



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2019-0239; FRL-10008-73-Region 5]

Air Plan Approval; Michigan; Redesignation of the Berrien County Area to Attainment of the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that Berrien County, Michigan is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and is proposing to approve a request from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to redesignate the area to attainment for the 2015 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EGLE submitted this request on January 30, 2020 and submitted a clarification letter on March 30, 2020. EPA is also proposing to approve, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2030 in the Berrien County area. Finally, EPA finds adequate and is proposing to approve Michigan's 2023 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_x) Motor Vehicle Emission Budgets (MVEBs) for the Berrien County area.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2019-0239 at <http://www.regulations.gov> or via email to compher.michael@epa.gov. For comments submitted at [Regulations.gov](http://www.Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation?
- IV. What is EPA's analysis of EGLE's redesignation request?
 - A. Has the Berrien County area attained the 2015 8-hour ozone NAAQS?
 - B. Has EGLE met all applicable requirements of section 110 and part D of the CAA for the Berrien County area, and does Michigan have a fully approved SIP for the area under section 110(k) of the CAA?
 - C. Are the air quality improvements in the Berrien County area due to permanent and enforceable emission reductions?
 - D. Does EGLE have a fully approvable ozone maintenance plan for the Berrien County area?
 - V. Has the state adopted approvable motor vehicle emission budgets?
- VI. Proposed actions.
- VII. Statutory and executive order reviews.

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Berrien County nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2017 through 2019 and that this area has met the requirements for redesignation under

section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Berrien County area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Michigan SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the Berrien County area in attainment of the 2015 ozone NAAQS through 2030. Finally, EPA is proposing to approve the newly-established 2023 and 2030 MVEBs for the area.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on

the most recent 3 years of quality assured ozone monitoring data. The Berrien County area was designated as a marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776) (effective August 3, 2018).

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) the Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided

further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of EGLE's redesignation request?

A. Has the Berrien County area attained the 2015 8-hour ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the

applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix U of part 50, based on 3 complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,¹ on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from the monitoring site in the Berrien County area for the 2017-2019 period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that

¹ The ozone season is defined by state in 40 CFR 58 appendix D. The ozone season for Michigan is March-October. See, 80 FR 65292, 65466-67 (October 26, 2015).

the Berrien County area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for the monitoring site are summarized in Table 1.

Table 1. Annual fourth high daily maximum 8-hour ozone concentrations and 3-year average of the fourth high daily maximum 8-hour ozone concentrations for the Berrien County area.

County	Monitor	Year	% Observed	Fourth high (ppm)	2016-2018 average (ppm)
Berrien	26-021-0014	2017	99	0.069	0.069
		2018	88	0.073	
		2019	96	0.066	

The Berrien County area's 3-year ozone design value for 2017-2019 is 0.069 ppm, which meets the 2015 ozone NAAQS.

Therefore, in today's action, EPA proposes to determine that the Berrien County area is attaining the 2015 ozone NAAQS.

B. Has EGLE met all applicable requirements of section 110 and part D of the CAA for the Berrien County area, and does Michigan have a fully approved SIP for the area under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (see section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (see section 107(d)(3)(E)(ii) of the

CAA). EPA finds that Michigan has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, EPA finds that all applicable requirements of the Michigan SIP for the area have been fully approved under section 110(k) of the CAA. In making these determinations, EPA ascertained which CAA requirements are applicable to the Berrien County area and the Michigan SIP and, if applicable, whether the required Berrien County area SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not

required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. EGLE has met all applicable requirements of section 110 and part D of the CAA applicable to the Berrien County area for purposes of redesignation.

a. Section 110 General Requirements for Implementation Plans.

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for

stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, e.g., NO_x SIP call. However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. See 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426-27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions

nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2008 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Michigan's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent those requirements are applicable for purposes of redesignation.

b. Part D Requirements.

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Berrien County area was classified as marginal under subpart 2 for the 2015 ozone NAAQS. As such, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements.

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than 3 years from the date of the nonattainment designation. For the Berrien County nonattainment area, SIPs required under CAA section 172 are due August 3, 2021. No requirements applicable for purposes of redesignation under part D became due prior to EGLE's submission of the complete redesignation request, and,

therefore, none are applicable to the area for purposes of redesignation.

EPA has previously approved Michigan's NSR program on May 16, 2007 (72 FR 27425). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." EGLE has demonstrated that the Berrien area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996). EGLE's PSD program will become effective in the Berrien County area upon redesignation to attainment. EPA approved EGLE's PSD program on March 25, 2010 (75 FR 14352).

ii. Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements² as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this

² CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of MVEBs, such as control strategy SIPs and maintenance plans.

interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, EGLE has an approved conformity SIP for the Berrien County area. See 61 FR 66607 (December 18, 1996) and 82 FR 17134 (April 20, 2017).

iii. Section 182(a) Requirements.

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of the ozone nonattainment area within two years of designation. For the Berrien County area, this submission is due August 3, 2020. Because it will become due after EGLE's submission of a complete redesignation request for the Berrien County area, it is not an applicable requirement for purposes of redesignation.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Berrien County area is not subject to the section 182(a)(2) RACT "fix up" requirement for the 2015 ozone NAAQS because the Berrien County area was designated as

nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of EGLE's redesignation request for this standard, the Berrien County area is not subject to the section 182(a)(2)(B) requirement because the Berrien County area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(C), under the heading "Corrections to the State implementation plans-Permit programs" contains a requirement for states to submit NSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within 2 years after the date of enactment of the 1990 CAA Amendments. For the purposes of the 2015 ozone NAAQS and the consideration of EGLE's redesignation request for this standard, the Berrien County area is not subject to the section 182(a)(2)(C) requirement because the Berrien County area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments.

Section 182(a)(4) specifies the emission offset ratio for marginal areas but does not establish a SIP submission deadline. EPA's December 6, 2018 implementation rule for the 2015 ozone NAAQS clarifies that nonattainment NSR permit program requirements applicable to the 2015 NAAQS are due 3 years from the effective date of the nonattainment designation, *i.e.*, August 3, 2021. See 83 FR 62998, 63001. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions "no later than 3 years from the date of the nonattainment designation." Because this requirement will become due after EGLE's submission of a complete redesignation request for the Berrien County area, it is not an applicable requirement for purposes of redesignation.

While EGLE has not submitted a nonattainment NSR SIP revision to address the 2015 ozone NAAQS, EGLE currently has a fully-approved part D NSR program in place. In addition, EPA approved EGLE's PSD program on March 25, 2010 (75 FR 14352). As discussed above, EGLE has demonstrated that the Berrien County area will be able to maintain the 2015 ozone NAAQS without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Berrien County area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_x emissions. As discussed below in section IV.D.4. of this proposed rule, EGLE will continue to update its emissions inventory at least once every 3 years. With regard to stationary source emission statements, this submission is due August 3, 2020. Because it will become due after EGLE's submission of a complete redesignation request for the Berrien County area, it is not an applicable requirement for purposes of redesignation.

Therefore, EPA finds that the Berrien County area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Berrien County area has a fully approved SIP for purposes of redesignation under section 110(k) of the CAA.

At various times, EGLE has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Michigan SIP for the Berrien County area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request

(see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Berrien County area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA has determined that EGLE has demonstrated that that the observed ozone air quality improvement in the Berrien County area is due to permanent and enforceable reductions in VOC and NO_x emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2014 and 2017. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Berrien County area and upwind areas have implemented in recent years. In addition, EGLE provided an

analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA finds that EGLE has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and enforceable emission controls implemented.

a. Regional NO_x Controls.

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO₂) and NO_x emissions in 27 eastern states, including Michigan, that contributed to downwind nonattainment and maintenance of the 1997 ozone NAAQS and the 1997 fine particulate matter (PM_{2.5}) NAAQS. See 70 FR 25162 (May 12, 2005). EPA approved EGLE's CAIR regulations into the Michigan SIP on August 18, 2009 (74 FR 41637). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus addressed the interstate transport of emissions contributing to nonattainment and interfering with maintenance

of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS. CSAPR requires substantial reductions of SO₂ and NO_x emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR³ was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_x ozone season emissions budgets for Michigan. On September 7, 2016, in response to the remand, EPA finalized an update to CSAPR requiring further reductions in NO_x emissions from EGUs beginning in May 2017. This final rule was projected to result in a 20% reduction in ozone season NO_x emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels.

There are no EGUs in the Berrien County area. However, the reduction in NO_x emissions from the implementation of CSAPR

³ *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012).

results in lower concentration of transported ozone entering the Berrien County area upon implementation of the phase 2 budgets in 2017 and throughout the maintenance period.

b. Federal Emission Control Measures.

Reductions in VOC and NO_x emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_x emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_x and VOC emissions from

light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. NO_x and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the on-road emission modeling for the Berrien County area, much of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_x and for particulate matter. The VOC and NO_x tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_x and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in

approximately a 50% reduction from current standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Berrien County area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_x, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 ppm by 2007, leading to additional reductions in combustion NO_x and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_x and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO_x and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Berrien County area,

some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Non-road Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for non-road diesel engines and sulfur reductions in non-road diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO₂ limits for non-road diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_x emissions from these non-road diesel engines by approximately 90%. As projected by these estimates and demonstrated in the non-road emission modeling for the Berrien County area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Non-road Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-

terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in VOC emissions from these engines and an 80% reduction in NO_x emissions. As projected by these estimates and demonstrated in the non-road emission modeling for the Berrien County area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011 and are expected to result in a 15 to 25% reduction in NO_x emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80% reduction in NO_x from these engines. As projected by these estimates and demonstrated in the non-road emission modeling for the Berrien County area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

2. Emission reductions.

Michigan is using a 2014 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. Michigan is using 2017 as the attainment year, which is appropriate because it is one of the years in the 2017-2019 period used to demonstrate attainment.

Area, point, and non-road mobile emissions were collected from data available on EPA's Air Emissions Modeling and National Emissions Inventory (NEI) websites.⁴ Using Emissions Modeling platform 2016v1, EGLE used 2016fh, 2023fh and 2028fh versions of the 2016v1 platform and 2014 NEI version 2 for this analysis. Tons per summer day (TPSD) emissions for the area and point sectors were then derived by dividing the annual emissions by 365. This method of deriving TPSD for the area and point sectors takes the conservative approach of assuming steady operation over 365 days each year. TPSD emissions for the non-road sector were derived by dividing the annual value by 330. This method of deriving TPSD accounts for non-road sources possibly having slightly higher emissions in the summer. 2017 emissions were derived by linear interpolation between 2016 and 2023 (2016fh and 2023fh). 2030 emissions were derived by linear interpolation between 2023 and 2028 (2023fh and 2028fh).

⁴ www.epa.gov/air-emissions-modeling/2016v1-platform
www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data

On-road mobile source emissions were calculated from emission factors produced by EPA's Motor Vehicle Emission Simulator model, MOVES2014a, and data extracted from the region's travel-demand model.

Using the inventories described above, EGLE's submittal documents changes in VOC and NO_x emissions from 2014 to 2017 for the Berrien County area. Emissions data are shown in Tables 2 through 6.

Table 2. Berrien County area NO_x emissions for nonattainment year 2014 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.61	2.21	2.22	9.01	15.05

Table 3. Berrien County area VOC emissions for nonattainment year 2014 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.34	7.38	3.81	4.81	17.34

Table 4. Berrien County area NO_x emissions for attainment year 2017 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.59	2.18	1.08	5.94	10.79

Table 5. Berrien County area VOC emissions for attainment year 2017 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.20	7.38	1.36	3.50	13.44

Table 6. Change in NO_x and VOC emissions in the Berrien County area between 2014 and 2017 (TPSD).

County	Nox					VOC				
	Point	Area	Non-	On-	Total	Point	Area	Non-	On-	Total

			road	road				road	road	
Berrien	-0.02	-0.03	-1.14	-3.07	-4.26	-0.14	0	-2.45	-1.31	-3.9

As shown in Table 6, NO_x and VOC emissions in the Berrien County area declined by 4.26 TPSD and 3.9 TPSD, respectively, between 2014 and 2017.

3. Meteorology.

To further support EGLE's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology, an analysis was performed by EGLE. EGLE analyzed the maximum fourth-high 8-hour ozone values for May, June, July, August, and September, as those months are more likely to have days over 80 degrees, leading to higher ozone formation for years 2000 to 2019.

First, the daily maximum 8-hour ozone concentration at the Coloma monitor in the Berrien County area was compared to the number of days where the maximum temperature was greater than or equal to 80° F. While there is a clear trend in decreasing ozone concentrations at the monitor, there is no such trend in the temperature data.

EGLE also examined the relationship between the average summer temperature for each year of the 2000-2019 period and the annual fourth-high 8-hour ozone concentration. EGLE conducted

this analysis using the fourth-high 8-hour ozone concentration from the Coloma monitor in the Berrien County area. While there is some correlation between average summer temperatures and ozone concentrations, this correlation does not exist over the study period. The linear regressions for each data set demonstrate that average summer temperatures have increased over the 2000 to 2019 period while average ozone concentrations have decreased. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the Berrien County area and not unusually favorable summer temperatures.

Finally, EGLE analyzed the relationship between average summertime relative humidity and fourth-high 8-hour ozone concentrations. The data did not show a correlation between relative humidity and ozone concentrations.

As discussed above, EGLE identified numerous Federal rules that resulted in the reduction of VOC and NO_x emissions from 2014 to 2017. In addition, EGLE's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the Berrien County area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Therefore, EPA finds that Michigan has shown that the air

quality improvements in the Berrien County area are due to permanent and enforceable emissions reductions.

D. Does EGLE have a fully approvable ozone maintenance plan for the Berrien County area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for

continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Berrien County area to attainment for the 2015 ozone NAAQS, EGLE submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2030, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that EGLE's ozone maintenance plan includes the necessary components and approve the maintenance plan as a revision of the Michigan SIP.

1. Attainment inventory.

EPA is proposing to determine that the Berrien County area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2017-2019. EGLE selected 2017 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_x. The attainment emissions inventory identifies the levels of emissions in the Berrien County area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Berrien County area?

EGLE has demonstrated maintenance of the 2015 ozone NAAQS

through 2030 by assuring that current and future emissions of VOC and NO_x for the Berrien County area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003).

EGLE is using emissions inventories for the years 2023 and 2030 to demonstrate maintenance. 2030 is more than 10 years after the expected effective date of the redesignation to attainment and 2023 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Point, area and non-road mobile emissions were collected from data available on EPA's Air Emissions Modeling website. Using Emissions Modeling platform 2016v1, EGLE collected data for the 2023 and 2028 projected inventories. TPSD emissions for the area and point sectors were then derived by dividing the annual emissions by 365. TPSD emissions for the non-road sector were derived by dividing the annual value by 330. For interim year 2023, version 2023fh was used without modification. 2030 emissions were derived by extrapolating from version 2023fh and 2028fh.

On-road mobile source emissions were calculated from emission factors produced by EPA's MOVES2014a model and data extracted from the region's travel-demand model. Emissions data are shown in Tables 7 through 11 below.

Table 7. Berrien County area NO_x emissions for interim maintenance year 2023 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	2.25	2.10	0.79	3.15	8.29

Table 8. Berrien County area VOC emissions for interim maintenance year 2023 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.26	7.28	1.06	2.24	11.84

Table 9. Berrien County area NO_x emissions for maintenance year 2030 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	2.25	2.05	0.65	1.85	6.80

Table 10. Berrien County area VOC emissions for maintenance year 2030 (TPSD).

County	Point	Area	Non-road	On-road	Total
Berrien	1.24	7.15	1.00	1.70	11.09

Table 11. Change in NO_x and VOC emissions in the Berrien County area between 2017 and 2030 (TPSD).

	NO _x				VOC			
	2017	2023	2030	Net Change (2017-2030)	2017	2023	2030	Net Change (2017-2030)
Point	1.59	2.25	2.25	0.66	1.20	1.26	1.24	0.04
Area	2.18	2.10	2.05	-0.13	7.38	7.28	7.15	-0.23
Non-road	1.08	0.79	0.65	-0.43	1.36	1.06	1.00	-0.36
On-road	5.94	3.15	1.85	-4.09	3.50	2.24	1.70	-1.80
Total	10.79	8.29	6.80	-3.99	13.44	11.84	11.09	-2.35

In summary, EGLE's maintenance demonstration for the Berrien County area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NO_x and VOC will remain at or below 2017 emission levels when taking into account both future source growth and implementation of future controls. Table 11 shows NO_x and VOC emissions in the Berrien County area are projected to decrease by 3.99 TPSD and 2.35 TPSD, respectively, between 2017 and 2030.

3. Continued air quality monitoring.

EGLE has committed to continue to operate the ozone monitor listed in Table 1 above. EGLE has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. EGLE remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of continued attainment.

The State of Michigan has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the Berrien County area. This includes the authority to adopt, implement, and enforce any subsequent

emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. EGLE will continue to operate the current ozone monitor located in the Berrien County area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by EPA.

In addition, to track future levels of emissions, EGLE will continue to develop and submit to EPA updated emission inventories for all source categories at least once every 3 years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Michigan was compiled for 2014, and 2017 is in progress. Point source facilities covered by EGLE's emission statement rule, Michigan Administrative Code Chapter 3745-24, will continue to submit VOC and NO_x emissions on an annual basis.

5. What is the contingency plan for the Berrien County area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: the contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and, a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, EGLE has adopted a contingency plan for the Berrien County area to address possible future ozone air quality problems. The contingency plan adopted by EGLE has two levels of response, a warning level response and an action level response.

In EGLE's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.074 ppm or higher is monitored within the maintenance area. A warning

level response will consist of EGLE conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In EGLE's plan, an action level response is triggered when a two-year average fourth high value of 0.071 ppm or greater is monitored within the maintenance area. A violation of the 2015 ozone NAAQS within the maintenance area also triggers an action level response. When an action level response is triggered, EGLE, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. EGLE may also consider if significant new regulations not currently included as part of the maintenance provisions will be

implemented in a timely manner and would thus constitute an adequate contingency measure response.

EGLE included the following list of potential contingency measures in its maintenance plan:

1. Adopt VOC RACT on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.
2. Apply VOC RACT to smaller existing sources.
3. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:
 - a. trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;
 - b. traffic flow and transit improvements; and
 - c. other new or innovative transportation measures not yet in widespread use that affected local governments deem appropriate.
4. Alternative fuel and diesel retrofit programs for fleet vehicle operations.
5. Require VOC or NO_x controls on new minor sources (less than 100 tons).

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that EGLE's maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, EGLE has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Berrien County area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by EGLE for the Berrien County area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Michigan SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay

timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. See the SIP requirements for the 2015 ozone NAAQS in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_x for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. See 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

B. What is the status of EPA's adequacy determination for the proposed VOC and NO_x MVEBs for the Berrien County area?

When reviewing submitted control strategy SIPs or maintenance plans containing MVEBs, EPA must affirmatively find that the MVEBs contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission; provision for a public comment

period; and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, EGLE's maintenance plan includes NO_x and VOC MVEBs for the Berrien County area for 2030 and 2023, the last year of the maintenance period and an interim year, respectively. EPA has reviewed the VOC and NO_x MVEBs and, in this action, is proposing to find them adequate for approval into the SIP. Michigan's January 30, 2020 maintenance plan SIP submission, including the VOC and NO_x MVEBs for the Berrien County area, is open for public comment via this proposed rulemaking. The submitted maintenance plan, which included the

MVEBs, was endorsed by the Governor's designee and was subject to a state public hearing. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

Table 12. MVEBs for the Berrien County area (TPSD).

	Attainment Year 2017 On-road Emissions	2023 Estimated On-road Emissions	2023 Mobile Safety Margin Allocation	2023 MVEBs	2030 Estimated On-road Emissions	2030 Mobile Safety Margin Allocation	2030 MVEBs
VOC	3.50	2.24	1.17	3.41	1.70	1.87	3.44
NO _x	5.94	3.15	1.78	4.93	1.85	2.89	4.74

As shown in Table 12, the 2023 and 2030 MVEBs exceed the estimated 2023 and 2030 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, EGLE allocated a portion of the safety margin (described further below) to the mobile sector. EGLE has demonstrated that the Berrien County area can maintain the 2015 ozone NAAQS with mobile source emissions at or below 3.41 TPSD and 3.44 TPSD of VOC and 4.93 TPSD and 4.74 TPSD of NO_x in 2023 and 2030, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA finds adequate and is proposing to approve the MVEBs for use to determine transportation conformity

in the Berrien County area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

C. What is a safety margin?

A "safety margin" is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 11, the emissions in the Berrien County area are projected to have safety margins of 2.89 TPSD for NO_x and 1.87 TPSD for VOC in 2030 (the difference between the attainment year, 2017, emissions and the projected 2030 emissions for all sources in the Berrien County area). Similarly, there is a safety margin of 1.78 TPSD for NO_x and 1.17 TPSD for VOC in 2023. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, EGLE is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2023, EGLE is allocating 1.17 TPSD and 1.78 TPSD of the VOC and NO_x safety margins, respectively. In 2030, EGLE is allocating 1.87 TPSD and 2.89 TPSD of the VOC and NO_x safety margins, respectively. EGLE is not requesting allocation to the

MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2023 and 2030 safety margins. Therefore, even though the State is requesting MVEBs that exceed the projected on-road mobile source emissions for 2023 and 2030 contained in the demonstration of maintenance, the permissible level of on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Proposed actions.

EPA is proposing to determine that the Berrien County nonattainment area is attaining the 2015 ozone NAAQS based on quality-assured and certified monitoring data for 2017-2019 and the area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Berrien County area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Michigan SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Berrien County area in attainment of the 2015 ozone NAAQS through 2030. Finally, EPA finds adequate and

is proposing to approve the newly-established 2023 and 2030 MVEBs for the Berrien County area.

VII. 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 SIP approvals are exempted 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: May 7, 2020.

Kurt Thiede,
Regional Administrator, Region 5.

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