



## H.R. 806 — Ozone Standards Implementation Act of 2017 (Rep. Olson, R-TX)

CONTACT: [Noelani Bonifacio](#), 202-226-9719

### FLOOR SCHEDULE:

Scheduled for consideration on July 18, 2017 under a structured [rule](#).

### TOPLINE SUMMARY:

[H.R. 806](#) would amend the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act, specifically in regards to ozone, and delay the implementation of the 2015 new ozone emission standards until 2026 in order to allow for the previously issued standards to be put into effect. The bill would give states more flexibility to implement NAAQS, require feasibility considerations in setting NAAQS standards, and give more predictability to states in regards to changing standards by extending the review timeline.

### COST:

The Congressional Budget Office (CBO) has [estimated](#) implementing H.R. 806 would cost \$2 million over the 2018-2020 period, subject to appropriation. The bill would not increase net direct spending or on-budget deficits in any of the four consecutive year periods beginning in 2028. The bill would not affect direct spending or revenues so pay-as-you-go would not apply.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

H.R. 806 would amend the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act, specifically the regulations related to ozone.

The bill would require the governor of each state to identify by October 26, 2024 which areas of their state have met the 2015 ozone standards, which areas haven't, and which areas cannot be classified. The Environmental Protection Agency (EPA) Administrator then must promulgate the designations by October 26, 2025. By October 26, 2025, each state must submit the plan required by [42 U.S.C. 7410\(a\)\(1\)](#) with regard to the 2015 ozone standards. The plan must provide for the implementation, maintenance and enforcement of the standard.

The bill states that the 2015 ozone standards will not apply to review of preconstruction permits if: (1) the application is determined to be complete before the above date of promulgation for the applicable area; or, (2) a public notice of preliminary determination or draft permit is published within 60 days of promulgation.

The bill does not eliminate the requirement of the applicant to install lowest achievable emission rate technology or best available control technology or limit state or local authority to impose more stringent emissions standards.

H.R. 806 amends the timeline of review of NAAQS under [42 U.S.C. 7409\(d\)](#). Currently, the EPA Administrator must complete a review of the NAAQS and promulgate new standards every five years. The independent science review committee established by the same section must also complete a review and recommend new standards and revisions to the EPA Administrator every five years. H.R. 806 would amend both timelines to every ten years. The bill adds a new subsection requiring the administrator to request, and for the committee to provide, advice regarding negative public health, welfare, economic or energy effects prior to revising or establishing a NAAQS.

The bill would prohibit the EPA Administrator from completing a review of or proposing any revisions to the ozone criteria under [42 U.S.C. 7408](#) or the NAAQS for ozone under [42 U.S.C. 7409](#) before October 25, 2025.

The bill amends [42 U.S.C. 7409\(b\)\(1\)](#) to allow the EPA Administrator to consider the technological feasibility of revising the national primary ambient air quality standard for each pollutant. This may only be done if the administrator, in consultation with the independent scientific review committee, finds that a range of levels of air quality for an air pollutant are necessary to protect public health.

A new subsection is added to [42 U.S.C. 7409](#) to require the administrator to publish regulations and guidance for the new standard's implementation for states, permitting authorities and applicants, including information in relation to submitting preconstruction permit applications under the new standard. Should the administrator fail to do so, the standard will not apply until the requirement is met. The bill does not eliminate the requirement of the applicant to install lowest achievable emission rate technology or best available control technology or limit state or local authority to impose more stringent emissions standards.

H.R. 806 also amends [42 U.S.C. 7502\(c\)\(9\)](#) to prevent the implementation of contingency measures for extreme areas that have failed to attain the ozone standards.

The bill amends [42 U.S.C. 7511a](#) to allow states to submit revisions to their implementation plans in moderate and serious areas with volatile organic compound emission reductions below 15% if the plan includes all feasible measures in light of economic feasibility, not just technological achievability. For severe areas, the bill would allow states, in showing reasonable further progress, to demonstrate less 3% of baseline emissions each year average over a consecutive 3-year period.

H.R. 806 amends the definition of exceptional events, which are subject to EPA regulations, under [42 U.S.C. 7619\(b\)\(1\)\(B\)](#). Under the new definition, meteorological events that involve lack of precipitation or high temperature and stagnation of air masses that are not ordinarily occurring would qualify as extraordinary events.

Within 2 years of enactment, the EPA Administrator must submit a report to Congress that includes: (1) how pollution sources outside of North America impact the attainment of NAAQS; (2) the timeline and procedures that the EPA uses to dispose of petitions of areas that would have met ozone standards if not for the impact of emissions originating outside of the U.S.; (3) the number of petitions received in regards to the previous item; and, (4) recommendations for the more efficient review of those petitions.

The EPA Administrator must also conduct a study on the atmospheric formation of ozone and how to effectively control it. The study must be peer reviewed by an independent panel of experts. The EPA Administrator must submit a report describing the results of the study and implement the results of the study into the implementation of the 2015 ozone standards.

The bill also adds a new section preventing states from being assessed a fee if the state demonstrates the national ambient air quality standard for ozone would have been met if not for emissions originating outside the area, an exceptional event, or from a mobile source that is beyond the state's control to reduce. The state must renew this demonstration every 5 years. This does not affect the state's obligations under the Clean Air Act to establish and implement measures to meet a NAAQS.

No new funds are authorized to carry out this act.

According to the House Report ([H. Rept. 115-222](#)) accompanying H.R. 806, counties in at least 33 states would violate the ozone standard promulgated by the EPA in October of 2015 based on monitoring data gathered from 2012-2014.

### **AMENDMENTS:**

1. [Rep. Castor \(D-FL\)](#) – This amendment would prevent the implementation of section 2 of H.R. 806 if the Clean Air Scientific Advisory Committee finds that the implementation could result in an increase in adverse health effects, particularly for vulnerable populations. Section 2 of H.R. 806 would delay the implementation of the 2015 Ozone Standards until October 26, 2026.
2. [Rep. Tonko \(D-NY\)](#) – This amendment would no longer allow the EPA Administrator to consider the technological feasibility of revising the national primary ambient air quality standard for each pollutant, as required by the underlying bill
3. [Rep. Beyer \(D-VA\)](#) – This amendment would keep the current statutory definition of extraordinary events that allow for exemptions from meeting NAAQS standards. H.R. 806 amends the definition of extraordinary events to allow meteorological events that involve lack of precipitation or high temperature and stagnation of air masses that are not ordinarily occurring to qualify under the definition.
4. [Rep. Polis \(D-CO\)](#) – This amendment would add a new section to H.R. 806. The new section would strike [42 U.S.C. 7412\(n\)\(4\)](#), which prohibits aggregating emissions from oil or gas exploration or production wells and emissions from pipeline compressors or pump stations with emissions from similar units. The new section would also require the EPA Administrator to add hydrogen sulfide to the list of hazardous air pollutants
5. [Rep. McNerney \(D-CA\)](#) – This amendment would strike section 6 of H.R. 806, which states that no additional funds are authorized to implement the bill.
6. [Rep. McNerney \(D-CA\)](#) – This is an amendment in the nature of a substitute. The new bill would allow for the designation of air and health quality empowerment zones. The EPA Administrator would be allowed to award grants to the zone's local government entity to implement a strategic plan to meet air quality standards and improve the population's health. Some conservatives may be concerned this amendment would increase the size and scope of the federal government by creating a new federally-funded grant.

### **COMMITTEE ACTION:**

H.R. 806 was introduced on February 1, 2017. The bill was referred to the House Committee on Energy and Commerce where a mark-up was held and the bill was reported by a vote of 29-24.

### **ADMINISTRATION POSITION:**

A Statement of Administration Policy is not available.

### **CONSTITUTIONAL AUTHORITY:**

According to the bill's sponsor: Congress has the power to enact this legislation pursuant to the following: "Article 1, Section 8, Clause 3 of the Constitution of the United States".

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