

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter,

Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 29, 2012.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### EPA-APPROVED INDIANA REGULATIONS

#### Subpart P—Indiana

■ 2. Section 52.770 is amended by adding a new entry at the end of the table in paragraph (c) for “Article 26. Regional Haze” and by adding a new entry in alphabetical order in the table in paragraph (e) for “Regional Haze Plan” to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * *	* * *	* * *	* * *	* * *
<b>Article 26. Regional Haze</b>				
<b>Rule 2. Best Available Retrofit Technology Emission Limitations</b>				
26–2–1 .....	Applicability .....	3/09/2011	6/11/2012, [Insert page number where the document begins].	
26–2–2 .....	Alcoa emission limitations and compliance methods.	3/09/2011	6/11/2012, [Insert page number where the document begins].	

\* \* \* \* \* (e) \* \* \*

#### EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *	* * *	* * *	* * *
Regional Haze Plan .....	01/14/2011 and 03/10/2011 .....	6/11/2012, [Insert page number where the document begins].	
* * *	* * *	* * *	* * *

[FR Doc. 2012–13955 Filed 6–8–12; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA–HQ–OAR–2008–0476; FRL 9682–2]

RIN 2060–AR56

#### Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinois, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations

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

**ACTION:** Final rule.

**SUMMARY:** This rule completes the initial air quality designations for the 2008 primary and secondary national ambient air quality standards (NAAQS) for ozone. On April 30, 2012, the EPA promulgated the initial ozone air quality designations for all areas in the United States except for 12 counties in Illinois, Indiana and Wisconsin, which the EPA was still evaluating. This action designates those counties. The EPA is designating all or parts of 11 counties as the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA is designating the remaining county and parts of counties as unclassifiable/attainment. The Chicago-Naperville, IL-IN-WI nonattainment area is being classified by operation of law as a Marginal area according to the severity of its air quality problem. This rule also corrects inadvertent errors in the

regulatory text regarding the designation of three areas in the ozone designation rule signed on April 30, 2012.

**DATES:** The effective date of this rule is July 20, 2012.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0476. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the Docket, EPA/DC, EPA West,

Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

In addition, the EPA has established a Web site for this rulemaking at: <http://www.epa.gov/ozonedesignations>. The Web site includes the EPA's final state and tribal designations, as well as state initial recommendation letters, the EPA modification letters, technical support documents, responses to comments and other related technical information.

#### FOR FURTHER INFORMATION CONTACT:

Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-04, Research Triangle Park, NC 27711, phone number (919) 541-3347 or by email at: [oldham.carla@epa.gov](mailto:oldham.carla@epa.gov).

Regional Office contact: Edward Doty, phone number (312) 886-6057 or by email at: [doty.edward@epa.gov](mailto:doty.edward@epa.gov).

**SUPPLEMENTARY INFORMATION:** The public may inspect the rule and state-specific technical support information at the following location:

Regional office	Affected states
John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604, (312) 886-6043.	Illinois, Indiana, and Wisconsin.

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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  
 D.C. District of Columbia  
 EPA Environmental Protection Agency  
 FR **Federal Register**  
 NAAQS National Ambient Air Quality Standards  
 NO<sub>x</sub> Nitrogen Oxides  
 NTTAA National Technology Transfer and Advancement Act  
 PPM Parts per million  
 RFA Regulatory Flexibility Act  
 UMRA Unfunded Mandate Reform Act of 1995  
 TAR Tribal Authority Rule  
 U.S. United States  
 U.S.C. United States Code  
 VCS Voluntary Consensus Standards  
 VOC Volatile Organic Compounds

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

The purpose of this action is to promulgate initial air quality designations for 12 counties in Illinois, Indiana and Wisconsin for the 2008 primary and secondary NAAQS for ozone, in accordance with the requirements of Clean Air Act (CAA) section 107(d). Whenever the EPA establishes a new or revised NAAQS, section 107(d) requires the EPA to designate all areas of the country as to whether the areas are meeting or not meeting the new or revised NAAQS. In an action signed on April 30, 2012, the EPA designated all other areas of the country for the 2008 ozone NAAQS (77

FR 30088; May 21, 2012). At that time, the EPA did not designate 12 counties in Illinois, Indiana and Wisconsin because the EPA was still evaluating them for inclusion in the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA has now completed that evaluation. The EPA is designating eight of the counties and parts of three of the counties as the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA is designating the remaining county and parts of counties as unclassifiable/attainment. The Chicago-Naperville, IL-IN-WI nonattainment area is also being classified by operation of law as a Marginal area according to the severity of its air quality problem. The designation for each of these 12 counties is provided in the tables at the end of this notice (amendments to 40 CFR 81.314, 315, and 350). For areas designated as nonattainment, the tables include the area's classification.

State areas designated as nonattainment are subject to planning and emission reduction requirements as specified in the CAA. Requirements vary according to an area's classification. The EPA will be proposing shortly an implementation rule to assist states in the development of state implementation plans for attaining the ozone standards.

This rule also corrects inadvertent errors in the regulatory text regarding the designation of three areas in the ozone designation rule signed on April 30, 2012. The affected areas are the Kentucky portion of the Cincinnati, OH-KY-IN nonattainment area, the partial Kenton County, KY unclassifiable/attainment area, and Crittenden County, AR.

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

Ground-level ozone, O<sub>3</sub>, 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 high elevation areas in the Western 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 2008 ozone NAAQS and the health and welfare concerns they address?

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years) to provide increased protection of public health and the environment.<sup>1</sup> The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but are set at a more protective level.

Ozone exposure has been associated with increased susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease. The secondary ozone standard was revised to protect against adverse welfare effects including impacts to sensitive vegetation and forested ecosystems.

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

When the EPA promulgates a new or revised NAAQS, the EPA is required to designate areas as nonattainment, attainment, or unclassifiable, pursuant to section 107(d)(1) of the CAA. The CAA requires the EPA to complete the initial area designation process within 2 years of promulgating the 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 not later than 1 year after the promulgation of a new or revised NAAQS, each state governor is required to 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 designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by the EPA. If the EPA intends to make any modifications to a state’s initial recommendation, the EPA is required to notify the state of any such intended modifications to its recommendation 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.” If the state does not agree with the EPA’s intended modification, it then has an opportunity to respond to the EPA to demonstrate why it believes the modification proposed by the EPA is inappropriate. Even if a state fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate.

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as, “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.” If an area meets either prong of this definition, then the EPA is obligated to designate the area as “nonattainment.” Section 107(d)(1)(A)(iii) provides that any area that the EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated as “unclassifiable.” Historically for ozone, the EPA designates the remaining areas that do not meet the definition of a nonattainment area or an unclassifiable area as “unclassifiable/attainment” indicating that the areas either have attaining air quality monitoring data or that air quality information is not available because the areas are not monitored, and the EPA has not determined that the areas contribute to a violation in a nearby area.

The EPA believes that section 107(d) provides the agency with discretion to determine how best to interpret the terms “contributes to” and “nearby” in the definition of a nonattainment area 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 believes 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>2</sup>

Similarly, the EPA believes that the statute permits the EPA to determine the most appropriate application of the term “area” for a particular NAAQS.

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 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 the initial air quality designation rules and what guidance did the EPA provide?

As discussed above, in 2008 the EPA revised both the primary and secondary NAAQS for ozone. On December 4, 2008, the EPA issued guidance for states and tribal agencies to use in developing area designation recommendations for the 2008 ozone NAAQS. (See memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, to Regional Administrators, Regions I–X, titled, “Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards.”) The guidance provided the anticipated timeline for designations and identified important factors that the EPA recommended states and tribes consider in making their recommendations. These factors include air quality data, emissions data, traffic and commuting patterns, growth rates and patterns, meteorology, geography/topography, and jurisdictional boundaries. In the guidance, the EPA asked that states and tribes submit their designation recommendations, including appropriate area boundaries, to the EPA by March 12, 2009. Later in the process, the EPA issued two new guidance memoranda related to designating areas of Indian country.<sup>3</sup>

<sup>3</sup> 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,” and December 20, 2011, memorandum from Stephen D. Page, Director,

<sup>1</sup> See 73 FR 16436; March 27, 2008. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

<sup>2</sup> This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

(There are no areas of Indian country affected by this action.)

Under the initial schedule, the EPA intended to complete the initial designations for the 2008 ozone NAAQS on a 2-year schedule, by March 12, 2010. On September 16, 2009, the EPA announced that it would initiate a rulemaking to reconsider the 2008 ozone NAAQS for various reasons, including the fact that the 0.075 ppm level fell outside of the range recommended by the Clean Air Scientific Advisory Committee, the independent group of scientists that provides advice to the EPA Administrator on the technical bases for the EPA's NAAQS. The EPA signed the proposed reconsideration on January 6, 2010 (75 FR 2938; January 19, 2010). Because of the significant uncertainty the ozone NAAQS reconsideration created regarding the continued applicability of the 2008 NAAQS, the EPA determined there was insufficient information to designate areas within 2 years of promulgation of the NAAQS. Therefore, the EPA used its authority under CAA section 107(d)(1)(B) to extend the deadline for designating areas by 1 year, until March 12, 2011 (75 FR 2936; January 19, 2010). The EPA has not taken final action on the proposed reconsideration; thus, the current NAAQS for ozone remains at 0.075 ppm, as established in 2008.

After the March 12, 2011, designation deadline passed, WildEarth Guardians and Elizabeth Crowe (WildEarth Guardians) filed a lawsuit seeking to compel the EPA to take action to designate areas for the 2008 ozone NAAQS. *WildEarth Guardians and Elizabeth Crowe v. Jackson* (D. Ariz. 11–CV–01661). The EPA and WildEarth Guardians settled the case by entering into a consent decree that requires the EPA Administrator to sign a final rule designating areas for the 2008 ozone NAAQS by May 31, 2012.

On September 22, 2011, the EPA issued a memorandum to clarify for state and local agencies the status of the 2008 ozone NAAQS and to outline plans for moving forward to implement them. The EPA indicated that it would proceed with initial area designations for the 2008 NAAQS, and planned to use the recommendations states made in 2009 as updated by the most current, certified air quality data from 2008–2010. While the EPA did not request that states submit updated designation recommendations, the EPA provided the

opportunity for states to do so. Several states chose to update their recommendations, and some requested that the EPA base designations for their areas on certified air quality data from 2009–2011, and committed to certify the 2011 data earlier than the May 1 deadline for annual air monitoring certification under 40 CFR 58.15(a)(2) so that the EPA would have sufficient time to consider the data in making decisions on designations and nonattainment area boundaries. The states of Illinois, Indiana, and Wisconsin did not submit updated designation recommendations.

On or about December 9, 2011, the EPA sent letters to Governors and Tribal leaders notifying them of the EPA's preliminary response to their designation recommendations and to inform them of the EPA's approach for completing the designations for the 2008 ozone NAAQS. The EPA requested that states submit any additional information that they wanted the EPA to consider by February 29, 2011, including any certified 2011 air quality monitoring data. Two days prior to those letters, on December 7, 2011, Illinois sent a letter to the EPA submitting the state's 2011 certified air quality monitoring data for consideration in the designation process. The data, when considered with data from the two previous years (2009 and 2010), indicated a violation of the 2008 ozone NAAQS at a monitor in Lake County, Illinois (which is in the Chicago-Naperville-Michigan City, IL-IN-WI consolidated statistical area). Given the timing of Illinois' submission of the certified data, the EPA was not able to consider the information in the December 9, 2011, letters. After reviewing the 2011 air quality data and assessing contributions to nonattainment from nearby areas, the EPA sent letters on January 31, 2012, notifying Illinois, Indiana, and Wisconsin that it intended to designate certain counties (or parts thereof), identified in those letters, as nonattainment for the 2008 ozone NAAQS. On April 30, 2012, the EPA Administrator signed a final rule designating almost all areas in the United States, including Indian country. At that time, the EPA did not designate the Illinois, Indiana, and Wisconsin counties identified in the January 31, 2011, notification letters because the necessary 120-day period had not yet elapsed following the January letters notifying the states that the EPA intended to modify the states' recommendations.

Although not required by section 107(d) of the CAA, the EPA also provided an opportunity for members of

the public to comment on the EPA's 120-day response letters to states and tribes. For the notification letters sent on or about December 9, 2011, the EPA announced a 30-day public comment period in the **Federal Register** on December 20, 2011 (76 FR 78872). The comment period was subsequently extended until February 3, 2012 (77 FR 2677; January 19, 2012). On February 14, 2012 (77 FR 8211), the EPA reopened the public comment period for the limited purpose of inviting comment on the EPA's revised responses to Illinois, Indiana, and Wisconsin. State and tribal recommendations and the EPA's 120-day response letters were posted on EPA's Web site at <http://www.epa.gov/ozonedesignations> and are available in the docket for the designations action. Comments from the states, tribes and the public, and EPA's responses to significant comments, are also in the docket.

#### **VII. What air quality data has the EPA used to designate these areas for the 2008 ozone NAAQS?**

The EPA based the designations in this action on the most recent 3 years of certified air quality monitoring data available at the end of January 2012 when the EPA notified Illinois, Indiana, and Wisconsin of its revised responses to their designation recommendations. Thus, the EPA considered ozone monitoring data for the 2009–2011 period for Illinois and for the 2008–2010 period for Indiana and Wisconsin.

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. States generally had not completed these requirements for calendar year 2011 ozone air quality data when the EPA notified states of our intended designations on December 9, 2011. For purposes of the designations promulgated on April 30, 2012, several states recommended that the EPA consider monitoring data from 2009–2011 in making final decisions and certified their 2011 data early for this purpose. In the letters to these states, the EPA indicated it would need the certified data by February 29, 2012, in order to have sufficient time to consider it in making final decisions. On December 7, 2011, Illinois sent a letter to the EPA submitting the state's 2011 certified air quality data for consideration in the designations.

Although there was not sufficient time for the EPA to consider the 2011 data from Illinois in the December 9, 2011, letters, the EPA subsequently considered the data and sent letters to Illinois, Indiana, and Wisconsin on January 31, 2012, revising the intended designation for 12 counties in the Chicago-Naperville, IL-IN-WI area. Indiana and Wisconsin did not request that the EPA consider their 2011 monitoring data or early certify such data.

#### **VIII. What are the ozone air quality classifications?**

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2008 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 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>4</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. The EPA established the air quality thresholds that define the classification categories in a rule titled, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes" (77 FR 30160; May 21, 2012). Based on those thresholds, the Chicago-Naperville, IL-IN-WI area is classified as a Marginal area.

#### **IX. Can states request that areas within 5 percent of the upper or lower limit of a classification threshold be reclassified?**

As discussed in the April 30, 2012, final rule, states may request that an area be reclassified to a higher or lower

classification pursuant to section 181(a)(4), within 90 days of promulgation of the designation, if the area would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based. The Chicago-Naperville, IL-IN-WI nonattainment area is being designated as a Marginal area, which is the lowest classification category. Therefore, the only possible reclassification would be to a higher classification. Marginal areas with an air quality design value of 0.082 ppm or more are eligible to request reclassification to a higher classification under section 181(a)(4). Because the 2009–2011 design value for the Chicago-Naperville, IL-IN-WI nonattainment area is 0.076 ppm, the nonattainment area is not eligible to be reclassified under that provision. However, the EPA notes that under section 181(b)(3), the EPA must grant any state request to reclassify an area into a higher classification.

#### **X. Where can I find information forming the basis for this rule and exchanges between the EPA, states and tribes related to this rule?**

Information providing the basis for this action is provided in the docket for this rulemaking. Docket ID NO. EPA–HQ–OAR–2008–0476. The applicable EPA guidance memoranda and copies of correspondence regarding this process between the EPA and the states, tribes and other parties are available for review at the EPA Docket Center listed above in the addresses section of this document, and on the EPA's ozone designation Web site at <http://www.epa.gov/ozonededesignations>. State-specific information is available from the EPA Regional Office.

#### **XI. What are the corrections to inadvertent errors in the designations for three areas in the April 30, 2012 designations rule?**

This rule also corrects inadvertent errors in the regulatory text for two areas in Kentucky and one area in Arkansas in the ozone designation rule signed on April 30, 2012 (77 FR 30088; May 21, 2012). The affected areas are the Cincinnati, OH-KY-IN nonattainment area (specifically related to Boone and Campbell counties), the partial Kenton County, KY unclassifiable/attainment area, and Crittenden County, AR. These corrections are set forth in the regulatory text at the end of this notice.

The Technical Support Document for the Cincinnati, OH-KY-IN nonattainment area, which is part of the record for the April 30, 2012,

designations rule, states, "All of the census tracts in Boone, Campbell, and Kenton Counties are included in the nonattainment area for the 2008 8-hour ozone NAAQS, excluding census tracts 706.01 and 706.04 in Boone County, 637.01 and 637.02 in Kenton County, and 520.01 and 520.02 in Campbell County." In the regulatory text for the Cincinnati, OH-KY-IN nonattainment area, 2000 Census tracts 706.01 and 706.04 in Boone County, KY and 2000 Census tracts 520.01 and 520.02 in Campbell County, KY were inadvertently listed as being part of the nonattainment area. These 2000 Census tracts were also correctly listed in the regulatory text as designated unclassifiable/attainment. The EPA is removing the erroneous duplicative listings under the Cincinnati, OH-KY-IN nonattainment area. For the partial Kenton County unclassifiable/attainment area, this action corrects a typographical error that incorrectly numbered one of the component 2000 Census tracts as 637.04 rather than 637.02.

The Technical Support Document for the Memphis, TN-MS-AR nonattainment area, which is part of the record for the April 30, 2012, designations rule, states, "Based on the assessment of the factors described above, the EPA is designating the following counties as nonattainment for the Memphis, TN-MS-AR area because they are either violating the 2008 ozone NAAQS or contributing to a violation in a nearby area: Crittenden County, Arkansas, and Shelby County, Tennessee in their entireties and the portion of DeSoto County that is included in the Memphis MPO boundary." In the regulatory text for the April 30, 2012, designations rule, Crittenden County, AR was correctly listed as part of the Memphis, TN-MS-AR nonattainment area. However, the county was also inadvertently listed as an unclassifiable/attainment area. The EPA is correcting that error by removing the duplicative entry for Crittenden County, AR as an unclassifiable/attainment area.

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

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to areas as required.

<sup>4</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 I.

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

This action responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107. The present final rule does not establish any new information collection requirements.

*C. Regulatory Flexibility Act*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice-and-comment requirements as provided under CAA section 107(d)(2)(B).

*D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the CAA and ozone NAAQS (40 CFR 50.15). The CAA establishes the process whereby states take primary responsibility in developing plans to meet the ozone NAAQS.

*E. Executive Order 13132: Federalism*

This final rule 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, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the ozone NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the ozone NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action does not have tribal implications. The EPA is not designating any areas of Indian country in this final rule.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. 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 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

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

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

The CAA requires that the EPA designate as nonattainment “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.” By designating as nonattainment all areas where available information indicates a violation of the ozone NAAQS or a contribution to a nearby violation, this action protects all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective July 20, 2012.

*L. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of 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 actions 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.”

This rule designating the final few areas for the 2008 ozone NAAQS is “nationally applicable” within the meaning of section 307(b)(1). This rule, along with a rule signed on April 30, 2012, establishes designations for areas across the U.S. for the 2008 ozone NAAQS. At the core of this rulemaking is the EPA’s interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

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

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

Dated: May 31, 2012.

**Lisa P. Jackson**,  
Administrator.

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

**ILLINOIS—2008 8-HOUR OZONE NAAQS**  
[Primary and secondary]

**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**

**§ 81.304 [Amended]**

■ 2. In section 81.304, the table entitled “Arkansas—2008 8-Hour Ozone NAAQS (Primary and Secondary)” is amended by removing the entry for Crittenden County before the entry for Cross County.

■ 3. In section 81.314, the table entitled “Illinois—2008 8-Hour Ozone NAAQS (Primary and Secondary)” is amended as follows:

■ a. By adding a new entry for “Chicago-Naperville, IL-IN-WI” before the entry for “St. Louis-St. Charles-Farmington, MO-IL”;

■ b. By adding a new entry for “Grundy County (remainder)” before the entry for “Hamilton County”; and

■ c. By adding a new entry for “Kendall County (remainder)” before the entry for “Knox County”.

The additions read as follows:

**§ 81.314 Illinois.**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Chicago–Naperville, IL-IN-WI: <sup>2</sup> .....	.....	Nonattainment .....	.....	Marginal.
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				
* * * * *				
Grundy County (remainder) <sup>3</sup> .....	.....	Unclassifiable/Attainment.		
* * * * *				
Kendall County (remainder) .....	.....	Unclassifiable/Attainment.		
* * * * *				

<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 any Indian country in each county or area, unless otherwise specified.

\* \* \* \* \*

■ 4. In section 81.315, the table entitled “Indiana—2008 8-Hour Ozone NAAQS (Primary and Secondary)” is amended as follows:

- a. By adding a new entry for “Chicago-Naperville, IL-IN-WI” before the entry for “Cincinnati, OH-K-IN”; and
- b. By adding a new entry for “Jasper County” before the entry for “Jay County”.

The additions 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 .....	.....	Marginal.
Lake County				
Porter County				
* * * * *				
Jasper County <sup>3</sup> .....	.....	Unclassifiable/Attainment.		
* * * * *				

<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 any Indian country in each county or area, unless otherwise specified.

\* \* \* \* \*

**§ 81.318 [Amended]**

■ 5. In section 81.318, the table entitled “Kentucky—2008 8-Hour Ozone NAAQS (Primary and Secondary)” is amended as follows:

- a. By removing the 2000 Census tracts “706.01” and “706.04” under the entry for “Boone County (part)” under the entry for “Cincinnati, OH-KY-IN”;

- b. By removing the 2000 Census tracts “520.01” and “520.02” under the entry for “Campbell County (part)” under the entry for “Cincinnati, OH-KY-IN”; and
- c. By revising 2000 Census tract “637.04” to read as “637.02” under the entry for “Kenton County (part)” under “Rest of State”.

- 6. In section 81.350, the table entitled “Wisconsin—2008 8-Hour Ozone NAAQS (Primary and Secondary)” is amended as follows:

- a. By adding a new entry for “Chicago-Naperville, IL-IN-WI” before the entry for “Sheboygan County, WI”; and

- b. By adding a new entry for “Kenosha County (remainder)” before the entry for “Kewaunee County”.

The additions 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 .....	.....	Marginal.
Kenosha County (part)				
Pleasant Prairie Township				
Somers Township				
* * * * *				
Kenosha County (remainder) <sup>3</sup> .....	.....	Unclassifiable/Attainment.		
* * * * *				

<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 any Indian country in each county or area, unless otherwise specified.

\* \* \* \* \*

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