



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R05-OAR-2016-0277; FRL-9956-95-Region 5]

Reclassification of the Sheboygan, Wisconsin Area to Moderate Nonattainment for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Sheboygan, Wisconsin area (Sheboygan County) has failed to attain the 2008 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2016, and that this area is not eligible for an extension of the attainment date. Thus, EPA is reclassifying this area as "moderate" nonattainment for the 2008 ozone NAAQS. The State of Wisconsin must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to areas classified as moderate nonattainment for the 2008 ozone NAAQS by January 1, 2017.

DATES: This final rule is effective **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0277. All documents in the

docket are listed in the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <http://www.regulations.gov>, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is being addressed in this document?

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on an area's ozone design value¹ as of the

¹ An area's ozone design value for the eight-hour ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most

area's attainment deadline, whether the area has attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a one-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next "highest" classification (e.g., marginal to moderate, moderate to serious, etc.) or to the classifications applicable to the areas' design values.

On April 30, 2012, the Sheboygan area was designated as nonattainment for the 2008 ozone NAAQS and was classified as marginal, effective July 20, 2012 (77 FR 30088, May 21, 2012). Wisconsin submitted a letter to EPA requesting a one-year extension of the attainment deadline for the Sheboygan area under section 181(a)(5) of the CAA. In that letter, Wisconsin certified that the State had complied with all requirements and commitments pertaining to the Sheboygan area in the SIP and that all monitors in the area had a fourth highest daily maximum 8-hour average of 0.075 parts per million (ppm) or less for 2014 (i.e., the last full year of air quality data prior to the July 20, 2015, attainment date). On May 4, 2016 (81 FR 26697), based

recent three years with complete, quality-assured monitored ozone data prior to the attainment deadline.

on EPA's evaluation and determination that the area met the attainment date extension criteria of CAA section 181(a)(5), EPA granted the Sheboygan area a one-year extension of the marginal area attainment date to July 20, 2016.

Wisconsin did not request a second one-year extension for the Sheboygan area, and the area would not have qualified for one under CAA section 181(a)(5) because, at 0.076 ppm, the average of the 2014 and 2015 annual fourth highest daily maximum eight-hour average ozone concentrations at a monitor in the area is greater than 0.075 ppm. On September 28, 2016 (81 FR 66617), EPA proposed to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016, is not eligible for an additional one-year attainment date extension, and must be reclassified as moderate nonattainment. EPA also proposed to require Wisconsin to submit SIP revisions to address moderate area requirements by January 1, 2017.

II. What comments did we receive on the proposed rule and how are we responding to those comments?

EPA provided a 30-day review and comment period on the proposed action. Adverse comments are summarized and addressed below.

Comment 1: There are two ozone monitoring sites in the Sheboygan area. The first is located at Kohler Andrae State

Park along Lake Michigan and southeast of the City of Sheboygan, the main urban area of the county. The ozone detected by the Kohler monitor does not come from the Sheboygan area, but from areas along southern Lake Michigan, namely Chicago, IL and Gary, IN. This site has been operational since June 1997. The second monitoring site, known as Haven, is located northwest and downwind of the City of Sheboygan and has been operational since April 2014.

EPA's nonattainment re-designation is based exclusively on data from the Kohler Andrae monitor. Once 2016 data are certified, the Haven monitor will have three complete years of data for this site. Based on these data, the Haven monitor will have a design value of 0.069 ppm, as compared to 0.079 ppm at the Kohler Andrae monitor.² These data show that actual air quality within the Sheboygan area is in compliance with the 2008 ozone standard. EPA should allow Wisconsin to certify these data and consider all available regulatory data prior to making a re-designation for the entire county.

Response 1: CAA section 181(b) (2) requires EPA to determine, based on an area's ozone design value as of the area's attainment deadline³, whether the area has attained the

² The level of the 2008 ozone standard is 0.075 ppm.

³ Section 181(a) (5) of the CAA gives the Administrator the discretion to grant up to two one-year extensions of the attainment date upon application by any state if certain

ozone standard by that date. The CAA also requires that any area⁴ that EPA finds has not attained the standard by the attainment deadline shall be reclassified by operation of law to the higher of the next "highest" classification (e.g., marginal to moderate, moderate to serious, etc.) or the classification applicable to the area's design value. Further, the agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS exists regardless of the nature or effect of transported ozone and emissions on monitored air quality data in a given nonattainment area.⁵

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth-highest daily maximum eight-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm.⁶ This three-year average is referred to as the design value. When the design value is less

criteria are met. Wisconsin did not request a second one-year attainment date extension, and the Sheboygan area would not have met the criteria required for EPA to grant one.

⁴ Except those classified as severe or extreme.

⁵ See *Sierra Club v. EPA*, 294 F.3d 155, 160-62 (D.C. Cir. 2002) (holding that the EPA is not permitted to relax mandatory statutory requirements for downwind areas on the basis of interstate transport).

⁶ The rounding convention under 40 CFR part 50, appendix P, dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed three-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and, therefore, over the standard.

than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, the area is deemed to be meeting the NAAQS. If the design value is greater than 0.075 ppm at any site in the area, the area is deemed to be violating the NAAQS.

Therefore, even if the Haven monitoring site had three years of complete, quality-assured, and certified ozone data showing a design value below the standard for the 2013-2015 time period, EPA would still be compelled to determine that the area failed to attain the standard due to the violation recorded at the Kohler Andrae monitor.

Comment 2: EPA's guidance on monitoring site selection states, "[f]or regulatory compliance, the principle objective is to measure the ozone concentration in the high population density areas and the maximum downwind concentration from the urban region." The Kohler Andrae monitor is not located downwind from sources in the Sheboygan area. The monitor's location in no way could be seen as measuring ozone concentration in an area with the maximum downwind concentration from the urban region.

Response 2: The siting of the Kohler Andrae monitor is consistent with EPA's monitoring site selection guidance. EPA's monitoring guidance does not prevent placement of monitors upwind of urban source areas. In addition, the Kohler Andrae

monitor was not placed to monitor the maximum downwind impacts from the urbanized portion of the Sheboygan area, but to capture maximum downwind impacts from several urban areas along Lake Michigan, including Milwaukee, Wisconsin; Chicago, Illinois; and Gary, Indiana. The fact that the Kohler Andrae site is monitoring the highest ozone concentrations in Wisconsin supports the appropriateness of its selection as a maximum downwind site.

Comment 3: The Haven monitor is located approximately six miles northwest of the City of Sheboygan. Wisconsin established this monitor specifically to provide accurate downwind measurements of air quality for the Sheboygan area. This monitor's location makes it a much more appropriate monitor to use for compliance with ozone standards because it is placed in a location that will actually monitor ozone generated from Sheboygan area facilities.

Response 3: EPA recognizes that the Haven monitor provides additional air quality data that can be used in conjunction with the air quality data from the Kohler Andrae monitor to form a more complete understanding of ozone values throughout the Sheboygan area. This information can be considered when making nonattainment area boundary decisions for any future ozone designations. The Sheboygan area, consisting of the entirety of Sheboygan County, was designated as nonattainment for the 2008

ozone standard on April 30, 2012. EPA considered the recommendation of the state and the information available at the time to determine the appropriate boundary for the area. At that time, the Haven monitor ozone data were not available for consideration. That designation is not being reevaluated in this rulemaking.

In this action EPA is meeting its statutory obligation under section 181(b)(2) of the CAA to determine, based on the area's ozone design value as of the area's attainment deadline, whether the Sheboygan area has attained the 2008 ozone standard. As discussed more completely in response to Comment 1, if any monitor in an area shows a violation of the ozone NAAQS during the most recent three-year period with complete, quality assured, and certified ozone data before the attainment deadline, and the state fails to meet the requirements for an attainment date extension set forth in section 181(a)(5) of the CAA, EPA is obligated to determine that the area has failed to attain the standard by the attainment date. Therefore, even were EPA able to consider data from the Haven monitor, EPA cannot ignore the data recorded at the Kohler Andrae monitor, which is also located within the Sheboygan nonattainment area. Quality assured, certified data from the Kohler Andrae monitor show that the area failed to attain the 2008 ozone standard by its attainment deadline and, thus, EPA is obligated to make that

finding. EPA's finding that the area failed to attain the standard by the attainment deadline requires EPA to reclassify the area by operation of law. Further, as discussed above, the agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS exists regardless of the nature or effect of transported emissions on monitored air quality data in a given nonattainment area.

Comment 4: The State of Wisconsin has worked with EPA to address the issue of an upwind compliance monitor unfairly subjecting an entire county to a nonattainment designation in Kenosha County. At the very least, EPA should consider changing the geographic boundaries of the Sheboygan nonattainment area to exclude those portions of the county which are clearly in attainment according to data from the Haven monitor. Reclassifying only part of Sheboygan County would allow for more regulatory certainty for businesses and residents of the area as well as provide a more fair and appropriate regulatory solution than holding the entire county accountable as the air quality data clearly shows substantial attainment with the 2008 standard in large portions of the county.

Response 4: As discussed in the previous response, in this action, EPA is meeting its statutory obligation under section 181(b)(2) of the CAA. This action does not grant EPA the authority to reopen the boundary determinations that were made

when the Sheboygan area was designated as nonattainment for the 2008 ozone standard.⁷ However, EPA and the states are currently in the process of designating areas under the 2015 ozone standard. The arguments presented by the commenter as well as other supporting information may be provided by the State to support its boundary recommendations for the 2015 ozone NAAQS and would be considered by EPA when finalizing area designations and boundaries for that ozone standard.

Comment 5: Reclassification to moderate increases the emission offsets required for new and modified major sources, which could restrict future growth for sources in the Sheboygan area. In addition, the majority of ozone precursor emissions in the Sheboygan area are located downwind of the Kohler Andrae ozone monitor. These facilities may be subject to increased regulations even though they are not likely contributing on days with higher ozone concentrations at the Kohler Andrae monitor.

Response 5: EPA acknowledges that a reclassification to moderate increases emission offsets required for new and modified major sources from 1.1 to 1 (for marginal areas) to 1.15 to 1 (for moderate areas). This offset ratio is established by section 181(b)(5) of the CAA. Increased offset ratios are intended to mitigate the impact of new ozone precursor sources to an existing ozone air quality problem and

⁷ 77 FR 30088 (May 21, 2012)

to avoid the propagation of this ozone problem to areas downwind of the violating monitoring site.

Comment 6: EPA should not finalize this action.

Wisconsin's lakeshore air quality is heavily impacted by ozone precursors originating from out of state. The Sheboygan area, in particular, has long suffered the consequences of diminished air quality and resulting nonattainment due to emissions originating beyond Wisconsin's borders. To meet its CAA obligations, Wisconsin has already taken a wide range of actions to reduce emissions in order to improve the air quality of the Sheboygan area. Source apportionment modeling from the Lake Michigan Air Directors Consortium (LADCO) has suggested that the entire State of Wisconsin contributes less than 10% of the ozone monitored in the Sheboygan area. Any further actions taken by the state to address moderate area planning requirements for this NAAQS are unlikely to significantly improve the Sheboygan area's air quality. EPA must expeditiously and more completely address the contributions of upwind state emissions to this region of Wisconsin.

Response 6: EPA readily acknowledges the role interstate transport of precursors and ozone pollution plays in the efforts of downwind areas to attain and maintain the NAAQS. Section 110(a)(2)(D) of the CAA specifically contains provisions requiring states to address their contribution to nonattainment

and maintenance of the NAAQS in other states. CAA section 110(a)(2)(D)(i)(I) requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment of a NAAQS, or interfere with maintenance of a NAAQS, in another state. Under section 110(a)(2)(D)(i)(I), each state is required to submit to the EPA new or revised SIPs that contain adequate provisions "prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will...contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard."

EPA has taken a number of steps to fulfill its statutory obligation to enforce CAA section 110(a)(2)(D), or the "good neighbor" provision, including the NO_x SIP Call, the Clean Air Interstate Rule, and the Cross-State Air Pollution Rule (CSAPR). Most recently, on October 26, 2016 (81 FR 74504), EPA updated CSAPR specifically to address the 2008 ozone NAAQS with tightened ozone NO_x emission budgets designed to achieve emission reductions in upwind states before the July 2018 moderate area attainment date.⁸

⁸ In updating CSAPR to address the 2008 ozone standard, EPA established ozone season NO_x emissions budgets of 14,601 tons for

In addition, in recognition of the regional nature of ozone formation and transport, the Lake Michigan Air Directors Consortium was created to provide a forum for the states surrounding Lake Michigan to work cooperatively to develop attainment strategies for the entire Lake Michigan region. EPA continues to encourage the states to work cooperatively through this forum to reach attainment goals throughout the region.

Nevertheless, as noted previously, the agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS under section 181(b)(2) of the CAA exists regardless of the nature or effect of transported emissions on monitored air quality data in a given nonattainment area.

Comment 7: EPA's proposed rule states "moderate nonattainment areas are required to attain the standard 'as expeditiously as practicable' but no later than six years after the initial designation as nonattainment (which, in the case of the Sheboygan area, would be July 20, 2018)." EPA is proposing to require submission of the necessary moderate area SIP revisions no later than January 1, 2017. EPA is unlikely to finalize a reclassification until just weeks before the proposed January 1, 2017 due date. This is insufficient time for a state

Illinois and 23,303 tons for Indiana. See 81 FR 74504, 74508 (October 26, 2016). This tightened the CSAPR emission budgets of 21,208 tons for Illinois and 46,175 tons for Indiana, which had been established to address the 1997 ozone standard. See 76 FR 48208, 48262-63 (August 8, 2011).

to complete all the actions needed to meet moderate nonattainment area requirements for this NAAQS. EPA must finalize a more realistic deadline and ensure the state is not penalized for any deficiency relative to that date.

Response 7: EPA recognizes the extremely tight timeframe and is committed to working with Wisconsin to prepare SIP revisions in a timely manner. EPA's ability to extend deadlines for areas being reclassified as required by CAA section 181(b)(2) is governed by section 182(i) of the CAA, which directs that the state shall meet the new requirements according to the schedules prescribed in those requirements, but provides "that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." CAA section 182(b), as interpreted by 40 CFR 51.1100 *et seq.*, describes the required SIP revisions and associated deadlines for a nonattainment area classified as moderate at the time of the initial designations. However, these SIP submission deadlines (*e.g.*, three years after the effective date of designation, or July 2015, for submission of an attainment plan and attainment demonstration) have already passed. Accordingly, EPA proposed to exercise its discretion under CAA section 182(i) to adjust the moderate SIP submittal deadlines for the Sheboygan area.

In determining an appropriate deadline for the moderate area SIP revisions for the Sheboygan area, EPA had to consider that pursuant to 40 CFR 51.1108(d), the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the complete ozone season immediately preceding a nonattainment area's attainment date. In the case of nonattainment areas classified as moderate for the 2008 ozone NAAQS, the attainment year ozone season is the 2017 ozone season (40 CFR 51.1100(h)). Because an extension of the attainment date is not appropriate here, and control measures for other moderate areas are to be implemented no later than the beginning of the 2017 ozone season, EPA determined it would not be appropriate to adjust the attainment date beyond the beginning of the 2017 ozone season for the Sheboygan area. Further, because ozone seasons begin as early as January 1, EPA determined that a SIP submission deadline of January 1, 2017, is the latest submittal deadline that allows all states to meet 40 CFR 51.1108(d) requirements, and thus assures consistency as directed by 182(i).

While we acknowledge that the timeframe for submitting the required SIP revisions is tight, states have not been prohibited from beginning development of moderate area SIP revisions prior to finalization of the reclassification. In fact, although

reclassification of the Sheboygan area is being finalized in this rule, Wisconsin has been aware that EPA would propose to reclassify the Sheboygan area as moderate from the time that 2015 monitoring data became available showing that the Sheboygan area would not qualify for an additional one-year extension. EPA has consistently encouraged states to begin working on moderate area SIP revision requirements ahead of finalization of the reclassification required by the CAA.

Even before the 2015 monitoring data was available, the state was aware that, if a second one-year extension was not appropriate, the state would have very little time to develop and implement an acceptable attainment plan. EPA's policy regarding attainment date extensions and reclassifications of marginal areas⁹ explicitly cautions: "When requesting an extension, States should consider the consequences of eventually not attaining the NAAQS. Although areas can request two 1-year extensions, those that ultimately fail to attain the NAAQS will be bumped up to at least a moderate classification... Consequently, areas that are bumped up will be under very tight timeframes to implement the new SIP requirements, in addition to achieving the reductions to meet the new attainment date." Moreover, in providing the initial one-year extension to the

⁹ Memorandum Dated February 3, 1994, from D. Kent Berry entitled "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas."

Sheboygan area, EPA was clear that "it would be prudent for the state to begin preparing for the possibility that the area may not attain by the July 20, 2016, attainment date." (81 FR at 26703) Accordingly, we believe the area was provided adequate notice that time to develop and submit a moderate area attainment plan was likely to be short given that the moderate area attainment year ozone season is the 2017 ozone season for the 2008 ozone NAAQS and that other moderate areas were also required to submit their plans in January 2017.

Comment 8: A reclassification to moderate would require the fourth highest ozone value for 2017 to be at or below 0.059 ppm. This would require ozone values to fall below background levels, and absolutely no action available to either the State of Wisconsin or EPA could achieve such a result. EPA is requiring the State of Wisconsin to undergo a time consuming SIP drafting effort in an extremely limited timeframe with no possibility of success. This requirement is as impractical as it is unfair.

Response 8: As discussed in the response to comment 7, the State of Wisconsin has been aware of its potential obligation to meet moderate SIP requirements from the time that the area failed to attain the 2008 ozone standard and the State requested and qualified for a one-year attainment date extension. Further, EPA disagrees that reclassification to moderate would

require the fourth highest 8-hour daily average ozone value for 2017 to be at or below 0.059 ppm at the Kohler Andrae monitor. As discussed more completely in response to comment 1, under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth-highest daily maximum eight-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm, when truncated after the third decimal place. The fourth highest 8-hour daily average ozone value for 2015 is 0.081. Preliminary data indicate that the fourth highest 8-hour daily average ozone value for 2016 is 0.085. Thus, providing the preliminary 2016 data remains unchanged upon certification, a fourth highest 8-hour daily average ozone value of 0.061 ppm for 2017 would result in a design value of 0.075 at the Kohler Andres monitor, which would be in attainment of the 2008 ozone standard.

In addition, even if the design value at the Kohler Andres monitor is not attaining the 2008 ozone standard with certified 2015-2017 monitoring data, Wisconsin could still request a one-year extension of the moderate area attainment date for the Sheboygan area. EPA could grant such an extension provided that the State meets the requirements of section 181(a)(5) of the CAA. Subsequently, if the area continued to violate the standard with 2018 data, Wisconsin could request a second one-

year attainment date extension, which EPA could grant if the State meets the requirements of section 181(a)(5). It should be noted that, if the Sheboygan area should fail to qualify for a one-year extension (or an additional one-year extension) and/or ultimately fails to attain the 2008 ozone standard by its attainment deadline, EPA would be required to meet its statutory obligation under section 181(b)(2) of the CAA to determine that the area failed to attain the ozone standard by its attainment deadline. This would result in the area being reclassified by operation of law to the next "highest" classification, in this case from moderate to serious.

Alternately, the State of Wisconsin could decide that additional time is needed to adopt the emissions control plan, seek emission controls from upwind states, and implement additional emission controls. In that case, Wisconsin could request that the Sheboygan area be reclassified to serious nonattainment at this time. This would result in establishing a serious area attainment date of July 20, 2021 for the Sheboygan area (rather than the July 20, 2018 moderate attainment deadline), and require the area to meet the serious level requirements of section 182(c) of the CAA while giving the state additional time to develop an ozone attainment plan for the Sheboygan area.

III. What action is EPA taking?

EPA is determining that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016, and is not eligible for an additional one-year attainment date extension. Therefore, upon the effective date of this rule, the Sheboygan area will be reclassified by operation of law to moderate nonattainment for the 2008 ozone standard. EPA is requiring Wisconsin to submit SIP revisions to address moderate area requirements by January 1, 2017.

IV. Good Cause Exemption Under the Administrative Procedure Act (APA).

Under APA section 553(d)(3), 5 U.S.C. 553(d)(3), an agency may make a rule immediately effective "for good cause found and published with the rule." The EPA believes that there is "good cause" to make this rule effective upon publication in the Federal Register in order to avoid an impractical outcome and to provide time for the state to meet the relevant statutory and regulatory deadlines. Specifically, for any areas classified as moderate nonattainment for the 2008 ozone NAAQS, the EPA has interpreted CAA section 182, in conjunction with 40 CFR 51.1108(d) and 51.1112(a)(3), to require states to submit their moderate area SIP revisions and comply with RACT implementation requirements by January 1, 2017. While EPA acknowledges and addresses comments related to the compressed timeline associated with this action elsewhere in this notice, the agency believes

that establishing an effective date of this action simultaneous with the date of publication will reconcile the competing statutory interests by eliminating a potentially impractical outcome in which the area might otherwise be subject to moderate nonattainment area statutory and regulatory deadlines that would already have passed prior to the normal 30 days post-publication effective date. EPA made clear in the action providing the initial extension for this area that absent a second extension, a state would be under a tight deadline to develop an acceptable attainment plan. See 81 FR 26703. When 2015 monitoring data became available earlier this year showing that the Sheboygan area would not be eligible for a second one-year extension, the state had every reason to anticipate and prepare for reclassification. In addition, EPA published its proposed rule for this reclassification on September 28, 2016, and is providing direct notice to the state of this final action simultaneous with signature of this rule. Accordingly, the EPA finds that the preparation time actually available to the state and the need to reconcile the statutory interest in reclassification with the deadlines for submission of moderate area SIP revisions and compliance with RACT implementation requirements, constitute good cause under 5 U.S.C. 553(d)(3) to make this final action effective upon publication.

V. Statutory and Executive Order reviews.

Under section 181(b)(2) of the CAA, a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification must occur by operation of law. A determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law under section 181(b)(2) does not in and of itself create any new requirements, but rather applies the requirements contained in the CAA. For these reasons, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications because it will not have a substantial direct effect on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure,
Air pollution control, Designations and classifications,
Intergovernmental relations, Nitrogen oxides, Ozone, Reporting
and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

Part 81, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 81--DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.350 is amended by revising the entry for Sheboygan County, WI in the table entitled "Wisconsin-2008 8-Hour Ozone NAAQS (Primary and secondary)" to read as follows:
 §81.350 Wisconsin.

* * * * *

Wisconsin-2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Sheboygan County, WI: ² Sheboygan County		Nonattainment	<u>[insert date 30 days after publication in the Federal Register]</u>	Moderate
* * * * *				

¹ This date is July 20, 2012, unless otherwise noted.

²Excludes Indian country located in each area, unless otherwise noted.

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[FR Doc. 2016-30330 Filed: 12/16/2016 8:45 am; Publication Date: 12/19/2016]