

114TH CONGRESS
2D SESSION

S. _____

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.

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. SHORT TITLE.**

4 This Act may be cited as the “Ozone Standards Im-
5 plementation Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) 2015 OZONE STANDARDS.—The term “2015
9 ozone standards” means the ozone standards de-
10 scribed in the final rule entitled “National Ambient

1 Air Quality Standards for Ozone” (80 Fed. Reg.
2 65292 (October 26, 2015)).

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

6 (3) BEST AVAILABLE CONTROL TECH-
7 NOLOGY.—The term “best available control tech-
8 nology” has the meaning given the term in section
9 169 of the Clean Air Act (42 U.S.C. 7479).

10 (4) LOWEST ACHIEVABLE EMISSION RATE.—
11 The term “lowest achievable emission rate” has the
12 meaning given the term in section 171 of the Clean
13 Air Act (42 U.S.C. 7501).

14 (5) NATIONAL AMBIENT AIR QUALITY STAND-
15 ARD.—The term “national ambient air quality
16 standard” means a national ambient air quality
17 standard promulgated under section 109 of the
18 Clean Air Act (42 U.S.C. 7409).

19 (6) PRECONSTRUCTION PERMIT.—

20 (A) IN GENERAL.—The term
21 “preconstruction permit” means a permit that
22 is required under part C or D of title I of the
23 Clean Air Act (42 U.S.C. 7470 et seq.) for the
24 construction or modification of a major emitting
25 facility or major stationary source.

1 (B) INCLUSION.—The term
2 “preconstruction permit” includes a permit de-
3 scribed in subparagraph (A) issued by the Ad-
4 ministrator or a State, local, or tribal permit-
5 ting authority.

6 **SEC. 3. FACILITATING STATE IMPLEMENTATION OF EXIST-**
7 **ING OZONE STANDARDS.**

8 (a) DESIGNATIONS.—

9 (1) DESIGNATION SUBMISSION.—Notwith-
10 standing the deadline specified in paragraph (1)(A)
11 of section 107(d) of the Clean Air Act (42 U.S.C.
12 7407(d)), not later than October 26, 2024, the Gov-
13 ernor of each State shall designate in accordance
14 with that section all areas (or portions of areas) of
15 the State as attainment, nonattainment, or
16 unclassifiable with respect to the 2015 ozone stand-
17 ards.

18 (2) DESIGNATION PROMULGATION.—Notwith-
19 standing the deadline specified in paragraph (1)(B)
20 of section 107(d) of the Clean Air Act (42 U.S.C.
21 7407(d)), not later than October 26, 2025, the Ad-
22 ministrator shall promulgate a final designation
23 under that section for all areas in all States with re-
24 spect to the 2015 ozone standards, including any

1 modifications to the designations submitted under
2 paragraph (1).

3 (3) STATE IMPLEMENTATION PLANS.—Notwith-
4 standing the deadline specified in section 110(a)(1)
5 of the Clean Air Act (42 U.S.C. 7410(a)(1)), not
6 later than October 26, 2026, each State shall submit
7 to the Administrator an implementation plan under
8 that section with respect to the 2015 ozone stand-
9 ards.

10 (b) CERTAIN PRECONSTRUCTION PERMITS.—

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

14 (A) the Administrator or the State, local,
15 or tribal permitting authority, as applicable, de-
16 termines the application to be complete on or
17 before the date of promulgation of final des-
18 ignations under subsection (a)(2); or

19 (B) the Administrator or the State, local,
20 or tribal permitting authority, as applicable,
21 publishes a public notice of a preliminary deter-
22 mination or draft permit for the application be-
23 fore the date that is 60 days after the date of
24 promulgation of the final designation of the rel-
25 evant area under subsection (a)(2).

1 (2) RULES OF CONSTRUCTION.—Nothing in
2 this section—

3 (A) eliminates the obligation of a
4 preconstruction permit applicant to install best
5 available control technology and lowest achiev-
6 able emission rate technology, as applicable; or

7 (B) limits the authority of a State, local,
8 or tribal permitting authority to impose more
9 stringent emissions requirements pursuant to
10 State, local, or tribal law than the Federal na-
11 tional ambient air quality standards established
12 by the Administrator.

13 **SEC. 4. FACILITATING STATE IMPLEMENTATION OF NA-**
14 **TIONAL AMBIENT AIR QUALITY STANDARDS.**

15 (a) CONSIDERATION OF TECHNOLOGICAL FEASI-
16 BILITY.—Section 109(b) of the Clean Air Act (42 U.S.C.
17 7409(b)) is amended—

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

20 “(b) REQUIREMENTS.—

21 “(1) IN GENERAL.—

22 “(A) PUBLIC HEALTH.—National”; and

23 (2) in paragraph (1)(A) (as so designated), in
24 the second sentence, by striking “Such” and insert-
25 ing the following:

1 “(B) TECHNOLOGICAL FEASIBILITY.—If
2 the Administrator, in consultation with the
3 independent scientific review committee ap-
4 pointed under subsection (d), finds that a range
5 of levels of air quality for an air pollutant are
6 requisite to protect public health with an ade-
7 quate margin of safety, as described in subpara-
8 graph (A), the Administrator may consider, as
9 a secondary consideration, likely technological
10 feasibility in establishing and revising the na-
11 tional primary ambient air quality standard for
12 the pollutant.”.

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

15 (1) 10-YEAR CYCLE FOR ALL CRITERIA AIR
16 POLLUTANTS.—Section 109(d) of the Clean Air Act
17 (42 U.S.C. 7409(d)) is amended—

18 (A) in paragraph (1), by striking “five-
19 year intervals” and inserting “10-year inter-
20 vals”; and

21 (B) in paragraph (2)(B), by striking “five-
22 year intervals” and inserting “10-year inter-
23 vals”.

24 (2) CYCLE FOR NEXT REVIEW OF OZONE CRI-
25 TERIA AND STANDARDS.—Notwithstanding section

1 109(d) of the Clean Air Act (42 U.S.C. 7409(d)),
2 the Administrator shall not—

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

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

11 (c) CONSIDERATION OF ADVERSE PUBLIC HEALTH,
12 WELFARE, SOCIAL, ECONOMIC, OR ENERGY EFFECTS.—
13 Section 109(d)(2) of the Clean Air Act (42 U.S.C.
14 7409(d)(2)) is amended by adding at the end the fol-
15 lowing:

16 “(D) ADVICE FROM SCIENTIFIC REVIEW
17 COMMITTEE.—Before establishing or revising a
18 national ambient air quality standard, the Ad-
19 ministrator shall request, and the scientific re-
20 view committee appointed under subparagraph
21 (A) shall provide, advice under subparagraph
22 (C)(iv) regarding any adverse public health,
23 welfare, social, economic, or energy effects
24 which may result from various strategies for at-

1 tainment and maintenance of the national am-
2 bient air quality standard.”.

3 (d) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
4 TIONS AND GUIDANCE.—Section 109 of the Clean Air Act
5 (42 U.S.C. 7409) is amended by adding at the end the
6 following:

7 “(e) TIMELY ISSUANCE OF IMPLEMENTING REGULA-
8 TIONS AND GUIDANCE.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) BEST AVAILABLE CONTROL TECH-
11 NOLOGY.—The term ‘best available control
12 technology’ has the meaning given that term in
13 section 169.

14 “(B) LOWEST ACHIEVABLE EMISSION
15 RATE.—The term ‘lowest achievable emission
16 rate’ has the meaning given that term in sec-
17 tion 171.

18 “(C) PRECONSTRUCTION PERMIT.—

19 “(i) IN GENERAL.—The term
20 ‘preconstruction permit’ means a permit
21 that is required under part C or D for the
22 construction or modification of a major
23 emitting facility or major stationary
24 source.

1 “(ii) INCLUSION.—The term
2 ‘preconstruction permit’ includes any per-
3 mit described in clause (i) issued by the
4 Administrator or a State, local, or tribal
5 permitting authority.

6 “(2) GUIDANCE FOR IMPLEMENTATION.—In
7 publishing any final rule establishing or revising a
8 national ambient air quality standard, the Adminis-
9 trator shall, as the Administrator determines nec-
10 essary to assist States, permitting authorities, and
11 permit applicants, concurrently publish final regula-
12 tions and guidance for implementing the national
13 ambient air quality standard, including information
14 relating to submission and consideration of a
15 preconstruction permit application under the new or
16 revised national ambient air quality standard.

17 “(3) APPLICABILITY OF NATIONAL AMBIENT
18 AIR QUALITY STANDARD TO PRECONSTRUCTION PER-
19 MITTING.—If the Administrator fails to publish the
20 final regulations and guidance referred to in para-
21 graph (2) that include information relating to sub-
22 mission and consideration of a preconstruction per-
23 mit application under a new or revised national am-
24 bient air quality standard concurrently with the na-
25 tional ambient air quality standard, the new or re-

1 vised national ambient air quality standard shall not
2 apply to the review and disposition of a
3 preconstruction permit application until the date on
4 which the Administrator publishes the final regula-
5 tions and guidance.

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

8 “(A) precludes the Administrator from
9 issuing regulations and guidance to assist
10 States, permitting authorities, and permit appli-
11 cants in implementing a national ambient air
12 quality standard after the publication of final
13 regulations and guidance for the national ambi-
14 ent air quality standard under paragraph (2);

15 “(B) eliminates the obligation of a
16 preconstruction permit applicant to install best
17 available control technology and lowest achiev-
18 able emission rate technology, as applicable; or

19 “(C) limits the authority of a State, local,
20 or tribal permitting authority to impose more
21 stringent emissions requirements pursuant to
22 State, local, or tribal law than the Federal na-
23 tional ambient air quality standards established
24 by the Administrator.”.

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—

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

6 “(A) SPECIFIC MEASURES.—A
7 nonattainment”;

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

10 “(B) CONTINGENCY MEASURES.—The spe-
11 cific measures referred to in subparagraph
12 (A)”;

13 (3) by adding at the end the following:

14 “(C) EXTREME AREAS.—Notwithstanding
15 subparagraphs (A) and (B) and any other pro-
16 vision of this Act, the specific measures referred
17 to in subparagraphs (A) and (B) shall not be
18 required for any nonattainment area for ozone
19 classified as an Extreme Area.”.

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

23 (1) in subsection (b)(1)(A)(ii)(III), by inserting
24 “and economic feasibility” after “technological
25 achievability”;

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

4 (3) in subsection (e)—

5 (A) in the matter preceding paragraph (1),
6 by striking the second sentence and inserting
7 “Paragraphs (6), (7), and (8) of subsection (c)
8 (relating to de minimus rule and modification
9 of sources) shall not apply in the case of an Ex-
10 treme Area.”; and

11 (B) in paragraph (5), in the matter pre-
12 ceding subparagraph (A), by striking “, if the
13 State demonstrates to the satisfaction of the
14 Administrator that—” and all that follows
15 through “Any reference to” in the last sentence
16 of the undesignated matter following subpara-
17 graph (B) and inserting the following:

18 “(6) REFERENCES.—Any reference to”.

19 (g) PLAN REVISIONS FOR MILESTONES FOR PARTIC-
20 ULATE MATTER NONATTAINMENT AREAS.—Section
21 189(e)(1) of the Clean Air Act (42 U.S.C. 7513a(e)(1))
22 is amended by inserting “, which take into account techno-
23 logical achievability and economic feasibility,” after “re-
24 designated attainment”.

1 (h) EXCEPTIONAL EVENTS.—Section 319(b)(1) of
2 the Clean Air Act (42 U.S.C. 7619(b)(1)) is amended by
3 striking subparagraph (B) and inserting the following:

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

6 “(i) ordinarily occurring stagnation of
7 air masses;

8 “(ii) meteorological inversions; or

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

11 (i) REPORT ON EMISSIONS EMANATING FROM OUT-
12 SIDE THE UNITED STATES.—Not later than 2 years after
13 the date of enactment of this Act, the Administrator, in
14 consultation with States, shall submit to Congress a report
15 that describes—

16 (1) the extent to which foreign sources of air
17 pollution, including emissions from sources located
18 outside North America, impact—

19 (A) designations of areas (or portions of
20 areas) as nonattainment, attainment, or
21 unclassifiable under section 107(d) of the Clean
22 Air Act (42 U.S.C. 7407(d)); and

23 (B) attainment and maintenance of na-
24 tional ambient air quality standards;

1 (2) the procedures and timelines of the Admin-
2 istrator for the disposition of petitions submitted
3 under subsection (b) of section 179B of the Clean
4 Air Act (42 U.S.C. 7509a);

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

8 (A) the date on which the petition was ini-
9 tially submitted to the Administrator; and

10 (B) the date of final disposition by the Ad-
11 ministrator; and

12 (4) whether the Administrator recommends any
13 statutory changes to facilitate the more efficient re-
14 view and disposition of petitions submitted under
15 that section (42 U.S.C. 7509).