To facilitate efficient State implementation of ground-level ozone standards,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CAPITO (for herself and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To facilitate efficient State implementation of ground-level ozone standards, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ozone Standards Implementation Act of 2016”.

SEC. 2. DEFINITIONS.

In this Act:

(1) 2015 OZONE STANDARDS.—The term “2015 ozone standards” means the ozone standards described in the final rule entitled “National Ambient
Air Quality Standards for Ozone” (80 Fed. Reg. 65292 (October 26, 2015)).

(2) Administrator.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(3) Best available control technology.—The term “best available control technology” has the meaning given the term in section 169 of the Clean Air Act (42 U.S.C. 7479).

(4) Lowest achievable emission rate.—The term “lowest achievable emission rate” has the meaning given the term in section 171 of the Clean Air Act (42 U.S.C. 7501).

(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.—

(A) In general.—The term “preconstruction permit” means a permit that is required under part C or D of title I of the Clean Air Act (42 U.S.C. 7470 et seq.) for the construction or modification of a major emitting facility or major stationary source.
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(B) INCLUSION.—The term “preconstruction permit” includes a permit described in subparagraph (A) issued by the Administrator or a State, local, or tribal permitting authority.

SEC. 3. FACILITATING STATE IMPLEMENTATION OF EXISTING OZONE STANDARDS.

(a) DESIGNATIONS.—

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

(2) DESIGNATION PROMULGATION.—Notwithstanding the deadline specified in paragraph (1)(B) of section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)), not later than October 26, 2025, the Administrator shall promulgate a final designation under that section 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.**—Notwithstanding the deadline specified in section 110(a)(1) of the Clean Air Act (42 U.S.C. 7410(a)(1)), not later than October 26, 2026, each State shall submit to the Administrator an implementation plan under that section with respect to 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 final designations 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 relevant area under subsection (a)(2).
(2) RULES OF CONSTRUCTION.—Nothing in this section—

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

(B) limits the authority of a State, local, or tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or tribal law than the Federal national ambient air quality standards established by the Administrator.

SEC. 4. FACILITATING STATE IMPLEMENTATION OF NATIONAL AMBIENT AIR QUALITY STANDARDS.

(a) CONSIDERATION OF TECHNOLOGICAL FEASIBILITY.—Section 109(b) of the Clean Air Act (42 U.S.C. 7409(b)) is amended—

(1) by striking “(b)(1) National” and inserting the following:

“(b) REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) PUBLIC HEALTH.—National”; and

(2) in paragraph (1)(A) (as so designated), in the second sentence, by striking “Such” and inserting the following:
“(B) TECHNOLOGICAL FEASIBILITY.—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 subparagraph (A), the Administrator may consider, as a secondary consideration, likely technological feasibility in establishing and revising the national primary ambient air quality standard for the pollutant.”.

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

(1) 10-YEAR CYCLE FOR ALL CRITERIA AIR POLLUTANTS.—Section 109(d) of the Clean Air Act (42 U.S.C. 7409(d)) is amended—

(A) in paragraph (1), by striking “five-year intervals” and inserting “10-year intervals”; and

(B) in paragraph (2)(B), by striking “five-year intervals” 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 that Act (42 U.S.C. 7408) or the
national ambient air quality standard for ozone
promulgated under section 109 of that Act (42
U.S.C. 7409); or

(B) propose, before October 26, 2025, any
revisions to those criteria or standards.

(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 fol-
lowing:

“(D) ADVICE FROM SCIENTIFIC REVIEW
COMMITTEE.—Before establishing or revising a
national ambient air quality standard, the Ad-
ministrator shall request, and the scientific re-
view committee appointed under subparagraph
(A) 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 at-
tainment and maintenance of the 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) **DEFINITIONS.**—In this subsection:

“(A) **BEST AVAILABLE CONTROL TECHNOLOGY.**—The term ‘best available control technology’ has the meaning given that term in section 169.

“(B) **LOWEST ACHIEVABLE EMISSION RATE.**—The term ‘lowest achievable emission rate’ has the meaning given that term in section 171.

“(C) **PRECONSTRUCTION PERMIT.**—

“(i) **IN GENERAL.**—The term ‘preconstruction permit’ means a permit that is required under part C or D for the construction or modification of a major emitting facility or major stationary source.
“(ii) INCLUSION.—The term ‘preconstruction permit’ includes any permit described in clause (i) issued by the Administrator or a State, local, or tribal permitting authority.

“(2) GUIDANCE FOR IMPLEMENTATION.—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 final regulations and guidance for implementing the national ambient air quality standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised national ambient air quality standard.

“(3) APPLICABILITY OF NATIONAL AMBIENT AIR QUALITY STANDARD TO PRECONSTRUCTION PERMITTING.—If the Administrator fails to publish the final regulations and guidance referred to in paragraph (2) 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 the national ambient air quality standard, the new or re-
vised national ambient air quality standard shall not apply to the review and disposition of a preconstruction permit application until the date on which the Administrator publishes the final regulations and guidance.

“(4) RULES OF CONSTRUCTION.—Nothing in this subsection—

“(A) precludes the Administrator from issuing regulations and guidance to assist States, permitting authorities, and permit applicants in implementing a national ambient air quality standard after the publication of final regulations and guidance for the national ambient air quality standard under paragraph (2);

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

“(C) limits the authority of a State, local, or tribal permitting authority to impose more stringent emissions requirements pursuant to State, local, or tribal law than the Federal national ambient air quality standards established by the Administrator.”.
(c) 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—

(1) in the first sentence, by striking “Such” and inserting the following:

“(A) Specific measures.—A nonattainment”;

(2) in the second sentence, by striking “Such measures” and inserting the following:

“(B) Contingency measures.—The specific measures referred to in subparagraph (A)”; and

(3) by adding at the end the following:

“(C) Extreme areas.—Notwithstanding subparagraphs (A) and (B) and any other provision of this Act, the specific measures referred to in subparagraphs (A) and (B) 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)—

(A) in the matter preceding paragraph (1), by striking the second sentence and inserting "Paragraphs (6), (7), and (8) of subsection (c) (relating to de minimus rule and modification of sources) shall not apply in the case of an Extreme Area."; and

(B) in paragraph (5), in the matter preceding subparagraph (A), by striking ", if the State demonstrates to the satisfaction of the Administrator that—" and all that follows through "Any reference to" in the last sentence of the undesignated matter following subparagraph (B) and inserting the following:

"(6) REFERENCES.—Any reference to".

(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," after "re-designated attainment".
(h) Exceptional Events.—Section 319(b)(1) of the Clean Air Act (42 U.S.C. 7619(b)(1)) is amended by striking subparagraph (B) and inserting the following:

“(B) Exclusions.—In this subsection, the term ‘exceptional event’ does not include—

“(i) ordinarily occurring stagnation of air masses;

“(ii) meteorological inversions; or

“(iii) air pollution relating to source noncompliance.”.

(i) Report on Emissions Emanating From Outside the United States.—Not later than 2 years after the date of enactment of this Act, the Administrator, in consultation with States, shall submit to Congress a report that describes—

(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 of areas) 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 procedures and timelines of the Administrator for the disposition of petitions submitted under subsection (b) of section 179B of the Clean Air Act (42 U.S.C. 7509a);

(3) the total number of petitions received by the Administrator under that section (42 U.S.C. 7509a) and, for each petition—

(A) the date on which the petition was initially submitted to the Administrator; and

(B) the date of final disposition by the Administrator; and

(4) whether the Administrator recommends any statutory changes to facilitate the more efficient review and disposition of petitions submitted under that section (42 U.S.C. 7509).