

Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on H.R. 4775, the “Ozone Standards Implementation Act of 2016”
April 14, 2016

(As Prepared for Delivery)

This morning we will review the challenges states face in implementing the EPA’s recently finalized ozone standards, as well as other challenges with the National Ambient Air Quality Standards program. The recent ozone standards will impose substantial compliance burdens on state and local governments while also jeopardizing economic growth and jobs.

We will also discuss a bipartisan solution, H.R. 4775, the “Ozone Standards Implementation Act of 2016,” which would create a more reasonable and streamlined approach to implementing current ozone standards. I want to thank Reps. Olson, Flores, Latta, Cuellar, Leader McCarthy, and Whip Scalise for their great work on this legislation and I welcome our witnesses who represent a number of state and local environmental agencies that are on the front lines of implementing these EPA rules.

EPA’s recently finalized National Ambient Air Quality Standards for ozone would impose an additional layer of regulation on states that are currently in the process of implementing stringent ozone standards set by the agency in 2008. Those standards revised the previous standards set in 1997 and established a level of 75 parts per billion. However, the EPA did not finalize the necessary implementing regulations for these 2008 standards until March of 2015, and states are only starting to comply with them.

Nonetheless, the agency decided to create an additional ozone standard, this one at 70 parts per billion. And because the standards from 2008 have not been revoked, states face the prospect of implementing two ozone standards at the same time. Under the new standards, states would be required to begin later this year a complex regulatory process involving designations, state implementation plans, and new permitting programs, long before the 2008 standards have been fully implemented.

As a practical matter, the new ozone standards present implementation challenges because for certain parts of the country they are close to background levels. EPA projects annualized costs of \$2 billion in 2025, including \$1.4 billion for areas outside California and \$800 million for California. Yet these annual costs will almost certainly be much higher since EPA acknowledges that “unidentified controls” will need to be discovered to meet the new standards in some of these areas – in other words, the agency does not really know how states can comply, so it is unclear what the ultimate price tag will be.

This new burden arrives at a time when state and local governments face other expensive EPA mandates. It represents another headwind for job creators, since new permitting requirements have already begun to be implemented. Further, potentially hundreds of counties will be designated as being in “nonattainment” as early as next year.

A “nonattainment” designation places limits on new construction, expansions and transportation projects, triggers a suite of new planning requirements, and subjects areas to potential penalties. Because of the designation, these counties will remain subject to continuing EPA requirements for decades, even after air monitoring shows the counties have attained the standards.

H.R. 4775 offers a commonsense path forward, by allowing the 2008 ozone rule to continue being implemented, and for the 2015 standards to be phased in on a more reasonable timeframe. EPA itself projects the vast majority of areas in the country would meet the new 70 parts per billion standard by 2025 under existing federal rules and programs.

Instead of forcing hundreds of counties to be needlessly categorized as “nonattainment,” this legislation builds on EPA’s own projection that all but 14 counties would reach attainment by 2025 based on existing federal measures. HR 4775 would ensure these areas do not become subject to a suite of new paperwork and requirements that will divert limited state resources but will not contribute to improvements in air quality.

There is no benefit to stacking a new rule on top of an unfinished earlier one. The bill makes practical changes to modify the current requirement that standards for ozone and other pollutants be reviewed every five years, and places the new deadline at no more than ten years subject to the discretion of the administrator.

EPA’s own actions show that five years is not enough time and that this arbitrary deadline needs to be revised.

The bill also imposes the commonsense requirement that EPA release implementing regulations and guidance at the same time it releases new standards, something that EPA should have been doing all along.

Overall, the news on ozone is positive and we have seen a 30 percent drop in ozone levels since 1980. EPA itself concedes ozone levels are declining and will continue to fall even in the absence of the new standards. This practical bill simply ensures that air quality continues to improve while avoiding unnecessary harm to state and local governments and to job-creating businesses. Thank you.

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