

Calendar No. 430

106TH CONGRESS
2D SESSION**S. 1053****[Report No. 106-228]**

To amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999.

IN THE SENATE OF THE UNITED STATES

MAY 14, 1999

Mr. BOND (for himself, Mr. GRAMM, Mr. COVERDELL, Mr. ASHCROFT, Mr. HELMS, Mr. ABRAHAM, Mr. WARNER, Mr. ROBERTS, Mr. INHOFE, Mrs. HUTCHISON, Mr. McCONNELL, Mr. COCHRAN, Mr. SESSIONS, Mr. LOTT, Mr. HUTCHINSON, Mr. SMITH of New Hampshire, Mr. BENNETT, Mr. CRAPO, Mr. SHELBY, Mr. MURKOWSKI, and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

FEBRUARY 2, 2000

Reported by Mr. SMITH of New Hampshire, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Clean Air Act to incorporate certain provisions of the transportation conformity regulations, as in effect on March 1, 1999.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. DETERMINATION OF TRANSPORTATION CON-**
 2 **FORMITY.**

3 Section 176(c) of the Clean Air Act (42 U.S.C.
 4 7506(c)) is amended by adding at the end the following:

5 “(6) DETERMINATION OF TRANSPORTATION
 6 CONFORMITY.—Notwithstanding any other provision
 7 of this section, the following provisions of title 40,
 8 Code of Federal Regulations, as in effect on March
 9 1, 1999, are incorporated in this Act: section
 10 93.102(a)(1), section 93.102(e), section
 11 93.118(e)(1), section 93.120(a)(2), section
 12 93.121(a)(1), and section 93.124(b).”

13 **SECTION 1. INAPPLICABILITY OF TRANSPORTATION CON-**
 14 **FORMITY FUNDING PROHIBITION TO CER-**
 15 **TAIN TRANSPORTATION PROJECTS.**

16 Section 176(c) of the Clean Air Act (42 U.S.C.
 17 7506(c)) is amended—

18 (1) in paragraph (1), by adding at the end the
 19 following: “For the purpose of this subsection, esti-
 20 mates of emissions from motor vehicles and necessary
 21 emissions reductions contained in a submitted imple-
 22 mentation plan may be used in lieu of an approved
 23 implementation plan if no approved implementation
 24 plan is available. If the Administrator does not deter-
 25 mine the adequacy of any estimates of emissions sub-
 26 mitted to the Administrator for use under the pre-

ceding sentence within 90 days after the date of submission of the estimates, the estimates shall be deemed to be adequate.”;

(2) in paragraph (2), by adding at the end the following:

“(E) *EXTENSION OF CONFORMITY DETERMINATION AFTER APPROVAL OF CERTAIN TRANSPORTATION PROJECTS.*—

“(i) *IN GENERAL.*—Notwithstanding subparagraphs (C) and (D), any transportation project that received an approval described in clause (iii), after compliance with subparagraph (C) or (D), may be implemented even if the Administrator subsequently determines that the conformity of the applicable transportation plan and program to the applicable implementation plan has lapsed (referred to in this subsection as a ‘conformity lapse’).

“(ii) *TRANSITION PROVISION.*—Notwithstanding subparagraphs (C) and (D), any transportation project that received an approval described in clause (iii) before March 2, 1999, may be implemented with-

1 *out any additional conformity determina-*
 2 *tion.*

3 “(iii) *TYPES OF APPROVAL.—An ap-*
 4 *proval described in this clause is—*

5 “(I) *an approval of plans, speci-*
 6 *fications, and estimates under title 23,*
 7 *United States Code;*

8 “(II) *a full funding grant agree-*
 9 *ment under chapter 53 of title 49,*
 10 *United States Code; or*

11 “(III) *an approval or authoriza-*
 12 *tion equivalent to an approval or*
 13 *agreement under subclause (I) or (II).*

14 “(F) *EXTENSION OF CONFORMITY DETER-*
 15 *MINATION FOR REVIEWED PROJECTS.—Notwith-*
 16 *standing subparagraphs (C) and (D), any trans-*
 17 *portation project for which a review under the*
 18 *National Environmental Policy Act of 1969 (42*
 19 *U.S.C. 4321 et seq.) has been completed within*
 20 *the 2-year period preceding a conformity lapse*
 21 *may be implemented for a period ending not*
 22 *later than 1 year after the date of commencement*
 23 *of the lapse.”;*

24 (3) *in paragraph (4)—*

25 (A) *in subparagraph (A)—*

1 *(i) by striking “(4)(A) No” and insert-*
 2 *ing the following:*

3 “(4) *CRITERIA AND PROCEDURES FOR DETER-*
 4 *MINING CONFORMITY.*—

5 “(A) *PROMULGATION.*—

6 “(i) *INITIAL PROMULGATION.*—*Not*”;

7 *and*

8 *(ii) by adding at the end the following:*

9 “(ii) *SUBSEQUENT PROMULGATION.*—

10 “(I) *IN GENERAL.*—*Not later than*
 11 *1 year after the date of enactment of*
 12 *this clause, the Administrator shall*
 13 *promulgate criteria and procedures for*
 14 *demonstrating and ensuring con-*
 15 *formity in the case of transportation*
 16 *plans, programs, and projects.*

17 “(II) *EFFECTIVE DATE OF PRIOR*
 18 *REGULATIONS.*—*Regulations promul-*
 19 *gated under clause (i) and in effect be-*
 20 *fore March 2, 1999, shall be in effect as*
 21 *originally promulgated, notwith-*
 22 *standing the decision of the court in*
 23 *Environmental Defense Fund v. Envi-*
 24 *ronmental Protection Agency, 167 F.3d*
 25 *641 (D.C. Cir. 1999)—*

“(aa) beginning on the date of enactment of this clause; and

“(bb) ending on the earlier of the effective date of regulations promulgated under this clause or 1 year after the date of enactment of this clause.

“(III) *APPLICABILITY OF REGULATIONS.*—

“(aa) *INITIAL REGULATIONS.*—The regulations described in subclause (II) shall apply to any conformity lapse that occurs before the effective date of regulations promulgated under subclause (I) but only until the date of promulgation of the regulations under subclause (I).

“(bb) *SUBSEQUENT REGULATIONS.*—The regulations promulgated under subclause (I) shall apply to any conformity lapse that occurs on or after the effective date of regulations promulgated under subclause (I).

1 “(IV) ACTION TO COMPEL PRO-
 2 MULGATION.—A civil action may be
 3 brought against the Administrator
 4 under section 304 to compel promulga-
 5 tion of regulations under this clause.”;
 6 and

7 (B) in subparagraph (B)—

8 (i) in clause (ii), by striking “and” at
 9 the end;

10 (ii) in clause (iii), by striking the pe-
 11 riod at the end and inserting “; and”; and

12 (iii) by adding at the end the fol-
 13 lowing:

14 “(iv) provide for a period of 90 days between—

15 “(I) the date on which a State implementa-
 16 tion plan under section 110 is disapproved; and

17 “(II) the effective date of the prohibition on
 18 approval, acceptance, or funding under this sub-
 19 section.”; and

20 (4) by adding at the end the following:

21 “(6) ACTIVITY DURING A CONFORMITY LAPSE.—

22 “(A) ATTRIBUTION OF NON-FEDERAL
 23 FUNDS.—In the case of a project for which a re-
 24 view under the National Environmental Policy
 25 Act of 1969 (42 U.S.C. 4321 et seq.) has been

completed, non-Federal funds applied toward right-of-way acquisition or design activities during a period of conformity lapse may be attributed to a State's obligated share of project funding under title 23 or title 49, United States Code, at such time as a transportation plan or transportation improvement program that includes the project is determined to conform to the implementation plan.

“(B) *MASS TRANSPORTATION PROJECTS.*—During a period of conformity lapse, the prohibition on approval, acceptance, or funding under this subsection shall not apply to the funding of any project for mass transportation (as defined in section 5302 of title 49, United States Code).”.

SEC. 2. EFFECT OF REVISED OZONE STANDARD ON CONFORMITY DETERMINATIONS.

Section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)) (as amended by section 1(4)) is amended by adding at the end the following:

“(7) *EFFECT OF REVISED OZONE STANDARD.*—

“(A) *IN GENERAL.*—Until the date described in subparagraph (B), notwithstanding any other provision of law, an area shall not be considered

1 *to be out of conformity with an implementation*
2 *plan under this Act for the sole reason that the*
3 *area is a nonattainment area under section 107*
4 *with respect to a revised national ambient air*
5 *quality standard for ozone promulgated after*
6 *January 1, 1997.*

7 *“(B) DATE.—For any area, the date re-*
8 *ferred to in subparagraph (A) is the date that is*
9 *1 year after the date on which the Administrator*
10 *determines to be adequate, with respect to the*
11 *area, the estimates of emissions from motor vehi-*
12 *cles and necessary emissions reductions con-*
13 *tained in an implementation plan, regardless of*
14 *whether the implementation plan itself has been*
15 *approved.”.*

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