

Submitted online via: <https://www.regulations.gov/>

July 13, 2026

U.S. Environmental Protection Agency
EPA Docket Center
Docket ID Number: EPA-HQ-OAR-2025-0201
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: U.S. Environmental Protection Agency's Proposed Rule: "*Ozone Reclassification State Implementation Plan Rule*" (Docket ID No. EPA-HQ-OAR-2025-0201), 91 FR 35639 (June 12, 2026)

To Whom It May Concern:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule "*Ozone Reclassification State Implementation Plan Rule*" 91 FR 35639 (June 12, 2026).

ADEQ was established under the Environmental Quality Act of 1986 by the Arizona State Legislature as the state's cabinet-level environmental agency. ADEQ carries out several core functions including: planning, permitting, compliance, management, monitoring, assessments, cleanups, and outreach. ADEQ's mission is to protect and enhance public health and the environment.

This comment letter addresses ADEQ's opposition to EPA's proposal. First, ADEQ presents a background of EPA's relevant rulemakings. Second, ADEQ believes EPA's proposed rule would allow States and other planning agencies to effectively delay ozone nonattainment requirements for years. Third, ADEQ does not agree with EPA's proposed reading of the Clean Air Act (CAA) that there can only be one classification at a time. Fourth, ADEQ would support a revised version of EPA's proposal that makes it clear that approved SIP elements do not need to be resubmitted upon an area's reclassification in order to reduce planning burden, provided such a proposal is adequately protective of human health and the environment. Fifth, ADEQ is concerned with the lack of cooperative federalism and dialogue with State partners in developing this proposal.

I. Regulatory Background

On October 4, 2024, EPA proposed deadlines for submission of State Implementation Plan (SIP) revisions and implementation of the relevant control requirements that would apply to nonattainment areas classified as moderate, serious, and severe under the current or future ozone national ambient air

quality standard (NAAQS), as a result of either failing to attain by the applicable attainment date or EPA granting a voluntary reclassification request.¹

On January 17, 2025, EPA finalized its proposal.² This final rule established in 40 Code of Federal Regulations (CFR), Part 51, Subpart DD, the requirements for reclassified ozone nonattainment areas. Specifically, 40 CFR § 51.1403 provides that upon the effective date of reclassification, the requirements of any subpart of Part 51 with respect to ozone are unaffected by the reclassification and continue to be required by the former classification with two exceptions. First, the attainment demonstration and the demonstration of adopting all reasonably available control measures (RACM) necessary to demonstrate attainment, are no longer applicable with respect to the former attainment date.³ Second, if the reclassification became effective prior to the former attainment date pursuant to CAA § 181(b)(3), the plan requirement for contingency measures for failure to attain by such date is no longer applicable with respect to the former attainment date.⁴

On June 3, 2025, EPA announced plans to reconsider its January 17, 2025 final rule. On September 15, 2025, EPA announced the subject of its reconsideration would be the unresolved requirements applicable to the former classification after reclassification (which EPA refers to as the “leftover” SIP requirements).

On June 12, 2026, EPA proposed to reconsider its 2025 final rule.⁵ In this new proposal, EPA is putting forward a new interpretation of CAA § 182 that would apply to past and future reclassifications associated with the 2008, 2015, and any future ozone NAAQS. Specifically, EPA is proposing to revise 40 CFR § 51.1403 to provide that an area’s new classification level governs which SIP requirements are applicable to that area, rather than the prior classification. To illustrate this, EPA provided the following example:

For example, for an area that is reclassified from Moderate to Serious, the State is required to submit only Serious area requirements because the area is now Serious, and a single nonattainment area can be subject to only one nonattainment classification at any point in time for the same ozone NAAQS. However, per the instruction in CAA section 182(c), States with Serious nonattainment areas are required to make the SIP submissions described under CAA section 182(a) and (b) [marginal and moderate area requirements] in addition to the other submissions described under CAA section 182(c). The newly classified Serious area does not escape the Moderate area requirements. The State must

¹ 89 FR 80833 (Oct. 4, 2024).

² 90 FR 5651 (Jan. 17, 2025).

³ 40 CFR § 51.1403(a)(2).

⁴ 40 CFR § 51.1403(a)(3).

⁵ 91 FR 35639 (June 12, 2026).

submit the Serious area SIP elements, which necessarily include all of the Moderate area SIP elements, on the timeline that accords with the new Serious area classification.⁶

In addition, EPA proposes that the reclassification would stop sanctions and Federal Implementation Plan (FIP) clocks, as they would no longer be considered a required SIP element triggered by the lower classification.⁷

EPA argues this position is supported by the text of CAA § 182. EPA argues that the text and structure of the statute make plain that areas can only be subject to one classification at a time for an ozone NAAQS, which is the area's current classification. Because an area can only be subject to a single classification for an ozone NAAQS at any given time, the EPA proposes that an area can only be subject to the SIP submittal and implementation requirements associated with its current classification (and not its prior classification).

Additionally, EPA proposes that if a State has already satisfied a required SIP element for an area's new classification level for that NAAQS at a time when the area was at a lower classification, the EPA is proposing that the requirement would be considered fulfilled and would not be triggered again upon reclassification. EPA provides an example of this proposal:

For instance, under CAA section 182(a)(1), States with Marginal areas are required to submit a baseline emissions inventory. Upon reclassification, Moderate area SIPs are to meet the requirements under CAA section 182 (a) and (b). However, the EPA is proposing that a State with an area reclassified from Marginal to Moderate would not need to resubmit a baseline emissions inventory if the State already submitted that requirement when the area was classified as Marginal.⁸

EPA now proposes that its prior interpretation of the CAA as imposing cumulative obligations that continue to apply upon reclassification is not the best possible reading of the statute.

II. EPA's proposed change with respect to FIP and Sanctions Clocks would allow States to delay implementing ozone nonattainment requirements for years, if not decades

ADEQ disagrees with EPA's proposal as it relates to both sanctions and FIPs following reclassification. EPA's proposal states that upon reclassification, pending sanctions and FIP clocks would be stopped.⁹ This change would, as a practical matter, remove one of the main tools available to EPA or to citizens filing lawsuits to compel States to meet their CAA requirements, jeopardizing human health as a result. For ozone, where interstate transport remains a challenge nationally,

⁶ *Id.* at 35642.

⁷ *Id.* at 35646.

⁸ *Id.* at 35644.

⁹ *Id.* at 35646.

removing tools to compel upwind states to reduce anthropogenic emissions of ozone and ozone precursors is inconsistent helping Western States address regional ozone challenges.

In order to illustrate the potential worst-case outcomes possible under EPA's proposal, please see the hypothetical scenario presented in Appendix A, below. EPA's reading of the CAA has the potential to delay action for over 20 years following promulgation of a new or revised NAAQS, and is so absurd that it constitutes an impermissible reading of the CAA. In review statutory interpretations, Courts have said, "It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."¹⁰ As illustrated in Appendix A, EPA's proposal would produce absurd results in that it allows States to effectively delay planning obligations for decades. EPA's 2025 interpretation (currently codified at 40 CFR § 51.1403), and historical practices preclude States from enacting this kind of delay through imposition of FIPs and sanctions. Therefore, EPA's proposed rule cannot stand as there are alternative interpretations available to EPA that would not create the results illustrated in Appendix A.

While the scenario presented in Appendix A would eventually result in an area being reclassified to extreme, it is possible that States (and some stakeholders) would accept an extreme designation if it provided a generation or more worth of delay to avoid compliance costs, though at the expense of public health outcomes. Quite simply, reducing planning burdens does not offset the risks to human health and the environment. The core mission of air planning agencies is protecting human health and the environment, not maximizing administrative convenience.

III. ADEQ disagrees with EPA's proposed reading of the CAA.

ADEQ disagrees with the EPA's reading that the CAA does not impose cumulative obligations. As described above, the best reading of the statute cannot be one that would allow for States to effectively avoid their obligations for decades.

As EPA noted, in its 2025 final rule:

CAA section 182(i) governs the Act's requirements for areas reclassified by operation of law. Specifically, CAA section 182(i) states that areas that are reclassified due to failure to timely attain by the attainment date "shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the submissions." Subsections (b) through (d) of CAA section 182 cover the required SIP revisions for Moderate (182(b)), Serious (182(c)), and Severe (182(d)), and those requirements are generally cumulative. *See, e.g.*, CAA section 182(b) (requiring Moderate areas to make submissions relating to Marginal areas in addition to the revisions for

¹⁰ Griffin v. Oceanic Contractors, 458 U.S. 564, 575 (1982)

the Moderate classification). The SIP revisions, control measures, and timing of such submissions and controls are intended to, among other things, ensure that areas will attain the NAAQS as expeditiously as practicable, but no later than the applicable attainment date. As discussed in more detail later in this document, most SIP requirements are not dependent on the attainment date itself, but certain SIP requirements are inherently tied to the applicable attainment date and therefore are no longer required for the lower classification after the area is reclassified.¹¹

The cumulative nature of planning requirements is a core piece of ozone nonattainment planning and allows states to build their SIP requirements over time and react appropriately if an area has failed to attain the relevant ozone NAAQS. EPA's proposed reading of the statute conflicts with the text of CAA § 182 and undermines the progression built into the CAA's structure. Therefore, ADEQ urges EPA to retain its 2025 interpretation as the best reading of the CAA.

IV. EPA should amend its proposal to only reflect that EPA approved SIP elements from lower classification do not need to be resubmitted to EPA.

ADEQ believes that EPA should amend its proposal in a way that gives States credit for submitted and approved SIP elements while still requiring States to submit any missing or disapproved elements for the lower classification to EPA. In order to assure that States are meeting their CAA requirements, credit for previously submitted items should be conditional on EPA approval of the corresponding nonattainment SIP requirements.

In EPA's proposed rule a State would not be required to submit a required SIP element for an area's new classification if the element was already submitted for a lower classification. The requirement would be considered fulfilled and would not be triggered anew upon reclassification to minimize rework required by the reclassification. EPA's rulemaking suggests that the submittal of a previously required SIP element, regardless of whether it has been approved, would satisfy that requirement and eliminate the need to resubmit the same SIP element upon reclassification. This interpretation is reflected in EPA's statement that:

“... the EPA is proposing that a State with an area reclassified from Marginal to Moderate would not need to resubmit a baseline emissions inventory **if the State already submitted that requirement when the area was classified as Marginal.**”¹²

However, this approach would not ensure that the submitted elements for the lower classification meet CAA requirements and are protective of human health and the environment. Therefore, ADEQ requests that EPA amend its proposal to state that only EPA approved elements would be considered fulfilled and not triggered again upon reclassification.

¹¹ Note 2, *supra*, at 5653.

¹² *Id.* at 35644 (emphasis added)

V. EPA's proposal does not reflect cooperative federalism.

In general, ADEQ appreciates the time and effort EPA invests in outreach to its state partners, as co-regulators under the CAA. However, in this instance, ADEQ notes that EPA did not engage in any meaningful outreach to States in the development of this proposal. Additionally, the 30 days provided as the comment period for this rulemaking are inadequate to fully analyze and respond to EPA's proposal. The lack of dialogue with State partners and the short comment period frustrate the purpose of cooperative federalism. This is especially true when EPA has proposed a change as significant as the one contained in its proposed rule. Therefore, ADEQ urges EPA to open a constructive dialogue with States on this proposal before proceeding further, in order to allow for a more robust process to develop alternatives that could meet EPA's objectives while still remaining protective.

VI. Conclusion

ADEQ appreciates the opportunity to provide these comments on EPA's proposed rule "*Ozone Reclassification State Implementation Plan Rule*" 91 FR 35639 (June 12, 2026). ADEQ opposes EPA's proposed reading of the statute as it could allow States to avoid implementing nonattainment planning requirements for ozone for many years without consequences. However, ADEQ is supportive of changes that could reduce planning burdens following a reclassification, as long as those changes remain protective of human health and the environment.

Thank you for your consideration of ADEQ's comments. If you have any questions, please contact me at (602) 771-4684 or czecholinski.daniel@azdeq.gov.

Sincerely,

Signed by:

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Daniel Czecholinski, CHMM
Director, Air Quality Division

Appendix A:

The purpose of this Appendix is to illustrate why EPA's proposed interpretation is not (as they've described it as) "the best reading of the statute" because it would effectively allow a State to delay action on air quality for over a generation. This is a result that is clearly inconsistent with the legislative purpose of CAA § 182. It also effectively strips citizen lawsuits of the ability to find judicial relief if a State does not take its legally required actions.

We can use the 2015 ozone national ambient air quality standard (NAAQS) as a hypothetical thought experiment to see how EPA's new interpretation would have played out if it existed at that time. For this thought experiment, let us assume our fictional area, Area 51, is located in the 51st State ("State 51"), and State 51 has not previously been designated as nonattainment for any other NAAQS due to its agrarian nature and lack of industrial source or mobile source emissions. However, under new leadership of Governor 51 the State experiences a rapid decline in air quality. **(This hypothetical situation is fictional. Any resemblance to persons living or dead or geographic locations is purely coincidental.)**

Fictional Background:

Effective December 28, 2015, EPA promulgated the revised 2015 ozone NAAQS.¹³

On August 3, 2018, EPA designated areas throughout the country as nonattainment for the 2015 ozone NAAQS. Among these areas, the Area 51 NAA was designated as a marginal nonattainment area.

As part of its rulemaking, EPA established the attainment date for marginal, moderate, and serious NAAs as three years, six years, and nine years, respectively, from the effective date of the final designations. Thus, the attainment date for marginal NAAs for the 2015 ozone NAAQS was August 3, 2021, the attainment date for moderate areas was August 3, 2024, and the attainment date for serious areas is August 3, 2027. Severe and extreme attainment dates would likewise be August 3, 2033 and August 3, 2038.¹⁴

Additionally, EPA set deadlines for when nonattainment requirements would be due:

Accordingly, states with areas designated nonattainment have 2 years from the effective date of nonattainment designation to submit SIP revisions addressing emission inventories (required by CAA section 182(a)(1)), RACT (CAA section 182(b)(2)) and emissions statement regulations (CAA section 182(a)(3)(B)); 3 years to submit SIP revisions addressing 15 percent rate of progress (ROP) plans (CAA section 182(b)(1)) and Moderate area attainment demonstrations (CAA section 182(b)(1)); and 4 years to submit SIP revisions addressing 3 percent per year RFP plans (CAA section 182(c)(2))

¹³ 80 FR 65292 (Oct. 26, 2015).

¹⁴ CAA § 181(a)(1).

and attainment demonstrations (CAA section 182(c)(2)) for Serious and higher areas, where applicable. If an area is subject to vehicle inspection and maintenance (I/M) program requirements based on its classification, the SIP revision due date, codified in 40 CFR 51.372(b)(2), would be aligned with the due date for the attainment demonstration SIP for the area. The SIP revisions addressing CAA section 185 penalty fee programs in areas initially classified Severe or Extreme would be due 10 years from the effective date of designations. Finally, SIP submissions addressing nonattainment NSR would be due 3 years from the effective date of designations.¹⁵

Based on the initial designation of a marginal nonattainment area, a nonattainment area SIP revision addressing required elements such as: 1) RACM; 2) provisions to require permits in accordance with CAA §§ 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the area; 3) periodic emission inventory updates; and 4) 1.1 to 1 emission offset requirement for VOCs.¹⁶ Based on EPA's above rule and the CAA, the State 51 would be required to submit a NAA SIP revision containing these elements to EPA no later than August 3, 2020, with the marginal attainment date of August 3, 2021.

Pursuant to CAA § 110(a), the State 51 submits its infra-structure SIP (I-SIP) revision to EPA in December 2018.

However, Governor 51 directs the State 51 Air Department (SAD) to not develop or submit a nonattainment area SIP revision addressing these elements arguing these requirements would limit economic growth in the State 51. Based on Governor 51's direction, the SAD does not develop any of the requirement elements for a SIP including its NNSR program as required by CAA § 182(a).

Under CAA § 110(k), EPA is required to issue a finding of failure to submit for States that have not made a complete submittal to EPA. If this finding is not corrected, EPA is required to issue a Federal Implementation Plan (FIP) and sanctions. However, EPA is slow to propose a FIP and misses its statutory deadline to do so.

Residents living in the Area 51 NAA bring a lawsuit to compel EPA to issue a finding of failure to submit in order to establish a sanctions clock and FIP clock. Eventually, the residents and EPA reach a settlement agreement to promulgate the finding of failure to submit by May 2022. Once issued, this final rule would start the 18 months offsets clock (ending December 2023) and the 24-month FIP clock (ending May 2024).

As a result of the lack of SIP planning and control measures, the ozone design value of the Area 51 NAA remains above the 2015 NAAQS. By statute, EPA is required to issue determinations of attainment within 6 months of the attainment date, or in this case February 7, 2022.

¹⁵ 81 FR 81276, 81278 (Nov. 17, 2018). (internal citations footnotes omitted)

¹⁶ CAA § 182(a).

In May 2022, EPA issued its finding that the SAD failed to submit its marginal area SIP revision. This action established the December 2023 sanctions clock and the May 2024 FIP clock.

On October 7, 2022 (effective Nov. 7, 2022), EPA finalized its determination that the Area 51 NAA failed to attain the 2015 ozone NAAQS, and was therefore reclassified by operation of law to a moderate NAA.

Under EPA's proposed rule, five things happen as a result of the reclassification:

1. EPA's moderate nonattainment area SIP elements would be due in accordance with the deadline applicable to reclassified moderate areas unless EPA specifies otherwise, the applicable submittal and implementation deadlines for moderate area plans would remain the default provided for in 40 CFR § 51.1402 (unless otherwise specified by EPA). As the reclassification was effective November 7, 2022, SAD would have a deadline to submit its moderate area plan to EPA no later than May 7, 2024. The Area 51 nonattainment area SIP revision would need to meet the requirements of both CAA 182(a) (marginal) and (b) (moderate). The attainment date for the moderate area would be August 3, 2024.
 - a. "Upon reclassification from Marginal to Moderate, a nonattainment area is subject to the requirements under CAA section 182(b). Requirements from CAA section 182(a) must be included in the SIP submission for Moderate areas pursuant to CAA section 182(b). Specifically, NNSR, baseline emissions inventories, emissions statements, and periodic emissions inventory updates are all requirements pursuant to CAA section 182(b). A State with a reclassified area is required to submit a plan that meets all these requirements in accordance with the deadlines applicable to the reclassification status."¹⁷
2. The SAD would not be required to submit any of the unmet marginal area requirements in the context of a marginal area plan. These planning elements would then be required as part of the moderate area nonattainment plan.
 - a. "If a State had yet to submit a Marginal area requirement upon reclassification to Moderate or higher classification, the EPA is proposing that it would no longer be required to submit that Marginal area requirement in the context of a Marginal area plan. If the EPA issued a finding of failure to submit a complete SIP for any Marginal SIP elements, the Agency is proposing that the finding would be moot as the Marginal elements would no longer be required SIP elements upon reclassification. After the reclassification, the area is no longer Marginal, and the EPA is proposing that there is no obligation to submit a SIP revision to meet requirements for the now extinguished classification."¹⁸
3. Additionally, applicable sanctions clocks would be stopped pursuant to 40 CFR § 52.31.

¹⁷ *Supra* note 5 at 35646.

¹⁸ *Id.*

- a. “If the EPA disapproved a Marginal area requirement, upon reclassification to Moderate or higher classification the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR 52.31.”¹⁹
4. Under EPA’s new policy a FIP would no longer be required because the element would no longer be considered a required SIP element triggered by a Marginal classification.
 - a. “The EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by a Marginal classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Moderate or higher classification plan.”²⁰
5. The residents’ lawsuit, and subsequent settlement agreement with EPA, would effectively be mooted due to the reclassification, as the sanctions and FIP clocks would be stopped.

Learning from the challenges created by not submitting a SIP revision, Governor 51 instructs SAD to submit a complete, and yet unapprovable, SIP revision to EPA. SAD submits a complete moderate area SIP revision to EPA on August 7, 2024 - three months after the deadline. EPA would then have 18 months (or until March 3, 2026) to act on SAD’s SIP revision.

On January 7, 2025, EPA proposed to disapprove SAD’s ozone SIP revision.

On February 7, 2025, EPA proposed to find that the Area 51 NAA failed to attain the 2015 NAAQS. On September 8, 2025, EPA finalized its disapproval of SAD’s SIP revision, which commences both a sanctions clock and FIP clock.

Similar to its moderate area finding of failure to attain, EPA promulgates its final rule on October 7, 2025 (effective Nov. 7, 2025). This final rule reclassifies the Area 51 NAA to a serious NAA with an attainment date of August 3, 2027.

EPA’s proposed approach states: “If the EPA disapproved a Moderate area requirement, upon reclassification to Serious or higher classification the Agency anticipates not needing to rescind or withdraw that disapproval, but associated sanctions clocks would be stopped pursuant to 40 CFR § 52.31. The EPA is proposing that the Agency would not be obligated to promulgate a FIP because the element would no longer be considered a required SIP element as triggered by a Moderate classification. A revised SIP submission addressing that element would be evaluated anew by the EPA as part of the Serious or higher classification plan.” Based on EPA’s proposed interpretation, the disapproval would remain but no threat of sanctions or a FIP would remain after reclassification. The SAD would theoretically be required to include those missing marginal and moderate area requirements in their serious area SIP.

¹⁹ *Id.*

²⁰ *Id.*

Under 40 CFR § 51.1402, the serious area plan would be due November 7, 2027. Under EPA's proposed approach, the State 51 SAD could continue this same methodology of either not submitting, or intentionally submitting unapprovable SIP revisions to avoid imposing any controls or permitting program on the Area 51 NAA.

Assuming each reclassification/SIP submittal cycle takes approximately 5-6 years to complete before the area is reclassified to its next higher classification, the area could potentially extend its period of no additional controls under CAA Title I, Part D, Subpart 2 until approximately 2038-2040. At this point, the area would be reclassified to extreme and the Area 51 NAA would no longer be able to avoid either: 1) submitting an extreme nonattainment area SIP revision addressing the requirements for a marginal, moderate, serious, severe and extreme at once; or 2) face a FIP, along with sanctions.

Discussion:

As a note, many of the dates selected for this hypothetical assume that EPA is largely timely with its findings of failure to attain/redesignation actions. However, this time could be longer depending on delays caused by federal inaction or time involved in litigation. Alternatively, some of these time frames could be shortened if EPA acts quickly to issue findings of failure to submit, determinations of attainment, or approvals/disapprovals of SIP revisions.

It should also be noted that if legal action threatens to move too quickly, the could also seek to voluntarily reclassify early to moot actions seeking to impose a FIP or sanctions. This would shorten the overall timeline, but would avoid near term nonattainment area air pollution control requirements.

This presents an absurd result that easily allows a state to effectively take no action in controlling air pollution for almost 20-25 years following the promulgation of a new NAAQS. This kind of delay has real-world consequences, by increasing the risk of avoidable illness, death and environmental harm within the NAA. It is an absurd reading of the CAA to produce a result that can delay any action for more than a generation, while at the same time avoiding meaningful judicial review of this inaction.

While this pathway may have significant long-term political and economic consequences, including the potential for Area 51 to be reclassified as an extreme ozone nonattainment area, those consequences may not be realized until after Governor 51's term in office is over. In the short term, this potential outcome would save regulated industries money from having to comply with CAA requirements. While controls would eventually be required, it would not be for many years and some stakeholders may have different discount rates that prioritize short term returns over long term costs.

Compared to EPA's prior interpretation, which created rolling progress as lower classification requirements become due and enforceable either through a FIP, sanctions, or judicial review, EPA's current proposal is so markedly absurd as that it undermines the structure of the SIP program.