

DISSENTING VIEWS
on
H.R. 4775, the *Ozone Standards Implementation Act of 2016*

The Clean Air Act (CAA) has driven important progress in improving air quality and public health. The history of the CAA continues to demonstrate the success of our nation's current approaches and utilization of valuable tools for measuring air quality.

House Republicans claim that the goal of H.R. 4775, the "Ozone Standards Implementation Act of 2016" is to facilitate a more efficient implementation of the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards (NAAQS) by states, and to provide states additional time to implement the new ozone standards. This bill would undermine decades of progress on cleaning up air pollution and protecting public health from all criteria pollutants – not just ozone. But, H.R. 4775 is an irresponsible compilation of attacks that in reality strikes directly at the heart of the CAA. It would cause irreparable harm to public health and the environment.

Analysis

The changes made to the CAA, included in H.R. 4775, would delay the implementation of health-based standards, complicate adoption and achievement of more stringent standards, and impose inappropriate cost and technological feasibility considerations on the standard-setting process. The bill inserts consideration of technological feasibility into the standard-setting process for NAAQS. Although the bill's sponsors assert this would be a minor change, adding this consideration would fundamentally alter the CAA in a manner that would erode public health and environmental protections. Considerations of cost and technological feasibility are – and should remain – separate from the identification of the appropriate standard to ensure the air we breathe is safe. Costs and technological feasibility as well as other non-risk factors are already considered in the selection of options for attaining the necessary standard. We can continue to achieve cleaner, healthier air through cost-effective means that allow our economy to grow.

The bill fundamentally alters the CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date knowledge about air pollutants and their health and environmental impacts. It would extend the NAAQS review period from five to ten years. Currently, EPA must review each NAAQS every five years and make revisions as appropriate.¹ Although EPA does not always meet the five-year deadline, the five-year cycle does provide for routine consideration of new scientific information and revisions to NAAQS, if necessary. Although EPA is required to compile new information and review current NAAQS every five years, the Agency is not required to adjust NAAQS at every review. New information is generated at a much faster pace than a decadal review cycle would accommodate. Extending the

¹ Clean Air Act at § 109(d)(1).

deadline would result in fewer reviews, and less up-to-date scientific information supporting air quality decisions. The longer review period would also result in much longer periods of exposure to dangerous air pollutants in cases where scientific studies demonstrate the need for stronger standards to protect public health.

In point of fact, H.R. 4775 does nothing to address the real constraints that states and the EPA face in their efforts to implement the new ozone standards – resources. The bill’s proponents claim they are simply giving states more time to comply with the new ozone standard. But, that simply means that people living in areas with poor air quality will continue to breathe unhealthy air for a longer period of time. In addition, a number of the provisions go beyond delaying the implementation of the standard. They are designed to allow some of the areas with the most severe air quality problems to avoid compliance with the standard. For example, the bill exempts any ozone non-attainment area classified as an “Extreme Area” from the requirement for a state, local, or tribal government to apply additional control measures if its approved emission reduction plan fails to make progress toward achieving the ozone standard. And, the bill changes air quality monitoring protocols in a manner that would result in under-reporting of poor air quality conditions, allowing areas with poor air quality to appear in compliance by designating their normal cyclical weather conditions (e.g. heat and drought) as exceptional events.

It is certainly true that state budgets are constrained and many states rely on guidance and support from EPA in the preparation of their implementation plans. And, there are areas that have specific challenges which make attainment with air quality standards more difficult to achieve. However, the CAA provides flexibility for those areas while ensuring public health protection progresses. We could do far more to support states’ efforts to control dangerous air pollution by providing EPA with adequate resources to support state activities rather than providing regulatory relief to polluters.

EPA’s Revision to the National Ambient Air Quality Standards for Ozone

On October 1, 2015, EPA issued a final rule tightening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.² EPA based its decision on the review of thousands of studies showing ozone’s effects on public health and welfare. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science supports a standard within a range of 70 ppb down to 60 ppb. Ozone, also known as smog, has a number of health impacts ranging from increased asthma attacks cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and trees.

Opponent’s Claims About the 2015 Ozone Rule

² U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule) (hereinafter “ozone NAAQS”).

Critics of the proposed ozone NAAQS have raised a number of concerns about the ozone rule regarding: the number of new ozone non-attainment areas that will result from lowering the standards; the impact of background ozone on compliance; the impact on construction of new facilities; and the overall costs of implementation. A number of these criticisms are not new. They have been raised repeatedly with respect to air quality standards. Yet, history demonstrates that many of these claims ultimately prove to be exaggerated.

The rule's critics claim that more than 200 counties will not be in attainment. However, these estimates do not account for a number of existing federal rules that will help to reduce ozone along with other targeted emissions. For instance, the new Tier 3 standards for vehicles and fuels, the Cross State Air Pollution Rule (CSAPR), and the New Source Performance Standards for the Oil and Gas Industry all will help lower ozone emissions, resulting in fewer non-attainment than many previously projected. According to EPA, by 2025 only 14 counties are expected to exceed the 70 ppb standard. These projections are far lower than the 213 counties with current ozone levels above 70 ppb.³ In fact, these figures are based on 2012-20134 air quality data. Final designations will likely be made based on 2014-2016 data which will reflect some of the federal measures discussed above, likely leading to even fewer non-attainment areas.

Some stakeholders have voiced concerns about the impact of "background ozone" on their ability to meet the 70 ppb ozone standard. "Background ozone" is ozone that results from natural events such as wildfires or the breakdown of hydrocarbons released by plants and soils. It also includes man-made pollution from sources outside the U.S. However, the CAA does not hold states responsible for these background emissions. While EPA does anticipate that there may be a limited number of areas where high ozone levels could be attributed to background ozone, EPA analysis indicates that background ozone is "not the sole contributor to an exceedance of the revised NAAQS" and will not prevent areas from meeting the revised 70 ppb standard.⁴

Various stakeholders also have raised concerns about projects with pending preconstruction permit applications and the potential impact of a revised NAAQS.⁵ The CAA currently requires major new or expanding stationary sources of air pollution to obtain permits before they start construction to ensure they will not significantly increase air pollution above levels that are safe to breathe. The preconstruction permitting provisions of the CAA achieve this by: (1) requiring new and modified sources to use control technology to reduce their emissions; and (2) to assess, and if necessary address, their remaining air quality impacts. EPA addressed preconstruction permit concerns in the final 2015 ozone NAAQS rule. The rule grandfathered permit applications that were well along in the permitting process, specifically

³ U.S. EPA, *Ozone by The Numbers* (Oct. 1, 2015) (online at www.epa.gov/sites/production/files/2015-10/documents/20151001_bynumbers.pdf).

⁴ *Id.*

⁵ See, e.g., U.S. EPA, *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 at 65431 (Oct. 26, 2015) (final rule).

permits that had been determined to be complete on or before October 1, 2015, or for which public notice of a draft permit or preliminary determination had been published as of the effective date of the revised standard. Sources eligible for grandfathering are allowed to meet the requirements associated with the prior ozone NAAQS rather than the revised standard.⁶

Finally and predictably, critics claim the costs of the rule will be too high and result in significant job economic growth sacrifices. In July 2014, well before the ozone proposal was issued, the National Association of Manufacturers (NAM) issued a report claiming that the ozone standards would be the most expensive rule ever issued and would reduce Gross Domestic Product by up to \$270 billion per year.⁷ NAM updated its hastily prepared analysis in February 2015, to examine a 65 ppb standard and reached a revised estimate of \$140 billion per year.⁸

There are numerous problems with this study. The Congressional Research Service has identified numerous issues with the study that cause the costs to be inflated. These include the use of outdated data from 2008 and 2010 regulatory analyses; use of an incorrect baseline that does not account for the effects of the Cross State Air Pollution Rule (CSPAR) or the Clean Power Plan; and looking at only the most stringent standard option of 65 ppb available to EPA – a stand which EPA ultimately rejected.⁹

Perhaps, most importantly, the study fails to include any estimate of benefits. The entire purpose of EPA's clean air rules is to realize public health and environmental benefits. EPA's analysis shows that the health benefits of a 70 ppb ozone standard will significantly outweigh compliance costs by billions of dollars per year. EPA has estimated the cost of the 70 ppb ozone standard will be \$1.4 billion in 2025, with \$2.9-\$5.0 billion in benefits (excluding California). Although these estimates may not legally be used in setting the standard, they were reviewed and approved by the Office of Management and Budget as part of EPA's Regulatory Impact Analysis.¹⁰

⁶ U.S. EPA, *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 at 65433 (Oct. 26, 2015) (final rule).

⁷ National Association of Manufacturers, *Assessing Impacts of a Stricter National Ambient Air Quality Standard for Ozone*, (Jul. 2014) (online at www.nam.org/Issues/Energy-and-Environment/Ozone-Regulations/NERA-NAM-Ozone-Full-Report-20140726/).

⁸ National Association of Manufacturers, *Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone*, (Feb. 2015) (online at www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-%28NERA%29.pdf).

⁹ Congressional Research Service, *Ozone Air Quality Standards: EPA's 2015 Revision* (Jun. 25, 2016) (R43092) (online at www.crs.gov/pdfloader/R43092).

¹⁰ U.S. EPA, *Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone* (Sept. 2015) (online at www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0169-0057).

H.R. 4475: An Irresponsible, Cynical and Unnecessary Attack on the Clean Air Act

In conclusion, H.R. 4775 offers no constructive improvements to Clean Air Act. It is designed to erode public health and environmental protections in the guise of regulatory relief. Poor air quality is a significant threat to human health and the environment. Other nations are realizing now what we learned long ago, that unregulated emission of dangerous air pollutants is unsustainable. The Clean Air Act has helped us to make dramatic improvements in air quality over the past decades. Our economy has grown during this same period demonstrating that we can have both healthy air and a vibrant economy. H.R. 4775 is an unnecessary and dangerous bill that should not become law. For the reasons stated above, we dissent from the views contained in the Committee's report.



Frank Pallone, Jr.
Ranking Member



Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power