



EPN Comments on Ozone Reclassification State Implementation Plan Rule EPA-HQ-OAR-2025-0201 July 13, 2026

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Introduction

EPA sets National Ambient Air Quality Standards (NAAQS) to protect public health with an adequate margin of safety from air pollution. Under the ozone NAAQS, areas are classified based on the severity of their ozone problem. Areas with higher classifications have longer deadlines to attain the standards and additional requirements. EPA regularly reclassifies areas to higher classifications when they fail to attain by the lower classification's attainment date.

In a rule finalized in January 2025, EPA clarified several aspects of which State Implementation Plan (SIP) requirements applied and which did not when an area is reclassified to a higher level of nonattainment. The SIP requirements in section 182 of the Clean Air Act (CAA) escalate and build on one another as the level of severity of the ozone air quality increases. In the 2025 rule, EPA acknowledged that some provisions of an earlier classification do not make sense as they are overtaken by the more aggressive requirements of the higher classification. However, EPA also recognized that the law should not be interpreted to allow backsliding or provide states an incentive to delay putting measures in place by the date required by its initial classification. In this 2026 proposal, EPA proposes changes that throw those two considerations aside without adequate rationale.

EPA's New Best Reading

EPA is once again reversing a prior regulatory position simply by claiming that its new reading of the statute is the “best reading” of the CAA. Why is it better than the reading adopted in the agency's January 2025 rule?¹ How can it be best when, as discussed below, EPA is ignoring other key provisions of the CAA? EPA seems to take the unsupported position that it's “best” because they now say so. The fact that it is deregulatory in nature (as EPA acknowledges on page 35643) does not make it the best reading of the statute. Clarifying one aspect of the admittedly complex statutory scheme while ignoring other key provisions also does not make it the best reading.

As discussed further below, this proposal ignores several key provisions of the CAA – most notably, the Congressional intent that the country make reasonable further progress towards meeting air quality standards. By attempting to simplify the requirements of the Act, EPA is re-writing the statute based on pre-conceived and unsupported notions of its desired outcome and then declaring it to be the “best” reading. In effect, EPA has said, we want to weaken air pollution and public health standards, how can we reverse engineer the process to achieve this? Instead of making reasonable tweaks to the process as the January 2025 rule did, EPA is now proposing to throw the baby out with the bathwater by removing all

¹ 90 FR 5651.

requirements from lower classifications when an area fails to meet the air quality standards and must by law be reclassified to a higher classification.

Other CAA Requirements

EPA is ignoring key statutory authorities to make it so all states automatically achieve a passing grade, regardless of the continuing unhealthy pollution levels. EPA is promoting attainment carte blanche, as section 179 of the Act is titled “Sanctions and consequences of failure to attain.” Of note are the sanctions associated with the failure to submit certain required SIP elements in this provision. An area is reclassified only when it fails to meet its attainment deadlines. Additionally, CAA section 110(c) requires the promulgation of a federal implementation plan if a state has failed to make a required SIP submission. With this proposed action, EPA is attempting to ignore these two powerful “sticks” intended to achieve important emission reductions. Instead, EPA is proposing to reward states for delaying action (e.g., being reclassified because they failed to attain the standards) to promote public health by removing legacy SIP requirements.

To illustrate this problem, we offer the following example. An area in State A is designated Marginal nonattainment in Year 0 and must submit a SIP with Marginal elements within two years. When that deadline arrives, State A submits nothing, and the Act requires EPA to issue a finding of failure to submit (FFS) shortly thereafter (although in the real world, EPA has taken six or more months to issue the finding). Meanwhile, because the state has taken no steps to reduce emissions, air quality has stagnated or worsened.

An FFS starts both a sanctions clock and a two-year deadline for EPA to issue a federal implementation plan. But by that point, the Marginal attainment date is only one year away. When the area inevitably fails to attain by the Marginal deadline, the Act requires EPA to reclassify the area by operation of law to Moderate (although in the real world, EPA has taken many months or, in some cases, years to issue this reclassification action). Under EPA’s new interpretation, the missed Marginal requirements simply disappear and are folded into a later Moderate SIP submission. As a result, the original basis for the FFS, sanctions, and FIP obligation is effectively erased, allowing the state to avoid any planning or emission-reduction requirements during the entire Marginal period. This is the opposite outcome envisioned by the Act’s text, purpose, and structure.

The same cycle can then repeat at least two more times because the Moderate and Serious periods are also three years long. Due 18 months after reclassification to Moderate, State A submits nothing again. This triggers another FFS only to have those obligations again reset upon reclassification to Serious before sanctions or a FIP are imposed. By continuing this pattern through successive reclassifications, a state could reach Severe nonattainment nearly a decade after the original nonattainment designation without ever implementing the Act’s required planning measures or emission reductions, undermining both the statute’s structure and its deadlines.

Reasonable Further Progress

EPA is ignoring the reasonable further progress provisions of the CAA: The layout of Subpart 2 - Additional Provisions for Ozone Nonattainment Areas is based on the concept of states with nonattainment areas making incremental progress (reasonable further progress) towards meeting the ozone standards. The words “reasonable further progress” are, in fact, clearly noted in, for example, sections 181(b)(1) and 181(c)(2). EPA’s proposed action would remove any obligation for states to make reasonable further progress by continuing to delay the submission of key emission-reduction measures, such as

Reasonably Available Control Technology. As noted above, Congress clearly wanted states to adopt such incremental measures by requiring the Administrator to impose sanctions under CAA section 179 (and, additionally, to adopt a federal plan under Section 110(c)), if a state was negligent in its duties.

Anti-Backsliding

EPA in this proposal is reading the anti-backsliding requirements out of the CAA in sections 110(l) and 172(e). The proposal effectively transfers responsibility for reducing pollution from upwind states to downwind states that these antibacksliding provisions were intended to reduce.

Reliance Interests

EPA has also failed to meaningfully or adequately consider reliance interests. With two brief sentences on page 35643 and no evidence whatsoever, EPA declares that no “members of the public” have a reliance interest in the January 2025 final rule. Yet surely the public has a very significant interest in air quality that meets the ozone air quality health standard. As this proposal would result in delayed implementation of clean air measures, a more thorough consideration of reliance is warranted before it is summarily dismissed. In fact, evidence to the contrary can be found in comments submitted on the October 2024 proposed rule that supported the “leftover” SIP requirements policy.

For all of the reasons above, EPN opposes finalization of this proposal.