



MEMORANDUM

March 4, 2024

TO: Members of the Subcommittee on Environment, Manufacturing, and Critical Materials

FROM: Committee Majority Staff

RE: Subcommittee on Environment, Manufacturing, and Critical Materials Markup

I. INTRODUCTION

On Wednesday, March 6, 2024, at 2:30 p.m. (ET), the Subcommittee on Environment, Manufacturing, and Critical Materials will meet in open markup session in 2123 Rayburn House Office Building to consider the following:

- H.R.____, Air Quality Standards Implementation Act of 2024

In keeping with Chair Rodgers' announced policy, Members must submit any amendments they have two hours before they are offered during this markup. Members may submit amendments by email to EandCdocs@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time.

II. EXPLANATION OF LEGISLATION

H.R. _____, Air Quality Standards Implementation Act of 2024, is draft legislation that would facilitate more efficient State implementation of National Ambient Air Quality Standards (NAAQS). The draft was examined by the Subcommittee at its February 15, 2024, hearing. Following are explanations of the provisions, including new provisions that reflect technical corrections and information developed at the hearing.

- Sec. 2(a) extends the current NAAQS review cycle from five years to ten years.
- Sec. 2(b) provides that the Administrator, when establishing or revising a NAAQS, may consider, as a secondary consideration, likely attainability of the standard.
- Sec. 2(c) requires membership of the Clean Air Scientific Advisory Committee (CASAC) to include at least 3 people representing State air pollution control agencies and includes a new provision that requires those appointed from State air pollution control agencies to be from different regions of the country.
- Sec. 2(d) requires the Administrator of the Environmental Protection Agency (EPA) to request, and the CASAC to provide, advice regarding adverse public health, welfare,

social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.

- Sec. 2(e) provides that the Administrator concurrently publish regulations and guidance for implementing a revised NAAQS and that the new or revised standards shall not apply to preconstruction permit applications until the Administrator has published such final regulations and guidance. The subsection also clarifies that nothing in the subsection eliminates the obligation of a preconstruction permit applicant to install the best available control technology and lowest achievable emission rate technology and clarifies that nothing in the subsection limits the authority of a State, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to a State, local, or Tribal law that NAAQS.
- Sec. 2(f) is a new subsection that requires the EPA to provide States the opportunity to correct any deficiency EPA identified in a State Implementation Plan (SIP) before the EPA can issue a Federal Implementation Plan (FIP). The subsection allows the EPA more time to promulgate a FIP, to accommodate the correction process.
- Sec. 2(g) provides that in “Extreme” ozone nonattainment areas, contingency measures are not required to be included in nonattainment plans.
- Sec. 2(h) ensures that economic feasibility, in addition to technological achievability, will be taken into consideration in certain requirements for plans for “Moderate” and “Serious” ozone nonattainment areas. The subsection eliminates certain demonstration requirements in approving provisions of an implementation plan for an “Extreme” ozone nonattainment area. Specifically, it removes certain demonstration requirements and allows for States to include the anticipated development of new control techniques or improvement of existing control technologies in SIPs.
- Sec. 2(i) provides that, for particulate matter nonattainment areas, the milestones that must be included in SIPs to show reasonable further progress must take into account technological achievability and economic feasibility.
- Sec. 2(j) amends Sec. 319(b) of the Clean Air Act (CAA) to include actions to mitigate wildfire risk (prescribed burns) along with exceptional events in the process for excluding air monitoring data that is directly due to such actions or events. It would also remove the current exclusion for high temperature or drought to be considered exceptional events. The provision requires the EPA, after consultation with federal land managers and State air pollution control agencies, to propose revisions to existing regulations governing the review and handling of air quality monitoring data influenced by exceptional events and actions to mitigate wildfire risk. The subsection requires the EPA to conduct regional modeling and analysis upon request by one or more states when one or more States notifies the EPA of their intent to submit an exceptional event petition. It also requires the EPA to establish, and provide monthly updates to, a public website noting the status of submitted petitions for exceptional events. Technical corrections and clarifications have

been added to the subsection in response to the EPA's comments and information developed at the Subcommittee hearing.

- Sec. 2(k) requires a report within 2 years of enactment from the EPA on the extent to which foreign sources of air pollution impact the designation of areas as nonattainment, attainment, or unclassifiable, and attainment and maintenance of NAAQS. The report also requires information on the EPA's procedures and timelines for disposing of a petition from a State that it would have attained the NAAQS for ozone by the applicable attainment date, but for emissions emanating from outside of the United States. The number of such petitions from States that have been submitted to the EPA, including the date of reception and final disposition from the Agency. Lastly, whether the Administrator recommends any statutory changes to facilitate a more efficient review and disposition process.
- Sec. 2(l) provides that the Administrator shall, in consultation with the National Oceanic and Atmospheric Administration (NOAA), (i) conduct a study on the atmospheric formation of ozone and effective control strategies, including with regard to the relative contribution of manmade and naturally occurring nitrogen oxides, volatile organic compounds, and other pollutants in ozone formation in urban and rural areas, and with regard to wintertime ozone; (ii) that the study be peer reviewed in accordance with the requirements applicable to highly influential scientific assessments; (iii) that the Administrator submit a report to Congress describing the results of the study; and (iv) that the Administrator incorporate the results of the study into any Federal rules and guidance implementing the 2015 ozone standards
- Sec. 3 amends the CAA with a new section 179C that provides that, with respect to any nonattainment area classified as severe or extreme for ozone or as serious for particulate matter, sanctions for implementation plan deficiencies under section 179 or fees for failure to attain the air quality standard under section 185 will not apply if the State demonstrates it would have avoided the deficiencies or attained the standard but for (i) emissions emanating from outside the nonattainment area, (ii) emissions from an exceptional event, or (iii) emissions from mobile sources that are beyond the control of the State to reduce or eliminate. The inapplicability of sanctions and fees under this section does not affect any obligations under the Act to implement measures to attain national ambient air quality standards.
- Sec. 4 is a new section that provides that the 2024 PM_{2.5} standard shall not apply to the review and disposition of a preconstruction permit application if a permit application is completed on or before the date of promulgation of the final designation of an area; or a public notice of a preliminary determination on a draft permit is provided within 60 days after the date of final designation of an area. Sec. 4 (b) provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable, or limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

III. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Martin, Peter Spencer, or Drew Lingle of the Committee Staff at (202) 225-3641.