REQUIREMENT.—Notwithstanding
8 subsection (a)(2)(D), if the Administrator
9 finalizes a new, updated, or modified ozone
10 standard that is applicable to an early ac-
11 tion compact plan during the final period
12 of the early action compact plan, the re-
13 vised early action compact plan under
14 paragraph (1) shall ensure achievement by
15 the affected areas of attainment during the
16 5-year period beginning on the date of sub-
17 mission of the revised early action compact
18 plan.

19 **SEC. 4. DECISIONS ON EARLY ACTION COMPACT PLANS.**

20 (a) IN GENERAL.—The Administrator shall issue a
21 decision on each early action compact plan or revised early
22 action compact plan submitted to the Administrator under
23 this Act by not later than 1 year after the date on which
24 the plan is submitted.

1 (b) TYPES OF DECISIONS.—In issuing a decision
2 under this section, the Administrator shall—

- 3 (1) approve the early action compact plan;
4 (2) deny the early action compact plan; or
5 (3) in accordance with subsection (c), make
6 specific suggestions to modify the early action com-
7 pact plan.

8 (c) MODIFICATIONS.—

9 (1) IN GENERAL.—Not later than 1 year after
10 the date on which a State, local, or tribal govern-
11 ment receives suggestions from the Administrator
12 under subsection (b)(3), the State, local, or tribal
13 government may submit to the Administrator, for
14 approval in accordance with subsection (b), a modi-
15 fied early action compact plan that takes the sugges-
16 tions of the Administrator into consideration.

17 (2) LIMITATION ON NONATTAINMENT STA-
18 TUS.—In the case of a State, local, or tribal govern-
19 ment that submits to the Administrator a modified
20 early action compact plan under paragraph (1), the
21 Administrator may not designate the area subject to
22 the early action compact plan as a nonattainment
23 area under section 107 of the Clean Air Act (42
24 U.S.C. 7407) until after the date on which the Ad-

1 administrator issues a decision on the modified early
2 action compact plan of the area under this section.

3 **SEC. 5. DUTIES OF ADMINISTRATOR.**

4 In carrying out the Early Action Compact Program,
5 the Administrator shall—

6 (1) recognize the commitment of each State,
7 local, or tribal area to voluntarily adopt an early,
8 substantive, enforceable, and scientifically based at-
9 tainment plan with early implementation of control
10 measures by becoming a party to an early action
11 compact plan developed in accordance with this Act;

12 (2) provide technical assistance to States, In-
13 dian tribes, and local areas in the development of
14 early action compact plans;

15 (3) ensure prompt review and approval of sub-
16 mitted early action compact plans;

17 (4) in a case in which the Administrator denies
18 a submitted early action compact plan, provide an
19 explanation of the reason for denying the submitted
20 early action compact plan;

21 (5) in the case of the failure of an area subject
22 to an early action compact plan to achieve attain-
23 ment status during the period for which the plan is
24 in effect, defer designation of the area as a non-
25 attainment area until the expiration of that period

1 if the area continues to meet the terms of the plan,
 2 including any milestones established by the plan;

3 (6) expeditiously designate an area as an at-
 4 tainment area and impose no additional require-
 5 ments other than the post-attainment plan if area
 6 monitors reflect attainment by not later than the
 7 early action compact plan attainment date; and

8 (7) in the case of the failure of a participating
 9 area to comply with the Early Action Compact Pro-
 10 gram—

11 (A) withdraw approval under this Act of
 12 the early action compact plan of the area; but

13 (B) provide reasonable opportunities for
 14 the area to cure deficiencies before withdrawing
 15 that approval.

16 **SEC. 6. WINTER OZONE PROVISIONS.**

17 (a) IN GENERAL.—For each early action compact
 18 plan under this Act, the Administrator shall establish re-
 19 quirements relating to winter ozone levels, including
 20 timelines, that are separate from, but not more burden-
 21 some than, the requirements otherwise established under
 22 this Act.

23 (b) REGULATIONS.—

24 (1) IN GENERAL.—The Administrator shall pro-
 25 mulgate regulations—

1 (A) to carry out the Early Action Compact
2 Program; and

3 (B) specifically to address and accommo-
4 date unique and complex occurrences of winter
5 ozone in accordance with this section.

6 (2) REQUIREMENTS.—The regulations promul-
7 gated pursuant to paragraph (1) shall provide—

8 (A) sufficient timelines for the Adminis-
9 trator and State, local, and tribal governments
10 to conduct air shed inventories, scientific re-
11 search and studies necessary for the Adminis-
12 trator and State, local, and tribal governments
13 to identify winter ozone causes (including pre-
14 cursors), and take appropriate actions nec-
15 essary—

16 (i)(I) to create accurate emissions in-
17 ventories and carefully model winter ozone
18 using the most current tools available; and

19 (II) over a sufficient period of time,
20 comprehensively to identify the variety of
21 situations that typically contribute to ele-
22 vated winter ozone levels;

23 (ii)(I) to fully analyze best available
24 science and data to determine background
25 ozone levels; and

1 (II) to identify meteorological, geo-
2 graphical, and other factors leading to ele-
3 vated winter ozone levels; and

4 (iii) to effectively identify, develop,
5 and implement air pollution control strate-
6 gies that the Administrator and State,
7 local, and tribal governments agree are the
8 highest-priority activities to reduce winter
9 ozone levels; and

10 (B) notwithstanding section 3(a)(2)(D),
11 given the complexities of winter ozone occur-
12 rences, a minimum of 10 years after the date
13 on which the Administrator approves an early
14 action compact plan for the reduction of winter
15 ozone levels under the Early Action Compact
16 Program.

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