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BORDER SMOG REDUCTION ACT OF 1998

SEPTEMBER 28, 1998.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany H.R. 8]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (H.R. 8) to amend the Clean Air Act to deny entry into the United States of certain foreign motor vehicles that do not comply with State laws governing motor vehicle emissions, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

Under the Clean Air Act, areas that do not comply with the National Ambient Air Quality Standard (NAAQS) are required to be designated as "nonattainment". Section 181 of the Clean Air Act provides for the classification of ozone nonattainment areas as "marginal", "moderate", "serious", "severe", or "extreme" depending on the level of ozone measured above the maximum level allowed in the NAAQS. Any State with nonattainment areas is required to develop a State Implementation Plan (SIP) that describes the means by which the State expects to improve air quality to bring the nonattainment area into compliance with the NAAQS.

Tropospheric—or ground-level—ozone is one of the six criteria pollutants for which a NAAQS has been established. Ozone is formed in the lower atmosphere by the chemical interaction of volatile organic chemicals (VOCs) and nitrous oxides (NOx) exposed to sunlight. Motor vehicles represent roughly half of the VOC and NOx emissions nationwide.

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One control measure included in SIPs is implementation of an inspection and maintenance (I/M) program that is used to ensure emission reductions from in-use motor vehicles. The Clean Air Act requires States with ozone nonattainment areas designated as moderate or worse to include an I/M program in the SIP it submits. While auto manufacturers are required to meet emission limits for the vehicles they sell, State I/M programs are used to ensure that proper maintenance is used so vehicle emissions performance does not needlessly deteriorate. Basic I/M includes measures such as periodic testing of tailpipe emissions. Vehicles that fail emissions tests are denied registration. "Enhanced" I/M is required in the serious, severe, and extreme nonattainment areas. This typically includes dynamometer testing, which uses a treadmill to simulate various driving conditions during emissions testing, as well as tests of evaporative emissions. The Environmental Protection Agency (EPA) considers I/M programs to be one of the most cost-effective control strategies for complying with the NAAQS for ozone and estimates the cost per ton of pollution reduced around $500.

Areas on the California (San Diego) and Texas (El Paso) borders with Mexico are designated as serious nonattainment for ozone. Buffalo, New York is a marginal ozone nonattainment area that borders Canada. Arizona, New Mexico, Maine, New Hampshire, and Michigan also contain ozone nonattainment areas, none of which are contiguous with the foreign border. It is possible that other border States will have new areas designated nonattainment for ozone when designations are made for the new 8-hour ozone standard in July 1999.

This legislation would provide a mechanism to exclude certain foreign-registered motor vehicles from those nonattainment areas on or near a foreign border unless they comply with emission limits applied within the nonattainment area. It is estimated that, each day, up to 45,000 vehicles cross into the United States at the San Ysidro border in Southern California. As many as 7,000 of those may be operated by individuals who commute into California on a routine basis for work or school. The California Air Resources Board estimates that, if this class of vehicles were in compliance with California emissions requirements, motor vehicle pollution in San Diego would be reduced by up to 13 percent.

This legislation provides legal authority to prohibit cars that have not complied with California emission testing requirements from entering the United States more than twice in a 12-month period. It also allows other States that share a border with either Canada or Mexico, and contain an ozone nonattainment area to allow such a prohibition to be applied at its foreign borders as well.

OBJECTIVES OF THE LEGISLATION

H.R. 8 amends the Clean Air Act to expand Federal ozone measures to include ensuring that foreign-registered, noncommercial motor vehicles comply with applicable emission standards for the State that vehicle attempts to enter. The bill would ban entry of foreign-registered, noncommercial motor vehicles operated by a United States citizen or a foreign national who is a permanent resident of the United States, or holds a valid visa for the purposes of employment or educational study in the United States. The entry

ban would apply in States in which State law contains provisions for the compliance of foreign-registered, noncommercial motor vehicles with inspection and maintenance programs, and that contain serious, severe, or extreme ozone nonattainment areas contiguous with a foreign country. States that are contiguous with a foreign country, and contain ozone nonattainment areas not meeting the above criteria may elect to apply the entry ban or establish an alternative approach under certain conditions.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section designates the short title of the Act as "Border Smog Reduction Act of 1998".

Section 2. Amendment of Clean Air Act

This section adds a new subsection to Section 183 of the Clean Air Act (42 U.S.C 7511b). Paragraph (1) of section 2 provides that foreign-registered, noncommercial vehicles may not enter the United States at certain border crossings more than twice in a 12-month period unless they meet applicable emission requirements. This entry ban would apply in serious, severe or extreme ozone nonattainment areas that are contiguous with a foreign border and located in a State where State law has requirements for the inspection and maintenance of foreign-registered, noncommercial vehicles under the implementation plan applicable in the ozone nonattainment area. The entry would apply to vehicles operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a valid visa for purposes of employment or educational study in the United States. The entry ban would not apply if the operator of the vehicle presents documentation at the United States border establishing that the vehicle has complied with emission requirements that are in effect and are applicable to motor vehicles of the same type and model year.

This section permits the United States to impose and collect from the operator of any vehicle that attempts to violate the entry ban a civil penalty of not more than $200 for an initial violation and not more than $400 for repeated violations.

Any State meeting the criteria of paragraph (1) may exempt itself from the entry ban upon receipt by the President of written notification from the Governor. In the case of a State that is contiguous with a foreign country, and contains ozone nonattainment areas not meeting the criteria of paragraph (1) may elect to apply the entry ban contained in paragraph (1) or elect to establish an alternative approach to facilitate the compliance of foreign-registered vehicles entering ozone non-attainment areas with the vehicle inspection and maintenance requirements in effect under an applicable implementation plan. An alternative approach may be established one year after the Governor of the State submits a written description of the approach to the President and the President approves the approach. In States that elect to apply the entry ban in paragraph (1), the entry ban takes effect 180 days after the President's receipt from the Governor of written notification of the State's election to apply the entry ban.

Section 3. General Provisions

This section provides that the entry ban established in paragraph (1) of Section 2 takes effect 180 days after the enactment of the Act in States meeting the criteria established in that paragraph. Section 3 states that nothing in this Act shall be construed to require action that is inconsistent with obligations of the United States under any international agreement. This section also provides that appropriate agencies of the government must distribute information to publicize the entry ban, and the effective date of the entry ban, set forth in Section 2.

Section 4. Study By General Accounting Office

This section directs the Comptroller General of the United States to conduct a study of the impact of the amendment made by the Act. The section directs the Comptroller to study the potential impact of the amendments made by the Act on air quality in ozone nonattainment areas affected by the Act with the impact on air quality in the same areas caused by the increase in vehicles engaged in commerce and registered in, or operated from, Mexico, as a result of the implementation of the North American Free Trade Agreement. Not later than July 1, 1999, the Comptroller is to submit to Congress a report describing findings of the study.

HEARINGS

The Committee on Environment and Public Works held no hearings on H.R. 8.

LEGISLATIVE HISTORY

On July 20, 1998, H.R. 8 was received in the Senate, read twice, and referred to the Committee on Environment and Public Works. On Wednesday, September 23, 1998 the committee held a business meeting to consider the bill. H.R. 8 was reported favorably by the committee on a voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes this evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that the bill would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments. All of its governmental directives are imposed on Federal agencies. Additionally, a State can elect to withdraw from participation in any activity described by this bill by written notification to the President from the Governor. The bill does not directly impose any private sector mandates.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 8, the Border Smog Reduction Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, Pepper Santalucia (for the State and local impact), who can be reached at 225–3220, and Patrice Gordon (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 8, Border Smog Reduction Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on September 23, 1998.

Summary

H.R. 8 would deny regular entry into the United States to certain operators of noncommercial motor vehicles registered in a foreign country that do not comply with State laws regarding motor vehicle emissions. Under this act, such operators would have to document compliance with State inspection and maintenance requirements before entering border areas experiencing specified levels of ozone pollution. Federal enforcement would begin 180 days after enactment of the legislation unless the affected States elect to be exempt from the program. These prohibitions could apply to other border areas under certain terms and conditions. Violators of the act's provisions would be subject to a civil fine of up to $400. This legislation also would direct the General Accounting Office (GAO) to prepare a report on air quality issues related to the implementation of this bill and the North American Free Trade Agreement with Mexico.

CBO estimates that implementing this legislation would increase Federal spending by about $1 million in fiscal year 1999 and about $1.5 million each year thereafter, assuming the appropriation of the necessary amounts. Annual costs could reach $3 million by 2000 if all eligible States participate in the program established by

the act. This legislation could affect receipts, so pay-as-you-go procedures would apply, but any effects would be less than $500,000 a year.

H.R. 8 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The act would impose a private-sector mandate, as defined by UMRA, but CBO estimates that the cost of complying with such a mandate would not exceed the statutory threshold established in UMRA ($100 million in 1996, adjusted annually for inflation) in any one of the first five years that the mandate would be effective.

Estimated Cost to the Federal Government

Implementing H.R. 8 would increase the workload of the Customs Service in any State that allows the border restrictions to apply. Assuming that the entry restrictions would go into effect in California, which seems likely, the service would have to check roughly 10,000 vehicles daily for compliance with California's inspection requirements. Customs would require additional resources to prevent increases in waiting times for vehicles crossing the border. We estimate that enacting H.R. 8 would cost about $700,000 in fiscal year 1999 and about $1.5 million annually thereafter for additional staff for the Customs Service, subject to the availability of appropriations. If the other eligible border States allow the act's restrictions to apply at their borders, the total cost to the service would reach $3 million annually, probably beginning in fiscal year 2000.

H.R. 8 would require GAO to prepare by July 1, 1999, a report assessing the potential impact of the bill's provisions on air quality. Based on information from the agency, CBO estimates that GAO would spend about $300,000 in fiscal year 1999 to conduct the study, assuming appropriation of the necessary amounts.

The act's provisions relating to new civil penalties could result in increased collections of civil fines. These fines are classified as revenues (governmental receipts), but CBO estimates that any such increase would be less than $500,000 annually.

Pay-As-You-Go Considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 8 could increase receipts, but CBO estimates that any such increase would be less than $500,000 annually.

Estimated Impact on State, Local, and Tribal Governments

H.R. 8 contains no intergovernmental mandates as defined in UMRA because States would not be required to take any action as a result of this act's enactment. Any costs incurred by States, which are likely to be small, would result from their decision to allow the entry restriction in the act to apply at their border.

Estimated Impact on the Private Sector

H.R. 8 would impose a private-sector mandate, as defined by UMRA, by preventing entry into the United States of certain foreign-registered vehicles in border areas that have the worst ozone

pollution problems. The Federal government would enforce this prohibition in any State that has requirements for inspection and maintenance of those vehicles as part of its State implementation plan under the Clean Air Act, unless the State opts out. In order to cross the border in those areas, drivers of those vehicles would have to prove to a Federal border agent that their vehicle is in compliance with the State vehicle inspection law. States with less severe ozone pollution problems could request Federal enforcement of the prohibition at their borders.

CBO assumes that San Diego, California, is the only ozone nonattainment area where Federal enforcement would automatically go into effect. About 10,000 people commuting to work or school using the ports of entry between Mexico and San Diego could be subject to this Federal mandate. Based on the number of vehicles affected and the likely costs of compliance, CBO estimates that the cost of complying with such a mandate would not exceed the statutory threshold established in UMRA ($100 million in 1996, adjusted annually for inflation).

Previous CBO Estimate

On July 17, 1998, CBO prepared a cost estimate for H.R. 8, as ordered reported by the House Committee on Commerce on June 24, 1998. The two versions of the legislation are identical, as are the two estimates.

Estimate Prepared by: Federal Costs: Mark Grabowicz (226–2860); Impact on State, Local, and Tribal Governments: Pepper Santalucia (225–3220); Impact on the Private Sector: Patrice Gordon (226–2940).

Estimate Approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

CLEAN AIR ACT

Public Law 159 (July 14, 1955; 69 Stat. 322) Codified under 42 U.S.C. 7401–7626.

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SEC. 183. FEDERAL OZONE MEASURES.

(a) * * *

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(h) VEHICLES ENTERING OZONE NONATTAINMENT AREAS.—

(1) AUTHORITY REGARDING OZONE INSPECTION AND MAINTENANCE TESTING.—No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a valid visa for purposes of employment or edu-

cational study in the United States, may enter a serious, severe, or extreme ozone nonattainment area from a foreign country bordering the United States and contiguous to such nonattainment area more than twice in a single 12-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area. The preceding sentence shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such requirements that are in effect and are applicable to motor vehicles of the same type and model year.

(2) SANCTIONS FOR VIOLATIONS.—The President of the United States may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200, except that in any case of repeated violations or attempted violations such penalty may not exceed $400.

(3) STATE ELECTION.—The prohibition set forth in paragraph (1) shall not apply in any State which elects to be exempt from the prohibition. Such election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) STATE ELECTION FOR OTHER NONATTAINMENT AREAS.—

(A) IN GENERAL.—In the case of a State that is contiguous with a foreign country and that contains an ozone nonattainment area (other than an ozone nonattainment area to which paragraph (1) applies), such State may elect for the prohibition described in such paragraph to apply in the State, or may elect to establish in accordance with subparagraph (B) an alternative approach to facilitate the compliance, by motor vehicles registered in foreign countries and entering such nonattainment area, with the motor vehicle inspection and maintenance requirements in effect under the applicable implementation plan in the nonattainment area and applicable to motor vehicles of the same type and model year.

(B) ALTERNATIVE APPROACH.—An alternative approach by a State under subparagraph (A) is established in accordance with this subparagraph if the Governor of the State submits to the President a written description of such approach and the President approves the approach as facilitating compliance for purposes of such subparagraph.

(C) EFFECTIVE DATE REGARDING STATE ELECTION.—If a State makes an election under subparagraph (A) for an alternative approach, the alternative approach takes effect in the State one year after the date on which the President approves the approach. If the State makes the other election under such subparagraph, the prohibition described in paragraph (1) takes effect in the State 180 days after the President's receipt of written notice from the Governor of the State notifying the President of such election.

(5) ALTERNATIVE APPROACH REGARDING SERIOUS, SEVERE, AND EXTREME AREAS.—In the case of a State containing an ozone nonattainment area to which paragraph (1) applies,

paragraph (4) applies to the State to the same extent and in the same manner as such paragraph applies to States described in such paragraph, subject to paragraph (3).

(6) DEFINITION.—For purposes of this section, a serious, severe, or extreme ozone nonattainment area is a Serious Area, a Severe Area, or an Extreme Area as classified under section 181, respectively, other than any such area first classified under such section after the date of the enactment of the Border Smog Reduction Act of 1998.

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