

### Intergovernmental Review

The William D. Ford Federal Direct Loan Program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Assessment of Educational Impact

Based on our own review, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Assistance Listing Number: 84.268 Federal Direct Student Loans.)

### List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Loan programs—Education, Reporting and recordkeeping requirements, Student aid, Vocational education.

**Michelle Asha Cooper,**

*Acting Assistant Secretary for Postsecondary Education.*

For the reasons discussed in the preamble, the Secretary amends part 685 of title 34 of the Code of Federal Regulations as follows:

## PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 1. The authority citation for part 685 continues to read in part as follows:

**Authority:** 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

\* \* \* \* \*

### § 685.200 [Amended]

■ 2. Section 685.200 is amended by:

■ a. In paragraph (a)(2)(i) introductory text, removing “must—” and adding in its place “must demonstrate financial need in accordance with title IV, part F of the Act.”.

■ b. Removing paragraphs (a)(2)(i)(A) and (B) and (f).

■ c. Removing the parenthetical authority citation at the end of the section.

### § 685.304 [Amended]

■ 3. Section 685.304 is amended by:

■ a. In paragraph (a)(6)(xiv), adding “and” after the semicolon.

■ b. In paragraph (a)(6)(xv), removing “; and” and adding a period in its place.

■ c. Removing paragraphs (a)(6)(xvi) and (b)(4)(xii).

■ d. Redesignating paragraphs (b)(4)(xiii) and (xiv) as paragraphs (b)(4)(xii) and (xiii), respectively.

[FR Doc. 2021–12384 Filed 6–11–21; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA–HQ–OAR–2017–0548; FRL–10019–90–OAR]

**RIN 2060–AV06**

### Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** This final action revises or affirms the initial air quality designations for 14 counties associated with seven nonattainment areas for the 2015 primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone. In a July 10, 2020, decision, the District of Columbia Circuit Court remanded to the Environmental Protection Agency (EPA or Agency), but did not vacate, the April 30, 2018, designations for 16 counties associated with nine nonattainment areas located in seven states. In response, the EPA has re-evaluated the

designations for the remanded counties by applying a uniform, nationwide analytical approach and interpretation of the designation provisions of the Clean Air Act (CAA) in considering the specific facts and circumstances of the areas using only data and information available at the time of the original designations. In this final action, the EPA is revising the designations and/or boundaries of 13 counties associated with six nonattainment areas in four states (Illinois, Indiana, Missouri, and Wisconsin) and is affirming the April 30, 2018, designation of one county associated with a nonattainment area in Michigan. The EPA is addressing the two additional remanded counties associated with two nonattainment areas in a separate **Federal Register** document.

**DATES:** The effective date of this rule is July 14, 2021.

**ADDRESSES:** The EPA has established a public docket for these ozone designations at <https://www.regulations.gov> under Docket ID No. EPA–HQ–OAR–2017–0548.<sup>1</sup> Although listed in the docket 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.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. The Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

In addition, the EPA has established a website for the designations for the 2015 ozone NAAQS at <https://www.epa.gov/ozone-designations>. The website includes the EPA’s final revised designations action, technical support documents, revised responses to comments and other related information.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, contact Carla Oldham, Office of Air Quality Planning and Standards,

<sup>1</sup> The <https://www.regulations.gov> platform is in the process of being upgraded. Users may be automatically redirected to <https://beta.regulations.gov>. Both website addresses contain the same information.

U.S. Environmental Protection Agency, Mail Code C539-01, Research Triangle Park, N.C. 27711, phone number (919) 541-3347 or by email at: [oldham.carla@epa.gov](mailto:oldham.carla@epa.gov). The following EPA contacts can answer questions regarding areas

affiliated with a particular EPA Regional office:

Region 5—Eric Svingen, telephone (312) 353-4489, email at [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

Region 6—Carrie Paige, telephone (214) 665-6521, email at [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

Region 7—Ashley Keas, telephone (913) 551-7629, email at [keas.ashley@epa.gov](mailto:keas.ashley@epa.gov).

Region 8—Abby Fulton, telephone (303) 312-6563, email at [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

Regional offices	Affected state(s)
EPA Region 5—Air Programs Branch, Air & Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.	Illinois, Indiana, Michigan, and Wisconsin.
EPA Region 6—State Planning & Implementation Branch, 1201 Elm Street, Dallas, Texas 75270.	Texas.
EPA Region 7—Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Missouri.
EPA Region 8—Air Quality Planning Branch, 1595 Wynkoop Street, Denver, Colorado 80202.	Colorado.

Most of the EPA's offices are closed to reduce the risk of transmitting COVID-19, but staff remain available via telephone and email. The EPA encourages the public to review information related to the EPA's final action responding to the July 10, 2020, Court Decision online at <https://www.epa.gov/ozone-designations> and also in the public docket at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OAR-2017-0548.

#### SUPPLEMENTARY INFORMATION:

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#### I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act  
 CAA Clean Air Act  
 CFR Code of Federal Regulations  
 CRA Congressional Review Act  
 D.C. District of Columbia  
 EPA Environmental Protection Agency  
 FR Federal Register  
 NAAQS National Ambient Air Quality Standards  
 NTTAA National Technology Transfer and Advancement Act  
 ppm Parts per million  
 PRA Paperwork Reduction Act  
 RFA Regulatory Flexibility Act  
 RTA Rural Transport Area  
 SIP State Implementation Plan  
 TAR Tribal Authority Rule  
 TSD Technical Support Document  
 UMRA Unfunded Mandate Reform Act  
 U.S. United States  
 VOC Volatile Organic Compound

#### II. What is the purpose of this action?

The purpose of this final action is to announce and promulgate revised 2015 ozone NAAQS designations for 13 counties in response to the July 10, 2020, decision by the District of Columbia Circuit Court that remanded the counties to the EPA for further consideration. The affected counties were initially designated on April 30, 2018. This action also modifies and

expands the rationale supporting the designation for one county that was remanded to the EPA by the court but remains identical to the initial April 30, 2018, designation. The EPA is addressing the two additional remanded counties that require a different process in a document published elsewhere in this issue of the **Federal Register**.

On October 1, 2015, the EPA promulgated revised primary and secondary NAAQS for ozone (80 FR 6592; October 26, 2015). In that action, the EPA strengthened both standards to a level of 0.070 parts per million (ppm), while retaining their indicators, averaging times, and forms. The EPA revised the ozone standards based on an integrated assessment of an extensive body of new scientific evidence, which substantially strengthens our knowledge regarding ozone-related health and welfare effects, the results of exposure and risk analyses, the advice of the Clean Air Scientific Advisory Committee and consideration of public comments.

The process for designating areas following promulgation of a new or revised NAAQS is contained in the CAA section 107(d) (42 U.S.C. 7407(d)). After promulgation of a new or revised NAAQS, the CAA requires the EPA to determine if areas in the country meet the new standards. Accordingly, the EPA designated all areas of the country as to whether they met, or did not meet, the NAAQS in three rounds.<sup>2</sup>

<sup>2</sup> The EPA designated areas for the 2015 Ozone NAAQS in three rounds, resulting in 52 nonattainment areas. In Round 1 (82 FR 54232; November 6, 2017), the EPA designated 2,646 counties, two separate tribal areas and five territories as attainment/unclassifiable, and one area as unclassifiable. In Round 2 (83 FR 25776; April 30, 2018), the EPA designated 51 nonattainment areas, one unclassifiable area, and all remaining areas as attainment/unclassifiable, except for the eight counties in the San Antonio,

Several environmental and public health advocacy groups, three local government agencies, and the State of Illinois filed a total of six petitions for review challenging the EPA's 2015 ozone NAAQS designations promulgated on April 30, 2018. The District of Columbia Circuit Court consolidated the petitions into a single case, *Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020). Collectively, the petitioners challenged aspects of the EPA's final designations for 17 counties associated with nine nonattainment areas. The petitioners primarily argued that the EPA improperly designated counties (in whole or part) as attainment that should have been designated as nonattainment because of contribution to nearby counties with violating monitors. In its response brief, the EPA requested voluntary remand of the final designation decisions for 10 counties

associated with four nonattainment areas to further review those designations.

On July 10, 2020, the District of Columbia Circuit Court granted the EPA's requests for voluntary remand and also remanded several other counties (*see Clean Wisconsin*, 964 F.3d 1145). In total, the Court remanded back to the EPA, 16 counties associated with nine nonattainment areas. The Court did not vacate the initial April 30, 2018, designations, but required the EPA to "issue revised designations as expeditiously as practicable." In response to the Court decision, the EPA re-evaluated the existing technical record, including data and information, that was used for the initial April 2018 designations under a uniform, nationwide analytical approach, to support either revising or affirming the designations for these remanded

counties. Table 1 summarizes the EPA's revised or affirmed 2015 ozone NAAQS designations for the 14 counties that are addressed in this **Federal Register** document. The EPA is affirming the designation for one county (Ottawa, Michigan) and revising the designations for 13 counties. The technical support documents (TSDs) that describe the re-evaluation of these counties are included in the public docket. The amended 40 CFR part 81 tables for the revised designations, which appear in the regulatory tables included at the end of this final rule, identify the revised designation for each remanded county and the classification for each associated nonattainment area. Because the designation for Ottawa County, Michigan is being affirmed, no amendment is needed for the Michigan 40 CFR part 81 table.

TABLE 1—REMAND DESIGNATIONS FOR THE 2015 OZONE NAAQS

Nonattainment area name	Remanded county	April 2018 designation	Remand designation
Chicago, IL-IN-WI .....	Kenosha, WI (partial) .....	Partial county nonattainment ....	Expanded partial county nonattainment.
	McHenry, IL .....	Full county attainment .....	Full county nonattainment.
	Porter, IN .....	Full county attainment .....	Partial county nonattainment.
Northern Milwaukee/Ozaukee Shoreline, WI.	Milwaukee, WI (partial) .....	Partial county nonattainment ....	Full county nonattainment.
	Ozaukee, WI (partial) .....	Partial county nonattainment ....	Full county nonattainment.
	Racine, WI .....	Full county attainment .....	Partial county nonattainment.
	Waukesha, WI .....	Full county attainment .....	Partial county nonattainment.
	Washington, WI .....	Full county attainment .....	Partial county nonattainment.
Sheboygan, WI .....	Sheboygan, WI (partial) .....	Partial county nonattainment ....	Expanded partial county nonattainment.
Manitowoc, WI .....	Manitowoc, WI (partial) .....	Partial county nonattainment ....	Expanded partial county nonattainment.
Door, WI .....	Door, WI (partial) .....	Partial county nonattainment ....	Expanded partial county nonattainment.
Allegan, MI .....	Ottawa, MI .....	Full county attainment .....	Full county attainment.
St. Louis, MO-IL .....	Monroe, IL .....	Full county attainment .....	Full county nonattainment.
	Jefferson, MO .....	Full county attainment .....	Full county nonattainment.

For the 14 counties that appear in Table 1, as is discussed further in Sections V and VI of this notice, the EPA is exercising its authority to take final action under section 107(d) of the CAA. For the remaining two remanded counties (El Paso County, Texas and Weld County, Colorado), a different process is required, and the EPA is addressing those two counties in a separate **Federal Register** document. As discussed in Section V of this document, CAA section 107(d) specifies that whenever the EPA Administrator intends to make a modification to a state's designation recommendation, the EPA must notify the state and provide the state with the opportunity to submit

additional information to demonstrate why the EPA's intended modification is inappropriate. The EPA is required to give the notification no later than 120 days before promulgating the final designation, including any modification thereto.

For the 14 counties that appear in Table 1, the EPA sent letters to the relevant states on December 20, 2017, notifying each state that the Agency intended to modify the state's designation recommendation, and providing the states with 120 days to submit additional information regarding each county's designation. However, both at the intended designations stage and in the final designations issued in April 2018, the EPA agreed with the

state recommendations for El Paso County, Texas and Weld County, Colorado. Now, in response to the court remand, the EPA intends to make modifications to the state recommendations for those two counties. Therefore, the EPA must conduct a 120-day notification process related to the counties. Concurrent with this **Federal Register** document governing 14 of the remanded counties, the EPA is sending letters to Texas and Colorado to notify them of the intended modifications. The EPA is also issuing a notice of availability for these letters and offering a public comment period.

Texas area. In Round 3 (83 FR 35136; July 17, 2018), the EPA designated one county in the San Antonio

area as nonattainment and the other seven counties as attainment/unclassifiable.

### III. What is ozone and how is it formed?

Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. However, high ozone concentrations have also been observed in cold months, where a few areas in the Western United States (U.S.) have experienced high levels of local VOC and NO<sub>x</sub> emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing. Ozone and ozone precursors can be transported to an area from sources in nearby areas or from sources located hundreds of miles away. For purposes of determining ozone nonattainment area boundaries, the CAA requires the EPA to include areas that contribute to nearby violations of the NAAQS.

### IV. What are the 2015 ozone NAAQS and the health and welfare concerns they address?

On October 1, 2015, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.070 ppm (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years).<sup>3</sup> The level of the ozone NAAQS previously set in 2008 is 0.75 ppm. The 2015 ozone NAAQS retain the same general form and averaging time as the 2008 ozone NAAQS.

The primary ozone standards provide protection for children, older adults, and people with asthma or other lung diseases, and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

### V. What are the CAA requirements for air quality designations?

After the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas in the country as

nonattainment, attainment, or unclassifiable, for that NAAQS pursuant to section 107(d)(1)–(2) of the CAA. Section 107(d)(1)(A)(i) of the CAA defines a *nonattainment* area as an area that does not meet the NAAQS or that contributes to a nearby area that does not meet the NAAQS. An *attainment* area is defined by the CAA as any area that meets the NAAQS and does not contribute to any nearby areas that do not meet the NAAQS. *Unclassifiable* areas are defined by the CAA as those that cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

Historically for ozone, the EPA has designated most areas that do not meet the definition of nonattainment as unclassifiable/attainment. This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors but for which the EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation. In the designations for the 2015 ozone NAAQS, the EPA has reversed the order of the label to be attainment/ unclassifiable to better convey the definition of the designation category and so that the category is more easily distinguished from the separate unclassifiable category. In a few instances, based on circumstances where some monitoring data are available but are not sufficient for a determination that an area is or is not attaining the NAAQS, the EPA has designated an area as unclassifiable.

The EPA notes that CAA section 107(d) provides the Agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., “contributes to” and “nearby”) for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA’s position is that the statute does not require the Agency to establish bright line tests or thresholds for what constitutes “contribution” or “nearby” for purposes of designations.<sup>4</sup>

Similarly, the EPA’s position is that the statute permits the EPA to evaluate the appropriate application of the term “area” to include geographic areas based upon full or partial county boundaries, as may be appropriate for a particular NAAQS. For example, CAA section 107(d)(1)(B)(ii) explicitly provides that the EPA can make

modifications to designation recommendations for an area “or portions thereof,” and under CAA section 107(d)(1)(B)(iv) a designation remains in effect for an area “or portion thereof” until the EPA redesignates it.

Section 107(d)(1)(B) of the CAA requires the EPA to issue initial area designations within 2 years of promulgating a new or revised NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, the EPA has the authority to extend the deadline for designation decisions by up to 1 additional year.

By no later than 1 year after the promulgation of a new or revised NAAQS, CAA section 107(d)(1)(A) provides that each state governor shall recommend air quality designations, including the appropriate boundaries for areas, to the EPA. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term “necessary,” but the EPA interprets this to authorize the Administrator to modify designation recommendations that are inconsistent with the statutory language, including modification of recommended boundaries for nonattainment areas that are not supported by the facts or analysis. If the EPA intends to modify a state’s recommendation, section 107(d)(1)(B) of the CAA requires the EPA to notify the state of any such intended modifications not less than 120 days prior to the EPA’s promulgation of the final designation. These notifications are commonly known as the “120-day letters.” During this period, if the state does not agree with the EPA’s proposed modification, it has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate. If a state fails to provide any recommendation for an area, in whole or in part, the EPA must promulgate a designation that the Administrator deems appropriate, pursuant to CAA section 107(d)(1)(B)(ii).

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes’ jurisdiction. The Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the

<sup>3</sup> See 80 FR 65296; October 26, 2015, for a detailed explanation of the calculation of the 3-year, 8-hour average and 40 CFR part 50, appendix U.

<sup>4</sup> This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA.

#### VI. What is the chronology for this designations action and what guidance did the EPA provide?

On February 25, 2016, the EPA issued guidance for states and tribal agencies to use for purposes of making designation recommendations as required by CAA section 107(d)(1)(A). (See February 25, 2016, memorandum from Janet G. McCabe, Acting Assistant Administrator, to Regional Administrators, Regions 1–10, titled, “Area Designations for the 2015 Ozone National Ambient Air Quality Standards” (Designations Guidance)). The Designations Guidance provided the anticipated timeline for designations and identified important factors that the EPA recommended states and tribes consider in making their recommendations and that EPA intended to consider in promulgating designations. These factors include air quality data, emissions and emissions-related data, meteorological data, geography/topography, and jurisdictional boundaries. In the Designations Guidance, the EPA asked that states and tribes submit their designation recommendations, including appropriate area boundaries, to the EPA by October 1, 2016. The EPA had previously issued two guidance memoranda related to designating areas of Indian country that also apply for designations for the 2015 ozone NAAQS. (See December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, “Policy for Establishing Separate Air Quality Designations for Areas of Indian Country,” (Tribal Designations Guidance) and December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, “Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process.”) In the Designation Guidance, the EPA indicated the Agency expected to complete the initial designations for the 2015 ozone NAAQS on a 2-year schedule, by October 1, 2017, consistent with CAA 107(d)(1)(B)(i).

On November 6, 2017, the EPA designated as attainment/unclassifiable 2,646 counties,<sup>5</sup> including tribal lands within those counties, for which the states recommended a designation of attainment or attainment/unclassifiable. This represents approximately 85 percent of the counties in the U.S. The EPA also designated a three-county area in Washington as unclassifiable as recommended by the state. Consistent with the EPA’s Tribal Designation Guidance, the EPA designated two areas of Indian country (Fond du Lac Band of Lake Superior Chippewa Indians and Forest County Potawatomi Community) as separate attainment/unclassifiable areas.

On or about December 22, 2017, the EPA sent 120-day letters to Governors and tribal leaders notifying them of the EPA’s preliminary response to their designation recommendations for all areas of the country not designated in the November 2017 action, with the exception of eight counties in the San Antonio metropolitan area. For the areas addressed in the 120-day letters, the EPA requested that states and tribes submit any additional information that they wanted the EPA to consider in making final designation decisions by February 28, 2018, including any certified 2017 air quality monitoring data.

Although not required by section 107(d)(2)(B) of the CAA, the EPA also provided a 30-day public comment period on the designation recommendations from states and tribes and the EPA’s intended designations addressed in the 120-day letters to states and tribes. The EPA announced the public comment period in the **Federal Register** on January 5, 2018 (83 FR 651).

On April 30, 2018, the EPA finalized designations for the areas addressed in the 120-day letter responses to states and tribes. In response to the *Clean Wisconsin* court decision relating to that April 30, 2018, action, the EPA has again applied a uniform, nationwide analytical approach and interpretation of CAA section 107(d)(1) to these areas across the country and reviewed the state and tribal responses and public comments, as well as reviewed the court decision itself, in the Agency’s decision

to revise certain designations remanded by the court. Comments from the states, tribes and the public, and EPA’s updated responses to significant comments, are also available in the docket along with the individual TSDs for areas with associated remanded counties.

In the *Clean Wisconsin* decision, the D.C. Circuit directed the EPA to complete a process to revise, as appropriate, its April 2018 designations for the remanded counties “as expeditiously as practicable.” The CAA does not require the EPA to follow a specific process when final designations are remanded to the Agency. The EPA’s final action reflects a reasonable interpretation of the CAA section 107(d) requirements, particularly given the court’s direction and the process already provided to states, tribes, and the public.

The EPA is finalizing the designations addressed in this action without providing additional opportunity for public comment or another 120-day period for states to respond. Under CAA section 107(d)(2)(B), the EPA is not required to provide a public comment period for designations actions. CAA section 107(d)(1)(B)(ii) lays out a particular process when the EPA disagrees with a state’s recommended designations. For the 14 counties addressed in this **Federal Register** document, the EPA is either (1) agreeing with the state recommendation, which does not require any further process, or (2) disagreeing with the state recommendation. For the latter category, the EPA has already expressed such disagreement and provided the relevant states (Wisconsin, Indiana, and Missouri) with the statutorily-mandated opportunity to demonstrate why EPA’s intended designations were inappropriate.<sup>6</sup> Each of those states took advantage of that opportunity and responded to the EPA with additional information.<sup>7</sup> In the designations addressed in this **Federal Register** document, the EPA considered those responses, in addition to the rest of the data and information in the record.

Proceeding straight to finalization for these 14 areas also aligns with the

<sup>5</sup> Any reference to “counties” in this action also includes non-county administrative or statistical areas that are comparable to counties. Louisiana parishes; the organized boroughs of Alaska; the District of Columbia; and the independent cities of the States of Virginia, Maryland, Missouri, and Nevada are equivalent to counties for administrative purposes. Alaska’s Unorganized Borough is divided into 10 census areas that are statistically equivalent to counties. As of 2017, there are currently 3,142 counties and county-equivalents in the United States.

<sup>6</sup> See 83 FR 651 (2018) for the notification of availability of EPA’s 120-day letters to the relevant states.

<sup>7</sup> Comment submitted by Daniel L. Meyer, Secretary, Wisconsin Department of Natural Resources, EPA–HQ–OAR–2017–0548–0300; Comment submitted by Bruno L. Pigott, Commissioner, Indiana Department of Natural Resources, EPA–HQ–OAR–2017–0548–0292; Comment submitted by Darcy A. Bybee, Director, Air Pollution Control Program, Missouri Department of Natural Resources, EPA–HQ–OAR–2017–0548–0303.

direction provided by the D.C. Circuit to “issue revised designations as expeditiously as practicable.”<sup>8</sup> While the EPA does sometimes provide opportunities for outside input even when it is not required by the CAA, it is not appropriate to do so here given the court’s direction, and the process that the EPA has already undertaken for these areas.

This approach is consistent with the EPA’s treatment of the two remaining remanded counties addressed in the Agency’s separate notification of availability published elsewhere in this issue of the **Federal Register**. The EPA’s December 2017 initial designations and April 2018 final designations aligned with Texas’s and Colorado’s recommendations for El Paso and Weld Counties, respectively, and so at that time, the EPA had no need to, and did not, notify the states that the Agency planned to modify the states’ recommendations. However, the EPA’s revised intended designations for those areas in response to the court’s remand would modify the states’ recommendations. As such, the EPA is acting consistently with the CAA requirement that the EPA notify the relevant states and allow them to “demonstrate why any proposed modification is inappropriate,” and undertaking a 120-day process.

## VII. What air quality data have the EPA used to designate the remanded areas for the 2015 ozone NAAQS?

For the remanded counties and associated nonattainment areas addressed in this action, the EPA has re-evaluated the designations under a uniform, nationwide analytical approach in considering the specific facts and circumstances of the areas using data and information available in the existing record.<sup>9</sup> The EPA has primarily based the revised final ozone designations in this action on air quality monitoring data from the years 2014–2016, which were the most recent data that states were required to certify at the time the EPA notified the states of its intended modifications to their recommendations in December 2017. Under 40 CFR 58.16, states are required to report all monitored ozone air quality data and associated quality assurance

data within 90 days after the end of each quarterly reporting period, and under 40 CFR 58.15(a)(2) states are required to submit annual summary reports and a data certification letter to the EPA by May 1 for ozone air quality data collected in the previous calendar year. Thus, at the time of the 120-day letters, the most recent certification obligation was for air quality data from 2016. In the 120-day notification letters to states, the EPA indicated that for the EPA to consider air quality data for the period 2015–2017 in the final designation decisions for any area, a state must submit certified, quality assured 2015–2017 air quality monitoring data for the area to the EPA by February 28, 2018. Several states, including Missouri and Illinois, chose to submit early certified air quality data for areas within their states. Accordingly, for the St. Louis, Missouri-Illinois area, the EPA based its original final designations decisions on air quality data from 2015–2017 and is also basing the revised final designation decisions on air quality data from 2015–2017. For the three states that comprise a portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin CSA, only Illinois chose to early certify 2017 data before the May 1, 2018, deadline. The 2015–2017 design values for counties in the Illinois portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin CSA show violations of the NAAQS in Cook County and Lake County in Illinois, and no violations in other counties in the Illinois portion of the CSA; this is not a change from the 2014–2016 data for Illinois, which also showed violations in only these two counties within the Illinois portion of the CSA. Therefore, the early certified 2017 data would not result in a change to the designations for those counties. Thus, for the Chicago, Illinois-Indiana-Wisconsin area, the EPA based its original final designations decisions on air quality data from 2014–2016 and is also basing the revised final designation decisions on air quality data from 2014–2016, with additional consideration of 2015–2017 data for Illinois.

The EPA’s reliance on the existing record to support the designations in this **Federal Register** document is reasonable in light of the circumstances. The CAA does not specify what data the Agency must rely on in re-promulgating designations upon remand from a court. As such, the EPA’s reasonable reliance on the existing record reflects the EPA’s dedication to national consistency and the specific direction of the court in *Clean Wisconsin*: “to issue revised designations as expeditiously as

practicable” in responding to the remand.<sup>10</sup>

Section 107(d) of the CAA lays out a particular timeline for designations decisions to be made, triggered from the promulgation date of a NAAQS. For the 2015 ozone NAAQS, the designation of every area of the country, apart from those remanded to the Agency, relied on the existing record.<sup>11</sup> As the D.C. Circuit stated in previous cases reviewing the EPA’s designations decisions, “inconsistency is the hallmark of arbitrary agency action.”<sup>12</sup> Relying on the data available to the Agency at the time of the April 2018 designations action would prevent inconsistent treatment between the remanded counties and every other area of the country.

In addition, this action expands the boundaries of existing nonattainment areas but does not create any new nonattainment areas. If it is important to treat areas across the country consistently, it is that much more important that the EPA treat *different portions of the same nonattainment area* consistently. For example, in this action, the EPA is expanding the boundary of the Sheboygan, Wisconsin nonattainment area by approximately 0.9 miles. It would be illogical in this type of situation for the Agency to use one set of data (e.g., 2014–2016 design values) for the previously-designated portion and a different set (e.g., 2017–2019 or 2018–2020 design values) for the new 0.9-mile wide portion of the county.

The D.C. Circuit’s direction to act “as expeditiously as practicable” also weighs in favor of using the existing record. Gathering and analyzing new data would necessarily have taken longer, because much of the data the EPA generally relies upon in its designations decision-making process is obtained outside the Agency, including from states.

## VIII. What are the ozone air quality classifications and implementation dates?

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the ozone NAAQS is classified by operation of law at the same time as the area is designated by the EPA. Under Subpart 2 of part D of

<sup>8</sup> *Clean Wisconsin*, 964 F.2d at 1176.

<sup>9</sup> The existing record consists of data and other information provided by the EPA, state air agencies and the public in the time leading up to the April 30, 2018, signature date of the original action, and which the EPA considered or relied upon in its original final decisions published in June 2018. This information is contained in the public rulemaking docket, available at <https://www.regulations.gov> under docket number EPA–HQ–OAR–2017–0548.

<sup>10</sup> *Clean Wisconsin*, 964 F.2d at 1176.

<sup>11</sup> As is discussed earlier in this section, almost every designation relied on monitored 2014–2016 design values. The few exceptions were for states that early-certified 2015–2017 data in accordance with the Designation Guidance.

<sup>12</sup> *Catawba County v. EPA*, 571 F.3d 20, 51 (D.C. Cir. 2009); see also *Mississippi Comm’n v. EPA*, 790 F.3d 138, 160 (D.C. Cir. 2015).

title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area's classification. The ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years).<sup>13</sup> The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a "lower" classification have ozone levels that are closer to the standard than areas with a "higher" classification. Areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule that establishes how the statutory classifications will apply for the 2015 ozone NAAQS, including the air quality thresholds for each classification category. Each nonattainment area's design value, based on the then-most recent 3 years of certified air quality monitoring data, is used to establish the classification for the area.

The regulatory tables included at the end of this action provide the classification for each designated nonattainment area for the 2015 ozone NAAQS based on the design value for the area and the classification thresholds established in the Classification Rule. All areas addressed in this **Federal Register** document are Marginal areas.

As established in the final implementing regulations for the 2015 ozone NAAQS, nonattainment areas (including the areas subject to this final action) shall attain the 2015 standards as expeditiously as practicable but not later than the dates provided in Table 1 of 40 CFR 51.1303(a) expressed in years after the effective date of area designations, which was August 3, 2018 (83 FR 25776; June 4, 2018). The resulting attainment date for Marginal areas is not later than 3 years from the designation effective date, or August 3, 2021. Further, states with Marginal nonattainment areas have 2 years from the effective date of designation to submit state implementation plan (SIP) revisions addressing emissions inventories (required by CAA section 182(a)(1)) and emissions statement regulations (CAA section 182(a)(3)(B))

(83 FR 62998, 63000; December 6, 2018). See also 40 CFR 51.1315. The resulting emissions inventory and emissions statement SIP revisions were due August 3, 2020. The August 3, 2021, Marginal area attainment date and the August 3, 2020, SIP submission requirements still apply for the areas subject to this final action, inclusive of the revised nonattainment boundaries. The EPA expects states with areas subject to this final action to work with their respective EPA Regional office to submit any necessary supplements or revisions to fulfill the Marginal area SIP revision requirements associated with the nonattainment boundaries in this final action as expeditiously as practicable.

#### **IX. Rural Transport Area Determination for the Revised Door County, Wisconsin Designation**

CAA section 182(h) sets out general criteria for determining whether an area qualifies as a Rural Transport Area (RTA). The statute defines an RTA as an area that is designated nonattainment and neither includes nor is adjacent to any part of a metropolitan statistical area or consolidated metropolitan statistical area as defined at the time of the 1990 CAA amendments. In such cases, the Administrator has discretion to treat the area as an RTA based on a finding that the emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas. The EPA provided guidance on requesting RTA treatment in the February 25, 2016, memorandum titled, "Area Designations for the 2015 Ozone National Ambient Air Quality Standards." An RTA, regardless of its nonattainment classification, is treated as meeting the applicable requirements of CAA section 182 (generally relating to submissions required for ozone nonattainment areas) if the area meets the submission requirements of a Marginal area.

In a letter dated April 20, 2017, Wisconsin requested that the EPA make an RTA determination for the Door County nonattainment area that was designated in Round 2 of the ozone designations for the 2015 ozone NAAQS. The EPA determined that the final Door County, Wisconsin nonattainment area met the criteria for treatment as an RTA under CAA section 182(h). In response to the July 10, 2020, Court remand regarding the Door County nonattainment area, the EPA is revising the boundaries of the Door County area designated nonattainment on April 30, 2018. The EPA has determined that this nonattainment area

meets the criteria for treatment as an RTA under CAA section 182(h) and will be treated as meeting the requirements of CAA section 182 if the area meets the submission requirements of Marginal areas explained previously in this section. Documentation supporting this determination is contained in the final TSD for Wisconsin, which is available in the public docket for this final action. This determination is reflected in the regulatory table for Wisconsin in 40 CFR part 81.

#### **X. Environmental Justice Concerns**

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action revises certain designation determinations for the 2015 ozone NAAQS that were identified in the July 10, 2020, Court remand. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

#### **XI. 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 exempt from review by the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

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

This action does not impose an information collection burden under the PRA. This action fulfills the non-discretionary duty for the EPA to promulgate air quality designations after promulgation of a new or revised NAAQS and does not contain any information collection activities.

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

This designation action under CAA section 107(d) is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. Section 107(d)(2)(B) of the CAA explicitly provides that

<sup>13</sup> The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, appendix U.



designations are exempt from the notice-and-comment provisions of the APA. In addition, designations under CAA section 107(d) are not among the list of actions that are subject to the notice-and-comment rulemaking requirements of CAA section 307(d).

*D. Unfunded Mandates Reform Act (UMRA)*

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

*E. 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. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There are no tribes affected by this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may 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 establish an environmental standard intended to mitigate health or safety risks.

*H. 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.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. 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 populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section X of this preamble, “Environmental Justice Concerns.”

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the Agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, “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.” For locally or regionally applicable final actions, the CAA reserves the EPA complete discretion whether to invoke the exception in (ii).

This final action designating areas for the 2015 ozone NAAQS is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).<sup>14</sup> This final action

<sup>14</sup> In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized

establishes designations for areas across the U.S. for the 2015 ozone NAAQS, located in five states, in two EPA regions, and in three different federal judicial circuits.<sup>15</sup> This final action applies a uniform, nationwide analytical method and interpretation of CAA section 107(d)(1) to these areas across the country in a single final action, and the final action is based on this common core of determinations. More specifically, for example, this final action is based on a determination by the EPA to evaluate areas nationwide under a common five factor analysis in determining whether areas were in violation of or contributing to an area in violation of the 2015 Ozone NAAQS at the time of the April 2018 designations final action.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, any petitions for review of this final action must be filed in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of these final actions does not affect the finality of the actions for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such actions.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Michael S. Regan,**  
Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

review versus allowing development of the issue in other contexts and the best use of Agency resources.

<sup>15</sup> In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.



# PART 81—DESIGNATIONS 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.*

## Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.314, the table titled “Illinois—2015 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by:

■ a. Revising the entries under “Chicago, IL-IN-WI” and “St. Louis, MO-IL”;

■ b. Removing the entries “McHenry County” after the entry “McDonough County” and “Monroe County” after the entry “Mercer County”; and

■ c. Adding footnote 3 to the table.

The revisions and addition read as follows:

### § 81.314 Illinois.

\* \* \* \* \*

## ILLINOIS—2015 8-HOUR OZONE NAAQS [Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Chicago, IL-IN-WI .....	.....	Nonattainment .....	.....	Marginal.
Cook County.				
DuPage County.				
Grundy County (part)				
Aux Sable Township and Goose Lake Township.				
Kane County.				
Kendall County (part)				
Oswego Township.				
Lake County.				
McHenry County .....	July 14, 2021 <sup>3</sup> .			
Will County.				
St. Louis, MO-IL .....	.....	Nonattainment .....	.....	Marginal.
Madison County.				
Monroe County .....	July 14, 2021 <sup>3</sup> .			
St. Clair County.				
* * * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

<sup>3</sup> EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the implementation dates for the overall nonattainment area (e.g., the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

\* \* \* \* \*

■ 3. In § 81.315, the table titled “Indiana—2015 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by:

■ a. Revising the entries under “Chicago, IL-IN-WI”;

■ b. Removing the entry “Porter County” after the entry “Pike County” and adding the entry “Porter County (part) remainder” in its place; and

■ c. Adding footnote 3 to the table.

The revisions and additions read as follows:

### § 81.315 Indiana.

\* \* \* \* \*

## INDIANA—2015 8-HOUR OZONE NAAQS [Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Chicago, IL-IN-WI: .....	.....	Nonattainment .....	.....	Marginal.
Lake County (part)				
Calumet Township, Hobart Township, North Township, Ross Township, and St. John Township.				
Porter County (part) .....	July 14, 2021 <sup>3</sup> .			
Center Township, Jackson Township, Liberty Township, Pine Township, Portage Township, Union Township, Washington Township, and Westchester Township.				
* * * * *				
Porter County (part) remainder .....	.....	Attainment/ Unclassifiable.		
* * * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

<sup>3</sup> EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the implementation dates for the overall nonattainment area (e.g., the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

\* \* \* \* \*

■ 4. In § 81.326, the table titled “Missouri—2015 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by:

- a. Revising the entries under “St. Louis, MO-IL”;
- b. Removing the entry “Jefferson County” after the entry “Jasper County”; and
- c. Adding footnote 3 to the table.

The revisions and addition read as follows:

**§ 81.326 Missouri.**

\* \* \* \* \*

**MISSOURI—2015 8-HOUR OZONE NAAQS**  
[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
St. Louis, MO-IL:	.....	Nonattainment .....	.....	Marginal.
Franklin County (part)				
Boles Township.				
Jefferson County .....	July 14, 2021 <sup>3</sup> .			
St. Charles County.				
St. Louis County.				
City of St. Louis.				
* * * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

<sup>3</sup> EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the implementation dates for the overall nonattainment area (e.g., the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

\* \* \* \* \*

■ 5. In § 81.350 the table titled “Wisconsin—2015 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by:

- a. Revising the entries under “Chicago, IL-IN-WI”;
- b. Revising the entry for “Door County, WI” and the entries under “Door County, WI”;
- c. Revising the entries under “Manitowoc County, WI”;
- d. Removing the entry for “Northern Milwaukee/Ozaukee Shoreline, WI” and adding in its place the entry

- “Milwaukee, WI” and revising the entries under “Milwaukee, WI”;
- e. Removing the entry for “Ozaukee County (part)”;
- f. Revising the entries under “Sheboygan County, WI”;
- g. Removing the entries “Milwaukee County (part) remainder” after the entry “Menominee County” and “Ozaukee County (part) remainder” after the entry “Outagamie County”;
- h. Removing the entry “Racine County” after the entry “Price County” and adding the entry “Racine County (part) remainder” in its place.

- i. Removing the entries “Washington County” and “Waukesha County” after the entry “Washburn County” and adding the entries “Washington County (part) remainder” and “Waukesha County (part) remainder” in their places, respectively; and
- j. Adding footnotes 4 and 5 to the table.

The revisions and additions read as follows:

**§ 81.350 Wisconsin.**

\* \* \* \* \*

**WISCONSIN—2015 8-HOUR OZONE NAAQS**  
[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Chicago, IL-IN-WI .....	.....	Nonattainment .....	.....	Marginal.
Kenosha County (part) .....	July 14, 2021 <sup>5</sup> .			
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.				
Door County, WI				
Door County (part): .....	6/10/2020 .....	Attainment .....	.....	Marginal (Rural Transport).
Newport State Park Boundary.				
Door County-Revised (part): .....	July 14, 2021 <sup>4</sup> .....	Nonattainment .....	.....	Marginal (Rural Transport).
The portion of Door County north of Sturgeon Bay Canal excluding Newport State Park.				
Manitowoc County, WI .....	.....	Nonattainment .....	.....	Marginal.
Manitowoc County (part): .....	July 14, 2021 <sup>5</sup> .			
Inclusive and east of the following roadways with the boundary starting from north to south: County Road B which turns into South State Street to County Road V which turns into Forest Home Drive to South Packer Drive to West Hillcrest Road to Highway 43 to West Custer Street to Dufek Drive which turns into Highway 42.				
Milwaukee, WI .....	.....	Nonattainment .....	.....	Marginal.
Milwaukee County .....	July 14, 2021 <sup>5</sup> .			
Ozaukee County .....	July 14, 2021 <sup>5</sup> .			
Racine County (part): .....	July 14, 2021 <sup>5</sup> .			

WISCONSIN—2015 8-HOUR OZONE NAAQS—Continued  
[Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 45 to Washington Ave. to South Beaumont Ave.				
Washington County (part): .....	July 14, 2021 <sup>5</sup> .			
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: County H to N Main St/Old US Hwy 45 to WI-60 Trunk E to WI-164 S.				
Waukesha County (part) .....	July 14, 2021 <sup>5</sup> .			
Going from the western county boundary to the southern county boundary: Inclusive and north of I-94 and inclusive and east of Highway 67.				
Sheboygan County, WI .....		Nonattainment .....		Marginal.
Sheboygan County (part): .....	July 14, 2021 <sup>5</sup> .			
Inclusive and east of the following roadways with the boundary starting from north to south: Union Road which turns into County Road Y which turns into Highland Drive, to Lower Road which turns into Monroe Street, to Broadway/Main Street to Highway 32 which turns into Giddings Avenue to County Road W to County Road KW.				
* * * *				
Racine County (part) remainder .....		Attainment/ Unclassifiable.		
* * * *				
Washington County (part) remainder .....		Attainment/ Unclassifiable.		
Waukesha County (part) remainder .....		Attainment/ Unclassifiable.		
* * * *				

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

<sup>3</sup> Includes Indian country of the tribe listed in this table located in Forest County, Wisconsin. Information pertaining to areas of Indian country in this table is intended for Clean Air Act 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.

<sup>4</sup> EPA revised the nonattainment boundaries of the Door County area that was designated as nonattainment on April 30, 2018, in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional portion of Door County is associated with a previously designated nonattainment area, the associated implementation dates (e.g., the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

<sup>5</sup> EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the associated implementation dates for the overall nonattainment area (e.g., the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

\* \* \* \*

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 328

[Docket ID FEMA-2020-0018]

### Prioritization and Allocation of Certain Scarce and Critical Health and Medical Resources for Domestic Use; Additional Exemptions

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security (DHS).

**ACTION:** Notification of additional exemptions.

**SUMMARY:** The Federal Emergency Management Agency (FEMA)

announces additional exemptions from a temporary final rule that FEMA published in the **Federal Register** on December 31, 2020.

**DATES:** *Applicability date:* This notification applies beginning on June 11, 2021.

**ADDRESSES:** You may review the docket by searching for Docket ID FEMA-2020-0018, via the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Daniel McMasters, Program Analyst, Office of Policy and Program Analysis, 202-212-2900, [FEMA-DPA@fema.dhs.gov](mailto:FEMA-DPA@fema.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 10, 2020, the Federal Emergency Management Agency (FEMA) published a temporary final rule (the “rule”) to allocate certain health and medical resources for domestic use, so that these resources may not be exported from the United

States without explicit approval by FEMA.<sup>1</sup> The rule aids the response of the United States to the spread of COVID-19 by ensuring that certain health and medical resources are appropriately allocated for domestic use. The rule was modified and extended on August 10, 2020 and December 31, 2020, respectively.<sup>2</sup>

FEMA issued the rule under the authority of the Defense Production Act of 1950, as amended (DPA),<sup>3</sup> and related Executive orders and delegations.<sup>4</sup> Most prominently, on April 3, 2020, the President signed a Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to

<sup>1</sup> 85 FR 20195 (Apr. 10, 2020) (codified at 44 CFR part 328). *See also* 85 FR 22622 (Apr. 23, 2020) (correcting the date filed from “4-8-20” to “4-7-20”).

<sup>2</sup> 85 FR 48113 (Aug. 10, 2020) and 85 FR 86835 (Dec. 31, 2020) (codified at 44 CFR part 328).

<sup>3</sup> 50 U.S.C. 4501 *et seq.*

<sup>4</sup> *See* 85 FR 20195 at 20196–20197.