



H.R. 4775 — Ozone Standards Implementation Act of 2016 (Rep. Olson, R-TX)

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FLOOR SCHEDULE:

Scheduled for consideration on June 8, 2016, under a structured [rule](#)

TOPLINE SUMMARY:

[H.R. 4775](#) would delay from 2020 to 2026 the implementation of the [National Ambient Air Quality Standards \(NAAQS\) for ozone emissions](#) promulgated by the Environmental Protection Agency (EPA) in 2015. The bill would also modify the EPA's NAAQS regulatory process to include longer review periods and to account for the technological and economic feasibility of meeting new proposed standards.

COST:

The Congressional Budget Office (CBO) [estimates](#) that completing activities described in the bill would cost \$2 million over the 2017-2019 period; such spending would be subject to the availability of appropriated funds. Enacting H.R. 4775 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4775 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

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:

Delay of the 2008 and 2015 Ozone Standards

H.R. 4775 would allow for the sequential, as opposed to simultaneous implementation of the 2008 and 2015 National Ambient Air Quality Standards (NAAQS) for ozone emissions by delaying the requirement for states to submit plans to reduce ozone emissions to EPA until 2026. The initial rule required states to determine whether different geographical areas in the states are in compliance with federal limits on ozone pollution and to submit those recommendations to the EPA by October 1, 2016. According to the House Energy and Commerce Committee, "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."

Specifically, H.R. 4775 would require the governor of each state to designate all areas of the state as attainment, nonattainment, or unclassifiable with respect to the 2015 ozone standards by October 26, 2024. The bill would additionally require the EPA to promulgate final designations for all areas in all states with respect to the 2015 ozone standards, including any modification no later than October 26, 2025. Each state would be required to submit a plan to the EPA which provides for the implementation, maintenance, and enforcement of the primary standard in each air quality control region required by the [Clean Air Act](#) by October 26, 2026, postponing the requirement by 6 years.

The 2015 ozone standards would not apply to the review and disposition of a preconstruction permit application if the EPA or the state, local, or tribal permitting authority: (1) determines the application to be complete on or before the final designation of the area involved is promulgated; (2) publishes a public notice of a preliminary determination or draft permit for the application before 60 days after final designation of the area involved is promulgated.

Reforming the NAAQS Process

H.R. 4775 would amend the [Clean Air Act](#) by modifying the review cycle for criteria pollutant NAAQS from a 5-year review cycle to a 10-year review cycle. The EPA would be prohibited from completing any review of the criteria for ozone or the national ambient air quality standard for ozone before October 26, 2025 or proposing any revisions to the criteria or standard before such date.

The EPA would be authorized to consider likely technological feasibility in establishing and revising the national primary ambient air quality standard for the pollutant as a secondary consideration, if the EPA, in consultation with an independent scientific review committee, established under the [Clean Air Act](#), 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. Prior to establishing or revising a national ambient air quality standard, the EPA would be directed to request advice from the scientific review committee, regarding any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standard.

In publishing any final rule establishing or revising a national ambient air quality standard, the EPA would be required to concurrently publish regulations and guidance for implementing the standard, including information relating to submission and consideration of a preconstruction permit application under the new or revised standard. If the EPA fails to publish final regulations and guidance that includes information relating to the submission and consideration of a preconstruction permit application under a new or revised NAAQS, then the standard would not apply to the review and disposition of a preconstruction permit application until the EPA has published the final regulations.

H.R. 4775 would clarify that nothing in the bill would be construed to preclude the EPA from issuing regulations and guidance to assist states, permitting authorities, and permit applicants in implementing a NAAQS subsequent to publishing regulations and guidance for the standard, nor would be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology. Nothing in the bill would be construed to limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements pursuant to state, local, or tribal law than national ambient air quality standards.

H.R. 4775 would mandate that contingency measures not be required for any nonattainment area for ozone classified as an Extreme Area. Technological achievability and economic feasibility would be required to be taken into account for plan revisions for milestones for particulate matter nonattainment areas.

Miscellaneous Provisions

The bill would require the EPA to submit a report to Congress on the extent to which foreign sources of air pollution, including emissions from sources located outside North America, impact designations of areas as nonattainment, attainment, or unclassifiable, as well as the attainment and maintenance of NAAQS. The

report would further include the EPA's procedures and timelines for disposing of submitted petitions, the total number of petitions received by the agency, and whether the EPA recommends any statutory changes to facilitate the more efficient review and disposition of petitions. The bill would require the EPA in consultation with states and the National Oceanic and Atmospheric Administration (NOAA), to conduct a study on the atmospheric formation of ozone and effective control strategies. The Administrator of the EPA would be required to have the study peer reviewed by an independent panel of experts in accordance with the requirements applicable to a highly influential scientific assessment, and submit a report to Congress describing the results of the study, including the findings of the peer review panel. The EPA would then be directed to incorporate the results of the study, including the findings of the peer review panel, into any federal rules and guidance implementing the 2015 ozone standards.

The House report (H. Rept. 114-598) accompanying H.R. 4775 can be found [here](#). A fact sheet provided by the House Energy and Commerce Committee can be found [here](#).

OUTSIDE GROUPS IN SUPPORT:

- [Competitive Enterprise Institute](#)
- [Americans for Prosperity](#)
- [American Energy Alliance](#)
- [Americans for Tax Reform](#)
- [National Taxpayers Union](#)
- [Freedom Works](#)
- [60 Plus Association](#)
- [Citizens Against Government Waste](#)
- [Frontiers of Freedom](#)
- [Independent Women's Forum](#)
- [Taxpayers Protection Alliance](#)
- A list of over 60 organizations in support can be found [here](#).
- A full list of organizations in support provided by the House Energy and Commerce Committee can be found [here](#).

AMENDMENT MADE IN ORDER:

- [#1 Whitfield \(R-KY\)](#): would clarify that no additional funds would be authorized to be appropriated to carry out the requirements of the bill and the amendments made by the bill. Such requirements would be carried out using amounts otherwise authorized.
- [# 7 Rush \(D-IL\)](#): would strike a provision allowing the NAAQS to not apply to the review and disposition of a preconstruction permit application if the EPA fails to publish final regulations and guidance on the consideration of a preconstruction permit application under a new or revised NAAQS. The amendment would allow federal, state, local, or tribal permitting agencies the ability to opt-out if the authority determines that the application would increase air pollution that harms human health and the environment, slow issuance of final preconstruction permits, increase regulatory uncertainty, foster additional litigation, shift the burden of pollution control from new sources to existing sources of pollution, including small businesses, or increase the overall cost of achieving the new or revised national ambient air quality standard in the applicable area.
- [# 5 Pallone \(D-NJ\)](#): would strike the provision requiring the EPA to consider likely technological feasibility in establishing and revising the national primary ambient air quality standard for the pollutant as a secondary consideration, after consulting with an independent scientific review committee.

- [# 6 Gosar \(R-AZ\)](#): would amend the requirement for the EPA to conduct a study on the atmospheric formation of ozone and effective control strategies to include the relative contribution of man-made and naturally occurring nitrogen oxides in ozone formation in urban and rural areas, including during wildfires.
- [#2 Polis \(D-CO\)](#): would strike paragraph 4 of [section 112\(n\) of the Clean Air Act](#) requiring that emissions from any oil or gas exploration or production well and emissions from any pipeline compressor or pump station would not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well such emissions would not be aggregated for any purpose under this section. Paragraph 4 additionally stipulates that the EPA would be prohibited from listing oil and gas production wells as an area source category, except that the EPA may establish an area source category for oil and gas production wells located in any metropolitan statistical area with a population in excess of 1 million, if the EPA determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health. The amendment would require the EPA to issue a final rule adding hydrogen sulfide to the list of hazardous air pollutants under the Clean Air Act, and revise the list to include categories and subcategories of major sources and area sources of hydrogen sulfide, including oil and gas wells.
- [#3 Norton \(D-DC\)](#): would stipulate that if the EPA, in consultation with the Clean Air Scientific Advisory Committee, finds that application of any provision of the bill could harm human health or the environment, H.R. 4775 and the amendments made thereby would cease to apply.

COMMITTEE ACTION:

H.R. 4775 was introduced on March 17, 2016 and was referred to the House Committee on Energy and Commerce. On May 27, 2016, the bill was ordered to be reported (amended) by the committee.

ADMINISTRATION POSITION:

The Statement of Administration Policy is available [here](#). According to the statement, if the President were presented with H.R. 4775, his senior advisors would recommend that he veto the bill.

CONSTITUTIONAL AUTHORITY:

According to the sponsor: “Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 3 of the Constitution: The Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

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