



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-HQ-OAR-2018-0226; FRL-9998-28-OAR]

RIN 2060-AT97

### **Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action for 11 ozone nonattainment areas that are classified as “Moderate” for the 2008 ozone national ambient air quality standards (NAAQS). First, the agency is determining that two Moderate areas—Baltimore, Maryland, and Mariposa County, California—attained the standards by the July 20, 2018, applicable attainment date. Second, the agency is granting a 1-year attainment date extension for the two Moderate areas in Sheboygan County, Wisconsin—Inland Sheboygan County, Wisconsin, and Shoreline Sheboygan County, Wisconsin. Third, the agency is determining that seven Moderate areas failed to attain the standards by the applicable attainment date — Chicago-Naperville, Illinois-Indiana-Wisconsin; Dallas-Fort Worth, Texas; Greater Connecticut, Connecticut; Houston-Galveston-Brazoria, Texas; Nevada County (Western part), California; New York-North New Jersey-Long Island, New York-New Jersey- Connecticut; and San Diego County, California. The effect of failing to attain by the applicable attainment date is that these areas will be reclassified by operation of law to “Serious” nonattainment for the 2008 ozone NAAQS on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the effective date of this final rule. Accordingly, the responsible state

air agencies must submit State Implementation Plan (SIP) revisions and implement controls to satisfy the statutory and regulatory requirements for Serious areas for the 2008 ozone NAAQS according to the deadlines established in this final rule.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA established Docket ID No. EPA-HQ-OAR-2018-0226 for this action.

All documents on the docket are listed at <https://www.regulations.gov>. Although listed in the docket index, some information may not be publicly available, e.g., Confidential Business Information (CBI) or other information for which 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. Docket materials are available electronically to the public through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this final rule, contact Ms. Virginia Raps, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C539-01, Research Triangle Park, NC 27711, telephone (919) 541-4383; fax number: (919) 541-5315; email address: [raps.virginia@epa.gov](mailto:raps.virginia@epa.gov).

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## **I. Proposed Actions**

### *A. Proposed Determinations of Attainment by the Attainment Date, Determinations of Failure to Attain by the Attainment Date and Extensions of the Attainment Date*

On November 14, 2018, the EPA proposed actions to fulfill its statutory obligation under Clean Air Act (CAA or the Act) section 181 to determine whether 11 Moderate ozone nonattainment areas attained the 2008 ozone NAAQS by July 20, 2018, the applicable attainment date for such areas.<sup>1</sup>

First, the EPA proposed to find that two areas—Baltimore, Maryland, and Mariposa County, California—attained the 2008 ozone NAAQS by the applicable attainment date based on

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<sup>1</sup> 83 FR 56781, November 14, 2018 (FR is the **Federal Register**).

complete, quality-assured and certified ozone air quality monitoring data for the 2015–2017 calendar years.

Second, the EPA proposed to grant state requests for a 1-year extension of the attainment date from July 20, 2018, to July 20, 2019, for two areas—Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, and Sheboygan County, Wisconsin. The proposed extensions were based on the states' specific requests for such extensions and compliance with the criteria under CAA section 181(a)(5)(B) and 40 CFR 51.1107,<sup>2</sup> *i.e.*, the fourth highest daily maximum 8-hour average ozone concentration recorded in each area during the attainment year (2017 calendar year) did not exceed the 2008 ozone NAAQS level of 0.075 parts per million (ppm), and the states certified that they were in compliance with all requirements and commitments pertaining to the areas in their respective applicable implementation plans. The EPA proposed that upon the effective date of a final reclassification action, the attainment date for these areas would be extended to July 20, 2019.

Third, the EPA proposed to find that seven areas failed to attain the 2008 ozone NAAQS by the applicable attainment date and did not qualify for a 1-year attainment date extension: Chicago-Naperville, Illinois-Indiana-Wisconsin; Dallas-Fort Worth, Texas; Greater Connecticut, Connecticut; Houston-Galveston-Brazoria, Texas; Nevada County (Western part), California; New York-North New Jersey-Long Island, New York-New Jersey-Connecticut; and San Diego County, California. The proposed determination for each of these areas was based upon complete, quality-assured and certified ozone air quality monitoring data that showed that the 8-hour ozone design value for the area exceeded 0.075 ppm for the period 2015-2017. The EPA proposed that these seven areas would be reclassified as Serious nonattainment areas by

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<sup>2</sup> CFR is Code of Federal Regulations.

operation of law on the effective date of a final action finding that these areas failed to attain the 2008 ozone NAAQS by the applicable attainment date for Moderate areas.<sup>3</sup> A summary of the actions proposed for the 11 areas in the November 14, 2018, document is provided in Table 1.

**Table 1—Summary of November 2018 Proposal for 2008 Ozone NAAQS Moderate Nonattainment Areas**

<b>2008 Ozone NAAQS Moderate Nonattainment Area</b>	<b>2015-2017 design value (ppm)</b>	<b>Attained the 2008 ozone NAAQS by the Moderate attainment date?</b>	<b>2017 4<sup>th</sup> highest daily maximum 8-hr average (ppm)</b>	<b>Area failed to attain 2008 ozone NAAQS but eligible for 1-year attainment date extension</b>
Baltimore, MD	0.075	Attained	Not applicable	Not applicable
Chicago-Naperville, IL-IN-WI	0.078	Failed to attain	0.079	No
Dallas-Fort Worth, TX	0.079	Failed to attain	0.077	No
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO	0.079	Failed to attain	0.075	Yes
Greater Connecticut, CT	0.076	Failed to attain	0.078	No
Houston-Galveston-Brazoria, TX	0.081	Failed to attain	0.079	No
Mariposa County, CA	0.075	Attained	Not applicable	Not applicable
Nevada County (Western part), CA	0.087	Failed to attain	0.090	No
New York-N. New Jersey-Long Island, NY-NJ-CT	0.083	Failed to attain	0.086	No
San Diego County, CA	0.084	Failed to attain	0.090	No
Sheboygan County, WI	0.080	Failed to attain	0.075	Yes

*B. Proposed Serious Area SIP Submission Due Dates and RACT Implementation Deadlines*

In the November 2018 proposal, the EPA also solicited comment on adjusting the due dates, in accordance with CAA section 182(i), for SIP submissions and setting deadlines for

<sup>3</sup> See CAA section 181(b)(2)(A).

implementation of reasonably available control technology (RACT) for ozone nonattainment areas that would be reclassified to Serious. Under CAA section 181(b)(2), Moderate nonattainment areas that fail to attain the 2008 ozone NAAQS by the applicable attainment date for such areas will be reclassified as Serious by operation of law upon the effective date of the final reclassification action. Each responsible state air agency must subsequently submit a SIP revision that satisfies the air quality planning requirements for a Serious area under CAA section 182(c).

On July 20, 2012, when final nonattainment designations became effective for the 2008 ozone NAAQS, states responsible for areas initially classified as Serious were required to submit SIP revisions by due dates relative to that effective date. For those areas, the SIP submission due dates ranged from 2 to 4 years after July 20, 2012, depending on the required SIP “element” (e.g., 2 years, or July 20, 2014, for the RACT SIP, and 4 years, or July 20, 2016, for the attainment demonstration). Since those dates have passed, the EPA proposed in its November 2018 proposal to apply the Administrator’s discretion provided in CAA section 182(i) to adjust the Serious area SIP due dates and certain implementation deadlines for newly reclassified areas. CAA section 182(i) requires that reclassified areas meet the applicable plan submission requirements “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” With regard to RACT, the November 2018 proposal made a distinction between RACT measures that would be needed for purposes of meeting reasonable further progress (RFP) requirements or for attaining the NAAQS expeditiously, and the possible set of RACT measures that nevertheless are required to be adopted and implemented under the CAA

but would not necessarily be needed for a state to meet RFP or demonstrate timely attainment in a particular nonattainment area.<sup>4</sup> In this final action, these two “categories” of RACT measures are referred to as “RACT measures tied to attainment” and “RACT measures not tied to attainment,” respectively.

First, the EPA proposed that states submit Serious area SIP revisions (including RACT measures tied to attainment) and implement those RACT measures no later than 12 months from the effective date of the final reclassification action. Second, the EPA proposed the date for submitting SIP revisions addressing RACT measures not tied to attainment and implementing those measures as August 3, 2020, which is the deadline for areas classified Moderate and higher for the 2015 ozone NAAQS to submit RACT SIP revisions.<sup>5</sup> At the time of proposal, the EPA estimated that August 3, 2020 would be approximately 18 months after the effective date of its final reclassification action.<sup>6</sup> In the proposal, the EPA requested comment on an alternative that would allow states to submit SIP revisions addressing RACT measures not tied to attainment no later than 24 months from the effective date of the final reclassification action. The EPA also requested comment on whether a longer timeframe for implementing RACT measures not tied to attainment (but no later than January 1, 2024, *i.e.*, providing 5 years from the anticipated date of reclassification,) would result in significant emission reductions and improvement in air quality. The EPA’s rationale supporting its proposed due dates and deadlines is summarized in the following sections.

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<sup>4</sup> See 83 FR 62998, December 6, 2018; 40 CFR 51.1312(a)(2).

<sup>5</sup> See 83 FR 62998, December 6, 2018; 40 CFR 51.1312(a)(2).

<sup>6</sup> See 83 FR 56781, November 14, 2018.

1. *Proposed due date for Serious-area SIP revisions (including RACT measures tied to attainment), and Proposed implementation deadline for RACT measures tied to attainment.* The EPA proposed that states submit all Serious-area SIP revisions—with the exception of any RACT measures not tied to attainment—by no later than 12 months after the effective date of the final reclassification action.<sup>7</sup> The state submittal requirements for nonattainment areas, in general, are provided under CAA section 172(c); the SIP requirements that apply specifically to Serious areas are listed under CAA section 182(c) and include: (1) enhanced monitoring; (2) an attainment demonstration and RFP; (3) an enhanced vehicle inspection and maintenance program, if applicable; (4) clean-fuel vehicle programs and transportation control measures; (5) nonattainment New Source Review (NSR) program revisions; and (6) contingency measures. States must also provide an analysis of—and adopt all—reasonably available control measures (RACM), including RACT needed for purposes of meeting RFP or timely attaining the NAAQS. In the case of areas that are reclassified from Moderate to Serious for the 2008 ozone NAAQS,

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<sup>7</sup> The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas. *See* Memo from John Seitz, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT must be met whether or not an area has attained the standard); *see also* 40 CFR 51.1118 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment). In addition to the independent RACT requirement, states have a statutory obligation to apply RACM (including such reductions in emissions from existing sources in the area as may be obtained through implementation of RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable. Therefore, to the extent that a state adopts new or additional RACT controls to meet RFP requirements or to demonstrate attainment as expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(c) and must implement them by the same date as explained further in Section III.D.3 of this preamble.

such an analysis should include: (1) an evaluation of controls for sources emitting 100 tons per year (tpy) or more that may have become reasonably available since the January 1, 2017, Moderate area deadline for adopting and implementing RACT, and (2) an evaluation of controls for sources emitting 50 tpy or more that are currently reasonably available, consistent with the definition of “major source” or “major stationary source” for areas classified as Serious.<sup>8</sup>

In CAA section 182(c), the schedule for submitting attainment planning requirements for Serious areas is 4 years from the effective date of nonattainment designation.<sup>9</sup> As such, in accordance with CAA section 182(i), EPA believed it was necessary to establish a shorter deadline for all areas being reclassified to Serious, given that a due date 4 years beyond reclassification would well surpass the Serious area attainment date of July 20, 2021. EPA therefore proposed a 12-month deadline for the Serious area attainment planning requirements believing this timeframe to be appropriate for all the newly reclassified areas, given that these areas are being reclassified rather than newly designated, classified as Serious and have therefore been adopting and implementing control measures to attain the 2008 ozone NAAQS for many years. The EPA considered the proposed timeframe to be consistent with how the EPA handled setting SIP submission deadlines for other nonattainment areas that were reclassified from Moderate to Serious for past ozone NAAQS. Examples include Dallas-Ft. Worth, Texas,<sup>10</sup> an area reclassified in 2010 as Serious for the 1997 8-hour ozone NAAQS, and the Beaumont-Port Arthur, Texas,<sup>11</sup> and St. Louis, Missouri,<sup>12</sup> nonattainment areas, reclassified in 2003 and 2004,

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<sup>8</sup> See CAA section 182(c).

<sup>9</sup> See CAA section 182(c)(2) and (i) for SIP submissions and requirements.

<sup>10</sup> See 75 FR 79302, December 20, 2010, Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour ozone NAAQS.

<sup>11</sup> See 69 FR 16483, March 30, 2004, Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS.

respectively, from Moderate to Serious for the 1979 1-hour ozone NAAQS. Based on these examples, the EPA considered that 12 months would generally provide the time necessary for states and local air districts to finish reviews of available control measures, adopt revisions to necessary attainment strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions.<sup>13</sup>

The EPA also proposed that any RACT that states determine is needed for meeting RFP or timely attainment of the 2008 ozone NAAQS would need to be implemented by the date that the attainment plan is due, *i.e.*, no later than 12 months after the effective date of the final reclassification action. As a general matter, the Act requires implementation of those requirements needed for timely attainment “as expeditiously as practicable.”<sup>14</sup> The EPA considered an implementation deadline of 12 months from the anticipated effective date of the final reclassification action to be consistent with the requirement to act expeditiously. Moreover, at the time of the November 2018 proposal, EPA anticipated that a 12-month deadline would be generally consistent with the start of the attainment year ozone season for all 2008 ozone NAAQS Serious areas (early 2020). Ideally, all emissions control strategies designed to help areas attain the 2008 ozone NAAQS by the applicable Serious area attainment date of July 20, 2021, or to qualify for a 1-year extension of that attainment date, would be in place and in effect for the start of the final full ozone season preceding the attainment date, as that is the last ozone

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<sup>12</sup> See 68 FR 4836, January 30, 2003, St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS.

<sup>13</sup> Cf. CAA section 179(d)(1).

<sup>14</sup> See CAA section 172(c)(1).

season of air quality monitoring data that could affect the area's design value as of the attainment date or would decide whether the area met the 1-year extension air quality eligibility criterion.<sup>15</sup>

Due dates for SIP submission often precede the deadline for implementation of control strategies contained in those SIP submissions. However, given the compressed timeframe available for states to meet the July 20, 2021, attainment date for Serious areas, the EPA considered that, at the very least, it would be appropriate to align the due date for RACT SIP submissions with the deadline for implementation of any new control measures contained in that RACT SIP.

*2. Proposed due date for Serious-area SIP revisions for RACT measures not tied to attainment.* The EPA proposed that states submit their SIP revisions by August 3, 2020, for any RACT not otherwise needed for attainment purposes, which was based on our prediction that such a due date would be approximately 18 months after the effective date of the final reclassification action. The proposed August 3, 2020, due date would have aligned the 2008 ozone Serious area SIP due date for RACT measures not tied to attainment with the SIP revision due dates for RACT (areas classified Moderate or higher) and certain other implementation plan elements required for 2015 ozone NAAQS nonattainment areas.<sup>16</sup>

As provided for in CAA section 182(i), the Administrator may adjust deadlines for reclassified areas “to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” In the November 2018 proposal, the EPA interpreted “consistency among the required submissions” to allow for consideration of “required submissions” for various ozone NAAQS that are being implemented simultaneously. Since all

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<sup>15</sup> See 40 CFR 51.1108(d).

<sup>16</sup> All the areas reclassified because of this final rule are among those designated nonattainment for the 2015 ozone NAAQS, effective August 3, 2018 (see 83 FR 25776, June 4, 2018).

the areas that are subject to reclassification to Serious upon the effective date of this final reclassification action are also designated nonattainment for the 2015 ozone NAAQS or are in the Ozone Transport Region (OTR), the same state air agencies are required under CAA section 182 to submit SIP revisions for certain SIP elements for the 2015 ozone NAAQS within 2 years of the effective date of the nonattainment area designations. The effective date of nonattainment area designations for the 2015 ozone NAAQS was August 3, 2018, and therefore the due date for submitting nonattainment SIP revisions associated with that standard is August 3, 2020.

Consistent with CAA section 182(i), the EPA considered coordinating the SIP due dates related to the 2008 and 2015 ozone NAAQS for these nonattainment areas to be “appropriate” and could result in more effective implementation of the NAAQS.

Under CAA section 182(i), reclassified areas generally are required to submit SIP revisions associated with their new classification “according to the schedules prescribed in connection with such requirements.” CAA section 182(b)(2), which establishes the RACT requirement for ozone nonattainment areas classified as Moderate or above, and CAA section 184(b), which establishes RACT requirements for states in the ozone transport region, provide a 24-month schedule for compliance with those requirements.<sup>17</sup> Although the proposed due date of August 3, 2020, would have provided states with less than 24 months to submit their SIP revisions for RACT measures not tied to attainment, the EPA considered the anticipated timeframe to be “appropriate” given coordination with the 2015 ozone NAAQS SIP due dates and the nature of the submission, *i.e.*, because states with newly reclassified Serious areas should recently have addressed RACT requirements commensurate with the Moderate area classification, such that their Serious area RACT SIP submittal should primarily only have to

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<sup>17</sup> See 40 CFR 51.1112(a)(2).

address sources emitting between 50-100 tpy. The EPA also requested comment on an alternative approach that would have allowed states a full 24 months from the effective date of the final reclassification action to submit SIP revisions for RACT not otherwise needed for attainment, if such additional time would yield significant emission reductions and improvement in air quality.

*3. Implementation deadline for Serious-area RACT measures not tied to attainment.* CAA section 182(b)(2) establishes the RACT area requirements for ozone areas designated and classified Moderate and higher.<sup>18</sup> That provision, which was written for the 1-hour ozone NAAQS, established a RACT implementation deadline of approximately 5 years from November 15, 1990. In the 2008 ozone NAAQS SIP Requirements Rule, the EPA interpreted this statutory deadline for the 2008 ozone standard by establishing a RACT implementation deadline of January 1 of the fifth year after the effective date of nonattainment designation, and explained that this was consistent with the maximum timeframe provided under the CAA for implementing RACT in nonattainment areas classified Moderate or higher.<sup>19</sup> For nonattainment areas initially classified as Moderate or higher for the 2008 ozone NAAQS and for OTR states, RACT measures were required to be implemented by January 1, 2017. Because that date has now passed and cannot be applied to the areas that are subject to reclassification to Serious, the EPA proposed to set a new deadline of August 3, 2020, for implementation of any new RACT requirements not otherwise needed for RFP or timely attainment purposes.

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<sup>18</sup> CAA Section 182(b)(2) sets the RACT requirement for Moderate areas, and the Act requires other higher-classified areas to fulfill the CAA section 182(b) requirements. *See* CAA sections 182(c), (d), and (e) (requiring states with Serious, Severe, and Extreme nonattainment areas, respectively, to also fulfill the obligations required of lower-classified areas).

<sup>19</sup> *See* 40 CFR 51.1112(a)(3); 80 FR 12264, 12280, March 6, 2015.

This proposed deadline of August 3, 2020, was based on EPA's estimation at proposal that the date would be approximately 18 months after the anticipated effective date of the final reclassification action. EPA also proposed the same date for the submission due date for related SIP revisions for RACT measures not tied to attainment discussed in Section I.B.2 of this final reclassification action.

Areas originally classified as Moderate and higher for the 2008 ozone NAAQS had just under 5 years to implement ozone RACT requirements (by January 1 of the fifth year after the effective date of designation, *i.e.*, January 1, 2017). By contrast, areas reclassified in 2016 from Marginal to Moderate for the 2008 ozone NAAQS became subject to the RACT requirement less than seven months (and in two cases significantly less than seven months) before the RACT implementation deadline.<sup>20,21,22</sup> In some reclassified Moderate areas, states may have been able to adopt additional controls as RACT had there been additional time to implement them. In their proposal the EPA, therefore, also solicited comment on whether an extended RACT implementation deadline—beyond August 3, 2020, but no later than January 1 of the fifth year after the effective date of reclassification to Serious (*i.e.*, January 1, 2024)—would yield additional and substantial emission reductions in newly-reclassified Serious areas beyond what could be achieved by the due date of August 3, 2020.

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<sup>20</sup> See 81 FR 26697, May 4, 2016.

<sup>21</sup> See 81 FR 90207, December 14, 2016, Houston-Galveston-Brazoria, Texas, reclassification to Moderate for the 2008 8-hour ozone NAAQS.

<sup>22</sup> See 81 FR 91841, December 19, 2016. Reclassification of the Sheboygan, Wisconsin, nonattainment area to Moderate Nonattainment for the 2008 ozone NAAQS.

## II. Significant Events Following EPA’s November 2018 Proposal

Following EPA’s issuance of the November 2018 proposal, two significant events occurred which have bearing on this final rule. First, on March 26, 2019, the State of Colorado’s Governor Jared Polis sent a letter to EPA to withdraw the state’s request for a 1-year attainment date extension.<sup>23</sup> As stated in the Act’s attainment date extension provision for ozone nonattainment areas, section 181(a)(5), “[u]pon application by any State,” the EPA may extend an area’s attainment date by 1 year provided certain criteria are met. The EPA interprets a state’s application to be a necessary prerequisite to granting the 1-year extension.<sup>24</sup> Because the Governor has withdrawn the request, this rulemaking does not finalize the 1-year extension for the Denver-Greeley-Ft. Collins-Loveland, CO, nonattainment area for the 2008 ozone NAAQS.

Second, since the EPA issued its November 2018 proposal, the agency has taken final action to approve a request from the State of Wisconsin to revise the designation for the Sheboygan County nonattainment area for the 1997 and 2008 primary and secondary ozone NAAQS, by splitting the historic nonattainment area into two distinct nonattainment areas that together cover the identical geographic area of Sheboygan County, Wisconsin.<sup>25</sup> For purposes of this action, the former Sheboygan County 2008 ozone moderate nonattainment area is now the “Inland Sheboygan County, WI,” nonattainment area and the “Shoreline Sheboygan County, WI,” area. Because the boundary of the two nonattainment areas together covers the entire historic nonattainment area, for which EPA proposed a 1-year extension of the attainment date

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<sup>23</sup> See docket item EPA-HQ-OAR-2018-0226-0059, “GOV Letter Attainment Extension withdrawal 3.26.2019.”

<sup>24</sup> Cf. *Del. Dep’t of Natural Res. and Env’tl. Control v. EPA*, 895 F.3d 90 (D.C. Cir. 2018) (interpreting section 181(a)(5)’s reference to “any” state literally to provide EPA with authority to grant an extension to a multi-state nonattainment area based on the extension request of only one state in that area).

<sup>25</sup> See 84 FR 33699, July 15, 2019; effective July 15, 2019.

for the 2008 ozone NAAQS in November 2018, the EPA is taking final action to grant a 1-year extension of the Moderate area attainment date to July 20, 2019 for both areas.<sup>26</sup> The EPA may grant a 1-year attainment date extension for the two areas because air quality data for each area, evaluated independently, shows the 2017 fourth-highest 8-hour ozone value for the Inland Sheboygan County, WI, nonattainment area was 0.070 ppm, and the corresponding value for the Shoreline Sheboygan County, WI, nonattainment area was 0.075 ppm. Furthermore, the other statutory criteria for qualifying for a 1-year attainment date extension for an ozone nonattainment area are met.<sup>27</sup>

### **III. Final Actions**

The public comment period for EPA's November 2018 proposal closed on December 14, 2018. To accommodate a request for a public hearing, the comment period was subsequently reopened on February 8, 2019, a public hearing was held on February 15, 2019, and the comment period closed on February 22, 2019.

All comments received during these two public comment periods may be found in the electronic docket for this final action. In this section describing EPA's final actions, certain key comments and the agency's responses are included. A Response to Comments document including all significant comments received on the EPA's proposal and the agency's responses to those comments is also included in the docket for this rulemaking. To access the full set of comments received and the Response to Comments document, please go to <http://>

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<sup>26</sup> See Section III.B of this preamble.

<sup>27</sup> The Wisconsin Department of Natural Resources requested an extension for the Sheboygan County, WI, nonattainment area and certified its implementation plan applicable for the entire historic geographic area.

[www.regulations.gov](http://www.regulations.gov) and search for Docket No. EPA-HQ-OAR-2018-0226, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Due to the withdrawal of Colorado’s request for a 1-year attainment date extension, EPA is not taking final action for the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, nonattainment area in this final rule. However, EPA is finalizing the attainment date extension for both portions of the historic Sheboygan, Wisconsin, nonattainment area (*i.e.*, Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI), which now counts as two nonattainment areas. A summary of EPA’s final actions for the 11 Moderate nonattainment areas is provided in Table 2.

**Table 2—2008 Ozone Moderate Nonattainment Area Final Action Summary**

<b>2008 NAAQS nonattainment area</b>	<b>Attained by the attainment date</b>	<b>Failed to attain by the attainment date</b>	<b>Extension of the Moderate area attainment date to July 20, 2019</b>
Baltimore, MD	X		
Chicago-Naperville, IL-IN-WI		X	
Dallas-Fort Worth, TX		X	
Greater Connecticut, CT		X	
Houston-Galveston-Brazoria, TX		X	
Mariposa County, CA	X		
Nevada County (Western part), CA		X	
New York-N. New Jersey-Long Island, CT-NJ-NY		X	
San Diego County, CA		X	
Inland Sheboygan County, WI			X
Shoreline Sheboygan County, WI			X

### *A. Determinations of Attainment by the Attainment Date*

Pursuant to section 181(b)(2)(A) of the CAA and 40 CFR 51.1103, the EPA is making final determinations that the Baltimore, MD, and Mariposa County, CA, Moderate nonattainment areas listed in Table 2 attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2018. Once effective, this final action satisfies the EPA's obligation pursuant to CAA section 181(b)(2)(A) to determine, based on an area's air quality as of the attainment date, whether the area attained the standard by the applicable attainment date. The effect of a final determination of attainment by an area's attainment date is to discharge the EPA's obligation under CAA section 181(b)(2)(A), and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by the applicable attainment date.

These determinations of attainment do not constitute a redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations require states to meet additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation, as required under CAA section 175A. As for all NAAQS, the EPA is committed to working with states that choose to submit redesignation requests for the 2008 ozone NAAQS.<sup>28</sup>

*Comment:* One commenter suggested that the record supporting the Baltimore, Maryland, reclassification action was incomplete because it appeared that the state relied on two

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<sup>28</sup> It is worth noting that EPA issued Clean Data Determinations, which suspend certain attainment planning requirements, for both the Baltimore, Maryland, and Mariposa, California, 2008 ozone NAAQS nonattainment areas. For Baltimore, Maryland, the final 2008 ozone NAAQS Clean Data Determination was effective on July 1, 2015 (80 FR 30941, June 1, 2015). For Mariposa, California, EPA issued a final 2008 ozone NAAQS Clean Data Determination that was initially effective on February 21, 2017 (81 FR 93624, December 21, 2016) and was delayed until March 21, 2017, due to a Presidential Directive (82 FR 8499, January 26, 2017). More information about the Clean Data Policy and redesignation guidance is available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

exceptional events claims for Canadian wildfires impacting air quality in Baltimore in May and July 2016.<sup>29</sup> The commenter claimed that the EPA failed to clearly identify the basis for its action in the docket. The commenter also suggested that Maryland appears to be the only state to claim that the July 2016 wildfires justified exclusion of any air quality data, indicating that Maryland's demonstration and the EPA's acceptance of the data exclusion were arbitrary and not valid.

*Response:* The EPA acknowledges that it inadvertently omitted from the record for this proposed action the supporting information received from Maryland regarding these exceptional events claims. The EPA therefore issued a supplemental proposal in the *Federal Register* on May 7, 2019.<sup>30</sup> This supplemental proposal made available the exceptional events demonstration relied upon by Maryland to support the exclusion of air quality data for the Baltimore area due to Canadian wildfire impacts in May and July 2016. Comments were solicited for a 15-day period through May 22, 2019. No substantive comments requiring a response were received.

#### *B. Extension of the Moderate Area Attainment Date*

Pursuant to CAA section 181(a)(5), the EPA is taking final action to grant a 1-year extension of the applicable attainment date from July 20, 2018, to July 20, 2019, for the two nonattainment areas in Sheboygan County, Wisconsin—Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI.<sup>31</sup>

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<sup>29</sup> See comments from Earthjustice, docket item EPA-HQ-OAR-2018-0226-0050.

<sup>30</sup> See 84 FR 19893, May 7, 2019; and docket item EPA-HQ-OAR-2018-0226-0061.

<sup>31</sup> Subsequent to EPA's proposal to extend the 2008 ozone Moderate area attainment deadline for the Sheboygan County nonattainment area, the EPA approved Wisconsin's request to split the area into two distinct nonattainment areas. See 84 FR 33699, July 15, 2019; effective July 15, 2019. See also Section II of this preamble.

The EPA is not taking final action to grant a 1-year extension for the Denver area because the State withdrew its request for an extension, and the EPA interprets that request to be a necessary prerequisite to an extension of the attainment date under CAA section 181(a)(5). The EPA is therefore addressing whether the Denver area attained the 2008 ozone NAAQS by the July 20, 2018 attainment date and any associated reclassification in a separate action.

*Comment:* One commenter opposed an attainment date extension for the Sheboygan area. The commenter claimed that because the “extension year” runs from July 2018 to July 2019, and the year preceding the Extension Year runs from July 2017 to July 2018, then the relevant monitoring data for making the CAA section 181(a)(5)(B) extension determination should be from the July 2017 to July 2018 period. The commenter noted that during this period, one of the Sheboygan County monitors recorded a fourth-highest daily maximum 8-hour average of 0.081 ppm, and they claimed that for this reason the area does not qualify for a 1-year attainment date extension.

*Response:* The EPA does not agree with the commenter because a 1-year attainment date extension for an ozone nonattainment area is based on air quality data for the most recent *calendar year* prior to the attainment date. This interpretation of CAA section 181(a)(5)(B) is explained in the SIP requirements rule for the 2008 ozone NAAQS.<sup>32</sup> As noted in Table 1, the fourth-highest 8-hour ozone value during 2017 for the historic Sheboygan County nonattainment area was below the level of the standard. Furthermore, as noted in Section II of this preamble, when analyzed separately, the fourth-highest 8-hour ozone value during 2017 for each of the “new” attainment areas in Sheboygan County (*i.e.*, Inland Sheboygan County, WI, and Shoreline

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<sup>32</sup> See 80 FR 12292 (March 6, 2015) and 40 CFR 51.1107.

Sheboygan County, WI), was below the level of the standard, and thus Sheboygan County, now separated into two nonattainment areas, qualifies for a 1-year attainment date extension.

### *C. Determinations of Failure to Attain and Reclassification*

Pursuant to CAA section 181(b)(2), the EPA is finalizing its proposed determinations that the seven Moderate nonattainment areas listed in Table 2 have failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2018. Therefore, upon the effective date of this final action, these seven areas will be reclassified, by operation of law, to Serious for the 2008 ozone NAAQS. Once reclassified to Serious, these areas will be required to attain the standard “as expeditiously as practicable” but no later than 9 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2021. If any of these areas attains the 2008 ozone NAAQS prior to the Serious area attainment date, the relevant state may request redesignation to attainment, provided the state can demonstrate that the criteria under CAA section 107(d)(3)(E) are met.<sup>33</sup>

Following the November 2018 proposal, the California Air Resources Board submitted a request under CAA section 181(b)(3) to voluntarily reclassify the Nevada County (Western part) nonattainment area from Moderate to Serious nonattainment for the 2008 ozone standards.<sup>34</sup> The State’s request for voluntary reclassification was accompanied by a SIP revision that addresses

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<sup>33</sup> See more information about the Clean Data Policy and redesignation guidance is available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

<sup>34</sup> See the December 2, 2018, letter from California Air Resources Board (CARB) Executive Officer Richard W. Corey to EPA Region 9 Regional Administrator Michael Stoker, transmitting CARB Resolution 18-36, and November 14, 2018 letter from Northern Sierra Air Quality Management District (NSAQMD) Executive Director Gretchen Bennitt to CARB Executive Officer Richard W. Corey, transmitting NSAQMD Resolution 2018-07.

Serious area attainment, RFP, RACM and other planning requirements.<sup>35</sup> The State previously submitted a SIP revision to address the Serious-area RACT requirements on June 7, 2018,<sup>36</sup> and a SIP revision to address NSR requirements for the 2008 ozone standard on September 6, 2016.<sup>37</sup> In this final action, the EPA is finding that the Nevada County (western part), California area failed to attain the 2008 ozone standard by the applicable attainment date, which means the area will be reclassified to Serious by operation of law. The EPA notes that there is no need for the EPA to act on the request for voluntary reclassification because the EPA's final determination here results in the same outcome as would occur with an approval of that request—in either scenario, the area would be reclassified to Serious, and subject to the Serious area requirements described in CAA section 182(c).

The EPA received some adverse comments on its proposal to determine that certain areas failed to attain by the applicable attainment date and to reclassify those areas to Serious nonattainment. For a discussion of additional comments received on the proposal and responses to those comments, please see the Response to Comments document in the docket for this action.

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<sup>35</sup> The Northern Sierra Air Quality Management District, which has local jurisdiction over the area, adopted the *Ozone Attainment Plan for Western Nevada County* on October 22, 2018. The California Air Resources Board adopted the plan as a revision to the California SIP on November 15, 2018.

<sup>36</sup> The Northern Sierra Air Quality Management District adopted the *Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Revision for Western Nevada County 8-hour Ozone Nonattainment Area* on March 26, 2018. The California Air Resources Board Executive Officer adopted the Plan as a revision to the California SIP on June 7, 2018.

<sup>37</sup> The Northern Sierra Air Quality Management District adopted District Rule 428: *New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas* on June 27, 2016. The California Air Resources Board Executive Officer adopted the rule as a revision to the California SIP on September 6, 2016.

*Comment:* Several commenters noted that when the Chicago area was designated as nonattainment for the more stringent 2015 ozone NAAQS,<sup>38</sup> a portion of Lake County, Indiana, and all of Porter County, Indiana, were designated as attainment rather than being included as part of the Chicago, IL-IL-WI, nonattainment area for the more stringent 2015 ozone NAAQS. For this reason, the commenters oppose the inclusion of these Indiana counties in the reclassification of the Chicago nonattainment area to Serious for the 2008 ozone NAAQS.

*Response:* Although the Chicago, IL-IN-WI, nonattainment area for the 2015 ozone NAAQS consists of a smaller geographic area than the Chicago-Naperville, IL-IN-WI, nonattainment area for the 2008 ozone NAAQS, the differences in the geographic extent of the nonattainment areas does not constitute a revision to the nonattainment area boundary for the 2008 ozone NAAQS. Under CAA section 181(b)(2), when the EPA determines that an area has failed to attain a standard by the applicable attainment date, that area is reclassified by operation of law to the next higher classification for the area or the classification applicable to the area's design value as of the date EPA determines the area failed to attain. Because the Chicago-Naperville, IL-IN-WI, nonattainment area for the 2008 ozone NAAQS failed to attain the standard by its Moderate attainment date, the EPA is required by the CAA to reclassify the area, not a portion of the area, to Serious. The boundary of the nonattainment area for a different NAAQS, in this case the 2015 ozone NAAQS, has no relevance on the EPA's duties with respect to the 2008 ozone NAAQS.

*Comment:* One commenter suggested that the Houston, Texas, area should not be reclassified to Serious for the 2008 ozone NAAQS because certain days in 2018 were impacted

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<sup>38</sup> See 83 FR 25776, June 4, 2018; final rule effective August 3, 2018.

by exceptional events, and if such events were taken into account, the area would attain the standard based on 2016-2018 data.

*Response:* The CAA section 181(b)(2)(A) requires the EPA Administrator to determine whether an area attained the 2008 ozone 8-hour NAAQS based on the area's 2015-2017 design value as of the attainment date, July 20, 2018. Based on these data, the Houston area is being reclassified to Serious as of the effective date of this final action. The EPA will review any exceptional events demonstrations that may be provided by Texas in the future, and the EPA will determine if it concurs with such demonstrations. If Houston or any other area that has been reclassified to Serious provides the EPA with quality-assured, certified air quality data for 2016-2018 that demonstrates attainment of the 2008 ozone NAAQS, the area could be eligible for a clean data determination,<sup>39</sup> which would suspend the obligation to submit the attainment planning elements so long as the area continues to attain the standard. Such areas would also be able to submit a request for redesignation provided they meet the statutory criteria for redesignation, including an approved maintenance plan.

*Comment:* One commenter claimed that Connecticut has failed to attain the 2008 ozone NAAQS by the applicable attainment date due to emissions it does not have authority to control, either because such emissions originate out of state or are from mobile sources regulated by EPA. The commenter believes that EPA failed to adequately address interstate transport of air pollution under CAA section 110(a)(2)(D) for the 2008 ozone NAAQS when it finalized the 2016 Cross-State Air Pollution Rule (CSAPR) Update. They claimed that the underlying logic of this rule was flawed because the EPA limited its assessment of control strategies to those that

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<sup>39</sup> More information about the Clean Data Policy and redesignation guidance is available at <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp>.

were feasible to implement only as late as the 2017 ozone season. The commenter recommends that the EPA revisit this transport rule to address longer term control strategies that could be feasible to implement beyond 2017 to benefit air quality in areas reclassified to Serious and beyond.

*Response:* The agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS is contained in CAA section 182(b)(2), which does not reference or make any exclusions based on the nature or effect of transported emissions on monitored air quality data in a given nonattainment area.<sup>40</sup> Moreover, to the extent the comment is raising issues related to the EPA's separate action, the CSAPR Update, to address the requirements of CAA section 110(a)(2)(D), or the "good neighbor" provision, with respect of the 2008 ozone NAAQS, they are outside the scope of this final determination and should be addressed in the context of those EPA actions.<sup>41</sup> Nevertheless, the EPA acknowledges the role interstate transport of precursors to ozone pollution plays in the efforts of downwind areas to attain and maintain the NAAQS. The EPA finalized a determination in December 2018, the "CSAPR Close Out," that fulfilled its statutory obligations under CAA section 110(a)(2)(D), or the "good neighbor" provision, with respect of the 2008 ozone NAAQS.<sup>42</sup> In that determination, the EPA's air quality modeling projected that all monitors in the Eastern United States, including those air quality

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<sup>40</sup> See *Sierra Club v. EPA*, 294 F.3d 155, 160–62 (D.C. Cir. 2002). The Court held that the EPA is not permitted to relax mandatory statutory requirements for downwind areas on the basis of interstate transport.

<sup>41</sup> As of the date of signature of this final action, litigation over the CSAPR Update is pending in the D.C. Circuit. *State of Wisconsin, et al., v. EPA*, No. 16-1406 (D.C. Cir.). Connecticut is not a petitioner or intervenor in this litigation.

<sup>42</sup> See 83 FR 65878, December 21, 2018.

monitors in Connecticut, would be attaining and maintaining the NAAQS by 2023, the analytic year used by the agency.<sup>43</sup> *Id.*

#### *D. Serious Area SIP Submission Deadlines and RACT Implementation Deadlines*

The EPA received comments on the proposed alternatives for the Serious area deadlines for submitting SIP and RACT revisions, and on the deadlines for implementation of RACT. After full consideration of those comments, and pursuant to CAA section 182(i), the EPA is finalizing the SIP submission due dates and RACT implementation deadlines.

*1. Due date for Serious area SIP revisions (including RACT measures tied to attainment), and implementation deadline for RACT measures tied to attainment.* The EPA is finalizing August 3, 2020, as the due date for Serious area SIP revisions, including RACT measures tied to attainment. The EPA is also finalizing August 3, 2020, as the implementation deadline for RACT measures tied to attainment.

The EPA's decision to finalize the date of August 3, 2020, for these deadlines was informed by several factors. The EPA proposed a due date of 12 months from the effective date of a final action for these SIP elements and the implementation deadline for RACT measures tied to attainment in its November 2018 proposal. At the time of proposal, the agency had hoped to issue a timely final action—by January 2019. Under such a scenario, the actual due dates for Serious area SIP submissions and deadlines for implementation of RACT measures tied to attainment would have been January 2020, the beginning of the final year of the 3-year period

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<sup>43</sup> As of the date of signature of this final action, litigation over the CSAPR Close Out is pending in the D.C. Circuit. *State of New York, et al., v. EPA*, No. 19-1019 (D.C. Cir.). Connecticut is a petitioner in this litigation.

(2018-2020) that would be evaluated to determine whether an area attains the 2008 ozone NAAQS by the July 20, 2021, Serious-area attainment date. This intended schedule would have enabled the state to implement controls by the beginning of 2020, the last year for which air quality data could impact an area's ability to timely attain the NAAQS or to achieve qualifying air quality for a 1-year extension of the attainment deadline from July 20, 2021, to July 20, 2022.

The timeliness of the final action was delayed when the EPA received a request to schedule a public hearing on the proposal around the time of the lapse in government appropriations, otherwise referred to as the Federal Government shutdown, occurred beginning on December 22, 2018, and ended January 25, 2019. Consequently, while the original public comment period for the November 2018 proposal closed on December 14, 2018, the EPA was unable to hold a public hearing in December. As quickly as possible after the shutdown ended, and the Government resumed normal operations, the EPA reopened the public comment period on February 8, 2019, held the public hearing on February 15, 2019,<sup>44</sup> and closed the public comment period on February 22, 2019. After considering the time that it would take to finalize the rule after the lapse in federal government appropriations, the EPA determined that finalizing the Serious area SIP due date and implementation deadline for RACT measures tied to attainment at 12 months from the effective date of a final rule would result in deadlines falling on a date close to August 3, 2020. Based on this revised timing scenario, and considering comments supporting the alignment of SIP due dates and deadlines for the 2008 and 2015 ozone NAAQS, the EPA determined that it would be appropriate in this case to finalize a due date for Serious Area SIP revisions, including RACT measures tied to attainment, and deadline for

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<sup>44</sup> EPA is required under the Administrative Procedure Act (APA) to provide adequate notice of a public hearing (*see* 5 U.S.C. 553).

implementation of those RACT measures of August 3, 2020, in order to ensure greater consistency among the submissions and implementation for both NAAQS.

More specifically, although the EPA did not propose August 3, 2020, as a due date for these particular SIP submissions, the date was proposed as the due date for SIP revisions addressing RACT measures not tied to attainment and proposed for the deadline for implementation of those RACT measures. In the November 2018 proposal, the EPA provided its rationale for proposing August 3, 2020, to provide for “consistency among submissions” that may be due from a nonattainment area for more than one NAAQS. For the reasons provided to proposing the August 3, 2020, due date for SIP submissions and the deadline for implementation of RACT measures not tied to attainment, the EPA believes that establishing August 3, 2020, as the due date for Serious-area SIP submissions (including RACT measures tied to attainment) and the implementation deadline of those RACT measures, would more effectively meet the objective of having consistency among submissions pursuant to CAA section 182(i), rather than a deadline that is 12 months from the effective date of this final rule.

*Comment:* Some commenters opposed the proposed deadline of 12 months from the effective date of the final action for SIP submissions and implementation of RACT measures tied to attainment because it would not provide a reasonable amount of time to evaluate control options, conduct rulemaking, and give affected sources sufficient time to implement control requirements. These commenters preferred a period of 18 months or more for Serious Area SIP submission due dates and implementation deadlines for RACT measures tied to attainment. Other commenters supported the proposed 12-month due date for SIP submissions and implementation deadline for RACT measures tied to attainment because they claimed that any additional delay would only extend the duration of unnecessary adverse health impacts on

nonattainment area residents. One commenter stated that, because the EPA is directed to streamline SIP submittals when it considers appropriate due dates after reclassification, the EPA should set a due date for Serious area SIP submittals under the 2008 ozone NAAQS that is consistent with the August 3, 2020, deadline for the Moderate area SIP submittals that will be due under the 2015 ozone NAAQS. The commenter indicated that states could realize significant savings of limited state resources if these 2015 ozone Moderate area and 2008 ozone Serious area SIP due dates were coordinated.

*Response:* As discussed earlier, CAA section 182(i) provides authority to the Administrator to adjust SIP submission due dates as necessary or appropriate to assure consistency among SIP submissions. Although the specific date of August 3, 2020 was not included as an option in the November 2018 proposal, the EPA is persuaded by comments received supporting this date because setting such a due date pursuant to the authority of CAA section 182(i) could allow states to save limited resources by consolidating two SIPs into a single submission. In addition, given the timing of this final action, the August 3, 2020 SIP submission due date will be relatively close in time to 12 months after this final action becomes effective, consistent with due dates established by EPA in past ozone reclassification actions from Moderate to Serious, which was discussed in the proposal. With regard to commenters seeking an 18-month period or longer for developing SIP revisions, the EPA notes that states with areas that were proposed for reclassification in November 2018 have known with a reasonable amount of certainty that revised implementation plans would be due in the near future to provide for expeditious attainment of the 2008 ozone NAAQS, and have had the opportunity to make progress on plan development activities before issuance of this final action. Nonetheless, the

EPA recognizes the challenges posed by these due dates and deadlines and is committed to working closely with states to help them as they prepare SIP revisions in a timely manner.

2. *Due date for submitting SIP revisions for RACT measures not tied to attainment.* For SIP revisions for RACT measures not tied to attainment, the EPA proposed a due date of August 3, 2020, which would have been about 18 months from the anticipated effective date of the final action (anticipated in early 2019). The EPA also requested comment on an alternative due date for submitting SIP revisions for RACT measures not tied to attainment that would have been 24 months from the effective date of the final action, *i.e.*, “according to the schedule[] prescribed in connection with such requirement[].”<sup>45</sup> Taking in to account several comments on these proposed dates and the circumstances surrounding the timing of this final action, the EPA is finalizing a due date for SIP revisions for RACT measures not tied to attainment of 18 months from the effective date of this final action, as explained further below.

The proposal’s due date of August 3, 2020, for RACT submissions not tied to attainment was expected to be roughly 18 months from the effective date of the anticipated final action. By proposing such a date, the EPA recognized that these measures could reasonably be submitted after the attainment year ozone season (2020) relevant to the Serious area attainment date, because these measures were explicitly not tied to the area’s ability to achieve timely attainment. In taking comment on providing a due date that accounted for a full 24 months to prepare a RACT submission, the EPA suggested that such additional time could yield a more desirable end result in terms of emissions reductions and air quality benefits, reducing state processing and resource burdens, and/or burden on emissions sources.

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<sup>45</sup> See CAA section 182(i).

While EPA is not electing to finalize a due date of 24 months from the effective date of this action (approximately August 2021), we are also electing not to finalize a due date of August 3, 2020, given that such a date would provide just under 12 months from the effective date. Because the measures that states identify as “reasonably available” are directly tied to the time provided by the EPA in establishing such a due date, providing a slightly longer timeframe (*i.e.*, 18 months rather than 12 months) to identify and submit RACT measures not tied to attainment for newly reclassified Serious areas for the 2008 standards could lead states to determine that additional controls are reasonable, thus helping areas attain both the 2008 and 2015 standards more expeditiously. Areas subject to this newer due date should have already implemented RACT for sources emitting 100 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) under their Moderate area requirements. Therefore, at this stage, states should be primarily focused on identifying and adopting new RACT measures required to control sources emitting between 50 to 100 tpy of VOC or NO<sub>x</sub>. The EPA believes that 18 months would provide adequate time to adopt any new controls determined to be RACT for this group of sources and submit a SIP to the EPA accordingly.

*Comment:* Several commenters supported either the proposed August 2020 due date or a due date of 18 months from the effective date of this final action. One commenter stated that a period of at least 18 months is needed to properly identify and evaluate potential controls and conduct necessary rulemaking at the state level. Another commenter believed that there was no justification for a due date any earlier than the July 2021 Serious-area attainment date because this SIP submission would be for RACT not needed for the area to attain. A third commenter supported the August 2020 due date because it would provide for aligned SIP submittal due dates for 2008 ozone Serious areas and for 2015 ozone Moderate areas.

*Response:* Section 182(i) of the CAA provides that states shall meet requirements for reclassified Moderate, Serious and Severe ozone areas “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.”

The EPA notes that the notion embodied in this provision is consistent with several other CAA provisions to establish a SIP submission due date for an area that has failed to attain a NAAQS by the relevant attainment date that may be shorter than the SIP submission due date for the first plan due after an area is initially designated as nonattainment.<sup>46</sup> In this case, the areas that are being reclassified to Serious are identifying and adopting RACT measures not tied to attainment for a subset of sources emitting between 50-100 tpy of VOC or NO<sub>x</sub>, because as Moderate areas they were already required to address RACT and submit SIPs for sources emitting over 100 tpy. Therefore, the EPA does not agree with the commenter that it is appropriate or necessary to extend the due date out to the July 2021 attainment date (which would be nearly 24 months) for submitting SIPs addressing RACT measures not tied to attainment. The EPA is generally in agreement with the commenter who stated that aligning deadlines between submissions required for the 2015 ozone NAAQS and the 2008 ozone NAAQS addresses section 182(i)’s call for “consistency among submissions” and creates efficiencies for states in preparing submissions. However, a SIP revision submission due date of August 3, 2020, for RACT measures not tied to attainment would at this point provide the states

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<sup>46</sup> For example, CAA section 179(d) requires a state that failed to attain a NAAQS by the attainment date to submit a revised implementation plan within 12 months of an EPA finding of failure to attain. In addition, the requirements for PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment areas in CAA section 189(d) require a Serious area to submit a revised implementation plan within 12 months of a failure to attain the standard.

with less than 12 months from the effective date of this final action to identify and evaluate such RACT, and prepare and approve those RACT SIPs at the state level.

Finally, the EPA is cognizant and in agreement with the commenter who stated that a due date of 18 months (which was the expected amount of time the EPA anticipated with an August 3, 2020, due date) could allow states to identify additional controls as “reasonably available” in comparison with the shorter deadline.<sup>47</sup> Therefore, the EPA believes a due date 18-months from the effective date of this final action for submission of certain RACT measures not tied to attainment is appropriate.

*3. Implementation deadline for RACT measures not tied to attainment.* The EPA proposed two options for the implementation deadline for RACT measures not tied to attainment: (1) August 3, 2020 or (2) up through the full 5 years provided by the statute for RACT implementation, *i.e.*, January 1, 2024. In proposing the two dates, the EPA made several observations. We noted at the time that “[i]deally, SIP submission deadlines would precede the implementation of control strategies contained in those SIP submissions.”<sup>48</sup> We also noted, in the context of taking comment on a providing a deadline past August 3, 2020, but no later than January 1, 2024, that additional time provided for implementation of control measures “could lead states to determine that additional controls are reasonable, thus helping areas attain both the 2008 and 2015 standards more expeditiously.” *Id.* In particular, we noted that in reclassifying areas from Marginal to Moderate in 2016 for the 2008 ozone NAAQS after findings of failure to

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<sup>47</sup> Moreover, the EPA notes that CAA section 110(k)(5), which provides the EPA with authority to “establish reasonable deadlines” for the submission of SIP revisions to address substantial inadequacies in the SIP identified by the EPA, states that the EPA may not establish such deadline “to exceed 18 months after the date of such notice.” While this provision is not directly applicable here, the EPA believes it is informative.

<sup>48</sup> See 83 FR 56781, November 14, 2018.

attain, states were provided less than seven months to implement RACT. We acknowledged that a more generous timeframe for implementing RACT may have allowed states to adopt additional controls.

Thus, the EPA is finalizing July 20, 2021, the Serious area attainment date, as the deadline for implementation of RACT measures not tied to attainment. Given the intervening time between proposed and final rules, an August 3, 2020, deadline for implementation of RACT measures not tied to attainment would limit the controls that states could consider implementing. As noted in the proposal, the EPA believes that there is a direct relationship between the amount of time provided for implementation of RACT measures not tied to attainment and the actual measures that will be available to states to install or implement. We also continue to believe that a slightly longer timeframe for measures that are not directly tied to the area's attainment can be appropriate, especially where an area is simultaneously implementing two ozone standards, such that additional controls will help the area attain both standards more expeditiously. On the other hand, the outside timeframe proposed by the EPA for implementation of RACT measures not tied to attainment, January 1, 2024, was well beyond the Serious area attainment date and we received feedback during the public comment period suggesting that any implementation deadline beyond the attainment date would not serve timely attainment. We are therefore finalizing July 20, 2021, the Serious Area attainment date, as the deadline for implementing RACT measures not needed for attainment. The EPA believes this date is reasonable and appropriate when considering the comments received on this issue and the timing of this final action. We also note that because the EPA is finalizing the SIP submission date for RACT measures not tied to attainment as 18 months from the effective date of this final action, this implementation approach will provide at least some window of time between the SIP revision

submission due date and the deadline for implementation of RACT measures not tied to attainment, which, as we noted at proposal, is preferable to direct alignment of the SIP submission due date and implementation deadline, where possible.

#### **IV. Environmental Justice Considerations**

The CAA requires that states with areas designated as nonattainment submit to the Administrator the appropriate SIP revisions and implement specified control measures by certain dates applicable to the area's classification. By requiring additional planning and implementation requirements for the seven nonattainment areas that the EPA determined failed to attain the 2008 ozone NAAQS standards, the part of this action reclassifying those seven areas from Moderate to Serious will protect all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

#### **V. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

##### *C. Paperwork Reduction Act (PRA)*

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget.<sup>49</sup> This action does not contain any information collection activities and serves only to make final: (1) determinations that certain Moderate nonattainment areas listed in Table 2 attained the 2008 ozone standards by the July 20, 2018, attainment date; (2) approval to grant certain Moderate nonattainment areas listed in Table 2 a 1-year attainment date extension from the July 20, 2018, attainment date to July 20, 2019; (3) determinations that certain Moderate nonattainment areas listed in Table 2 failed to attain the 2008 ozone standards by the July 20, 2018, attainment date where such areas will be reclassified as Serious nonattainment for the 2008 ozone standards by operation of law upon the effective date of the final reclassification action; and (4) establishment of adjusted due dates for SIP revisions, including RACT SIP revisions, and RACT implementation deadlines.

#### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determinations of attainment and failure to attain the 2008 ozone standards (and resulting reclassifications), and the final approval to grant 1-year attainment date extensions do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

#### *E. Unfunded Mandates Reform Act (UMRA)*

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<sup>49</sup> On April 30, 2018, the OMB approved EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expires on April 30, 2021, 3 years after the approval date (*see* OMB Control Number 2060-0695 and ICR Reference Number 201801-2060-003 for EPA ICR No. 2347.03).

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538,<sup>50</sup> and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA has identified a few tribal areas that exist within certain Moderate nonattainment areas for which the EPA is making final determinations of attainment for the 2008 ozone NAAQS. The EPA regional offices consulted with tribal officials under the EPA policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Documentation of the consultation is provided in docket items EPA-HQ-OAR-2018-0226-0041 and 0043.

*H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

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<sup>50</sup> U.S.C. is United States Code.

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the section of the preamble titled, “Environmental Justice Considerations.”

*L. Congressional Review Act (CRA)*

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the approval to grant 1-year attainment date extensions do not in themselves create any new requirements beyond what is mandated by the CAA.

*M. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of final actions that are locally and regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. However, the statute also provides that notwithstanding that general rule, “a petition for review of any action . . . may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”<sup>51</sup> Because this final action makes findings regarding nonattainment areas across the country, interprets the CAA and applies such interpretations to states and nonattainment areas across the country, and establishes SIP deadlines for newly reclassified areas in different states in a consistent fashion, the Administrator finds that this action has nationwide scope and effect. Therefore, in accordance with CAA section 307(b)(1), petitions for review of this final action may be filed only in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings for enforcement.

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<sup>51</sup> See 42 U.S.C. 7607(b)(1); see also *Dalton Trucking v. EPA*, 808 F.3d 875 (D.C. Circuit 2015).

## **List of Subjects**

### *40 CFR Part 52*

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

### *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: August 7, 2019.

Andrew R. Wheeler,  
Administrator.

For the reasons stated in the preamble, parts 52 and 81, title 40, chapter 1 of the Code of Federal Regulations are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart F—California**

2. Section 52.282 is amended by adding paragraph (k) to read as follows:

**§52.282 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(k) *Determination of attainment by the attainment date.* Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA has determined that the Mariposa County Moderate nonattainment area in California attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2018, based upon complete quality-assured and certified data for the calendar years 2015-2017.

**Subpart V—Maryland**

3. Section 52.1076 is amended by adding paragraph (ff) to read as follows:

**§52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.**

\* \* \* \* \*

(ff) The EPA has determined that the Baltimore, Maryland Moderate nonattainment area attained the 2008 8-hour ozone National Ambient Air Quality Standards by the applicable

attainment date of July 20, 2018, based upon complete quality-assured and certified data for the calendar years 2015-2017.

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

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

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

**Subpart C—Section 107 Attainment Status Designations**

5. Section 81.305 is amended by revising the entries for “Nevada County (Western part), CA:” and “San Diego County, CA:” in the table entitled “California-2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§81.305 California.**

\* \* \* \* \*

California—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Nevada County (Western part), CA: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.
Nevada County (part)				
That portion of Nevada County, which lies				

<p>west of a line, described as follows: Beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.</p>				
* * * * *				
San Diego County, CA: <sup>2</sup>		Nonattainment	<b>[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]</b>	Serious.
San Diego County <sup>2</sup>				
Barona Group of Capitan Grande Band of Mission Indians of the Barona				

Reservation <sup>3</sup>				
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation <sup>3</sup>				
Capitan Grande Band of Diegueno Mission Indians of California <sup>3</sup>				
Ewiiapaayp Band of Kumayaay Indians <sup>3</sup>				
Iipay Nation of Santa Ysabel <sup>3</sup>				
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation <sup>3</sup>				
Jamul Indian Village of California <sup>3</sup>				
La Jolla Band of Luiseno Indians <sup>3</sup>				
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation <sup>3</sup>				
Los Coyotes Band of Cahuilla and Cupeno Indians <sup>3</sup>				
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation <sup>3</sup>				
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation <sup>3</sup>				
Pala Band of Luiseno Mission Indians of the Pala Reservation <sup>3</sup>				

Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation <sup>3</sup>				
Rincon Band of Luiseno Mission Indians of the Rincon Reservation <sup>3</sup>				
San Pasqual Band of Diegueno Mission Indians of California <sup>3</sup>				
Sycuan Band of the Kumeyaay Nation <sup>3</sup>				
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians <sup>3</sup>				
* * * * *				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

<sup>3</sup>Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \* \*

6. Section 81.307 is amended by revising the table entitled “Connecticut—2008 8-Hour Ozone NAAQS [Primary and secondary]” to read as follows:

**§81.307 Connecticut.**

\* \* \* \* \*

**Connecticut—2008 8-Hour Ozone NAAQS**

[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Greater Connecticut, CT: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.
Hartford County				
Litchfield County				
New London County				
Tolland County				
Windham County				
Mashantucket Pequot Tribe of Connecticut <sup>3</sup>				
Mohegan Indian Tribe of Connecticut <sup>3</sup>				
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.
Fairfield County				
Middlesex County				

New Haven County				
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<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

<sup>3</sup>Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \* \*

7. Section 81.314 is amended by revising the entry for “Chicago-Naperville, IL-IN-WI:” in the table entitled “Illinois—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§81.314 Illinois.**

\* \* \* \* \*

Illinois—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Chicago-Naperville, IL-IN-WI: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.
Cook County				
DuPage County				

Grundy County (part)				
Aux Sable Township				
Goose Lake Township				
Kane County				
Kendall County (part)				
Oswego Township				
Lake County				
McHenry County				
Will County				
* * * * *				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

8. Section 81.315 is amended by revising the entry for “Chicago-Naperville, IL-IN-WI:” in the table entitled “Indiana—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§81.315 Indiana.**

\* \* \* \* \*

Indiana—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Chicago-Naperville, IL-IN-WI: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE	Serious.

			<b>OF PUBLIC ATION IN THE FEDERA L REGIST ER]</b>	
Lake County				
Porter County				
*****				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\*\*\*\*\*

9. Section 81.331 is amended by revising the entry for “New York-N. New Jersey-Long Island, NY-NJ-CT:” in the table entitled “New Jersey—2008 8-Hour Ozone NAAQS [Primary and secondary]” to read as follows:

**§81.331 New Jersey.**

\*\*\*\*\*

**New Jersey—2008 8-Hour Ozone NAAQS**

[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE	Serious.

			<b>OF PUBLIC ATION IN THE FEDERA L REGIST ER]</b>	
Bergen County				
Essex County				
Hudson County				
Hunterdon County				
Middlesex County				
Monmouth County				
Morris County				
Passaic County				
Somerset County				
Sussex County				
Union County				
Warren County				
* * * * *				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

10. Section 81.333 is amended by revising the entry for “New York-N. New Jersey-Long Island, NY-NJ-CT:” in the table entitled “New York—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§81.333 New York.**

\*\*\*\*\*

New York—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
*****				
New York-N. New Jersey-Long Island, NY-NJ-CT: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLIC ATION IN THE FEDERAL REGISTER]	Serious.
Bronx County				
Kings County				
Nassau County				
New York County				
Queens County				
Richmond County				
Rockland County				
Suffolk County				
Westchester County				
Shinnecock Indian Nation <sup>3</sup>				
*****				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

<sup>3</sup>Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA

lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \* \*

11. Section 81.344 is amended by revising the entries for “Dallas-Fort Worth, TX:” and “Houston-Galveston-Brazoria, TX:” in the table entitled “Texas—2008 8-Hour Ozone NAAQS (Primary and secondary)” to read as follows:

**§81.344 Texas.**

\* \* \* \* \*

Texas—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Dallas-Fort Worth, TX: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.
Collin County				
Dallas County				
Denton County				
Ellis County				
Johnson County				
Kaufman County				
Parker County				
Rockwall County				
Tarrant County				
Wise County				
Houston-Galveston-Brazoria, TX: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE	Serious.

			<b>FEDERAL REGISTER]</b>	
Brazoria County				
Chambers County				
Fort Bend County				
Galveston County				
Harris County				
Liberty County				
Montgomery County				
Waller County				
* * * * *				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

12. Section 81.350 is amended by revising the entries for “Chicago-Naperville, IL-IN-WI;” “Inland Sheboygan County, WI,” and “Shoreline Sheboygan County, WI” and adding footnote 5 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 <sup>1</sup>	Type	Date <sup>1</sup>	Type
Chicago-Naperville, IL-IN-WI: <sup>2</sup>		Nonattainment	[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Serious.

Kenosha County (part)				
The portion of Kenosha County bounded by the Lake Michigan shoreline on the East, the Kenosha County boundary on the North, the Kenosha County boundary on the South, and the I-94 corridor (including the entire corridor) on the West.				
Inland Sheboygan County, WI <sup>2.5</sup>	7/15/2019	Nonattainment	12/19/2016	Moderate.
Sheboygan County (part):				
Exclusive and west of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hofstiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road				
Shoreline Sheboygan County, WI <sup>2.5</sup>	7/15/2019	Nonattainment	12/19/2016	Moderate
Sheboygan County (part):				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hofstiezer Road, Highway 32, Palmer				

Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road				
* * * * *				

<sup>1</sup>This date is July 20, 2012, unless otherwise noted.

<sup>2</sup>Excludes Indian country located in each area, unless otherwise noted.

\* \* \* \* \*

<sup>5</sup>Attainment date is extended to July 20, 2019 for both Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI, nonattainment areas.

\* \* \* \* \*

[FR Doc. 2019-17796 Filed: 8/22/2019 8:45 am; Publication Date: 8/23/2019]