November 5, 2026

U.S. Environmental Protection Agency
EPA Docket Center, Office of Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Submitted electronically via Regulations.gov and e-mail

RE: Public Interest Organizations' comments regarding Initial Air Quality Designations for the 2024 Revised Primary Annual Fine Particle (PM2.5) National Ambient Air Quality Standards (NAAQS), Docket ID No. EPA-HQ-OAR-2024-0078

The Natural Resources Defense Council, Earthjustice, Environmental Defense Fund, Southern Environmental Law Center, Citizens for Pennsylvania's Future, Clean Air Council, CleanAIRE NC, Environmental Law & Policy Center, Kentucky Resources Council, Sierra Club, Center for Biological Diversity, National Parks Conservation Association, Alliance of Nurses for Healthy Environments, California Community Against Toxics, RiSE4EJ, Respiratory Health Association, WE ACT for Environmental Justice, Savannah Riverkeeper, Southern Alliance for Clean Energy, California Safe Schools, Comite pro Uno, Desert Citizens Against Pollution, and Citizen's for Pennsylvania's Future (together, "Public Interest Organizations") submit these comments regarding the U.S. Environmental Protection Agency's (EPA) intended approach for area designations under the 2024 Revised Primary Annual Fine Particulate Matter (PM2.5) National Ambient Air Quality Standards (NAAQS)**,** 91 Fed. Reg. 63,516 (Oct. 6, 2026).

The 2024 PM2.5 NAAQS provide important lifesaving and health protections for the public. As the science clearly shows, there are serious PM2.5 health effect associations with mortality and/or morbidity across diverse populations.[1] Both the general population, as well as disproportionately children and older adults, people with pre-existing respiratory or cardiovascular disease, people of color, and low socioeconomic status populations, are at risk of PM2.5-related health effects due to existing concentrations of this pollutant in the ambient air. These health effects include increased risk of cardiovascular disease, respiratory disease, and premature death.[2]

The 2024 PM2.5 NAAQS, which was upheld by the U.S. Court of Appeals for the D.C. Circuit as lawful and well-grounded, is foundational to protecting Americans from these serious health risks. A crucial step in ensuring that the public has the benefit of those protections is EPA

[1] 89 Fed. Reg. 16202 at 16219.
[2] *Id*.

properly designating all areas in the country based on whether ambient concentrations of PM2.5 meet or exceed the NAAQS. Particularly, areas with concentrations that are in violation of the 2024 PM2.5 NAAQS, or areas that contribute to a nearby area with a violation, must be properly designated as "nonattainment". Properly designating such areas as nonattainment ensures that States (and local agencies, as applicable), Tribes, and EPA are required to implement appropriate emission reduction measures in order to protect the health of people living, working, and recreating in these areas. Contemporaneously with promulgating the 2024 PM.25 NAAQS, EPA issued a memorandum detailing the approach it intended to follow for making designations.[3] That guidance is consistent with the approach to designations that EPA has taken for several decades, under which EPA examines five key factors in assessing the boundaries of a nonattainment area, and EPA has never withdrawn it or suggested it intends to follow any other approach. The agency would face an especially high hurdle to depart from its consistent, longstanding approach, and EPA has not come close to clearing that hurdle.

Based on the certified 2023-2025 design values that EPA published in June 2026,[4] EPA has sufficient information at this time to designate all areas in the country as required by the Clean Air Act. As detailed below, EPA unlawfully suggests that in promulgating final designations it can change those values based on new information, such as air quality monitoring adjustments and untimely exceptional event demonstrations. For the reasons described in these comments, EPA may not rely on such new information without providing an opportunity for public comment on how it impacts EPA's final designations. The undersigned Public Interest Organizations urge EPA to properly designate areas in a manner consistent with the statute, EPA's own regulations, and guidance that the agency issued regarding these designations.

I. EPA's Notice of Availability and 120-Day Letters Do Not Meet Applicable Legal Requirements

The public comment opportunity that EPA has provided on its intended designations for the 2024 PM2.5 NAAQS presents insufficient information as to EPA's intended modifications in promulgating the final designations. The insufficiency of EPA's notice unlawfully and arbitrarily deprives the public of the opportunity to meaningfully evaluate and comment on the intended designations. Additionally, EPA's 120-day letters ask states to provide information by November 1, 2026, that could affect the final designations. It is patently unreasonable for the public to

[3] EPA, Initial Area Designations for the 2024 Revised Primary Annual Fine Particle National Ambient Air Quality Standard, Memorandum from Joesph Goffman, Assistant Administrator (February 7, 2024) ("Goffman Memo"). Available at Attachment A.

[4] EPA issued certified 2023-2025 design values on June 12, 2026, available at https://www.epa.gov/air-trends/air-quality-design-values#report. Available at Attachment B. EPA subsequently posted a different set of 2023-2025 design values in the docket for this rulemaking. The values materially differ from the ones posted on June 12, 2026, and EPA provides no information as to how they were generated or relate to the June 12, 2026 report. *See* section II.C of this comment for further discussion.

digest and provide comments on this new information in the four days that remain after this submission deadline and the close of the public comment period on November 5, 2026.

The Administrative Procedure Act requires an agency conducting notice-and-comment rulemaking, as EPA has chosen to do here, to publish in its notice of proposed rulemaking "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U. S. C. §553(b)(3). "The object, in short, is one of fair notice," yet EPA has failed to provide such fair notice here.[5] It is fundamental administrative law that "a prerequisite to the ability to make meaningful comment is to know the basis upon which the rule is proposed."[6]

However, described further in this comment letter, EPA provides zero indication of what its intended designations, including nonattainment boundaries, will be for areas with monitors that show NAAQS violations or areas that are contributing to a nearby violation. EPA further suggests that in promulgating final designations, it may consider information that has *not* been submitted, such as monitoring data adjustments and consideration of exceptional events information. Without any notice of what the 2024 $PM_{2.5}$ designations might be, and the information EPA may consider and how it would affect the designations, the public is left in the dark as to what are the relevant issues and potential considerations they should be weighing in on. This is particularly true should EPA promulgate designations that illegally and arbitrarily deem as attainment or unclassifiable areas that should be fully nonattainment or areas that have been improperly reduced to smaller nonattainment areas. As discussed further below, such actions would be unlawful without further notice and comment, and EPA must make its final designation decisions based on valid 2023-2025 monitoring data as adjusted through lawful means.

A. EPA has not met the requirements of Clean Air Act section 107(d) where EPA intends to depart from a state's recommendations

EPA's "120 Day Letters" are incomplete and insufficient under Clean Air Action section 107(d) because EPA does not provide adequate notice of whether it intends to designate nonattainment areas smaller than those states recommended. Section 107(d)(1)(B)(ii) requires that, whenever the EPA Administrator "intends to make a modification" to an initial designation submitted by a State under Section 107(d)(1)(A), "the Administrator *shall* notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate."[7] In short, EPA must give each State an opportunity to demonstrate why any such

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[5] *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007).

[6] *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375 at n. 67 (D.C. Circuit 1973)

[7] 42 U.S.C. §7407(d)(1)(B)(ii); *see also* 42 U.S.C. §7407(d)(1)(B)(iii) (directing EPA to use redesignation methods when modifying from a State Governor's submission of attainment areas; 42 U.S.C. §7407(d)(3)(A) (pertaining to redesignations and further requiring that EPA "shall provide such information as the Administrator may have available explaining the basis for the notice."). EPA can look to other provisions of section 107(d) to inform the process for new PM2.5 designations. *See* EPA, "Air Quality Designations for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standards" ("2006 Designations"), 74 FR 58688, 58691 (Nov. 13, 2009) (available at https://www.govinfo.gov/content/pkg/FR-2009-11-13/pdf/E9-25711.pdf) ("EPA has concluded that it

intended modification of their proposal is inappropriate. This then requires that the State have the opportunity to see the intended modification and EPA's basis for making that modification.[8] Otherwise, the States are left to guess at what EPA intends to modify, and why, rendering the States' "opportunity" to respond to EPA's notification meaningless. "Shall" is mandatory: all information EPA has available must be provided.[9] Case law likewise mandates that EPA has the burden of providing the information it is relying on to the States where EPA suggests departing from the state's recommendations.[10]

Here, EPA has instead transmitted letters to the States that allude to, but do not actually provide, the certified 2023-2025 design values, and which also then undermine those design values by suggesting, but not providing, the existence of additional facts and information not in the record that could nonetheless impact EPA's conclusions with regard to those design values. Speculative or uncertain considerations are inappropriate for EPA to rely on in the designation process, as are conclusions drawn from gaps or inconsistencies in the data. This is especially true where the record that existed at the time of EPA's transmittal letters and continuing until now, fails to include the additional facts and information to question or depart from the certified 2023-2025 design values. EPA's letters fall short of meeting the black-letter administrative law and section 107(d) standard for providing adequate information to the public and to the states in response to the states' initial submitted designations.

Additionally, on October 8, 2026, EPA notified Texas, Utah, and Virginia of an error in its initial 120-day letters to these States, which had originally stated that EPA intends to designate "the entire" State attainment/unclassifiable.[11] EPA's new letters describe that this statement was intended to state that EPA intends to designate "the rest of" the State attainment/unclassifiable. There is a material difference in scope between these two statements. However, EPA has not included these updated letters in the regulatory docket for the 2024 PM2.5 designations. Instead, EPA has posted them on its website, where it clearly noted that it is providing these documents

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has discretion to look to other provisions of section 107(d) by analogy, as appropriate, to inform the process for designations for the 2006 24-hour $PM_{2.5}$ NAAQS.).

[8] Likewise, where EPA provides a public comment period, the public must be given a meaningful opportunity to comment and provide relevant information. See 5 U.S.C. § 553(b)-(c).

[9] *See* 42 U.S.C. §7407(d)(1)(B)(iii) and. §7407(d)(3)(A); *see also Clean Wisconsin v. Env't Prot. Agency*, 964 F.3d 1145, 1173 (D.C. Cir. 2020), j*udgment entered,* 812 F. App'x 4 (D.C. Cir. 2020) (remanding designation to EPA due to the "record assembled by EPA" failing to support the EPA's attainment designations).

[10] *See Clean Wisconsin v. Env't Prot. Agency*, 964 F.3d 1145, 1161 (D.C. Cir. 2020), judgment entered, 812 F. App'x 4 (D.C. Cir. 2020) ("'The outcome the EPA ultimately reached [for a designation] may be reasonable; however, [n]ot only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.' *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 652 (D.C. Cir. 2016) (internal quotation marks omitted). By failing to 'provide[ ] an explanation' for designating [an area] as attainment 'that is not premised on inconsistencies in the record,' *id.*, EPA fell short of that requirement here.").

[11] This language appears in the EPA 120-Letters to: Colorado, Florida, Iowa, Maine, Massachusetts, Oregon, Utah, Virginia, Wyoming, Alabama, Alaska, Arizona, Arkansas, California, Delaware, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, West Virginia, and Wisconsin.

"for INFORMATION PURPOSES ONLY."[12] Thus, for purposes of the public opportunity to provide comment on EPA's designations, it is unclear what EPA's intended modifications are for these states, further exacerbating the notice and comment issues described further in this comment letter.

B. EPA's suggestion that its court-ordered deadline is justification for not meeting the statutory requirements in promulgating designations is contrary to law and otherwise arbitrary and capricious

For States with one or more monitors with 2023-2025 design values that do not meet the 2024 PM2.5 NAAQS, or States with locations in an interstate CBSA that has a monitor that does not meet the 2024 PM2.5 NAAQS, the 120 Day letters cite EPA's purportedly compressed timeline as a justification for evading statutory requirements. For example, the letter sent to Texas Governor Abbott notes that, "Given the expedited deadline that the EPA is operating under, the Agency acknowledges that the EPA may be lacking relevant information or demonstrations that would lead to a different designation. . . . Further, the Agency also recognizes the difficulties associated with gathering and processing the information necessary for the designation process within such an abbreviated timeline."[13] Echoing this press for time – and blaming the court, EPA asserted in a press release that it "is concerned that the court-ordered deadline leaves insufficient time to consider critical information relevant to particular areas."[14] EPA's complaint is baseless and thus arbitrary.

As EPA details, the revisions to the PM2.5 NAAQS began in 2021 and the final promulgation occurred on February 7, 2024, which created a statutory deadline of February 7, 2026, for EPA to issue its designations.[15] An extension of "up to one year" is permissible by statute, but only if the Administrator "has insufficient information" available, leaving the outer-most statutory deadline available for the issuance of final designations at February 2027.[16] But EPA never invoked the statutory provision allowing for an extension of up to one year based on insufficient information, meaning the applicable deadline had already come and gone before EPA sent the 120-day letters. This is a statutory deadline imposed by Congress and unwaivable by either executive agency or judiciary. As stated in a previous designations-delay suit, "Congress, not 'the reviewing court,' has 'dictat[ed] ... the time dimension' for EPA action. . . [I]mposing a

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[12] https://www.epa.gov/particle-pollution-designations/primary-annual-fine-particulate-matter-designations-state-initial

[13] EPA Letter to Gov. Abbott, Oct. 8, 2026. Docket ID No. EPA-HQ-OAR-2024-0078-0664.

[14] EPA, "EPA Notifies States of Potential Designations for the Biden EPA's Flawed 2024 Air Quality Standard Following Appealed Court Order," Oct. 2, 2026 (available at https://www.epa.gov/newsreleases/epa-notifies-states-potential-designations-biden-epas-flawed-2024-air-quality-standard).

[15] 42 U.S.C. §7407(d)(1)(B).

[16] *Id*. Any delay in the designations delays the next step in the NAAQS implementation process--development and approval of state implementation plans for nonattainment areas--which has its own Congressionally mandated timeline. Delaying the designations delays the ensuing health benefits from the new NAAQS.

deadline is in keeping with Congress's purpose of ensuring timely area designations."[17] Notably, too, EPA's February 2024 guidance laid out a designations schedule that would allow EPA to meet the statutory deadline.

The February 2027 deadline that EPA appears to blame for its own inadequate analysis was established by a federal district court in response to EPA's failure to meet the two-year statutory deadline for promulgating designations. Especially considering that EPA did not claim in that litigation that it needed more time based on insufficient information, EPA cannot legitimately argue now that this court-ordered deadline is forcing it to comply with an unreasonable timeline. Three years is the longest available time under the statute to the agency, and any suggestion by EPA that this "insufficient" time justifies its lack of ability to process all "critical information," is contrary to law. A delay of the agency's own making does not excuse compliance with the statute.[18]

C. EPA's process for PM2.5 NAAQS designations deviates from the agency's guidance and past practice without explanation, and arbitrarily and unlawfully fails to propose boundaries for nonattainment areas

EPA's failure to propose nonattainment boundaries fails to satisfy the requirements of the Clean Air Act, arbitrarily and unlawfully deviates from the process outlined in its own guidance document, and is inconsistent with past practice.[19] Section 107(d)(1)(B)(ii) of the CAA allows the EPA Administrator to "make such modifications as the Administrator deems necessary to the designations of the areas" proposed by States, but to do so lawfully, "the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate." The process and analysis described in EPA's 2024 guidance were intended to comply with this requirement.

EPA's 120-day letters and public notice make no attempt to abide by that process and analysis. Thus, either EPA is following that process and analysis, but not providing it to the

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[17] *Love v. Thomas,* 858 F.2d 1347, 1359 (9th Cir. January 29, 1988).

[18] Note that the EPA has stated it would not consider late submissions from States on NAAQS attainment issues: "If a State fails to meet the schedule for flagging or document submittal, late petitions will not be considered. Policy decisions, SIP planning, and dissemination of data should not be delayed or altered based on a State's failure to submit documentation or follow the regulatory procedures in a timely manner." 72 Fed. Reg. 13,560 at 13,572.

[19] *See* Goffman Memo; *Miss. Com'n on Env't Quality v. Env't Prot. Agency*, 790 F.3d 138, 147 (D.C. Cir. 2015) (discussing similar process for 2008 ozone NAAQS); *Catawba Cnty v. Env't Prot. Agency*, 571 F.3d 20, 27-28 (D.C. Cir. 2009) (discussing the "Holmstead Memo" which recognized "that appropriate boundaries of urban nonattainment areas may well be smaller or larger than the applicable C/MSA" and used a "nine-factor test"). Gina McCarthy, Off. of Air & Radiation, Env't Prot. Agency, Initial Area Designations for the 2012 Revised Primary Annual Fine Particle National Ambient Air Quality Standard (2013), https://www.epa.gov/sites/default/files/2016-08/documents/april2013guidance.pdf, available at Attachment C; John S. Seitz, Off. of Air & Radiation, Env't Prot. Agency, Boundary Guidance on Air Quality Designations for the 8-hour Ozone National Ambient Air Quality Standards (2000), https://archive.epa.gov/ttn/ozone/web/pdf/boundary1.pdf, available at Attachment D; Air Quality Designations and Classifications for the Fine Particles (PM2.5) National Ambient Air Quality Standards, 70 Fed. Reg. 944, 946–48 (Jan. 5, 2005) (discussing the Holmstead memorandum and the designations process).

public or states for comment, or EPA is silently departing from that process and analysis without any notice or mention of any replacement. Both possibilities are illegal and arbitrary.

By deviating from the process described in the guidance, failing to propose nonattainment boundaries, and failing to provide supporting analysis for its intended area designations—particularly to the extent that they reflect proposed modifications from state recommendations—EPA has failed to satisfy the requirements of the statute and acted arbitrarily. EPA's 120-day letters fail to provide adequate notification and explanation to states regarding the extent to which EPA is proposing to modify their recommendations, and therefore states have not been given an adequate opportunity to respond, including to demonstrate why a proposed modification might be inappropriate.

Even if this deficient process were allowed under the CAA, EPA has not acknowledged this substantial change in its approach, much less provided a reasoned explanation for it.[20] The February 2024 guidance (which is included in the regulatory docket, is still available on the EPA's website, and has not been officially disclaimed, withdrawn, or replaced)[21] describes the agency's plan to send out 120-day letters, open a comment period in October 2025, and consider certain factors when determining boundaries for nonattainment areas. The final designations are now long overdue, and the process has been inadequate because EPA has failed to propose and provide opportunity to respond to borders for its intended area designations.[22]

As discussed in section I of this comment, the 120-day letters EPA released are deficient because the information provided is incomplete and inadequate. The letters do not specify the nature or extent of EPA's intended modifications of state recommended designations, and do not provide technical information or analysis supporting borders for area designations. The agency has previously provided this critical information in technical support documents (TSDs), but here the agency has not provided any documents with that information as part of the record for these intended designations. Previously, TSDs provided detailed information on EPA's process that allowed states, Tribes, and the public to fully understand the proposed designations and provide helpful analysis and input.[23] EPA's 120-day letters for this standard do not provide sufficient information to determine nonattainment areas.

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[20] *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (noting "[A] reason explanation is needed for disregarding facts and circumstances that underlay . . . the prior policy . . ." when an agency changes its policy); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (requiring agencies to "display awareness that it is changing its position," provide good reasons for the new policy, and consider longstanding polies that may have "engendered serious reliance interests . . . .").

[21] *See* Goffman Memo.

[22] Inadequate in light of EPA's statutory duty, and in that it restricts the public's ability to provide meaningful comments.

[23] *Catawba Cnty v. Env't Prot. Agency*, 571 F.3d at 28 (D.C. Cir. 2009) ("In a technical support document accompanying the Rule, EPA explained the basis for the designations and the analytical tools that it had developed and applied to assess the nine factors. "); *see, e.g.*, EPA, EPA-HQ-OAR-2007-0562, Technical Support Document

As the agency is aware, nonattainment area boundaries do not necessarily map cleanly onto county boundaries. As EPA has previously recognized—and as was previously litigated in *Catawba County*—the statute requires that "any area that does not meet (*or that contributes to ambient air quality in a nearby area that does not meet*) the national primary or secondary ambient air quality standard for the pollutant" be designated nonattainment. 42 U.S.C. § 7607(d)(1)(A)(i) (emphasis added).[24] In determining the boundaries for nonattainment areas, EPA's guidance said it would look at contributions from neighboring areas, and "as was done in prior designations for the NAAQS, the contribution determination will be made through a case-by-case evaluation of the relevant facts and circumstances in each nonattainment area."[25] EPA has recognized that its "weight-of-evidence approach to determining area boundaries could result in nonattainment areas consisting of the entire urbanized area, the urban area plus adjacent counties or partial adjacent counties, single counties, or, in cases supported by relevant evidence, partial counties, including partial counties within larger urban areas."[26]

To support a robust designations process, the agency's guidance provided "descriptions for five 'factors' and relevant information informing these factors that the EPA intends to evaluate in making final nonattainment area designations decisions."[27] EPA recommended that these factors, specifically air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries, be used in "evaluating areas on a case-by-case basis and in making boundary recommendations."[28] EPA's website also lists and provides descriptions of these factors.[29]

EPA has failed to provide proposed boundaries and has not provided any supporting analysis of the five factors it previously recommended using or any evaluation of relevant facts and circumstances. This is contrary to EPA's guidance, which stated that the agency would "rely on monitoring data to identify areas to be designated nonattainment due to monitored violations of the standard" and "[c]onsistent with the CAA and with previous area designations processes, the EPA will then determine the appropriate nearby areas to include within the nonattainment area boundary for the violating area based on emissions that contribute to these violations." Goffman, attach. 3 at 1. EPA also noted that "states and Tribes may identify and evaluate other

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for 2006 24-Hour PM2.5 NAAQS Designations for Alaska (Nov. 13, 2009), https://www.regulations.gov/document/EPA-HQ-OAR-2007-0562-0438 (providing 42 pages of data and analysis).

[24] *See also Catawba Cnty*, 571 F.3d at 28 (noting that EPA generally presumes that violation of PM2.5 NAAQS in urban areas is attributable to multiple sources throughout a broader area).

[25] Goffman Memo, attach. 3 at 2.

[26] Goffman Memo, attach. 3 at 2.

[27] Goffman Memo, attach 3 at 1.

[28] *Particle Pollution Designations Data for the 2024 Revised Annual PM2.5 NAAQS*, EPA, https://www.epa.gov/particle-pollution-designations/particle-pollution-designations-data-2024-revised-annual-pm25-naaqs (last updated Oct. 2, 2026). *See also Miss. Com'n on Env't Quality v. Env't Prot. Agency*, 790 F.3d 138, 147 (D.C. Cir. 2015).

[29] https://www.epa.gov/particle-pollution-designations/particle-pollution-designations-data-2024-revised-annual-pm25-naaqs

relevant information or circumstances specific to a particular area to support nonattainment area boundary recommendations," but that if "states and Tribes choose not to conduct an analysis justifying their boundary recommendation, or the EPA finds the analysis insufficient, the EPA will establish those boundaries that it determines to be appropriate based upon the five factor analysis and any other relevant information for a given area."[30]

Despite EPA's own guidance and its longstanding practice,[31] EPA now provides no analysis of the five factors it recommended states and Tribes analyze and told them it intended to analyze.[32] It would be particularly arbitrary for the agency to "pull a surprise switcheroo" on the states and Tribes by recommending this approach and claiming future adherence to this approach, only to turn around and abandon this practice without any explanation (or even acknowledgment) of the change.[33] The agency's sudden deviation undermines the required designations process under section 107(d)(1)(B)(ii), as it is impossible to determine the full extent to which EPA is proposing to modify states' recommended designations. Because EPA did not provide the adequate notification—including proposed boundaries for nonattainment areas—required under the Act, states do not have the information they need to participate and provide meaningful input on EPA's intended designations that the Act requires. Similarly, EPA fails to provide the public, whose health is directly impacted by the designations, with information for it to meaningfully participate in the comment process. EPA has determined that "public notice and comment is […] possible" for these designations, yet EPA unlawfully and arbitrarily shrouds its intended approach to the designations so as to render the public comment process burdensome if not altogether futile.[34]

Jurisdictional boundaries constitute just one of the five factors, as air pollution is not constrained by county borders, and emissions in counties without monitors violating the standard may nevertheless contribute to nearby air quality problems, and therefore still warrant inclusion in a nonattainment area. EPA claimed it would follow a weight-of-evidence approach to establishing borders for the purpose of designations but by failing to provide and weigh such evidence the agency has arbitrarily and unlawfully failed to provide adequate notice of what it is proposing, making it difficult (if not impossible) for states, Tribes, and other interested parties to respond and comment on proposed area designations.

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[30] Goffman Memo at 5.

[31] *See, e.g.*, *Catawba Cnty*, 571 F.3d at 28 ("The states submitted their initial designations; EPA responded with its proposed modifications, as well as explanations of its analysis under the nine-factor test; the states then submitted any responses; and EPA promulgated the final area designations . . . .").

[32] Goffman Memo at 5.

[33] *See Kentucky v. U.S. Env't Prot. Agency*, 123 F.4th 447, 470 (6th Cir. 2024) (quoting *Env't Integrity Project v. Env't Prot. Agency*, 425 F.3d 992, 996 (D.C. Cir. 2005) (noting that longstanding policies and agency direction can create reliance interests such that agencies cannot issue final actions that "flatly contradict prior guidance").

[34] Clean Air Act section 107(d)(2)(B).

EPA must provide both proposed boundaries and supporting analysis for nonattainment areas, as part of the record for its intended designations, because it is impossible to know—based only on air quality monitoring data and jurisdictional lines—where the boundaries should be drawn, particularly for areas of the country that fit the statutory criteria of meeting the standard but contributing to unhealthy ambient air quality in a nearby area and therefore must be designated nonattainment. Commenters (including states) cannot be expected to predict how EPA will weigh the relevant factors, if at all, in drawing these boundaries without such information from the agency.

As discussed previously, EPA's court-ordered deadline does not justify this deficient process. By failing to propose and explain borders for area designations in accordance with its own guidance and past practice, the agency risks litigation over an arbitrary and capricious change in approach and failure to provide adequate notice and explanation of any proposed changes to recommended designations. To the extent that the agency may be sabotaging its own designations process for political reasons, that is both inappropriate and a violation of Clean Air Act requirements. Intentionally engaging in an inadequate and arbitrary process risks vacatur by a court and potentially additional work in the future to fix both the process and the substance of the final designations. The agency would be shirking its statutory responsibilities by engaging in a decision-making process that the agency knows is deficient, which would be a wasteful and poor use of government resources and tax dollars and could ultimately be subject to judicial or congressional oversight.

II. EPA has sufficient information at this time to issue final designations, and may not otherwise invoke an extension or promulgate Unclassifiable designations

Approximately 35 of EPA's 120-day letters contain the following form language:[35]

> "Further, the Agency also recognizes the difficulties associated with gathering and processing the information necessary for the designation process within such an abbreviated timeline. As a result, it is possible that the Agency would determine that areas in your State cannot be classified on the basis of available information as meeting or not meeting the NAAQS, which would result in a designation of unclassifiable for areas in your State. This outcome would be a modification of the State's initial area designation submitted [DATE]."

These letters also include a companion paragraph stating that:

> "Given the expedited deadline that the EPA is operating under, the Agency acknowledges that the EPA may be lacking relevant information or

[35] The language appears in EPA's 120-day letters to: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

demonstrations that would lead to a different designation. As a result, the EPA is notifying you that the Agency may designate the aforementioned areas attainment/unclassifiable if sufficient and appropriate information is received or becomes available prior to February 6, 2027, to support such a designation. This would be a modification of the State's initial area designation submitted [DATE]."

EPA does not lack the information it needs to promulgate designations for all areas in the country. Particularly, where EPA has access to valid, certified 2023-2025 design values for an area, the potential for an untimely and discretionary exceptional event demonstration or some other data adjustment that could lead to a different designation does not justify failing to promulgate the appropriate designation based on the sufficient information that EPA does have. Neither paragraph in these letters can thus justify designating an area with a valid design value as "unclassifiable," and neither supports any extension of the designation deadline.

A. The statute limits "unclassifiable" designations and extensions to situations where EPA actually lacks sufficient information required to determine whether an area is meeting the NAAQS.

Under Clean Air Act section 107(d)(1)(A)(iii), an area may be designated unclassifiable only if it "cannot be classified on the basis of available information as meeting or not meeting" the NAAQS. Section 107(d)(1)(B)(i) likewise permits EPA to extend the two-year designation deadline by "up to one year" only if EPA "has insufficient information to promulgate the designations." Neither condition is met here; a so-called "abbreviated timeline" to complete an overdue duty is not missing information.

Even if EPA could legitimately show that it lacks sufficient information for a particular area, invoking the statutory extension provision would give EPA no meaningful additional time. EPA promulgated the revised standard on February 7, 2024.[36] The two-year deadline therefore fell on February 7, 2026, and the outer limit of any one-year extension is February 7, 2027, three years after promulgation. *See* Goffman Memo at 2 & attach. 2. EPA never invoked the extension provision before the statutory deadline passed or even during subsequent litigation challenging EPA's failure to meet the two-year deadline. The district court has since ordered EPA to promulgate final designations for all areas "no later than February 6, 2027," one day before the latest date the statute could permit even with the longest possible extension.[37] The extension provision thus offers EPA no path to delay designations past the court's deadline, and EPA's purported concerns about information or timing cannot justify designating areas with valid design values as "unclassifiable" in the meantime.

[36] Goffman Memo at 1; 89 Fed. Reg. 16,202.
[37] *All. of Nurses for Healthy Env'ts v. Zeldin*, No. 4:26-cv-03118-HSG, slip op. at 29 (N.D. Cal. July 17, 2026).

The form language also says that an "unclassifiable" designation "would be a modification of the State's initial area designation." Although EPA may modify a State's recommendation if it decides that it is "necessary," *see* 42 U.S.C. § 7407(d)(1)(B)(ii); Goffman Memo at 2, where a valid design value supports the State's recommended designation, EPA has no basis to determine such a modification is "necessary." EPA's general concerns about its own timeline do not supply one.[38]

B. Under EPA's own methodology, valid design values decide whether an area meets the standard, and EPA already has them.

On June 12, 2026, EPA issued 2023-2025 design values for the 2024 PM NAAQS, identifying 73 monitors whose valid design values violate the standard.[39] EPA's guidance makes those values decisive:

- **Violating monitors come first.** "[T]he first step in designating PM2.5 nonattainment areas is to identify air quality monitoring sites with data that show a violation" of the revised NAAQS using "quality-assured, certified air quality data" and the procedures in 40 C.F.R. Part 50, Appendix N. Goffman Memo at 3.
- **A design value above the standard is a violation.** "A violation of a NAAQS occurs when a design value is over the NAAQS level." *Id.* at 3 n.5.
- **EPA committed to designating those areas nonattainment.** "The EPA will designate as nonattainment all areas with one or more regulatory ambient PM2.5 air quality monitors with a design value greater than the annual standard of 9.0 μg/m3." *Id.* attach. 3, at 4.

The five-factor analysis governs the determination of which additional areas fall within a nonattainment area's boundary based on their contribution to levels of pollution in the violating area. It does not displace the monitoring data as the basis for identifying which areas are violating the standard in the first place.[40]

The memo reserves "unclassifiable" for cases where "the monitoring data may be incomplete" or monitors are "not . . . sited and operated in accordance with" 40 C.F.R. Part 58. Goffman Memo at 7. A valid design value, by definition, has neither defect. Moreover, the 120-

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[38] *See also* Section I of this comment (adequacy of notice in 120-day letters).

[39] *See* EPA report titled "PM2.5 Design Values, 2025", published June 2, 2026 by Brett Gantt, available at https://www.epa.gov/air-trends/air-quality-design-values. Available at Attachment B. These design values are the most current quality-assured, certified air quality data at relevant monitoring sites. EPA's docketed 2023-2025 design values ("2023-2025 PM2.5 design values updated 9.16.2026") depart significantly from the full, June 2, 2026 PM2.5 design value report, and EPA fails to explain how it generated these different values on the docketed spreadsheet, the information it is based on, or how it relates to the prior report that was issued consistent with applicable requirements. *See* EPA-HQ-OAR-2024-0078-0677, available at Attachment E.

[40] *See* Goffman Memo at 5; *id.* attach. 3, at 1, 4-5, 12; *see* Section I of this comment (boundaries and five-factor analysis).

day letters identify no area- or monitor-specific defect of this kind; they cite only the so-called "abbreviated timeline."

Designating these areas "unclassifiable" would violate the statute and would depart, without explanation, from EPA's announced methodology for its decision-making process. EPA must explain any departure from the methodology it set out in the 2024 memo and may not ignore the most relevant evidence in the record.[41]

C. EPA may not reopen or otherwise alter certified data to create uncertainty after the fact

Monitoring agencies must certify data "by May 1st of the subsequent year," and EPA then calculates official design values "typically by June 1st." Goffman Memo attach. 3, at 5; *see* 40 C.F.R. § 58.15. Those deadlines have passed for the data underlying the current design values. Neither states nor EPA may now discount certified data to create "insufficient information." Any exclusion of data must go through the established regulatory procedures and be fully documented in the agency record.[42]

EPA must not improperly designate areas "unclassifiable" or invoke a one-year extension where valid design values exist. EPA must instead designate as "nonattainment" at least every area with a valid design value exceeding 9.0 μg/m³.

Additionally, EPA has two different versions of PM2.5 design values, creating confusion as to the version that is calculated consistent with 40 CFR Part 50, and that EPA is relying on for purposes of these designations. One version is the ordinary design value report, which follows a standard format consistent with EPA's regulations, and which EPA posts annually on its website (https://www.epa.gov/air-trends/air-quality-design-values#report). That version is dated June 12, 2026.[43] The other is the file EPA posted in the docket (EPA-HQ-OAR-2024-0078-0677) and on its webpage of guidance and data for designations.[44] This latter file departs significantly from the ordinary design value report. It provides some different design values than the ordinary report, but does not explain how EPA generated it, what information it is based on, or how it relates to the ordinary report. EPA does not even acknowledge that this file is different from the ordinary one. Given these gaps and unexplained departures, it is not clear that this latter file is reliable and meets applicable legal requirements, and it is arbitrary of EPA to both rely on it and to provide inadequate notice to the public on which design values and sets of air quality information are relevant to the designations.

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[41] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also* Section V.b. of this comment addressing EPA's use of unclassifiable/attainment.

[42] *See* Section III of this comment regarding monitoring adjustments, and Section IV regarding exceptional events.

[43] See Attachment B.

[44] https://www.epa.gov/particle-pollution-designations/particle-pollution-designations-data-2024-revised-annual-pm25-naaqs.

III. Further Downward Adjustments To The Regulatory Monitors Are Not Justified

In EPA's 120-day letters to states, EPA notes that certain states and organizations have claimed that Teledyne monitors have a high bias and therefore EPA is in the process of assessing the issue and any effect on the quality of measurements. EPA also invited states to request an exclusion of monitoring data based on demonstration of high bias.

EPA has no legitimate basis on which to further adjust downward historical monitoring data based on potential issues associated with Teledyne monitors. EPA already retroactively updated PM2.5 data from the Teledyne Advanced Pollution Instrumentation (TAPI) Model T640/T640X, adjusting data going back to 2017. EPA determined that data from T640/T640X monitors demonstrated a consistent positive bias. TAPI applied to EPA for a modification to their T640/T640X FEMS to correct the issue, which EPA accepted. EPA then retroactively updated the data to reflect this correction.[45] Yet, as EPA acknowledged in its 120-day letters to states, certain entities submitted a "Request for Correction" under the Information Quality Act for EPA to take additional action to address what they claimed was remaining "substantial positive bias" despite the steps EPA has already taken to correct the bias it previously identified.[46]

EPA has thus already considered and addressed the issues raised by the states and cannot continue to rely on Teledyne monitoring bias allegations to disregard or tamper with monitoring data. EPA's $PM_{2.5}$ Performance Evaluation Program ($PM_{2.5}$-PEP) is an annual independent evaluation of the measurement system bias of the national $PM_{2.5}$ monitoring network.

As EPA has explained:

> The pertinent regulations for the PM2.5-PEP are outlined in 40 CFR Part 58, Appendix A, Section 3.2.4. The strategy is for the PM2.5-PEP to collocate a portable PM2.5-PEP sampler within 1 to 4 meters of a statistically meaningful number of routine PM2.5 samplers in each PQAO. During each sampling event, both the routine and PM2.5-PEP samplers operate simultaneously. The SLT/PQAO's measurement is made routinely following the normal procedure and the PM2.5-PEP measurement follows an independent collection and analysis convention. The resulting routine PQAO measurement and PM2.5-PEP

[45] See, EPA, Supplemental Information on the EPA's Update of PM2.5 Data from T640/T640X PM Mass Monitors (May 13, 2024), https://www.epa.gov/system/files/documents/2024-05/2_supplemental-info_t640-data-update_final-05-13-2024.pdf; EPA, Notice, Update of PM2.5 Data From T640/T640X PM Mass Monitors, 89 Fed. Reg 42874 (May 16, 2024).

[46] Letter from NAAQS Regulatory Review & Rulemaking Coalition to EPA Enterprise Quality Management regarding Request for Correction under the Information Quality Act of: (1) EPA's Approval of Four Modification Requests for the T640-T640x PM FEM Monitors; and (2) EPA's Retroactive Application of the Approved Modification of the T640 and T640X Monitors to Concentration Data for PM2.5 in EPA's Air Quality System (AQS) (Jan. 6, 2026), https://www.epa.gov/system/files/documents/2026-01/nr3-rfc-1-6-26-c.pdf.

measurement are then compared to calculate a percent difference of the PM2.5 concentrations which is used to evaluate bias.[47]

EPA's PM2.5-PEP for years 2015-2024 showed an acceptable *negative* bias within allowable ranges. Indeed, the analysis showed the Teledyne monitors had some of the lowest magnitude of bias compared to other monitors.[48] EPA's own independent audit thereby confirms that the prior adjustments EPA made addressed any bias issues and there is no need or justification for further action.

Moreover, EPA's analysis has indicated that to the extent there is any bias, that bias is negative. Such Federal Reference Monitor under-measurement has been noted by multiple sources, including the Independent Particulate Matter Review Panel, as follows:

> For routine monitoring, FRM filters remain in the sampler at or somewhat above ambient temperatures for up to 6 days. FRM filters can lose up to 10% of their non-water mass over 24-96 hours if not removed from the sampler and chilled immediately. Therefore, in field comparisons of co-located FEM and FRM monitors, FEM measurements typically appear to be biased high compared to the FRM, when in reality this is an artifact of field sample handling for the FRM and not an actual limitation of the FEM. However, as a result of such comparisons, the FEM is often found (erroneously) to be deficient with respect to performance requirements for NAAQS compliance purposes. [49]

EPA thus cannot make changes to correct purported positive bias at monitors without also addressing the negative bias its analysis has revealed.

A. EPA lacks authority to make retroactive changes to data outside of the formal approval of state monitoring plans

EPA's 120-day letters improperly suggest that, at this stage, States can request an exclusion of monitoring data from being compared to the NAAQS if they demonstrate a high bias. This is contrary to EPA's own regulations regarding monitoring data. EPA regulations require states to certify their monitoring results for each year by May 1 of the following year. 40

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[47] EPA, Quality Assurance Project Plan for the Federal PM2.5 Performance Evaluation Program (PM2.5-PEP) at 38 (May 2022), https://www.epa.gov/sites/default/files/2020-09/documents/pepqapp.pdf. Available at Attachment F.

[48] Evaluating Measurement Bias in PM2.5 Monitoring Methods across the National Ambient Air Monitoring Network through the PM2.5 Performance Evaluation Program (PM2.5-PEP) (April 8, 2026). Available at Attachment G.

[49] Independent Particulate Matter Review Panel, Consensus Responses to Charge Questions on EPA's Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter (External Review Draft – Sept. 2019) at page B-9, available at https://www.regulations.gov/comment/EPA-HQ-OAR-2015-0072-0037.

C.F.R. 58.15. They also require states to submit annual monitoring network plans identifying any new determination that a monitor's data is not of sufficient quality for determination of compliance with national ambient air quality standards (NAAQS). 40 C.F.R. §§58.10(a)(2), 58.11(e). EPA must approve or disapprove the annual monitoring plan and any modifications to the determinations regarding the sufficiency of monitors within 120 days of submittal. *Id.* §58.10(a)(2). EPA lacks authority to make changes to data obtained from approved regulatory monitors outside of this process set by EPA in its own regulations.

B. EPA must provide an opportunity for notice and comment on any changes to monitoring data that support a designation

The Clean Air Act requires EPA to comply with statutory requirements for notice and comment "whenever possible" while otherwise providing an exemption from the Administrative Procedure Act's requirements at 5 U.S.C. Section 553-557 for designations. 42 U.S.C. Section 7407(d)(2)(B). Here, EPA has determined that it is possible to provide notice and comment on designations. Having thus found it possible, EPA must then provide opportunity for notice and comment on underlying data used to support these designations—including any changes to the data it makes in response to state submissions or otherwise or explain why doing so is not possible.

Principles of administrative law embodied in requirements of the Administrative Procedure Act and the Clean Air Act require that there be "public exposure of the assumptions and data incorporated into the analysis and the acceptance and consideration of public comment" for data and analytics underlying agency regulatory actions. *Sierra Club v. Costle*, 657 F.2d 298, 334-35 (D.C. Cir. 1981). Failing to allow public notice and comment on data adjustments would deprive the public of the opportunity to examine and test EPA's methods and bases for making data adjustments that will directly determine clean air protections in a particular area.

C. States may not exclude near road monitors that are approved as part of their Annual Ambient Monitoring Network Plan

To the extent EPA seeks to exclude data from near-road monitors in promulgating final designations, proximity to a road itself is not a basis for excluding data from these monitors. If a monitor's location near a road is to provide a basis for deeming its data unrepresentative, that determination must have been reached during EPA's formal review of the state's annual monitoring plan.

All air monitoring sites that follow EPA's network technical requirements in 40 C.F.R. § 58.11 are considered eligible for comparison to the PM2.5 NAAQS, including the 2024 annual standard.[50] This includes micro- or middle-scale PM2.5 monitoring sites when they collectively identify a larger region of localized high ambient PM2.5 concentrations. Such sites are

[50] 40 C.F.R. § 58.30(a).

considered representative of an area-wide location and, therefore, eligible for comparison to the annual PM2.5 NAAQS.

PM2.5 measurement data from these sites can be excluded from comparison to the annual PM2.5 NAAQS if the monitors "are not representative of area-wide air quality but rather of relatively unique micro-scale, or localized hot spot, or unique middle-scale impact sites."[51]

EPA previously addressed the need for near-road monitoring and the use of this data for annual PM2.5 designation decisions. According to EPA, near-road monitors "support the NAAQS since the largest [Core Based Statistical Areas] are likely to have greater numbers of exposed populations, a higher likelihood of elevated near-road PM2.5 concentrations, and a wide range of diverse situations with regard to traffic volumes, traffic patterns, roadway designs, terrain/topography, meteorology, climate, surrounding land use and population characteristics."[52] Further, a "significant fraction of the population lives in proximity to major roads" and exposures in these locations "represent ambient air for which the agency has a responsibility to ensure the public is protected with an adequate margin of safety. Ignoring monitoring results from such areas (or not monitoring at all) would abdicate this responsibility." [53]

The regulations recognize that some near-road monitor locations may reflect relatively unique circumstances versus the more representative area-wide situation. For example, a near-road location may be impacted by its "proximity to a unique source like a tunnel entrance, nearby major point source, or other relatively unique microscale hot spot."[54] In such circumstances, the monitor may be deemed unsuitable for comparison to the annual PM2.5 NAAQS as part of the annual monitoring network plan, but not in the designation stage for the new standard.[55] Addressing these unsuitability decisions at the state monitoring plan stage is similarly reaffirmed throughout the monitoring regulations.[56]

VI. Issues Relating to Exceptional Events

Section 319 of the Clean Air Act establishes a set of principles to guide EPA's treatment of exceptional events that may be excluded from air quality monitoring data used in regulatory determinations regarding exceedances and violations of the NAAQS, including designations. The

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[51] *Id.*
[52] National Ambient Air Quality Standards for Particulate Matter Final Rule, 78 Fed. Reg. 3089, 3238 (Jan. 15, 2013).
[53] 78 Fed. Reg. 3089, 3240.
[54] 78 Fed. Reg. at 3241.
[55] 40 C.F.R. § 58.30. *See also*, 78 Fed. Reg. 3086, 3241 ("In these types of scenarios, air agencies would identify the site as a unique monitor comparable only to the 24-hour PM2.5 NAAQS per the language in section 58.30, and not comparable to the annual NAAQS, through the Annual Monitoring Network Plan process described earlier.")
[56] 40 C.F.R. § 58.10(a)(2) ("Any annual monitoring network plan that proposes network modifications (including ... changes in identification of monitors as suitable or not suitable for comparison against the annual PM2.5 NAAQS))" and 40 C.F.R. § 58.10(b) ("The annual monitoring network plan must contain the following information for each existing and proposed site: . . . (7) The identification of any sites that are suitable and sites that are not suitable for comparison against the annual PM2.5 NAAQS as described in § 58.30.").

statute unequivocally states that the first principle is that the "protection of public health is the highest priority."[57] The statute also mandates the EPA provide a public process for determining whether an event in fact qualifies as an exceptional event justifying exclusion of certain air quality monitoring data.

However, EPA's 120-day letters and general approach to considering exceptional events in the context of designations for the 2024 PM2.5 NAAQS undermines these statutory directives. EPA invites States to liberally exclude exceedances as exceptional events, at the cost of increased exposure to PM2.5 pollution that harms public health. EPA's letters also both encourage States to submit exceptional event demonstrations, and indicate that EPA's designation decisions will be based on those demonstrations, in an untimely and non-transparent fashion. For the reasons described below, EPA must adhere to the statute and regulations, and consider only exceptional event demonstrations that were submitted in accordance with EPA's regulations. Further, for any properly submitted exceptional events demonstrations, EPA must provide an opportunity for a public process on any designations that are affected by EPA's determination that monitoring data should be excluded because of an exceptional event.

A. The deadlines for States to submit both initial notifications and demonstrations for Exceptional Events has already passed under EPA's regulations

EPA's 120-day letters suggest that "a determination that air quality data was influenced by an exceptional event" could serve as further information for EPA to rely on in designating an area that has monitors with violating design values as something other than nonattainment.[58] EPA's letters additionally highlight that prescribed fires and wildfires have the potential to impact air quality monitoring data across many regions of the country, and that over 9,000 site days "could be submitted" as exceptional events.[59] EPA's letters thus suggest that States can choose to submit new exceptional event demonstrations to inform EPA's promulgation of final designations for the 2024 PM2.5 NAAQS.

EPA's suggestion is flatly wrong, and is in violation of its own regulations. 40 CFR 50.14(c) prescribes schedules and procedures for a State to notify the public of a potential exceptional event, provide initial notification of such an event to EPA, and then submit an exceptional events demonstration. Importantly, section 50.14(c)(vi) and Table 2 explicitly govern the submission process for exceptional events demonstrations that "will or may influence the initial designation of areas for any new or revised national ambient air quality standard." In addition, 40 CFR 50.14(c)(2)(ii) provides that "data *shall not be excluded* with respect to exceedances or violations of the national ambient air quality standards *unless and until*,

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[57] 42 USC § 7619(b)(3)(A)(i)
[58] *See* page 2 of EPA's 120-day letters for states with violating monitors and states with invalid design values; *E.g.* EPA 120-day Notification Letter, dated September 29, 2026, from Anne Vogel, US EPA Region 5 Administrator, to the Honorable Michael Braun, Governor of Indiana, Regarding EPA's 2024 PM2.5 NAAQS Designations. Docket No. EPA-HQ-OAR-2024-0078-0525.
[59] *Id.*

following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and the Administrator's review, the Administrator notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database." Taken together, EPA's regulations require that in order for a final designation under the 2024 PM2.5 NAAQS to be based on air quality data that excludes an exceptional event, a State must have submitted the initial notification and demonstration in compliance with the applicable schedule laid out in Table 2, and EPA must have reviewed and provided formal notification of its concurrence with that demonstration.

Under court order, EPA must promulgate final designations for the 2024 PM2.5 NAAQS by February 6, 2027. This date also aligns with the outermost deadline that could apply if EPA had invoked an extension under Clean Air Act section 107(d)(1)(B)(i), which allows the two-year deadline to be extended "for up to one year" if there is "insufficient information to promulgate the designations." Table 2's deadlines for submission of initial notifications and exceptional events demonstrations applies to these designations, and all applicable deadlines therein have now passed. For 2024-2025 data, the applicability condition under Table 2(E) is if EPA follows a 3-year designation schedule, as it is doing so here. This rule sets a deadline for submitting an initial notification and exceptional events demonstration by 2 years and 7 months after promulgation of a new or revised NAAQS. Because EPA promulgated the 2024 PM2.5 NAAQS on February 7, 2024, the regulatory deadline for submitting an initial notification and exceptional events demonstration with respect to 2024-2025 data was September 8, 2026. For 2023 data, the applicability condition under Table 2(B) and (C) respectively establish a deadline of January 1, 2025, for initial notifications, and February 7, 2025, for exceptional event demonstrations.

States may thus not submit any new notifications or demonstrations in response to EPA's 120-day letters, and EPA cannot base a final designation on such a submission if it was made after these regulatorily defined deadlines. As EPA stated in its final 2007 Exceptional Events Rule establishing a prior version of the schedule set out in Table 2, "if a State fails to meet the schedule for flagging or document submittal, late petitions will not be considered."[60]

This regulatory schedule and deadline is crystal clear. Even if a different condition and schedule under Table 2 applied to the current designations, *all* deadlines under this regulation have passed for initial notifications[61] and exceptional event submissions. EPA's 2024 guidance for States and Tribes making their initial area designation recommendations also cited to the existence of this regulatory schedule, and provided a copy of Table 2.[62] EPA cannot unlawfully or arbitrarily violate (or invite States to violate) the clear terms of its own regulations. In promulgating final designations for the 2024 PM2.5 NAAQS, EPA must instead limit its

[60] 55 Fed. Reg. 13,560 at 13,572.
[61] 40 CFR 50.14(c)(2)(i) requires a State to submit to EPA an initial notification of a potential exceptional event. 40 CFR 50.14(c)(2)(C) allows EPA to waive this requirement on a "case-by-case" basis. A blanket, unsubstantiated exception to this requirement would not constitute a "case-by-case" waiver.
[62] Goffman Memo at Attachment 2.

consideration of exceptional events demonstrations to those that were properly flagged and submitted on or before the applicable Table 2 deadlines.

B. An opportunity for notice and comment must be provided before EPA promulgates final designations based on Exceptional Events concurrences

For exceptional events demonstrations that were properly flagged and submitted before September 8, 2026, EPA must first provide an opportunity for notice and comment over any decision excluding exceptional event-influenced air quality data as it relates to the designation. Clean Air Act section 319(b)(3)(B)(iii) requires that "there is a public process for determining whether an event is exceptional." While the deadline for States to submit exceptional event demonstrations with respect to the 2024 PM2.5 designations has already passed, any action EPA seeks to (unlawfully) take on a late submission in excluding data from a designation must also go through notice and comment.

Critically, Clean Air Act Section 319(b)(3)(B)(iii) requires "a public process for determining whether an event is exceptional." EPA has placed a number of its initial concurrences on states' exceptional event demonstrations in the docket for these designations. However, merely placing this information in the docket is insufficient for purposes of providing the required public process. EPA has not at all explained whether it is indeed determining that there is an exceptional event that meets applicable legal requirements, whether and how such exceptional event relates to excluding monitoring data from a designation, and how a designation would be affected by an exceptional event-influenced data exclusion.

This information matters for purposes of the public weighing in an EPA's exceptional event determination, and a designation that is affected by a particular determination. As explained further below, EPA itself makes clear in concurring on an exceptional event submission that its concurrence is only an initial step, and that the final, reviewable agency action occurs when EPA takes a regulatory action through notice and comment rulemaking that implicates the exceptional event. EPA's initial concurrence occurs sometime before its regulatory action. It's feasible that a concurrence that occurred in the past no longer has relevance to the present regulatory action, for example a concurrence on a 2022 exceptional event submission has no relevance to a designation based on 2023-2025 design values. Here, EPA has provided no information in its Federal Register notice or the docket as to what are the exceptional event determinations it is making as to which designations, and how the design values are impacted by such determinations. EPA has thus failed to provide the required public process.

Section 319(b)(1)(A)'s definition of the term "exceptional event" makes clear that EPA, and not the State, is the entity that must determine whether an event meets the definition of an exceptional event. States may only "petition" EPA to make the determination, per Section 319(b)(3)(B)(iv). Thus, the "public process for determining" exceptional events is a statutory requirement that applies to EPA, not the states.

The best reading of this provision is reinforced by the structure of the Act, specifically Section 319(b)(3)(B)(iv). Here, Congress separately required regulations establishing "criteria and procedures for the Governor of a State to petition the Administrator to exclude ... data" from "EPA's determinations." The structure of the statute thus envisions the public process in Section 319(b)(3)(B)(iii) to be separate from the State process to petition EPA, which would include State-level notice and comment requirements, for an exceptional event determination. Statutes are written to avoid duplication and surplusage, and if the "public process" in Section 319(b)(3)(B)(iii) was intended to be only a State process, then the entire subsection (iii) would be duplicative and unnecessary in light of the broader subsection (iv) governing all State criteria and procedures.

EPA's own prior statements and consistent practice reflect an understanding that the Act requires it to provide an opportunity for comment on its determination that an event constitutes an exceptional event influencing air quality data that should be excluded from a regulatory determination. The agency asserted in the 2016 Exceptional Events Rule that "EPA generally provides a public comment opportunity before using air quality data, with or without such exclusions, in a final regulatory action."[63] Additionally, EPA issued a Frequently Asked Questions guidance document regarding the 2016 Exceptional Events Rule.[64] This guidance document states that "if and when the EPA takes a regulatory action that hinges on a decision to exclude data under the Exceptional Events Rule, the EPA *will* consider and respond to any public comments on that regulatory action that address any aspect of a supporting exceptional events demonstration."[65]

EPA's regulations explicitly identify designations as a regulatory determination within the scope of the Exceptional Events Rule.[66] The statements in the 2016 Exceptional Events Rule and accompanying guidance document make clear EPA's own interpretation that the agency, and not just the State, must provide a public comment opportunity on designations that exclude air quality data because of an exceptional events demonstration. The agency's guidance for the 2024 PM2.5 NAAQS initial designations similarly emphasizes this point. There, EPA made clear its intent to consider public input in the designations process for the 2024 PM2.5 NAAQS,[67] which includes exceptional events demonstrations.[68]

EPA's own consistent practice further confirms that the agency itself is required to provide a public process for its determination of whether an event is exceptional. Under its regulations, EPA takes the initial step of sending a State a concurrence letter for an exceptional

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[63] 81 Fed. Reg. 68216 at n.15.
[64] 2016 Revisions to the Exceptional Events Rule: Update to Frequently Asked Questions (February 2020). Available at https://www.epa.gov/sites/default/files/2019-07/documents/updated_faqs_for_exceptional_events_final_2019_july_23.pdf. Available at Attachment H.
[65] *Id*. at 6. (emphasis added).
[66] 40 CFR 50.14(a)(1)(i)(A).
[67] Goffman Memo at 2.
[68] Goffman Memo at 4.

events demonstration where it finds the State has met the applicable schedule, procedural, and demonstration requirements. EPA sends these letters without providing a public comment opportunity. Rather, EPA provides a comment opportunity for final agency actions relying on such demonstration, which is the public's opportunity to weigh in on whether EPA has correctly determined that an event is exceptional and properly qualifies for excluding air quality data from the final regulatory action being taken.

Similarly, EPA's concurrence letters for exceptional event demonstrations submitted for purposes of *these* designations state that "EPA's concurrence is a preliminary step in the regulatory process for actions that may rely on the dataset containing the event-influenced data and does not constitute final agency action."[69] These letters also state that "if the EPA takes a regulatory action that is affected by the exclusion of this data, then the *EPA will publish notice of its proposed action* in the Federal Register."[70] Thus, EPA has consistently taken the position that its initial concurrence on an exceptional event demonstration alone does not constitute a final or reviewable agency action, rather the regulatory decision that relies upon EPA's concurrence, such as designations for the 2024 PM2.5 NAAQS, will undergo notice and comment rulemaking.

Also relevant to this action, EPA has previously correctly implemented the statute, regulations, and guidance in the context of prior designations for the PM2.5 NAAQS. For example, as part of its notice of availability for initial designations under the 2012 PM2.5 NAAQS, EPA provided an opportunity for public comment on its concurrence with Idaho's request to exclude wildfire-related exceptional events from data underpinning the designation for Lemhi County.[71] This concurrence included EPA's technical analysis to support data exclusion, allowing the public sufficient information to review EPA's determination of an exceptional event. Importantly, EPA's letter to Idaho concurring on the State's request asserted that "EPA's decisions on exceptional event exclusions are not considered final agency action until they are acted upon as part of a final regulatory action subject to public notice and comment."[72]

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[69] Letter from Denisse Diaz, Dir. of EPA Reg. 4 Air & Radiation Div., to Michael Abraczinskas, Dir. of N.C. Dep't of Env't Quality Air Quality Div. at 2 (Sept. 2, 2025). https://www.regulations.gov/document/EPA-HQ-OAR-2024-0078-0676.

[70] *See e.g.* Letter from Cheryl Newton, Acting Regional Administrator, EPA Region 5, to Gail E. good, Director, Wisconsin Department of Natural Resources (March 27, 2025) (providing EPA's concurrence on Wisconsin's request to exclude wildfire-influenced exceedances of the 2024 PM2.5 NAAQS in Milwaukee, Wisconsin) (emphasis added), Document ID No. EPA-HQ-OAR-2024-0078-0521, available at https://www.regulations.gov/document/EPA-HQ-OAR-2024-0078-0521; *see also* Letter from Denisse Diaz, Dir. of EPA Reg. 4 Air & Radiation Div., to Michael Abraczinskas, Dir. of N.C. Dep't of Env't Quality Air Quality Div. at 2 (Sept. 2, 2025) ("If the EPA takes a regulatory action that is affected by exclusion of the data for the 2023 Canadian Wildfire event at the Remount monitor, then the EPA intends to alert the public of the exclusion through the applicable regulatory process. The EPA's concurrence letter and accompanying technical support document will be included in the record as part of the technical basis for that regulatory action.").

[71] 79 Fed. Reg. 51,517 at 51,518.

[72] *See* page 1 of Letter dated July 8, 2014 from Dennis J. McLerran, Regional Administrator USEPA Region 10, to Curt Fransen, Director, Idaho Department of Environmental Quality, concurring with Idaho's request to exclude data associated with wildfire exceptional events that influenced PM2.5 concentrations at 2 Idaho monitors during 2012.

EPA's general practice further demonstrates its understanding that the public must have an opportunity to comment on EPA's exceptional events determination to the extent it affects a regulatory action. EPA has previously made clear in these concurrence letters in the context of addressing the PM NAAQS that:

> The EPA's concurrence is a preliminary step in the regulatory process for actions that may rely on the dataset containing the event-influenced data and does not constitute final Agency action. If the EPA completes a notice-and-comment rulemaking for an action that is influenced by the exclusion of the PM2.5 data specified in this concurrence, the EPA's concurrence letter and accompanying technical support document would be included in the record as part of the technical basis for the proposed action. If we receive comments during such an action, we will consider and respond to those comments before taking final regulatory action.[73]

Under EPA's regulations implementing Clean Air Act section 319, 40 CFR 50.14(c)(3)(i) requires that a state requesting a monitoring data exclusion based on an exceptional event must submit its demonstration "after notice and opportunity for public comment." Additionally, 40 CFR 50.14(c)(3)(v) requires the state to document that it conducted a public comment process lasting at least 30 days, submit public comments it received to EPA, and address in the submission to EPA comments disputing or contradicting factual evidence.

EPA's regulation governing the treatment of air quality data influenced by exceptional events makes clear that its requirements, including for States to implement a public notice and comment process, apply to the exclusion of such data for purposes of designations. 40 CFR 50.14(a)(1)(i)(A). However, a State's satisfaction of this regulatory requirement does not dispose of EPA's statutory obligation to provide a public process for *its* determination of whether certain air monitoring data should be excluded because it was influenced by an exceptional event.

Additionally, EPA fails to acknowledge, let alone consider or respond to, the public's serious and legitimate reliance interests in EPA's prior statements asserting that it will consider and respond to comments on regulatory actions, including designations, that rely on decisions to

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Docket No. EPA-HQ-OAR-2012-0918-012, available at https://www.regulations.gov/document/EPA-HQ-OAR-2012-0918-0121.

[73] *See e.g.* Letter from Joseph Goffman, Assistant for Air and Radiation, EPA, to Michael Benjamin, Division Chief, California Air Resources Board (February 23, 2024) (providing EPA's concurrence with California's request to exclude prescribed fire-influenced data showing exceedances of the 2012 PM2.5 NAAQS in Nevada County, CA), available at https://www.epa.gov/system/files/documents/2024-02/epa_letter.pdf. Available at Attachment I; Letter from Timothy B. Hamlin, Director, EPA Region 10, to Maia Bellon, Director, Washington Department of Ecology (March 21, 2018) (providing EPA's concurrence on Washington's request to exclude high wind dust-influenced data showing exceedances of the 24-hour PM10 NAAQS), available at https://www.epa.gov/sites/default/files/2018-04/documents/kennewick_2015_pm_10_high_wind_ee_letter_3.9.18.pdf. Available at Attachment J.

exclude air quality data influenced by exceptional events.[74] When changing position, an agency must acknowledge the change and provide a reasoned explanation for concluding that its prior approach was mistaken or unworkable. *Fox Television Stations,* 556 U.S. at 515. EPA's notice of availability for its intended designations does neither with respect to the public's opportunity to comment on EPA's consideration of exceptional events.

Members of the public may have reasonably waited for EPA to provide notice of EPA's proposed determinations of exceptional events that will affect the designations, as EPA has repeatedly avowed it would do and has historically done, instead of commenting on earlier state demonstrations that EPA might not credit. Given the paramount importance of the designations process to implementing the public health protections under the 2024 PM2.5 NAAQS, it would be patently unlawful and arbitrary for EPA to deprive the public of an opportunity to comment on its designations that rely on EPA's determinations as to exceptional events.

EPA also cannot arbitrarily defy its own prior statements by now suggesting that it can pick and choose which aspects of its decision-making process for designations, such as exceptional events demonstrations, it can subject to notice and comment. Clean Air Act section 107(d)(2)(B) makes clear that while designation decisions are exempt from APA section 553's notice and comment requirements, "nothing herein shall be construed as precluding such public notice and comment whenever possible." EPA has taken the initial step of meeting the terms of this provision, as it is providing an opportunity for public notice and comment on the agency's intended designations for the 2024 PM2.5 NAAQS under circumstances when it is possible for EPA to do so. But, nothing in this provision suggests that EPA can pick and choose which aspects of its designations it can provide notice and comment on, especially when an aspect such as an exceptional event demonstration is inextricably tied to a final designation. Failing to provide an opportunity for comment on an exceptional event demonstration would thus deny the public of meaningful input on EPA's designations, in addition to contravening Clean Air Act section 319's mandate that there is a public process for determining whether an event is exceptional.

Further exacerbating EPA's failure to provide the required public process is the fact that EPA's notice of its intended designations and the accompanying docket provide no identifying information or explanation on exceptional event demonstrations the agency has already concurred upon and that may be a factor for these designations. For example, EPA's concurrence letters are not necessarily labelled as such in the docket, EPA's notice of availability does not identify docket numbers for relevant concurrences, and there is no indication whatsoever of how the public should identify documents of interest for purposes of providing comment on EPA's intended designations and exceptional events that may result in an exclusion of data from the designations. Importantly, EPA fails to provide any explanation at all of whether and how any of

[74] *FDA v. Wages & White Lion*, 604 U.S. 542, 568 (2025); *Dept. of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30-31 (2020) ("*DHS*"); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-222 (2016); *Fox Television Stations*, 556 U.S. at 515.

the 2023-2025 design values are being adjusted to reflect exclusion of data influenced by an exceptional events determination, and whether a designation decision is based on such adjusted data.

Additionally, EPA has previously concurred on a number of exceptional event demonstrations. Docketing these concurrences is a key first step toward EPA meeting its legal obligations to provide an opportunity for the public to assess and comment on an exceptional event demonstration as it relates to a designation. As EPA itself states in these concurrence letters, "if the EPA takes a regulatory action, including initial area designations determinations for the 2024 annual PM2.5 NAAQS, that is affected by exclusion of the data for the [exceptional event], the EPA intends to publish notice of its proposed action in the Federal Register. EPA's concurrence letter and accompanying technical support document will be included in the record as part of the technical basis for that proposal."[75] To the extent EPA has failed to include any concurrence letters and accompanying technical support documents in the record for these designations, EPA will have failed to provide an adequate opportunity for the public to comment on them, and cannot legally rely on such concurrences in finalizing designations for the relevant areas.

Finally, failure by EPA to provide a public comment opportunity on any exclusion of exceptional event-influenced data from a designation decision contravenes Clean Air Act section 319(b)(3)(A)'s principle that the protection of public health is the *highest priority*. Underscoring this Congressionally mandated priority is the fact that submission and consideration of exceptional events is discretionary, and cannot override the protections the public is afforded under the 2024 PM2.5 NAAQS and the rights that members of the public have to comment on decisions that may affect such protections. Because the designations process determines whether enforcement of more stringent pollution control requirements and other steps must be taken to bring air quality into compliance with the applicable standard, it is critically important that the public be given an opportunity to review and comment on any designation decision by EPA which hinges upon an exceptional event determination.

C. An interpretation that public comment is not required for EPA's determinations as to exceptional events constructively reopens the 2016 Exceptional Events Rule

As described above, EPA is legally required to provide an opportunity for notice and comment on its exceptional event determinations as they relate to designation decisions. If EPA instead takes the position that such opportunity is not required under its regulations, this reflects a "change in the regulatory context" for the public participation requirements under the 2016 Exceptional Events Rule as codified at 40 CFR 50.14, therefore constructively reopening them.

[75] *See e.g.* Letter dated March 13, 2026 from Angeles Herrera, Director, Air and Radiation Division, USEPA Region 10, to Michael Simon, Administrator, Air Quality Division, Idaho Department of Environmental Quality, concurring with Idaho's Exceptional event requests regarding exceedances of the 2024 annual PM2.5 NAAQS at the Nampa Ridgecrest monitoring site for the 2024 Annual PM2.5 NAAQS designation. Docket No. EPA-HQ-OAR-2024-0078-0568, available at https://www.regulations.gov/document/EPA-HQ-OAR-2012-0918-0121.

Kennecott Utah Copper Corp. v. Dep't of Interior, 88 F.3d 1191, 1214. A constructive reopening of regulations occurs by "significantly [altering] the stakes of judicial review," *id.* at 1227, as the result of a revision that "could not have been reasonably anticipated*." Envtl. Def. v. EPA*, 467 F.3d 1329, 1334 (D.C. Cir. 2006).

Specifically, a new interpretation that a state-level public comment period on a draft exceptional events submission alone satisfies the statutory requirements under Clean Air Act section 319 constructively reopens 40 CFR 50.14(c)(3). As previously described, the statute plainly requires that EPA's regulations must provide the public with an opportunity to comment on the agency's exceptional event determinations. EPA has historically and consistently done this through providing a comment opportunity on an exceptional event determination as it relates to a particular regulatory action, including designations. Because EPA's 2016 rule was premised on an assumption that EPA would provide a public comment opportunity on its exceptional event determinations in the context of a regulatory action, an interpretation that such opportunity is not required changes the calculus for petitioners in seeking judicial review and constructively reopens the previous regulatory requirements for state-level public participation. *See Sierra Club v. EPA*, 551 F.3d 1019, 1025-26 (finding constructive reopener of 1994 SSM regulation by virtue of subsequent rule revisions that changed available remedies) (D.C. Cir. 2008).

The primary purpose of the Act is to protect public health, which is in part effectuated by the public's ability to assess and comment on regulatory decisions that directly impact them. As proper implementation of the NAAQS is a foundational aspect of protecting public health, depriving the public of the opportunity to weigh in on EPA's exceptional event determinations is contrary to Congress's intent and the plain language of the statute and is flatly unlawful.

D. The presence of multistate nonattainment areas support that EPA must provide an opportunity for public comment on its exceptional event determinations as they relate to these designations

Certain airsheds may cross state borders and require multistate nonattainment designations because air quality monitoring data shows that levels of pollutants in these shared airsheds are above the 2024 PM2.5 NAAQS.[76] The fact that there may be multistate nonattainment areas further illustrates why a state-level public process is insufficient to meet the requirements of Section 319, and that EPA must provide a public comment opportunity for exceptional event determinations affecting these designations. Members of the public in multistate areas may not have had the opportunity to participate in a public process occurring in a state other than the one in which they reside. For instance, a letter was sent to the Indiana Department of Environmental Management on July 24, 2025 stating that "EPA agrees that wildfires or fireworks caused exceedances of the 2024 annual PM2.5 National Ambient Air

[76] *See e.g.* EPA's designation of four multistate nonattainment areas for the 2006 PM2.5 NAAQS. 74 Fed. Reg. 58688, 58696 Table 1. *See also* Clean Air Act section 107(d)(3), referencing designation of an area "within the State or interstate area."

Quality Standard on several days, and that IDEM's demonstrations for these dates meet the Exceptional Events Rule criteria at 40 CFR Parts 50 and 51."[77] That letter lists twenty-one (21) event days at the Jeffersonville-Bates-Bowyer Ave, within the Louisville KY-IN potential nonattainment area. Absent exclusion of those dates, the design value for the area exceeds the 2024 PM2.5 NAAQS.

Residents of Louisville, KY (including Jefferson County, and Bullitt and Oldham Counties), the metropolitan center of this area, however, were not notified of the opportunity to comment on Indiana's exceptional events demonstration. The legal notice for state-level public participation process for the demonstration pertaining to the Louisville KY-IN area states it was posted on the Indiana Department of Environmental Management's website, and five locations in Indiana,[78] including in the Brownstown regional office over 50 miles from Louisville, and primary office in Indianapolis, over 100 miles from Louisville. No notice was provided in Kentucky, and a resident of Louisville reasonably would not have received notice of any opportunity to participate in this public comment process for Indiana's submission.

This lack of public notice by one state to people living in another state that is part of a potential multistate nonattainment area has real consequences. PM2.5 emissions can transport across state lines and impact air quality, and therefore public health, in other states. Thus, an EPA concurrence with an exceptional event demonstration in one state could impact the designation of places in nearby states without the opportunity for that state or its residents to comment on the proposed exceptional event.

This lack of public participation across state borders and attendant risk are certainly not unique to the Louisville KY-IN multistate area. The docket for this action contains many exceptional events demonstrations, including some potentially that would affect multi-state areas. Nor does the mere inclusion of these demonstrations in this docket satisfy the legal requirements for a public process. Because EPA has not indicated which exceptional event demonstrations are being relied on in making designations, there is still no realistic opportunity for the public to comment on the designations, particularly members of the public who live in the portion of a potential multistate nonattainment area that did not submit the exceptional event demonstration. As stated elsewhere in these comments, the broad statement that a "State has one or more monitors with design values that may not meet the 2024 annual PM2.5 NAAQS," is not sufficient to meet the requirements of Section 107(d), nor is it sufficient to meet the requirements of 319(b)(3)(B)(iii).

E. The mere submission of an Exceptional Events demonstration is not sufficient to designate an area as Unclassifiable

[77] Document ID EPA-HQ-OAR-2024-0078-0644, at 1.
[78] EPA-HQ-OAR-2024-0078-0644, Attachment 11, Attachment A: Public Participation Process Documentation, at 1-2.

Approximately 35 of EPA's 120-day letters suggest that EPA may lack "relevant information or demonstrations" due to its deadline for promulgating these designations, and therefore may designate certain areas as "attainment/unclassifiable if sufficient and appropriate information is received or becomes available." The Clean Air Act defines an attainment area as one that "meets" the NAAQS, and an unclassifiable area as one that "cannot be classified on the basis of available information as meeting or not meeting" the NAAQS.[79] EPA's 120-day letters describe a starkly different situation, in which the agency has the 2023-2025 monitoring data necessary to classify regions as either meeting or not meeting the standard, and that data identifies monitors that are not meeting the 2024 annual PM2.5 NAAQS. Thus, by its own admission, EPA cannot find that these areas are meeting the standard nor that the necessary information is unavailable.

The 120-day letters argue that EPA "may be lacking relevant information" necessary to make designations. But the letters do not identify what this missing information might be or how EPA would come to possess such new data. These designations are based on monitoring data collected between 2023-2025, so it is difficult to imagine how any new, certified monitoring data could become available in the future.

To the extent EPA suggests it may assign designations based on the exclusion of data under pending or future exceptional event decisions, that approach contradicts the plain reading of 42 U.S.C. § 7407. As previously discussed, any exceptional event demonstrations covering 2023 was required to be submitted by February 7, 2025, and demonstrations for 2024 and 2025 were due September 8, 2026.[80] EPA's delay in taking action on these demonstrations or deferring decisions on certain dates does not mean it presently lacks the necessary information to assign designations. It simply means that EPA is seeking to create uncertainty through its own delay. But EPA suggests going one step further, suggesting it may exclude data based on new, yet-unsubmitted demonstrations. Allowing valid, certified monitoring data to be disregarded based on EPA's failure to take action on previously submitted demonstrations or the possible submission of future demonstrations is plainly prohibited by EPA regulations and would serve to write the current provision out of existence.[81]

For over a year, EPA has had all the information necessary to evaluate designations under the 2024 PM2.5 NAAQS. No additional certified monitoring data for 2023-2025 will become available, and states have already had the opportunity to petition EPA to exclude data due to

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[79] 42 U.S.C. § 7407 (d)(1)(A)(ii)-(iii).

[80] 40 C.F.R. § 50.14 Table 2(C), (E).

[81] 40 C.F.R. § 50.14(c)(2)(ii) (The data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until, following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and the Administrator's review, the Administrator notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.)(emphasis added)

exceptional events. EPA cannot use its own inaction and delay as a justification for incorrect and unlawful designation decisions.

F. Although site days may qualify as Tier 1 or Tier 2 events, that does not mean they satisfy the requirements to be excluded as exceptional events.

EPA's 120-day letters note that 9,000 exceedances statistically qualify as Tier 1 or Tier 2 events for purposes of exceptional events review. But these tiers only describe the relative complexity of the relationship between the exceedance and the putative exceptional event based on historic pollution levels. This categorization, in turn, requires increasing levels of evidence in order to establish the clear causal connection required by the Exceptional Events Rule.[82]

The fact that a certain number of dates are categorized as Tier 1 or Tier 2 only provides the most preliminary indication of whether an exceedance could be excluded based on an exceptional event. This categorization in no way suggests that the higher exceedance was caused by a wildfire or other exceptional event; it only indicates that the exceedance was relatively high compared to other historic readings at that monitoring site. The vast majority of the information required to demonstrate an exceptional event caused an exceedance requires a case-by-case evaluation of the circumstances present on that day, rather than the tiering decision based on historic data. These showings must be met irrespective of an events tiering. Further, even if sufficient information is submitted to establish a clear causal connection under that tier, additional items are also required before an exceedance can be excluded as an exceptional event.[83] All of these showings must be met irrespective of an events tiering. Finally, as described above, the 120-day letters' suggestion that these Tier 1 and 2 events be examined is futile, because additional dates cannot be submitted as exceptional events for the reasons explained above.

V. Issues Regarding Boundaries and Designation Labels

A. Available satellite data must be used for properly determining nonattainment boundaries

EPA must consider all available data in its contribution analyses for nonattainment boundary areas. Satellite data for PM2.5 emissions is increasingly available, and elsewhere in this docket we are submitting data based on MODIS, MISR, SeaWIFS and VIIRS data.[84] Under

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[82] PM2.5 Wildland Fire Exceptional Events Tiering Document, Environmental Protection Agency, EPA-457/R-24-001 (April 2024). https://www.epa.gov/system/files/documents/2024-04/final-pm-fire-tiering-4-30-24.pdf at 5, 10. Available at Attachment K.

[83] Memorandum re: Tiered Approach for Addressing a Clear Causal Relationship Element within a Wildland Fire PM2.5 Exceptional Event Demonstration, Environmental Protection Agency, Docket #EPA-HQ-OAR-2024-0078 (Oct 2, 2026) citing 40 CFR 50.14(c)(3)(iv).

[84] *See*, Aaron van Donkelaar et. al., *North American Fine Particulate Matter Chemical Composition for 2000–2022 from Satellites, Models, and Monitors: The Changing Contribution of Wildfires*, 1 ACS ES&T 12 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11651298/. Available at Attachment L.

the APA, EPA's actions will be arbitrary and capricious if the agency fails to "examine the relevant data" submitted by commentors and articulate a satisfactory explanation for its action.[85]

The Clean Air Act defines nonattainment areas to include any area that "contributes to ambient air quality in a nearby area" that does not meet the NAAQS.[86] For determining whether a location contributes to nonattainment in a nearby area, EPA uses a "holistic, multi-factor, weight-of-the-evidence test."[87] Under this test, EPA can include meteorological data, as well as supplemental data related to emissions and air quality, to better understand the nature of violations. The MAIA dataset provides PM 2.5 speciation, breaking the pollutant down into its major chemical components. The MISR dataset's measurements of aerosol optical depth and motion provide information on the height and direction of moving pollutant plumes. Together, the attached data allow EPA to trace how a specific PM 2.5 component reached a violating monitor. EPA should utilize these advancements in air quality data to reach more accurate boundary designations.

Legal precedent supports EPA's consideration of MISR and MAIA data when determining nonattainment area boundaries. EPA has often utilized similar meteorological and speciated data for nonattainment boundary designations.[88] EPA has also relied on satellite data for excluding data in its exceptional event demonstrations.[89] Further, EPA cannot selectively use any data from the submitted datasets, or substantially similar datasets, to support PM2.5 boundary designations in certain areas, without analyzing how such data impacts boundary designations in other similarly situated areas.[90] The D.C. Circuit has held that EPA "may be required to articulate why data are sufficiently reliable for one purpose but not for another."[91] EPA recognizes the value of speciation data and satellite data suitable for certain uses.[92] These data provide key information for understanding contribution; as a result, if EPA does not consider them in boundary designations, it must explain its rationale.

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[85] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 30 (1983).
[86] 42 U.S.C. § 7407(d)(1)(A)(i).
[87] *Mississippi Comm'n. on Envt'l. Quality v. EPA*, 790 F.3d 138, 150 (D.C. Cir. 2015).
[88] *See,* e.g., *Bd. of Cnty. Commissioners of Weld Cnty., Colorado v. EPA*, 72 F.4th 284, 291 (D.C. Cir. 2023) (utilizing weather model data to expand a nonattainment area); *State v. EPA*, 983 F.3d 826 (5th Cir. 2020) (utilizing HYSPLIT trajectory modeling); *Catawba Cnty., N.C. v. EPA*, 571 F.3d 20 (D.C. Cir. 2009) (utilizing PM 2.5 speciation); *ATK Launch Sys., Inc. v. EPA*, 669 F.3d 330 (D.C. Cir. 2012) (utilizing meteorological data and non-regulatory monitors).
[89] *See, e.g., Bahr v. Regan,* 6 F.4th 1059 (9th Cir. 2021), *Sierra Club v. EPA*, 161 F.4th 934 (6th Cir. 2025).
[90] *See, Clean Wisconsin v. EPA*, 964 F.3d 1145, 1163 (D.C. Cir. 2020) (finding EPA's attainment designation for one area arbitrary and capricious where EPA failed to explain why it designated a similarly situated area nonattainment based on the same data).
[91] *Mississippi Comm'n. on Envt'l. Quality* at 155.
[92] EPA has recommended satellite data generally for exceptional events demonstrations. *See,* e.g., EPA, Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations (2016). Available at Attachment M; EPA, PM2.5 Wildland Fire Exceptional Events Tiering Document (2024). Available at Attachment K. EPA also references MISR data in its most recent Integrated Science Assessment for Particulate Matter. *See, e.g.*, EPA, Integrated Science Assessment for Particulate Matter at 2-36 (2019), https://www.epa.gov/system/files/documents/2026-06/isa_pm_final2019.PDF.

B. Unclassifiable/Attainment is an extra-statutory and improper designation

Clean Air Act section 107(d)(1)(A) plainly specifies three categories of designations: nonattainment, attainment, and unclassifiable. The Act further specifies the bases for each designation. However, contrary to the best reading of the Act, EPA suggests that after determining boundaries for any nonattainment and unclassifiable areas, it will designate the remainder of areas as "attainment/unclassifiable."[93] This is an extra-statutory designation unsupported by the law. EPA provides no explanation for its authority to promulgate such a designation, nor does it explain what this designation actually means.

An area designated attainment is by definition meeting the NAAQS. An unclassifiable area, by contrast, is an area that by definition cannot be classified as meeting or not meeting the NAAQS on the basis of available information. To lump together these two terms under one designation is confusing at best, and at worst provides misleading and inaccurate information about air quality in the area. For example, on its face, "attainment/unclassifiable" could be read to suggest that air quality in an area may factually be in attainment, but EPA does not have sufficient information to make that determination. In this circumstance, the Act allows for such an area to be designated as "unclassifiable" and there is no need for a hybrid designation.

Conversely, "attainment/unclassifiable" could reasonably be read to suggest that there is insufficient information for EPA to determine whether an area is attaining the NAAQS, and EPA is adding a reference to "attainment" so as to provide positive optics for such an area where in reality there are questions of whether the air quality is factually in attainment. This is problematic, as it does not allow the public to understand the status of air quality in their community. Such confusion and potential obfuscation is both unnecessary and unjustified, as the statute prescribes the designation categories that EPA must use, and these categories cover all possible permutations involved in these designations.

VI. Venue

When EPA publishes final designations for the 2024 PM2.5 NAAQS, it should acknowledge in the final rule the legal reality that the action is "nationally applicable" under Clean Air Act § 307(b)(1), codified at 42 U.S.C. § 7607(b)(1), and is therefore reviewable only in the D.C. Circuit. In the alternative, EPA must find and publish that the action is based on determinations of nationwide scope or effect.

Venue under 42 U.S.C. § 7607(b)(1) follows the two-step inquiry described in *Calumet* and *Oklahoma*.[94] First, a court identifies the relevant EPA "action" by reference to the Clean Air Act provision authorizing it and determines whether that action is "nationally applicable" or

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[93] Goffman memo at 7; *see also* Enclosure 1 of 120-day letters for states with violating monitors. *E.g.* EPA 120-day Notification Letter, dated September 29, 2026, from Anne Vogel, US EPA Region 5 Administrator, to the Honorable Michael Braun, Governor of Indiana, Regarding EPA's 2024 PM2.5 NAAQS Designations. Docket No. EPA-HQ-OAR-2024-0078-0525.

[94] *See EPA v. Calumet Shreveport Refin., L.L.C.*, 605 U.S. 627 (2025); *Oklahoma v. EOA*, 605 U.S. 609 (2025).

"locally or regionally applicable." Challenges to nationally applicable actions must be brought in the D.C. Circuit. Second, for locally or regionally applicable actions, venue ordinarily lies in the appropriate regional circuit, unless the action is "based on a determination of nationwide scope or effect," and EPA so finds and publishes, in which case challenges must instead be brought in the D.C. Circuit.

A. EPA should clarify that this is a "nationally applicable" action under CAA section 307(b)(1), reviewable only in the D.C. Circuit

Under the Supreme Court's two-step framework, the inquiry begins by identifying the relevant EPA "action" to then decide whether, on its face, the action applies "throughout the entire country, or only to particular localities or regions."[95] Section 307(b)(1)'s examples demonstrate this approach. EPA's promulgation of a new or revised NAAQS is included in the statute's description of nationally applicable regulations. Conversely, EPA's approval of a state implementation plan is state-specific action because 42 U.S.C. § 7410(a) indicates such a plan is something "submitted by a State."[96] The relevant "action" is determined by "reference to the substantive authority under which EPA is acting," which is "controlling, regardless of how EPA chooses to package its decisions in the Federal Register."[97]

The "action" for purposes of determining venue for judicial review here is EPA's exercise of the authority under Section 107(d)(1)(B)(i), the promulgation of designations. The statute requires EPA to promulgate designations "of all areas." It directs a single, nationwide action tied to promulgation of the NAAQS. It sets a single deadline, "as expeditiously as practicable, but in no case later than two years" after promulgating the new or revised NAAQS, and allows for an extension "for up to one year" if EPA has determined that there is "insufficient information to promulgate the designations."

The published notice of EPA's intended designations confirms that this is a nationwide action. EPA explains that CAA Section 107(d) requires it to designate areas across the country as attainment, nonattainment, or unclassifiable.[98] And EPA describes the court-ordered deadlines as requiring final designations "for all areas of the country."[99] These statements support the conclusion that designations are a single exercise of federal authority implementing one national standard. This differs from the specific action in *Calumet*, where EPA's denial of a single refinery's exemption petition "only applies to that refinery, which is a particular entity located in a particular place." It also differs from *Oklahoma*, where each SIP disapproval was its own action because the statute directs each state to adopt and submit a plan that EPA then approves or

[95] *Calumet* at 638.
[96] *Calumet*, at 637.
[97] *Id*., at 638.
[98] *Initial Air Quality Designations for the 2024 Revised Primary Annual Fine Particle (PM2.5) National Ambient Air Quality Standards (NAAQS)*, 91 Fed. Reg, 63516, 518 (Oct. 6, 2026).
[99] *Id*.

disapproves, so a disapproval "on its face applies only to the State that proposed the SIP."[100] Section 107(d) does not frame designations that way. Instead, it directs EPA to promulgate designations "of all areas" as a single set under a specific standard.

Here, EPA must promulgate "final designations for all areas of the country."[101] The final designations will establish attainment status of areas in every State and Tribal area under one numerical standard of 9.0 $\mu g/m^3$. The Tenth Circuit reached this same conclusion regarding the 2006 PM2.5 designations, focusing on the designations' nationwide geographic scope.[102] The court explained that the rule "creates a standard that applies to the entire country" and that the list of designations "does not […] constitute a mere amalgamation of numerous local actions into a single rule. Rather, EPA's Designations Rule constitutes its national interpretation of Clean Air Act mandates, and any challenge thereto belongs in the D.C. Circuit."[103]

EPA also confirmed the national applicability of its anticipated designations rule for the 2024 PM2.5 NAAQS in its statements to the district court for the Northern District of California, in the citizen suit filed to compel EPA to issue the designations. The then-Assistant Administrator for the Office of Air and Radiation, Aaron Szabo, explained in a declaration that EPA coordinates designations "across the country" to ensure they are "correct, nationally consistent, and defensible." [104] Alongside regional offices, EPA Headquarters participate directly in the process and review technical support documents "for accuracy and national consistency."[105] Szabo further stated that even if public comments address only one area, the review still requires national coordination:

> Notably, this effort is *national in scope* because even if the comments are specific to one area, ensuring national consistency necessarily involves coordination across all ten EPA Regional Offices and the multiple Headquarters Offices.[106]

Furthermore, EPA characterizes and anticipates that the final action "will have broadly applicable and intertwined factual, policy, and legal implications across areas, States, and regions," requiring nationwide consultation from the agency's Office of Air

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[100] *Oklahoma v. EPA*, 605 U.S. 609, 620 (2025).
[101] See, e.g., EPA Region 5 letter Governor Whitmer at 1 (citing *All. of Nurses for Healthy Env'ts v. Zeldin*, No. 26-cv-03118-HSG).
[102] *ATK Launch Sys. v. United States EPA*, 651 F.3d 1194, 1200 (10th Cir. 2011).
[103] *Id*. The holding in *Texas v. EPA*, 983 F.3d 826, 833 (5th Cir. 2020), that designations for eight counties in Texas were not a nationally applicable action is no longer good law. The 5th Circuit's ruling relied on how EPA packaged the action—a Federal Register notice that pertained only to eight counties in Texas. That reliance is inconsistent with now controlling Supreme Court precedent. As the Supreme Court held in *Calumet*, 605 U.S. at 637, it is the scope of the agency's authority under the CAA that determines the scope of its action, regardless of how EPA itself packages the action. And, as explained above, the Clean Air Act makes clear that EPA's authority and obligation to issue designations applies nationally.
[104] Szabo Decl. ¶ 16. Available as Attachment N.
[105] Szabo Decl. ¶¶ 17–19.
[106] Szabo Decl. ¶ 26 (emphasis added).

and Radiation, Regional Offices, and Office of General Counsel "to assure consistency with EPA's nationwide approach to such issues."[107] After nationwide coordination, Szabo directs that final routing for the Administrator's signature go through the Office of State Air Partnerships, then be transmitted to his office in case it "may require iteration and re-review as needed to ensure national consistency and accuracy."[108] Thus, EPA's own statements regarding the designations process for the 2024 PM2.5 NAAQS reflect the national applicability of the action.

Indeed, EPA historically has concluded its designations are nationally applicable. EPA has published prior designation rules as nationally applicable under section 307(b)(1) and the D.C. Circuit has reviewed several iterations of EPA's national designations for the PM2.5 and ozone NAAQS on the merits. EPA should continue that practice and clarify that the promulgation of final designations here is a nationally applicable action.[109] Not only would doing so be consistent with the statute and EPA's past practice, it would make clear that judicial challenges to the final designations rule should be filed in the D.C. Circuit, potentially avoiding confusion regarding the proper circuit for petitions for review and ensuring that any litigation over the designations is promptly resolved in a single proceeding in the D.C. Circuit.

B. Alternatively, EPA should make a finding that the designations are based on determinations of nationwide scope or effect under CAA section 307(b)(1)

For the reasons explained above, EPA's action is nationally applicable for purposes of CAA section 307(b)(1).[110] However, even if EPA were to treat any part of its promulgation of final designations as locally/regionally applicable, the action still belongs in the D.C. Circuit if (1) it is "based on a determination of nationwide scope or effect" and (2) EPA "finds and publishes that such action is based on such a determination."[111] While EPA has provided scant notice of its intended area designations, the information EPA has provided suggests that EPA intends to base final designations on whether air quality monitoring data reflects design values showing that an area is violating the PM2.5 NAAQS. EPA's 120-day letters and other statements indicate that air quality monitoring data and design values will be the core justification for its action nationwide. Therefore, EPA's action is "based on a determination of nationwide scope or effect" and EPA should publish to that effect under CAA section 307(b)(1) to ensure that judicial

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[107] Szabo Decl. ¶ 27.
[108] Szabo Decl. ¶ 28.
[109] *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009) (1997 PM2.5); *ATK Launch Systems, Inc. v. EPA*, 669 F.3d 330 (D.C. Cir. 2012) (2006 PM2.5); *Mississippi Commission on Environmental Quality v. EPA*, 790 F.3d 138 (D.C. Cir. 2015) (2008 ozone); and *Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020) (2015 ozone).
[110] EPA may attempt to argue, as it did before the Northern District of California, that it has discretion to promulgate partial designations. If EPA were to take that position in its final designations rule, EPA would be wrong. *See All. of Nurses for Healthy Env'ts v. Zeldin*, 2026 WL 2078145, at *6 & n.7 (July 17, 2026), *appeal filed* 9th Cir., September 3, 2026.
[111] 42 U.S.C. § 7607(b)(1).

review occurs in a timely and consolidated fashion, furthering the statute and EPA's goals of national consistency.

As the Supreme Court recently clarified in *Calumet*, an EPA action is "based on" a determination of nationwide scope or effect "if that determination 'lies at the core of the agency action,' so as to form the most important part of the agency's reasoning" and is the "primary explanation for and driver of EPA's action."[112] EPA's 120-day letters reflect that EPA's intended approach to the designations will be based primarily on specific air quality monitoring data and design values for each area.[113] Likewise, EPA's guidance in the Goffman Memo provides a uniform five-factor analysis to drive the determination of whether a "nearby" area "contributes" to nonattainment such that it should be included within the boundary of the nonattainment area. *See* Goffman Memo at 5; *id.* attach. 3, at 1, 4-5, 12. As already discussed, EPA's 120-day letters unlawfully and arbitrarily fail to apply the five-factor analysis set forth in the guidance or otherwise explain how it intends to identify nonattainment area boundaries. However, whatever approach EPA takes in the final designations will reflect its interpretation of an area that "contributes to ambient air quality in a nearby area" in nonattainment with the PM2.5 NAAQS. The design values and EPA's interpretation of nearby contributing areas "form[] the core basis" for the designations.[114]

EPA's description of its "intended approach" in the Federal Register announcement of the 120-day letters similarly describes monitoring data and design values as the core determinations driving its designations. EPA explained its "intended approach for designations for the 2024 annual $PM_{2.5}$ NAAQS under CAA section 107(d)(1)(B)" includes "evaluation of the complete and certified $PM_{2.5}$ ambient air quality monitoring data, including the 2021-2023 DVs on which States, the District of Columbia, territories, and Tribes, based their initial designation submissions." 91 Fed. Reg. 63518. EPA noted that it also "evaluated and utilized the most recent complete and certified $PM_{2.5}$ air quality monitoring data, including the 2023-2025 DVs, and other available technical information pertinent to these designations." 91 Fed. Reg. 63518.

EPA's intent to use monitoring data and design values as the core rationale for its decision is comparable to EPA's determination in *Calumet* to apply a single decision-making factor to all small refinery petitions for economic hardship exemption from the Renewable Fuel Standards program. In that instance, EPA applied a coordinated statutory interpretation and economic analysis generically to all small refineries applying for the exemption, regardless of their geographic location. [115] Likewise, EPA is proposing in its 120-day letters to classify areas as

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[112] *Calumet*, 605 U.S. 627, 145 S. Ct. at 1751 (cleaned up).
[113] As already noted *supra* Section I.C, this is a departure from EPA's 2024 PM2.5 designations guidance. The guidance stated that "all areas with one or more regulatory ambient PM2.5 air quality monitors with a design value greater than the annual standard of 9.0 μg/m3" would be designated as nonattainment. Goffman Memo at 4. However, EPA's current approach abandons the historic five-factor analysis EPA applied to identify nonattainment area boundaries that include areas that contribute to nonattainment in nearby areas.
[114] Calumet, 145 S. Ct. at 1752.
[115] *Calumet*, 605 U.S. 627, 145 S. Ct. at 1752.

"attainment/unclassifiable" or "nonattainment" based on its evaluation of air quality monitoring data and design values using a consistent method to evaluate such data across all areas of the country. Although EPA has not done a proper five-factor analysis to identify nonattainment area boundaries, such an analysis would be part-and-parcel of is core decision-making approach and thus wrapped up in the determination of nationwide scope or effect driving the designation.

EPA's "determination" to rely on certain air quality monitoring data and design values is clearly one of "nationwide scope or effect."[116] A "determination" is one of "nationwide scope and effect" if it applies "throughout the entire nation," as both a legal and practical matter.[117] As noted, EPA announced its approach to the designations would be to rely on monitoring data and design values for 2021-2023 submitted by States and data and design values for 2023-2025 evaluated by EPA. 91 Fed. Reg. 91 Fed. Reg. 63518. And EPA has provided the same explanation for its intended approach to the designations in all its 120-day letters. As such, if finalized, EPA would be applying the same rationale across the entire country, as a legal and practical matter. Therefore, EPA cannot escape that the final designations are based on a determination that has nationwide scope and effect.

EPA's 120-day letters further suggest that states may submit or EPA may otherwise consider information showing that design values are invalid or should be discounted due to exceptional events determinations. As discussed above, *supra* Section IV, EPA cannot consider exceptional events demonstrations submitted in response to the 120-day letters because those demonstrations fall outside the regulatory deadline for such submissions and will not be subject to required public notice and the opportunity to comment. Nor can EPA finalize designation decisions based on excluding data influenced by exceptional events without first providing a public process. However, if EPA's final designations rule were to rely on exceptional events demonstrations that are untimely and were not subject to notice and comment, its decision to generically waive the regulatory deadline for exceptional events demonstrations and public notice and comment requirements for the designations rule would be an additional determination of nationwide scope and effect that the designations rule is based on.

That EPA is soliciting additional state-specific information that it may consider in designating areas as "nonattainment" or "attainment/unclassifiable" does not transform EPA's final designations rule into multiple separate locally or regionally applicable actions. Such information would not be the primary driver of EPA's decision. Where, as here, EPA relies on a determination of nationwide scope or effect to reach a "presumptive resolution, those determinations qualify as the driver of its decision."[118] EPA's own description of its decision-making process treats the design values as more than an aid to guide its decision-making,[119] as

[116] 42 U.S.C. § 7607(b)(1).
[117] *Calumet*, 605 U.S. 627, 145 S. Ct. at 1750 (cleaned up).
[118] *Calumet*, 605 U.S. 627, 145 S. Ct. at 1752.
[119] *Contra Oklahoma*, 605 U.S. at 624 (conclusions that served as "heuristics that aided EPA's analysis, as opposed to the primary drivers" of its action were not determinations of nationwide scope or effect).

EPA considers the certified air quality data the determinative factor of whether an area should be classified as "nonattainment." EPA's confirmatory review of state-specific submissions to is "peripheral" and therefore "not relevant" for venue purposes under Section 307(b)(1).[120]

VII. Conclusion

For these reasons, the undersigned Public Interest Organizations urge EPA to abandon the illegal aspects of its intended designations. EPA must instead focus its efforts on designating areas of the country based on valid 2023-2025 design values, and on technically and legally sound assessments of appropriate nonattainment boundaries for those areas with violating monitors or that may be contributing to such violations. Given the paramount importance of protecting public health under the 2024 PM2.5 NAAQS, now is the time for the agency to faithfully implement the Act so that the public benefits from clean air that is healthy to breathe.

The health and wellbeing of the American people suffer the most when EPA and states sit on the sidelines rather than properly implement the NAAQS. This is especially true for children and older adults, people with pre-existing respiratory or cardiovascular disease, people of color, and low socioeconomic status populations. To protect the public health and environment, EPA must do more—not less—and must not abdicate its responsibility and mission by failing to promulgate final designations grounded in science and the law.

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[120] *Calumet*, 605 U.S. 627, 145 S. Ct. at 1754.

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