

JULY 12, 2017

RULES COMMITTEE PRINT 115–26
TEXT OF H.R. 806, OZONE STANDARDS
IMPLEMENTATION ACT OF 2017

[Showing the text of H.R. 806 as ordered reported by the
Committee on Energy and Commerce]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ozone Standards Im-
3 plementation Act of 2017”.

4 **SEC. 2. FACILITATING STATE IMPLEMENTATION OF EXIST-**
5 **ING OZONE STANDARDS.**

6 (a) DESIGNATIONS.—

7 (1) DESIGNATION SUBMISSION.—Not later than
8 October 26, 2024, notwithstanding the deadline
9 specified in paragraph (1)(A) of section 107(d) of
10 the Clean Air Act (42 U.S.C. 7407(d)), the Gov-
11 ernor of each State shall designate in accordance
12 with such section 107(d) all areas (or portions there-
13 of) of the Governor’s State as attainment, nonattain-
14 ment, or unclassifiable with respect to the 2015
15 ozone standards.

16 (2) DESIGNATION PROMULGATION.—Not later
17 than October 26, 2025, notwithstanding the deadline
18 specified in paragraph (1)(B) of section 107(d) of

1 the Clean Air Act (42 U.S.C. 7407(d)), the Adminis-
2 trator shall promulgate final designations under
3 such section 107(d) for all areas in all States with
4 respect to the 2015 ozone standards, including any
5 modifications to the designations submitted under
6 paragraph (1).

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

13 (b) CERTAIN PRECONSTRUCTION PERMITS.—

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

17 (A) the Administrator or the State, local,
18 or Tribal permitting authority, as applicable,
19 determines the application to be complete on or
20 before the date of promulgation of the final des-
21 ignation of the area involved under subsection
22 (a)(2); or

23 (B) the Administrator or the State, local,
24 or Tribal permitting authority, as applicable,
25 publishes a public notice of a preliminary deter-

1 mination or draft permit for the application be-
2 fore the date that is 60 days after the date of
3 promulgation of the final designation of the
4 area involved under subsection (a)(2).

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

7 (A) eliminate the obligation of a
8 preconstruction permit applicant to install best
9 available control technology and lowest achiev-
10 able emission rate technology, as applicable; or

11 (B) limit the authority of a State, local, or
12 Tribal permitting authority to impose more
13 stringent emissions requirements pursuant to
14 State, local, or Tribal law than national ambi-
15 ent air quality standards.

16 **SEC. 3. FACILITATING STATE IMPLEMENTATION OF NA-**
17 **TIONAL AMBIENT AIR QUALITY STANDARDS.**

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

20 (1) TEN-YEAR CYCLE FOR ALL CRITERIA AIR
21 POLLUTANTS.—Paragraphs (1) and (2)(B) of sec-
22 tion 109(d) of the Clean Air Act (42 U.S.C.
23 7409(d)) are amended by striking “five-year inter-
24 vals” each place it appears and inserting “10-year
25 intervals”.

1 (2) CYCLE FOR NEXT REVIEW OF OZONE CRI-
2 TERIA AND STANDARDS.—Notwithstanding section
3 109(d) of the Clean Air Act (42 U.S.C. 7409(d)),
4 the Administrator shall not—

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

11 (B) propose, before such date, any revi-
12 sions to such criteria or standard.

13 (b) CONSIDERATION OF TECHNOLOGICAL FEASI-
14 BILITY.—Section 109(b)(1) of the Clean Air Act (42
15 U.S.C. 7409(b)(1)) is amended by inserting after the first
16 sentence the following: “If the Administrator, in consulta-
17 tion with the independent scientific review committee ap-
18 pointed under subsection (d), finds that a range of levels
19 of air quality for an air pollutant are requisite to protect
20 public health with an adequate margin of safety, as de-
21 scribed in the preceding sentence, the Administrator may
22 consider, as a secondary consideration, likely technological
23 feasibility in establishing and revising the national pri-
24 mary ambient air quality standard for such pollutant.”.

1 (c) CONSIDERATION OF ADVERSE PUBLIC HEALTH,
2 WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—
3 Section 109(d)(2) of the Clean Air Act (42 U.S.C.
4 7409(d)(2)) is amended by adding at the end the fol-
5 lowing:

6 “(D) Prior to establishing or revising a national am-
7 bient air quality standard, the Administrator shall re-
8 quest, and such committee shall provide, advice under sub-
9 paragraph (C)(iv) regarding any adverse public health,
10 welfare, social, economic, or energy effects which may re-
11 sult from various strategies for attainment and mainte-
12 nance of such national ambient air quality standard.”.

13 (d) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
14 TIONS AND GUIDANCE.—Section 109 of the Clean Air Act
15 (42 U.S.C. 7409) is amended by adding at the end the
16 following:

17 “(e) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
18 TIONS AND GUIDANCE.—

19 “(1) IN GENERAL.—In publishing any final rule
20 establishing or revising a national ambient air qual-
21 ity standard, the Administrator shall, as the Admin-
22 istrator determines necessary to assist States, per-
23 mitting authorities, and permit applicants, concu-
24 rrently publish regulations and guidance for imple-
25 menting the standard, including information relating

1 to submission and consideration of a preconstruction
2 permit application under the new or revised stand-
3 ard.

4 “(2) APPLICABILITY OF STANDARD TO
5 PRECONSTRUCTION PERMITTING.—If the Adminis-
6 trator fails to publish final regulations and guidance
7 that include information relating to submission and
8 consideration of a preconstruction permit application
9 under a new or revised national ambient air quality
10 standard concurrently with such standard, then such
11 standard shall not apply to the review and disposi-
12 tion of a preconstruction permit application until the
13 Administrator has published such final regulations
14 and guidance.

15 “(3) RULES OF CONSTRUCTION.—

16 “(A) Nothing in this subsection shall be
17 construed to preclude the Administrator from
18 issuing regulations and guidance to assist
19 States, permitting authorities, and permit appli-
20 cants in implementing a national ambient air
21 quality standard subsequent to publishing regu-
22 lations and guidance for such standard under
23 paragraph (1).

24 “(B) Nothing in this subsection shall be
25 construed to eliminate the obligation of a

1 preconstruction permit applicant to install best
2 available control technology and lowest achiev-
3 able emission rate technology, as applicable.

4 “(C) Nothing in this subsection shall be
5 construed to limit the authority of a State,
6 local, or Tribal permitting authority to impose
7 more stringent emissions requirements pursu-
8 ant to State, local, or Tribal law than national
9 ambient air quality standards.

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

11 “(A) The term ‘best available control tech-
12 nology’ has the meaning given to that term in
13 section 169(3).

14 “(B) The term ‘lowest achievable emission
15 rate’ has the meaning given to that term in sec-
16 tion 171(3).

17 “(C) The term ‘preconstruction permit’—
18 “(i) means a permit that is required
19 under this title for the construction or
20 modification of a stationary source; and
21 “(ii) includes any such permit issued
22 by the Environmental Protection Agency
23 or a State, local, or Tribal permitting au-
24 thority.”.

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

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

11 (1) in subsection (b)(1)(A)(ii)(III), by inserting
12 “and economic feasibility” after “technological
13 achievability”;

14 (2) in subsection (c)(2)(B)(ii), by inserting
15 “and economic feasibility” after “technological
16 achievability”;

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

19 (A) by striking “The provisions of clause
20 (ii) of subsection (c)(2)(B) (relating to reduc-
21 tions of less than 3 percent), the provisions of
22 paragraphs” and inserting “The provisions of
23 paragraphs”; and

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

4 (4) in paragraph (5) of subsection (e), by strik-
5 ing “, if the State demonstrates to the satisfaction
6 of the Administrator that—” and all that follows
7 through the end of the paragraph and inserting a
8 period.

9 (g) PLAN REVISIONS FOR MILESTONES FOR PARTIC-
10 ULATE MATTER NONATTAINMENT AREAS.—Section
11 189(c)(1) of the Clean Air Act (42 U.S.C. 7513a(c)(1))
12 is amended by inserting “, which take into account techno-
13 logical achievability and economic feasibility,” before “and
14 which demonstrate reasonable further progress”.

15 (h) EXCEPTIONAL EVENTS.—Section 319(b)(1)(B)
16 of the Clean Air Act (42 U.S.C. 7619(b)(1)(B)) is amend-
17 ed—

18 (1) in clause (i)—

19 (A) by striking “(i) stagnation of air
20 masses or” and inserting “(i)(I) ordinarily oc-
21 ccurring stagnation of air masses or (II)”;

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

23 (2) by striking clause (ii); and

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

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

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

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

13 (B) attainment and maintenance of na-
14 tional ambient air quality standards;

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

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

23 (4) whether the Administrator recommends any
24 statutory changes to facilitate the more efficient re-

1 view and disposition of petitions submitted pursuant
2 to such section 179B(b).

3 (j) STUDY ON OZONE FORMATION.—

4 (1) STUDY.—The Administrator, in consulta-
5 tion with States and the National Oceanic and At-
6 mospheric Administration, shall conduct a study on
7 the atmospheric formation of ozone and effective
8 control strategies, including—

9 (A) the relative contribution of man-made
10 and naturally occurring nitrogen oxides, volatile
11 organic compounds, and other pollutants in
12 ozone formation in urban and rural areas, in-
13 cluding during wildfires, and the most cost-ef-
14 fective control strategies to reduce ozone; and

15 (B) the science of wintertime ozone forma-
16 tion, including photochemical modeling of win-
17 tertime ozone formation, and approaches to
18 cost-effectively reduce wintertime ozone levels.

19 (2) PEER REVIEW.—The Administrator shall
20 have the study peer reviewed by an independent
21 panel of experts in accordance with the requirements
22 applicable to a highly influential scientific assess-
23 ment.

24 (3) REPORT.—The Administrator shall submit
25 to Congress a report describing the results of the

1 study, including the findings of the peer review
2 panel.

3 (4) REGULATIONS AND GUIDANCE.—The Ad-
4 ministrators shall incorporate the results of the
5 study, including the findings of the peer review
6 panel, into any Federal rules and guidance imple-
7 menting the 2015 ozone standards.

8 **SEC. 4. APPLICABILITY OF SANCTIONS AND FEES IF EMIS-**
9 **SIONS BEYOND CONTROL.**

10 The Clean Air Act (42 U.S.C. 7401 et seq.) is amend-
11 ed by inserting after section 179B the following new sec-
12 tion:

13 **“SEC. 179C. APPLICABILITY OF SANCTIONS AND FEES IF**
14 **EMISSIONS BEYOND CONTROL.**

15 “(a) IN GENERAL.—Notwithstanding any other pro-
16 vision of this Act, with respect to any nonattainment area
17 that is classified under section 181 as severe or extreme
18 for ozone or under section 188 as serious for particulate
19 matter, no sanction or fee under section 179 or 185 shall
20 apply with respect to a State (or a local government or
21 source therein) on the basis of a deficiency described in
22 section 179(a), or the State’s failure to attain a national
23 ambient air quality standard for ozone or particulate mat-
24 ter by the applicable attainment date, if the State dem-
25 onstrates that the State would have avoided such defi-

1 ciency or attained such standard but for one or more of
2 the following:

3 “(1) Emissions emanating from outside the
4 nonattainment area.

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

7 “(3) Emissions from mobile sources to the ex-
8 tent the State demonstrates that—

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

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

15 “(b) NO EFFECT ON UNDERLYING STANDARDS.—

16 The inapplicability of sanctions or fees with respect to a
17 State pursuant to subsection (a) does not affect the obliga-
18 tion of the State (and local governments and sources
19 therein) under other provisions of this Act to establish and
20 implement measures to attain a national ambient air qual-
21 ity standard for ozone or particulate matter.

22 “(c) PERIODIC RENEWAL OF DEMONSTRATION.—

23 For subsection (a) to continue to apply with respect to
24 a State or local government (or source therein), the State

1 involved shall renew the demonstration required by sub-
2 section (a) at least once every 5 years.”.

3 **SEC. 5. DEFINITIONS.**

4 In this Act:

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

8 (2) BEST AVAILABLE CONTROL TECH-
9 NOLOGY.—The term “best available control tech-
10 nology” has the meaning given to that term in sec-
11 tion 169(3) of the Clean Air Act (42 U.S.C.
12 7479(3)).

13 (3) HIGHLY INFLUENTIAL SCIENTIFIC ASSESS-
14 MENT.—The term “highly influential scientific as-
15 sessment” means a highly influential scientific as-
16 sessment as defined in the publication of the Office
17 of Management and Budget entitled “Final Informa-
18 tion Quality Bulletin for Peer Review” (70 Fed.
19 Reg. 2664 (January 14, 2005)).

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

24 (5) NATIONAL AMBIENT AIR QUALITY STAND-
25 ARD.—The term “national ambient air quality

1 standard” means a national ambient air quality
2 standard promulgated under section 109 of the
3 Clean Air Act (42 U.S.C. 7409).

4 (6) PRECONSTRUCTION PERMIT.—The term
5 “preconstruction permit”—

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

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

13 (7) 2015 OZONE STANDARDS.—The term “2015
14 ozone standards” means the national ambient air
15 quality standards for ozone published in the Federal
16 Register on October 26, 2015 (80 Fed. Reg. 65292).

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

18 No additional funds are authorized to be appro-
19 priated to carry out the requirements of this Act and the
20 amendments made by this Act. Such requirements shall
21 be carried out using amounts otherwise authorized.

