

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 187 (Senator Stone)
Education, Health, and Environmental Affairs

Ozone Transport Region - Restrictions on the Sale of Products - Regulations

This bill prohibits the Maryland Department of the Environment (MDE), except under specified conditions, from adopting regulations that are based on model rules proposed or recommended by the Ozone Transport Commission that restrict the sale of a product.

The bill takes effect June 1, 2002 and is retroactive to regulations proposed or adopted on or after September 1, 2001.

Fiscal Summary

State Effect: Potential loss of federal funds if the bill results in disapproval of the State Implementation Plan for the Baltimore Area by the U.S. Environmental Protection Agency (EPA). No material effect on expenditures.

Local Effect: The bill would not directly affect local governments.

Small Business Effect: Minimal.

Analysis

Bill Summary: The prohibition set forth in the bill would not apply if: (1) at least a majority of the states within the Ozone Transport Region (OTR) have enacted laws or adopted regulations containing restrictions that are the same as the restrictions MDE proposes to adopt; and (2) the regulations include a provision that allows sellers of the restricted product to sell then existing inventories of the product for at least two years from the effective date of the regulations.

Current Law: MDE may adopt rules and regulations for the control of air pollution in the State, including testing, monitoring, recordkeeping, and reporting requirements. MDE must adopt rules and regulations that set emission standards and ambient air quality standards for each of the air quality control areas in the State.

Background: Ozone occurs naturally in the stratosphere and at that altitude protects humans and the environment from harmful ultraviolet rays, but when ozone forms at ground level, it becomes the primary ingredient of smog. Ground-level ozone is caused when strong sunlight reacts with pollutants from a variety of sources such as fumes from vehicles, lawn mowers, and boats, or emissions from power plants and industrial facilities. The main ozone-causing pollutants are volatile organic compounds (VOCs) and nitrogen oxides (NO_x). The federal Clean Air Act (CAA), as amended in 1990, requires all areas of the country to achieve specific air quality standards for ozone and to develop State Implementation Plans (SIPs) to meet those standards. CAA provides penalties for states failing to achieve the standards. Penalties include limits on new industries, loss of federal highway funds, and imposition of a federal implementation plan.

Because ground-level ozone is transported by the wind over long distances, it is a regional problem. To help develop regional solutions to reduce ground-level ozone, Congress established the Ozone Transport Commission (OTC) in 1990 as part of CAA Amendments. OTR includes Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Northern Virginia suburbs of Washington, D.C.

In December 1999, EPA informed several jurisdictions within OTR, including Maryland, that their SIPs would not provide sufficient emission reductions to attain the federal one-hour ozone standard by 2005 and 2007. EPA indicated that it would grant states additional time to implement new measures if those states pursued regional strategies to control ozone and its precursors. Accordingly, Maryland and other states with reduction “shortfalls” began to develop new regulations to significantly decrease emissions of ozone precursors in order to meet federal reduction goals. OTC has been coordinating the efforts of Northeast and Mid-Atlantic states, including Maryland, in this effort. All the states in OTR have signed a Memorandum of Understanding to have uniformity in state regulations.

Several workgroups led by OTC member states have been working with stakeholders to develop “model rules” to be used by the states to assure the implementation of uniform control measures throughout the region. Model rules have been developed for portable fuel containers, consumer products, architectural and industrial maintenance (AIM)

coatings, solvent cleaning operations, mobile equipment repair and refinishing, and additional NO_x controls for industrial boilers, cement kilns, stationary reciprocating engines, and stationary combusting engines.

MDE advises that the model rules presently being considered by Maryland to address the reduction shortfalls are those regulating emissions from portable fuel containers, consumer products, AIM coatings, and those establishing additional NO_x controls. Regulations relating to portable fuel containers were published in the Maryland Register on January 11, 2002 and took effect January 21, 2002. MDE advises that although the regulations prohibit the sale of portable fuel containers not meeting specified requirements after January 1, 2003, they allow retailers an additional year to sell then existing non-compliant inventories and to apply to MDE for variances if significant inventories of non-compliant products remain and extraordinary hardships result beyond that date. Regulations relating to consumer products were approved by the Air Quality Control Advisory Council on January 7, 2002 and are in preparation for public hearing. Regulations for AIM coatings and NO_x controls have not yet been proposed by MDE so details are unknown; MDE advises that it will hold public hearings related to those regulations during the summer and fall of 2002.

State Fiscal Effect: By prohibiting MDE, except under specified conditions, from adopting regulations based on model rules developed by the OTC that restrict the sale of a product, the bill could delay and possibly prevent the implementation of various measures necessary to achieve federal emission standards for ozone. If Maryland fails to meet those standards, EPA could disapprove the SIP for the Baltimore Area. Should this occur, EPA could impose sanctions on the State, which could result in a loss of federal highway funds.

Small Business Effect: Based on the estimated cost of the regulations relating to portable fuel containers, the bill is not anticipated to have a significant impact on small businesses. Although the regulations are expected to impose additional costs on manufacturers, MDE advises that there are no manufacturers of portable fuel containers in the State. Assuming depletion of existing inventories during the one-year sell-through period or via the variance procedure if necessary, the regulations are not expected to have a significant impact on retailers. The average cost of a portable fuel container, in sizes ranging from one gallon to six gallons, will increase approximately \$6 to \$11 per container. Any such costs would likely be passed on to consumers because of the low relative price and the lack of available substitutes to the consumer.

Small businesses could benefit as a result of the bill if the bill prevents the future adoption of regulations that would otherwise have a significant impact on those businesses.

Additional Information

Prior Introductions: None.

Cross File: None, although HB 112 (Delegate Owings, *et al.*) – Environmental Matters, is identical.

Information Source(s): Maryland Department of the Environment, U.S. Environmental Protection Agency, Department of Legislative Services

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