

116TH CONGRESS  
1ST SESSION

# S. 1973

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, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 25, 2019

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

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## 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, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4       In this Act:

## 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.—

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.

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  
16 participants 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

(B) is an area in which an early action compact plan is being implemented to improve 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—

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

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

(2) measurable milestones, including—

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

(B) adoption of control strategies that demonstrate attainment;

(C) if necessary, completion and adoption of early action State implementation plan revisions;

(D) subject to subsection (b) and section 6(b)(2)(B), attainment with the ozone standard (including any applicable revised ozone standards that are finalized after the date on which the early action compact plan is approved by the Administrator) by not later than 10 years after the date on which the Administrator approves the early action compact plan; and

(E) a post-attainment plan;

(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—

(i) perform within the margin of accuracy

racy determined by the Administrator

based on best practices; and

(ii) include a base case and future

case on or before the date of approval by

the Administrator of the early action com-

pact plan; and

(B) that sufficiently account for projected

growth in ozone precursor emissions, particu-

larly from stationary, nonroad, and on-road mo-

bile sources;

(5) continui

ent a variety of situations that contribute to

14 ozone production in a manner that—

15 (A) supports the early action compact

(B) determines control strategies;

(C) demonstrates

control measures; and

(D) demonstrates attainment within the

early action compact plan period;

(6) the applicable Federal, State, local, and

23       Tribal control strategies that—

## Tribal control strategies that—

(A) demonstrate attainment not later than the attainment date of the early action compact 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.

(b) EFFECT OF UPDATED OZONE STANDARDS.—

10 (1) REVISED PLANS.—

(A) IN GENERAL.—In any case in which, during the 10-year effective period of an early action compact plan approved under this Act, the Administrator finalizes a new, updated, or modified ozone standard that is applicable to the early action compact plan, the affected State, local, or Tribal government shall submit to the Administrator, by not later than 1 year after the date of finalization of the new, updated, or modified ozone standard, a revised early action compact plan that incorporates adjusted milestones to meet the new, updated, or modified ozone standard, in accordance with paragraph (2).

1 (B) FAILURE TO SUBMIT.—If an affected  
2 State, local, or Tribal government fails to sub-  
3 mit to the Administrator a revised early action  
4 compact plan by the applicable deadline under  
5 subparagraph (A), the Administrator shall with-  
6 draw approval of the early action compact plan.

## 7 (2) DEADLINES.—

8 (A) MODIFICATION TO OZONE STANDARDS  
9 DURING INITIAL 5-YEAR PERIOD.—If the Ad-  
10 ministrator finalizes a new, updated, or modi-  
11 fied ozone standard that is applicable to an  
12 early action compact plan during the 5-year pe-  
13 riod beginning on the date of approval of the  
14 early action compact plan under section 4, the  
15 revised early action compact plan under para-  
16 graph (1) shall ensure achievement by the af-  
17 fected areas of attainment during the 10-year  
18 period beginning on the date of approval of the  
19 original early action compact plan.

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

22 (i) DEFINITION OF FINAL PERIOD.—  
23 In this subparagraph, the term “final pe-  
24 riod”, with respect to an early action com-  
25 pact 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.

## 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 ministrator 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

(B) specifically to address and accommodate unique and complex occurrences of winter ozone in accordance with this section.

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

(II) to identify meteorological, geographical, and other factors leading to elevated 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  
8 the highest priority activities to reduce  
9 winter 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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