



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2020-0097; EPA-R05-OAR-2020-0199; EPA-R05-OAR-2020-0200; FRL-10011-90-Region 5]

Air Plan Approval; Wisconsin; Redesignation of the Shoreline Sheboygan, WI Area to Attainment of the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Shoreline Sheboygan County, Wisconsin area is attaining the 2008 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and is approving a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2032 in the Shoreline Sheboygan area. EPA finds adequate and is approving Wisconsin's 2025 and 2032 volatile organic compound (VOC) and oxides of nitrogen (NO_x) Motor Vehicle Emission Budgets (MVEBs) for the Shoreline Sheboygan area. EPA is also approving Wisconsin's VOC reasonably available control technology (RACT) SIP revisions.

Finally, EPA is approving the Wisconsin SIP as meeting the applicable base year inventory requirement, emission statement requirements, VOC RACT requirements, motor vehicle inspection and maintenance (I/M) program requirements, and NO_x RACT requirements.

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

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA-R05-OAR-2020-0097, Docket ID No. EPA-R05-OAR-2020-0199, and Docket ID No. EPA-R05-OAR-2020-0200. All documents in the dockets are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Eric Svingen,

Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

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

I. What is being addressed in this document?

This rule approves the February 11, 2020 and April 1, 2020 submissions from Wisconsin requesting redesignation of the Shoreline Sheboygan area to attainment for the 2008 ozone standard. The background for this action is discussed in detail in EPA's proposal, dated May 13, 2020 (85 FR 28550). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration (*i.e.*, the design value) is equal to or less than 0.075 parts per million (ppm), when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. (See 40 CFR 50.15 and appendix P to 40 CFR part 50.) The level of the 2008 ozone NAAQS is often expressed as 75 parts per billion (ppb). Under the CAA, EPA may redesignate

nonattainment areas to attainment if complete, quality-assured data show that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule provides a detailed discussion of how Wisconsin has met these CAA requirements and EPA's rationale for approving the redesignation request and related SIP submissions.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2017-2019 show that the area has attained the 2008 ozone standard, and EPA has determined that the attainment is due to permanent and enforceable measures. In the maintenance plan submitted for the area, Wisconsin has demonstrated that compliance with the ozone standard will be maintained in the area through 2032. As also discussed in the proposed rule, Wisconsin has adopted 2025 and 2032 VOC and NO_x MVEBs for the area that are supported by Wisconsin's maintenance demonstration. Finally, EPA is approving the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals, which include Administrative Order AM-20-02 for Kieffer & Co. Inc. and Administrative Order AM-20-03 for Kohler Power Systems. With these approvals of Wisconsin's SIP submissions, EPA finds that all SIP requirements applicable to redesignation are fully approved.

Per the CAA, upon the effective date of this redesignation,

nonattainment area requirements cease to apply to this area. More specifically, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the Reasonably Available Control Measures (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA), are no longer applicable to the area and cease to apply. See 40 CFR 51.1118.

II. What comments did we receive on the proposed rule?

Public comments on the May 13, 2020 proposed rule were due by June 12, 2020. During the comment period EPA received three comments in support of our action, one comment that was not relevant to our action, as well as two adverse comments. EPA thanks the commenters for their comments. Summaries of the adverse comments and EPA's responses are provided below.

Comment 1: A member of the public shared concerns regarding the health effects of ozone. The commenter lists health problems and asks whether these problems are occurring in Sheboygan County, and whether any occurrence of these problems could be related to ozone. The commenter states a belief that ozone standards will continue to decrease, and notes that the American Lung Association has supported a standard of 60 ppb.

The commenter states that the design value for the Shoreline Sheboygan area is 75 ppb, which "can't get any closer" to the level of the 2008 ozone NAAQS at 75 ppb. The commenter references the 2015 ozone NAAQS which is set at a level of 70 ppb, alleges that "implementation has been postponed by lawsuits and EPA is dragging its feet," and raises concerns that redesignation of the Shoreline Sheboygan area for the 2008 ozone NAAQS would diminish efforts to attain the 2015 ozone NAAQS. The commenter states that Sheboygan County needs to do a comprehensive health study, which would motivate stakeholders to collaborate in achieving greater reductions in ozone levels. Lastly, the commenter congratulates the Sheboygan County business community for "not adding to most of the bad ozone that comes from out of state," but shares concerns that not enough attention is being paid to health issues.

Response 1: The issues raised by this commenter are largely beyond the scope of this action, in which EPA is evaluating the State's request to redesignate the area for the 2008 ozone NAAQS under the criteria at CAA section 107(d)(3)(E).

The requirement for EPA to periodically review the NAAQS, and to update those standards as necessary, is provided under sections 108 and 109 of the CAA. As part of the NAAQS review process, EPA conducts an analysis of available science, including key science judgements that inform the development of

risk and exposure assessments. Resulting from this process, EPA has promulgated progressively more protective standards for ground-level ozone. On March 27, 2008, EPA revised the 8-hour ozone NAAQS by strengthening the level of the primary and secondary standards to 75 ppb (73 FR 16435), and on October 26, 2015, EPA further revised the 8-hour ozone NAAQS by strengthening the level of the primary and secondary standards to 70 ppb (80 FR 65292). In this action EPA is not reevaluating our March 27, 2008 and October 26, 2015 actions under CAA sections 108 and 109, in which we reviewed available science and revised the ozone standards to levels determined by the Administrator to be protective of public health.

Likewise, the commenter's concerns regarding implementation and attainment of the 2015 ozone NAAQS are not relevant to this redesignation for the 2008 ozone NAAQS. EPA also disagrees with the commenter's assertion that implementation of the 2015 ozone NAAQS "has been postponed by lawsuits and EPA is dragging its feet." On December 6, 2018, EPA published implementation requirements for the 2015 ozone NAAQS, including requirements for attainment demonstrations and programs such as nonattainment new source review (NNSR) (83 FR 62998). EPA is continuing to implement the 2015 ozone NAAQS according to the requirements set forth in that rulemaking, including in the Sheboygan County nonattainment area for the 2015 ozone NAAQS, which covers the

identical geographic area as the Shoreline Sheboygan area for the 2008 ozone NAAQS. Requirements appropriate for nonattainment areas, such as NNSR, will continue to apply in the area because the area will retain its nonattainment designation for the 2015 ozone NAAQS.

The commenter's inquiry about whether health problems they've experienced are related to ozone pollution is also beyond the scope of this action, which focuses only on whether the Shoreline Sheboygan area has met the requirements for redesignation under CAA section 107(d)(3)(E).

Finally, EPA reiterates that according to 40 CFR part 50, the 2008 ozone NAAQS is attained when the design value in an area is equal to or less than 75 ppb. Although the commenter asserts that the Shoreline Sheboygan area's design value of 75 ppb "can't get any closer" to the standard, such a design value nevertheless meets the requirements for redesignation under section 107(d)(3)(E)(i) of the CAA.

Comment 2: Sheboygan Ozone Reduction Alliance (SORA), a citizen group focused on reducing air pollution and advocating for public health, provided two reasons for opposing this action.

First, SORA contends that WDNR has failed to demonstrate that reductions in emissions were responsible for reductions in Sheboygan County ozone concentrations. The commenter notes that

WDNR chose 2011 and 2017 as the years to be used for nonattainment year and attainment year emissions inventories, and the commenter quantifies that between 2011 and 2017, NO_x emissions in the area decreased by 48% and VOC emissions in the area decreased by 15%. For the years 2008 through 2019, the commenter presents a table of design values for the area, as well as the number of days each year that the daily maximum 8-hour average in the area was above the level of the 2015 ozone NAAQS. The commenter contends that between 2011 and 2017, ozone concentrations did not decrease proportionally with emissions reductions. Further, the commenter presents a table of the design values for the ten 3-year periods occurring between 2008 through 2019, and notes that none of the design values for the five 3-year periods occurring between 2011 and 2017 show attainment of the 2008 ozone NAAQS. The commenter writes that "although the 2017-2019 design value appears to meet the 2008 NAAQS, two of the years used for that design value, 2018 and 2019, are outside of the scope of the emission inventory years provided in the request," and contends that because WDNR did not provide inventories for 2018 or 2019, it is not possible to determine that the 2017-2019 design value was a result of permanent and enforceable reductions. The commenter also notes that WDNR's submission included the statement "Sheboygan County sources have little to no ability to influence ozone

concentrations at monitors in the county,” and contends that WNDR therefore does not demonstrate that the improvement in air quality is based on permanent and enforceable emissions reductions. The commenter suggests that WNDR consider expanding the nonattainment area, in order to manage the regional emissions contributing to violations of the ozone standards in Sheboygan County and along Lake Michigan.

Second, SORA contends that ozone season meteorology deviated significantly from historical averages in 2019 and was likely the primary contributor to reduced ozone concentrations during the 2019 ozone season. Specifically, the commenter contends that “the 2019 ozone season had important meteorological trends that deviated from historical averages for wind direction and temperature.” The commenter notes that high ozone concentrations at the Kohler Andrae monitor are “almost always” associated with southerly winds originating from the south-southwest to southeast, and contends that the average wind direction in 2019 differed from the average wind direction in 2009 through 2017. According to the commenter, an increased frequency of winds from the north and northeast accounts for a drop in average wind direction, and this caused fewer days in 2019 with winds favorable to ozone formation. Further, the commenter notes that warm temperatures are associated with high ozone formation at the Kohler Andrae monitor, and contends that

average summer temperature in 2019 was below the 2008-2018 average. The commenter suggests that lower average temperatures indicate fewer days with temperatures conducive to increased ozone formation, and notes that WDNR's submittal shows a correlation between temperature and ozone concentrations. To illustrate these points, the commenter includes four charts displaying data for wind direction and temperature. The commenter concludes these points by contending that unusual meteorology is "likely the significant contributor to reduced ozone concentrations" at the Kohler Andrae monitor, without which the design value would have been higher. Lastly, the commenter states that ozone problems will not be solved through redesignation, suggests that regional solutions are required, and hopes that coordinated cooperation between stakeholders will lead to improved air quality.

Response 2: As discussed below, EPA finds that approval of Wisconsin's request to redesignate the Shoreline Sheboygan area is consistent with the requirements of CAA section 107(d)(3)(E).

First, EPA does not agree that attainment of the 2008 ozone NAAQS in Sheboygan County was not due to permanent and enforceable reductions in emissions, per CAA section 107(d)(3)(E)(iii).¹ As stated in EPA's long-standing guidance on

¹The commenter states that they do not support EPA's proposal to redesignate the Sheboygan County area because WDNR has failed to demonstrate that CAA

redesignations (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992), we interpret this provision to mean that "[a]ttainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." Calcagni Memo at 4. EPA's guidance instructs that the showing under CAA section 107(d)(3)(E)(iii) "should estimate the percent reduction . . . achieved from Federal measures . . . as well as control measures that have been adopted and implemented by the State," and that overall, we must be able to "reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable." *Id.* This cataloguing of permanent and enforceable state and Federal measures, along with the estimated reductions in precursor emissions that cause ozone pollution which are attributable to each measure over the relevant time

section 107(d)(3)(E)(iii) is met. However, as that statutory provision clearly states, the Administrator may not promulgate a redesignation of a nonattainment area unless "the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions." On its face, the statute permits EPA to not only consider Wisconsin's submittal and demonstration, but also any other information the Agency has regarding emission reductions in the area.

period, has long been EPA's methodology to demonstrate compliance with CAA section 107(d)(3)(E)(iii) and has been upheld in court. See *Sierra Club v. EPA*, 774 F.3d 383, 393-95 (7th Cir. 2014). As noted by the court in *Sierra Club*, "the CAA does not require EPA to prove causation to an absolute certainty. Rather in accord with its own internal guidance . . . EPA had to 'reasonably attribute' the drops in ozone to permanent and enforceable measures. Only if EPA's path cannot 'be reasonably discerned,' or if EPA relied on factors 'that Congress did not intend it to consider' or 'fail[ed] to consider an important aspect of the problem,' will we conclude that EPA acted arbitrarily or capriciously." *Id.* at 396.

EPA applied the same methodology in reviewing Wisconsin's request as it did for the areas at issue in the *Sierra Club* case, and as it has for the many redesignated areas across the country over the last three decades. In our proposal, we discussed at length the various state and Federal promulgated measures and the estimated precursor emission reductions impacts attributable to each of those measures. 85 FR at 28555-58. The commenter does not dispute the permanence or enforceability of any of the measures listed by EPA, nor do they refute that the measures obtained the estimated reductions cited by EPA. The commenter's sole focus was on WDNR's comparison of emission inventories for 2011 (a nonattainment year) and 2017 (an

attainment year) for sources within the Shoreline Sheboygan area. To the extent that the commenter is suggesting that the fact that ozone concentrations did not decline proportionally to the emissions reductions implemented in the Sheboygan County area means that those reductions had no impact on the area's attainment, we disagree. Ozone concentrations do not typically decline proportionally with emissions reductions to both precursors, because ozone formation chemistry, which involves photochemical reactions of precursor species, is a complex nonlinear process. Therefore, reductions of both NO_x and VOC precursor emissions are not likely to result in a *proportional* reduction in ozone. However, selectively reducing the key anthropogenic precursor emissions that are driving ozone formation, generally results in reduced ozone. As noted by the commenter, meteorology and emissions of ozone precursors from outside the nonattainment area both impact ozone concentrations in the Sheboygan County area and can cause some variability from year to year. But the influence of these factors does not negate the fact that the permanent and enforceable precursor emission reductions from stationary and mobile sources in Wisconsin and upwind states that contribute ozone to the Sheboygan County area – all of which we pointed to in our proposal – have in the aggregate caused the area to come into attainment of the 2008 ozone NAAQS.

We also find no fault with Wisconsin's use of 2017 emissions within the nonattainment area (i.e., the attainment inventory) for purposes of illustrating the reduction in emissions in the area over time (from 2011 to 2017). We do not agree with the commenter that "it is not possible to determine that the 2017-2019 design value was the result of emission reductions" because Wisconsin did not provide emission inventories for 2018 and 2019. The State's selection of one year of emissions during a design value period indicating nonattainment and one year of emissions during a design value period indicating attainment showed quite simply that emissions had decreased substantially within the area during that time period.

We do not agree with the commenter that it is appropriate or necessary to expand the boundaries of the Shoreline Sheboygan area in order to manage regional ozone pollution impacts along the shoreline of Lake Michigan. Expanding nonattainment areas and imposing the requirements that accompany a nonattainment area designation are not the only tools to achieve emission reductions under the CAA; CAA section 110(a)(2)(D)(i)(I), also known as the good neighbor provision, requires states to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance in another state. We acknowledge that the Shoreline Sheboygan area's ozone

concentrations are impacted by emissions from upwind states. WDNR's analysis includes source apportionment modeling showing that, for anthropogenic emissions within modeled source regions, upwind sources in Illinois contribute the largest share of emissions. Under the authority of the good neighbor provision, EPA has required emission reductions from Illinois and other upwind states to address contribution to the Shoreline Sheboygan area in regional interstate transport rulemakings such as the Cross-State Air Pollution Rule (CSAPR) and the CSAPR Update. The CSAPR Update, which took effect in 2017 (i.e. the beginning of the 3-year period during which the Shoreline Sheboygan area began monitoring attainment) was estimated to result in a 20% reduction in ozone season NO_x emissions from electric generating units in the eastern United States. In addition, Wisconsin's submittal shows that between 2011 and 2017, NO_x emissions from the multistate Chicago nonattainment area for the 2008 ozone NAAQS decreased by 33%, and VOC emissions from the Chicago area decreased by 18%. Much of this reduction is likely attributable to the fact that the Chicago area is itself a nonattainment area, subject to the same or similar control requirements as the Shoreline Sheboygan area, which would further limit any efficacy of expanding the Shoreline Sheboygan area.

Second, EPA disagrees that unusual ozone season meteorology is the "likely significant contributor" to the Sheboygan

Shoreline area's attainment of the 2008 ozone NAAQS. Similarly, EPA disagrees with the commenter's assertion that meteorology in 2019, specifically, significantly "deviated from historical averages for wind direction and temperature." Meteorology's impact on ozone formation and the variability that that can cause in ozone concentrations from year to year is expressly accounted for in EPA's form of the NAAQS. Attainment of the 2008 ozone NAAQS, like the 1997 ozone NAAQS before it, is measured by averaging the annual fourth-highest daily maximum 8-hour average concentrations over a 3-year period. In our rulemaking promulgating the 1997 ozone NAAQS, EPA noted the "lack of year-to-year stability" inherent to the prior 1979 ozone NAAQS, and determined that a form including a 3-year average would "provide some insulation from the impacts of extreme meteorological events that are conducive to ozone formation." (62 FR 38856, July 18, 1997). Similarly, when EPA revised the NAAQS in 2008, we recognized "that it is important to have a form that is stable and insulated from the impacts of extreme meteorological events that are conducive to ozone formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due of meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that

EPA moved to a concentration-based form in 1997.” (73 FR 16435, March 27, 2008). We therefore observe that as a general matter, some year-to-year variation in meteorology is expected, and that EPA designed the form of the 2008 ozone NAAQS to accommodate that variability.

We do not think that lower temperatures in 2019 was the cause of the Shoreline Sheboygan area's attainment. The commenter's own analysis shows that the average summer temperature across the years 2008 through 2018 was 61.9 degrees Fahrenheit, and the 2019 summer temperature was 60.6 degrees Fahrenheit. Rather than indicating that 2019 was an outlier year in terms of temperature, the commenter's data shows that 2019 was a very typical year in terms of summer temperatures. According to the commenter's analysis, the average summer temperature in 2019 was only the third lowest out of 11 years. Further, EPA is determining that the Shoreline Sheboygan area is attaining the 2008 ozone NAAQS based on data from the 2017-2019 period; as shown in the commenter's analysis, 2017 and 2018 were among the five warmest out of 11 years. As discussed above, EPA designed the form of the 2008 ozone NAAQS to accommodate year-to-year variation in meteorology, including variability between relatively cooler years and relatively warmer years.

In terms of wind direction, we acknowledge that southerly winds can play a role on high ozone days in the Sheboygan

Shoreline area. But it is important to keep in mind that high ozone cannot form in the absence of precursor emissions. The commenter contends that in 2019, the average hourly wind direction at the Kohler Andrae site was 173 degrees, compared to the average hourly wind direction of 190 degrees for six other years including 2009, 2010, 2012, 2013, 2016, and 2017. Annual average hourly wind direction is not a meaningful parameter to consider when analyzing high ozone episodes, particularly at the Kohler Andrae site which is impacted by highly variable wind direction and lake breezes, because it does not narrow in on wind direction during the specific time periods that are contemporaneous with high ozone. Further, wind direction alone is not a meaningful parameter to consider in analyzing high ozone since it excludes other important factors such as emissions, wind speed, atmospheric boundary layer height, temperature inversion, etc. WDNR's February 11, 2020 submittal (available in the docket for this rulemaking) includes a statistical study, known as a Classification and Regression Tree (CART) analysis, conducted by the Lake Michigan Air Directors Consortium (LADCO) on ozone data from the Shoreline Sheboygan area. LADCO's CART analysis groups high ozone day data (i.e., over 50 ppb) based on meteorological similarity, and shows that for every group, ozone levels at the Kohler Andrae monitor have decreased over the 14-year period from 2005-2018. Although

highest ozone concentrations typically occurred on days which experienced southerly winds and high temperatures, those days also experienced the steepest declines in ozone concentrations over the 14-year period. LADCO's CART analysis shows that when the influence of meteorological variability is largely removed, whether it is favorable or unfavorable meteorology, ozone concentrations declined regardless, indicating that the downward trend in ozone levels is attributable to reductions in precursor emissions. Given the results of the LADCO analysis combined with the reasons outlined above pertaining to 2019 meteorology as well as the form of the NAAQS, EPA disagrees with the commenter's contention that unusual meteorology is the primary cause of attaining ozone concentrations at the Kohler Andrae monitor. Rather, EPA concludes that attainment is due to permanent and enforceable reductions in precursor emissions from within the Shoreline Sheboygan area and from upwind areas elsewhere in Wisconsin and in other states during the relevant time period.

Lastly, EPA acknowledges the commenter's assertions that ozone problems will not be solved through redesignations, that regional solutions are required, and that coordinated cooperation between stakeholders may lead to improved air quality. The Sheboygan County area for the 2015 ozone NAAQS will retain its nonattainment designation, and EPA will continue

to address ozone problems along Lake Michigan through implementation of the 2015 ozone NAAQS. EPA also continues to implement programs addressing regional and interstate transport of NO_x, such as CSAPR. Finally, EPA encourages the commenter to remain engaged with stakeholders in the effort to protect human health and the environment.

III. What Action is EPA Taking?

EPA is determining that the Shoreline Sheboygan nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2017-2019. EPA is approving Wisconsin's 2011 base year emissions inventory, emission statement certification SIP, VOC RACT SIP, I/M certification SIP, and NO_x RACT certification SIP, and is determining that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Shoreline Sheboygan area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also approving, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Shoreline Sheboygan area in attainment of the 2008 ozone NAAQS through 2032. EPA finds adequate and is approving the newly-established 2025 and 2032 MVEBs for the Shoreline Sheboygan area. Finally, EPA is approving the VOC

RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for these actions to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d) (1) and section 553(d) (3).

Section 553(d) (1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** "except ... a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule permanently relieves the state of the requirement to submit certain planning SIPs, such as an attainment demonstration and associated RACM, RFP plans,

contingency measures, and other planning elements related to attainment.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** "except ... as otherwise provided by the agency for good cause." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling." *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This rule approves into the SIP the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals, which include Administrative Order AM-20-02 for Kieffer & Co. Inc. and Administrative Order AM-20-03 for Kohler

Power Systems. These Administrative Orders were signed on February 4, 2020 and February 28, 2020, respectively, and have been effective and enforceable since the dates of signature. The two affected sources, therefore, do not require time to adjust. On balance, EPA finds affected parties would benefit from the immediate suspension of the requirement to submit certain planning SIPs, instead of delaying by 30 days the suspension of this requirement.

For these reasons, EPA finds good cause under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Administrative Orders described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d) (3) (E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: July 1, 2020.

Cheryl Newton,
Deputy Regional Administrator, Region 5.

Title 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Section 52.2570 is amended by adding paragraph (c) (139) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(139) On April 1, 2020, the Wisconsin Department of Natural Resources submitted requests to incorporate Administrative Order AM-20-02 for Kieffer & Co. Inc. and Administrative Order AM-20-03 for Kohler Power Systems into the Wisconsin State Implementation Plan (SIP). These orders establish, through permanent and enforceable emission limits and other requirements, Reasonably Available Control Technology (RACT) equivalency demonstrations for the facilities located in Sheboygan County, Wisconsin.

(i) Incorporation by reference.

(A) Administrative Order AM-20-02, issued by the Wisconsin Department of Natural Resources on February 4, 2020, to the Kieffer & Co. Inc. facility located in Sheboygan, Wisconsin.

(B) Administrative Order AM-20-03, issued by the Wisconsin Department of Natural Resources on February 28, 2020, to the Kohler Power Systems facility located in Mosel, Sheboygan County, Wisconsin.

* * * * *

3. Section 52.2585 is amended by adding paragraph (mm) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(mm) *Redesignation*. Approval - On February 11, 2020, Wisconsin submitted a request to redesignate the Shoreline Sheboygan County area to attainment of the 2008 8-hour ozone standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. The ozone maintenance plan also establishes 2025 and 2032 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2025 MVEBs for the Inland Sheboygan County area are 0.50 tons per hot summer day for VOC and 1.00 tons per hot summer day for NO_x. The 2032 MVEBs for the Inland Sheboygan County area are 0.36 tons per hot summer day for VOC and 0.77 tons per hot summer day for NO_x.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

5. In § 81.350, the table entitled "Wisconsin-2008 8-Hour Ozone NAAQS [Primary and Secondary]" is amended by revising the entry for "Shoreline Sheboygan County, WI" to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2008 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Shoreline Sheboygan County, WI ²⁵ Sheboygan County (part): Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road	[insert date of publication in the Federal Register]	Attainment		
* * * * *				

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

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

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

* * * * *

[FR Doc. 2020-14691 Filed: 7/9/2020 8:45 am; Publication Date: 7/10/2020]