

# Ozone Standards Implementation Act of 2016

*Senators Shelley Moore Capito (R-W.Va.) and Jeff Flake (R-Ariz.)*

The ***Ozone Standards Implementation Act of 2016*** allows states to pursue cost-effective and practical implementation of EPA's ozone standards. Under the Clean Air Act's NAAQS program, the EPA sets standards for criteria pollutants, including ground-level ozone. EPA initially established ozone standards in 1971, and subsequently revised them in 1979, 1997 and 2008. Unfortunately, EPA did not publish implementing regulations for the 2008 standards until March 2015, and states are just beginning to implement those standards. Because EPA then revised these standards in October 2015, states now face the prospect of simultaneously implementing two ozone standards.

Further, states are increasingly confronting other challenges under the statutory construct of the NAAQS implementation program. These challenges range from the agency's failure to issue timely implementation regulations and guidance when standards are revised, to specific issues relating to foreign emissions or exceptional events, provisions in the statute that have been interpreted to require states to pursue measures that may not be technologically or economically feasible, and the current statutory requirement that EPA review all NAAQS no later than every five years.

## **WHAT THE ACT DOES:**

For Existing Ozone Standards, the Capito-Flake bill would:

- Phase in implementation of the 2008 and 2015 ozone standards, extending to 2025 the date for final designations under the 2015 standards; and
- Align permitting requirements under the phased implementation schedule.

For the NAAQS Process, the Capito-Flake bill would:

- Change the 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 revising NAAQS;
- Ensure the EPA Administrator, prior to revising NAAQS, obtains advice from the agency's scientific advisory committee regarding potential adverse effects relating to implementation of the standards, as required by Section 109 of the Clean Air Act;
- Ensure the EPA Administrator issues timely implementation regulations and guidance when revising NAAQS;
- Ensure that for certain ozone and particulate matter nonattainment areas, states are not required to include economically infeasible measures in their plans;
- Ensure that states may seek relief with respect to certain exceptional events, including droughts, under Section 319 of the Clean Air Act; and
- Direct EPA to submit a report to Congress within 2 years regarding the impacts of foreign emissions on NAAQS compliance and related matters, including the agency's current petition process under Section 179B of the Clean Air Act.