6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0369; FRL-11761-01-R5]

Air Plan Approval; Wisconsin; Milwaukee Second 10-Year 2006 24-hour $PM_{2.5}$ Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), the limited maintenance plan (LMP) submitted on April 8, 2022, by the Wisconsin Department of Natural Resources (WDNR) for the Milwaukee-Racine maintenance area including Milwaukee, Waukesha, and Racine counties. The plan addresses the second 10-year maintenance period for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). EPA is proposing to approve Wisconsin's LMP submission for Milwaukee-Racine because it provides for the maintenance of the 2006 $PM_{2.5}$ national ambient air quality standard (NAAQS) through the end of the second 10-year portion of the maintenance period. In addition, EPA is initiating the process to find the Milwaukee-Racine $PM_{2.5}$ LMP adequate for transportation conformity purposes.

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-2022-0369 at *https://www.regulations.gov*, or via email to *arra.sarah@epa.gov*. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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 *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Cecilia Magos, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7336, *magos.cecilia@epa.gov*. The EPA Region 5 office 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.

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

I. Background.

A. The $PM_{2.5}$ NAAQS.

$PM_{2.5}$ is one of the criteria pollutants for which a NAAQS is established to protect human health and the environment. In 1997, EPA established the first $PM_{2.5}$ standards based on significant scientific evidence and health studies demonstrating the serious health effects associated with exposure to $PM_{2.5}$. EPA set an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour (or daily) standard of 65 $\mu g/m^3$. In 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by revising it to 35 $\mu g/m^3$ and retained the level of the annual $PM_{2.5}$ standard at 15.0 $\mu g/m^3$. Subsequently, in 2012, EPA established an annual primary $PM_{2.5}$ NAAQS at 12 $\mu g/m^3$ and retained the 2006 24-hour $PM_{2.5}$ NAAQS at 35 $\mu g/m^3$. In 2024, EPA revised the annual primary $PM_{2.5}$ NAAQS to 9.0 $\mu g/m^3$ and retained the level of the 2006 24-hour $PM_{2.5}$ NAAQS at 35 $\mu g/m^3$.

B. Regulatory Actions in Milwaukee-Racine.

On November 13, 2009 (74 FR 58688), EPA designated the

Milwaukee-Racine area as a $PM_{2.5}$ nonattainment area due to measured violations of the 2006 $PM_{2.5}$ NAAQS. On June 8, 2012, supplemented on May 30, 2013, WDNR submitted to EPA a request to redesignate the Milwaukee-Racine nonattainment area, to attainment of the 2006 $PM_{2.5}$ NAAQS. The submission included a plan to provide for maintenance of the 2006 $PM_{2.5}$ NAAQS in the area for 10 years. EPA redesignated the Milwaukee-Racine area on April 22, 2014 (79 FR 22415),and approved the associated maintenance plan into the Wisconsin State Implementation Plan (SIP). The purpose of WDNR'S April 8, 2022, LMP submission is to fulfill the second 10-year planning requirement of CAA section 175A(b) to ensure $PM_{2.5}$ NAAQS compliance through 2034.

II. The LMP Option.

A. Demonstration of Maintenance Using the LMP Option.

Section 175A of the CAA sets forth the elements of a maintenance plan. Under section 175A, a state must submit a revision to the SIP that provides for maintenance of the applicable NAAQS for at least 10 years after an area is redesignated to attainment. Section 175A also requires that eight years into the first maintenance period, the state must submit a second maintenance plan demonstrating that the area will continue to attain for the following 10-year period.

EPA has published long-standing guidance for states on developing maintenance plans.[1] The Calcagni memo provides that

[1] Calcagni, John, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni memo).

states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.*, attainment year inventory). EPA clarified in subsequent guidance memos that certain nonattainment areas could meet the CAA section 175A requirement to provide for maintenance by demonstrating that the area's design value was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future.[2]

Most recently, in October 2022, EPA released guidance extending this streamlined option for demonstrating maintenance under CAA section 175A to certain $PM_{2.5}$ areas, titled "Guidance on Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas" ($PM_{2.5}$ LMP Guidance).[3]

EPA refers to this streamlined demonstration of maintenance

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[2] *See* "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas" (PM_{10} LMP Guidance) from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[3] The guidance document developed by the Office of Air Quality Planning and Standards and the Office of Transportation and Air Quality, within the Office of Air and Radiation, titled "Guidance on the Limited Maintenance Plan Option for Moderate $PM_{2.5}$ Nonattainment Areas and $PM_{2.5}$ Maintenance Areas" can be found at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1015UL4.pdf*.

as an LMP. EPA has interpreted CAA section 175A as permitting this option because CAA section 175A defines few specific content requirements for maintenance plans and, in EPA's experience implementing the various NAAQS, areas that qualify for an LMP or have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the $PM_{2.5}$ LMP guidance, states seeking an LMP should still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, states seeking an LMP must still submit their section 175A maintenance plan as a revision to their state implementation plan, with all attendant notice and comment procedures.

The $PM_{2.5}$ LMP Guidance, which contains requirements similar to those for an LMP under the PM_{10} LMP Guidance, allows states to demonstrate that areas qualify for an LMP by showing that, based on their recent measured air quality, they are unlikely to violate the NAAQS in the future.

Specifically, the $PM_{2.5}$ LMP Guidance relies on the critical design value (CDV) concept. The Guidance directs states to calculate a site-specific CDV for the monitoring site with the highest design value in the area, and also for all other active monitoring sites in the area with complete data. The Guidance states that areas should show that the average design value

(ADV) for each monitoring site in the area, *i.e.*, the average of at least the most recent consecutive five years of $PM_{2.5}$ design values, does not exceed the associated CDV for each site.[4] The CDV calculation for a monitoring site involves parameters including: 1) the level of the relevant NAAQS; 2) the co-efficient of variation of recent design values measured at that site; and 3) a statistical parameter corresponding to a 10 percent probability of exceedance, such that sites with historically high variability in DVs result in a lower (or more stringent) CDV. Evaluating if the ADV for each monitoring site in the area is below the CDV demonstrates that the probability of a future exceedance, based on the area's historical air quality and variability, is less than 10 percent. Per EPA's transportation conformity regulations, areas with LMPs must also "demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur."[5]

B. Transportation Conformity Under the LMP Option.

Transportation conformity is required by section 176(c) of the CAA. Under that provision, conformity to a SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any required interim emission

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[4] EPA recommends that the ADV be calculated using at least five years of design values, each representing a three-year period, because this approach would rely on a more robust data set. However, we acknowledge that an alternative interpretation may be acceptable where these variables could be calculated using three years of design values, collectively representing five years of air quality data.

[5] 40 CFR 93.109(e)

reductions or other milestones in any area. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93, subpart A, establishes the criteria and procedures to determine whether metropolitan transportation plans, transportation improvement programs, and federally supported highway and transit projects conform to the purpose of the SIP. Transportation conformity applies for transportation-related criteria pollutants in nonattainment areas and redesignated attainment areas with a CAA section 175A maintenance plan (i.e., maintenance areas).[6]

While qualification for the LMP option does not exempt an area from the need to determine conformity, in an area with an LMP, conformity may be demonstrated without a regional emissions analysis for the relevant NAAQS and pollutant (40 CFR 93.109(e)). An LMP must demonstrate that it is unreasonable to expect that the area would experience so much growth in on-road emissions during the maintenance period that a violation of the relevant NAAQS would occur. *See* 40 CFR 93.109(e). Hence, because no such impact is expected, areas with LMPs are not required to do a regional emissions analysis as part of a transportation conformity determination. *See* 40 CFR 93.109(e).

While areas with maintenance plans approved or found adequate under the LMP option are not required to do a regional

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[6] In addition to $PM_{2.5}$, the criteria pollutants for which transportation conformity applies include ozone, carbon monoxide, particulate matter with an aerodynamic diameter less than or equal to 10 micrometers, and nitrogen dioxide. *See* 40 CFR 93.102(b).

emissions analysis (and are not subject to the budget test in 40 CFR 93.118), the areas remain subject to the other transportation conformity requirements of 40 CFR part 93, subpart A, including fulfilling project-level conformity requirements and consultation requirements.

The $PM_{2.5}$ LMP Guidance notes that an LMP may be particularly appropriate for a second maintenance plan, as the area will have demonstrated attainment of the $PM_{2.5}$ NAAQS for at least 8 years. To demonstrate that it would be unreasonable to expect that the area would experience enough motor vehicle growth for a NAAQS violation to occur, the guidance states that an LMP submission for an area's second maintenance plan should address the area's $PM_{2.5}$ air quality trends and the historical and projected vehicle miles traveled (VMT). Further, if re-entrained road dust has been found to be significant for $PM_{2.5}$ transportation conformity purposes under 40 CFR 93.102(b)(3), the plan should include an on-road $PM_{2.5}$ emissions analysis consistent with the methodology provided in Attachment B of the PM_{10} LMP Guidance, included in the appendix for the $PM_{2.5}$ LMP Guidance, along with the discussion in the $PM_{2.5}$ LMP Guidance itself. If the on-road $PM_{2.5}$ emissions analysis is necessary, it would include a demonstration that for each monitoring site in the area, the ADV plus the expected on-road emissions growth estimate does not exceed the CDV.

In addition to the proposed action, EPA is notifying the public that the Agency is initiating the adequacy process for

the Milwaukee-Racine LMP. *See* 40 CFR 93.118(e)(4). In the case of an LMP, EPA's adequacy review is to assess whether the demonstration required by 40 CFR 93.109(e) is met. Any comments on the adequacy of the submitted LMP for the Milwaukee-Racine area should be submitted to the docket established for this rulemaking. If EPA approves the second 10-year maintenance plan as an LMP or finds the submission adequate, the Milwaukee-Racine maintenance area will not be required to perform regional emissions analyses after 2025 for the 2006 $PM_{2.5}$ NAAQS. Note that the Milwaukee area has approved motor vehicle emission budgets for nitrogen oxides (NO_X), direct $PM_{2.5}$, sulfur dioxide (SO_2) and volatile organic compounds (VOCs) for the year 2025 from the first maintenance plan that must continue to be met in any transportation conformity determination made through the year 2025.[7] In addition, project-level conformity requirements as well as the other transportation conformity criteria continue to apply with respect to the 2006 $PM_{2.5}$ NAAQS for conformity determinations that occur through the maintenance period, i.e., through 2034.[8]

We will complete the adequacy determination process either in the final action on this proposal or by notifying the state in writing, publishing a notice in the *Federal Register* and by posting the finding on EPA's adequacy web page. *See* 40 CFR 93.118(f).

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[7] *See* 81 FR 8656 and 79 FR 22415.
[8] *See* 40 CFR 93.102(b)(4) and Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period (October 2014, EPA-420-B-14-093).

C. General Conformity Under LMP Option.

EPA's general conformity program requirements do not distinguish between maintenance areas with an approved LMP and those with an approved "full maintenance plan," which is developed and approved using the long-standing methods that demonstrate the area will maintain the NAAQS. Thus, maintenance areas with an approved LMP are subject to the same general conformity requirements under 40 CFR part 93, subpart B, as those with a "full maintenance plan." Both a "full maintenance plan" and an LMP must be developed and approved per the requirements of CAA section 175A.

III. EPA's Analysis of the State's Submittal.

A. Demonstration of qualification for the LMP Option.

EPA redesignated the Milwaukee-Racine area from nonattainment to attainment of the NAAQS on April 22, 2014 (79 FR 22415). This LMP was developed as part of an interagency consultation process which includes Federal, state, and local agencies. Table 1 below shows the historical design values for the area since the area was redesignated in 2014.[9] The 2006 $PM_{2.5}$ NAAQS is attained when the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations is equal to or less than 35 $\mu g/m^3$. As shown in table 1, the area has been measuring air quality well below the 2006 $PM_{2.5}$ NAAQS with decreasing $PM_{2.5}$ concentrations over time. The design values at the individual monitoring sites in the area also measure air quality well below

[9] *See* https://www.epa.gov/air-trends/air-quality-design-values#map.

the 2006 $PM_{2.5}$ NAAQS as shown in table 2.

Table 1. Design Values (DV) (µg/m^3) for the 2006 $PM_{2.5}$ NAAQS in the Milwaukee-Racine Area Since Redesignation to Attainment (2013-2022).

Design Value Period	Milwaukee-Racine $PM_{2.5}$ Design Value
2011-2013	27
2012-2014	27
2013-2015	25
2014-2016	24
2015-2017	22
2016-2018	21
2017-2019	22
2018-2020	22
2019-2021	23
2020-2022	24

Table 2. Design Values (DV) (µg/m^3) for the 2006 $PM_{2.5}$ NAAQS at Monitoring Sites in the Milwaukee-Racine Area (2014-2022).

AQS Site ID	Site Name	County	2014-2016	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022
550790010	16th St. Health Center	Milwaukee	24	22	20	21	21	23	24
550790026	Milw SER[c]	Milwaukee	20	19	20	21	21		
550790056	College Ave NR	Milwaukee				22	21	22	22
550790058	College Ave P&R[b]	Milwaukee	23	20	19	19*	-		
550790099	Milw Fire Dept[a]	Milwaukee	23*	23*	-	-	-		
551330027	Cleveland Ave	Waukesha	22	21	21	22	22	23	23

* 24-hr data did not meet completeness criteria. Associated DV's are thus invalid.

[a] Milwaukee-Fire Dept. (550790099) shut down in 2017 and was replaced by Milwaukee-College Ave NR (550790056).

[b] Milwaukee-College Ave P&R (550790058) was shut down in October 2019.

[c] Milwaukee SER (550790026) was shut down in April 2021.

We propose to find that the Milwaukee-Racine area meets the critical design value demonstration for a LMP. As noted above, the parameters of the CDV calculation, outlined in the $PM_{2.5}$ LMP Guidance, include the level of the relevant NAAQS, the co-efficient of variation of recent design values, and a statistical parameter corresponding to a 10 percent probability of future violation. The CDV demonstration is designed such that if a site's ADV is lower than the site's CDV, the probability of a future violation of the NAAQS is less than 10

percent.[10] The eligibility calculation equations for the CDV demonstration are shown in Table 3. Table 4 below contains the CDV and ADV for each monitor in the Milwaukee-Racine area, including the College Ave NR (monitor ID 550790056). EPA reviewed the data and methodology provided by the state and finds that each monitor's 5-year average design value is well below the corresponding site-specific CDV.[11]

Table 3. Eligibility Calculation Equations

Critical Design Value	$CDV = NAAQS/(1+(t_C \times CV))$
Coefficient of Variation	$CV = \sigma/ADV$

NAAQS = applicable standard ($PM_{2.5}$ is 35 $\mu g/m^3$)
t_C = critical t-value
σ = standard deviation of design values

Table 4. Qualification of Monitors for LMP in the Milwaukee-Racine maintenance area in $\mu g/m^3$ (2016-2020).

Site Name	Monitor	ADV (2016-2020)	CDV (2016-2020)	Qualify for LMP?
16th St. Health Center	550790010	21.6	31.6	Yes
Milw SER	550790026	20.2	32.9	Yes
College Ave NR	550790056[1]	21.75	33.8	Yes
Cleveland Ave	551330027	21.6	33.7	Yes

[1]The ADV and CDV for this monitor were calculated using valid DV data from 2019 through 2022 due to monitor installation occurring in 2017 for the 2019 DV period. The monitor was installed to replace the Milwaukee-Fire Dept. monitor (Monitor ID 550790099) that was shut down in 2017 after two design value periods that did not meet data completeness criteria.

We also propose to find that Wisconsin has adequately demonstrated that it is unlikely there will be an increase in motor vehicle emissions growth sufficient to cause a NAAQS violation in the Milwaukee-Racine maintenance area. In the 2022 $PM_{2.5}$ LMP Guidance, which was released after Wisconsin submitted its SIP revisions, EPA clarified that an area submitting the

[10] *See* the *"Example Site Calculation"*, page 7 of the October 2022 $PM_{2.5}$ LMP guidance (*https://www.epa.gov/system/files/documents/2022-10/420b22044.pdf*).
[11] Two monitors in the Milwaukee-Racine maintenance area were not included in the analysis below. One of these monitors (Monitor ID 550790099) had invalid DV's in 2016 and 2017 before being shut down, and one was shut down in 2019 (Monitor ID 550790058) and has valid DV's only through 2018.

second 10-year maintenance plan may be eligible for the LMP option as long as monitored air quality data and VMT trends support the LMP option. The state included both air quality data and VMT trend data of the maintenance area to satisfy transportation conformity regulations under an LMP option. The VMT projections considered by Wisconsin were based on transportation models provided by both the Wisconsin Department of Transportation (WDOT) and Southeastern Wisconsin Regional Planning Commission (SEWRPC). WDOT maintains a statewide travel demand model that projects average weekday VMT for each of the 72 counties in Wisconsin. WDOT provided modeled VMT for the years 2017 and 2050 for the Milwaukee-Racine area. WDNR linearly interpolated VMT results between the 2017 and 2050 values to obtain values for 2034, resulting in a 10.4 percent VMT growth percentage for 2017 to 2034. SEWRPC also has their own travel demand model that covers their seven-county region, which includes the Milwaukee-Racine maintenance area. Wisconsin also included in their submission the SEWRPC modeled projections under a high economic growth scenario from 2017 to 2035, showing a 13.6 percent VMT growth percentage. Ultimately, Wisconsin relied upon the highest VMT growth calculated from the different transportation models, at a VMT growth of 13.6 percent. A LMP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. *See* 40 CFR 93.109(e). EPA is proposing to conclude that the higher VMT

growth rate of 13.6 percent between 2017 and 2035 would not cause an exceedance of the CDV at the monitors listed in table 4 and therefore, that the Milwaukee-Racine maintenance area would qualify for the LMP option.[12] Wisconsin's submission included an on-road $PM_{2.5}$ emissions analysis consistent with the methodology provided in the 2001 PM_{10} LMP Guidance, because at the time of the state's submission, the $PM_{2.5}$ LMP Guidance had not yet been issued by EPA. This specific on-road $PM_{2.5}$ analysis is most critical for areas where re-entrained road dust has been identified as a significant contributor to $PM_{2.5}$ concentrations. Re-entrained road dust was not determined to be a significant contributor to $PM_{2.5}$ concentrations in the Milwaukee-Racine area. EPA evaluated the state's analysis as part of its consideration of whether increases in VMT will lead to future exceedances of the 2006 $PM_{2.5}$ NAAQS. Based on that evaluation, EPA is proposing to conclude that the results of the analysis provide further evidence that they will not. EPA is proposing to approve the LMP for the Milwaukee-Racine area. Per 40 CFR 93.109(e) an area is not required to satisfy the regional emissions analysis for §93.118 and/or §93.119 for a given pollutant and NAAQS, in this instance the 2006 $PM_{2.5}$ NAAQS. However, the first 10-year maintenance plan included motor vehicle emissions budgets for 2025. Therefore, if 2025 is within the timeframe of any transportation plan or transportation improvement program (TIP) and transportation conformity is determined for that plan or

[12] *See* "EPA_analysis_MilwaukeePM2.5_LMP.xlsx" provided in the docket of this rulemaking.

TIP, a regional emissions analysis is required for 2025.

In addition to the VMT trends, the air quality trends in the area provided in the state's submission (Table 1) also support the LMP option. From the time the area started attaining the NAAQS (2014) through 2020, ambient $PM_{2.5}$ concentrations have decreased substantially. There has been a 19.5 percent decrease in the annual 98th percentile $PM_{2.5}$ concentrations in the Milwaukee-Racine area during this time period.[13] Air quality trends from 2021 and 2022 in table 1 also show ambient $PM_{2.5}$ concentrations well below the 2006 $PM_{2.5}$ NAAQS.

The $PM_{2.5}$ LMP guidance further notes that, to the extent that the air agency is submitting a second 10-year maintenance plan for $PM_{2.5}$, a record showing that the area design value is lower than the CDV, coupled with air quality data demonstrating the area has already been maintaining the NAAQS for at least 8 years, provides EPA with further confidence that the area will continue to maintain the relevant $PM_{2.5}$ standard. Given the current $PM_{2.5}$ design values in the area and the demonstrated downward trend in $PM_{2.5}$ concentrations over the last ten years, and the state's analysis of VMT trends discussed above, we propose to find that the state has adequately demonstrated that, consistent with 40 CFR 93.109(e) and the $PM_{2.5}$ LMP Guidance, it would be unreasonable to expect that the area will experience a

[13] Where available, 2020 and 2014 monitor data was used at each monitoring site to compare the percent decrease, averaged across the area. Where 2020 data was not available, the closest year prior to 2020 with available data was used, and no earlier than 2018. *See* "EPA_analysis_MilwaukeePM2.5_LMP.xlsx" provided in the docket of this rulemaking.

growth in motor vehicle emissions sufficient to cause a violation of the 2006 $PM_{2.5}$ NAAQS. EPA therefore proposes to find that the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area meets the qualification criteria set forth in the $PM_{2.5}$ LMP Guidance.

The following is a summary of EPA's interpretation of the section 175A requirements and EPA's evaluation of how each requirement is met. Under the LMP option, the state will be expected to determine on a regular basis that the criteria are still being met. If the state determines that the LMP criteria are not being met, it must take action to reduce $PM_{2.5}$ concentrations enough to requalify. One possible approach the state could take is to implement the contingency measures contained in its maintenance plan. *See* Section 6 of the state's submittal, placed in the docket for this action, for a description of the contingency measures. If the attempt to reduce $PM_{2.5}$ concentrations fails, or if it succeeds but in future years it becomes necessary again to address increasing $PM_{2.5}$ concentrations in an area, the area will no longer qualify for the LMP option.

B. Attainment Inventory.

As noted above, states that qualify for an LMP must still meet the other elements of a maintenance plan, as articulated in the Calcagni Memo. This includes an attainment year emissions inventory.

WDNR's Milwaukee-Racine $PM_{2.5}$ LMP submission includes an emissions inventory, with a base year of 2017. This inventory

was prepared as part of the 2017 National Emissions Inventory (NEI),[14] Version 2, under EPA's Air Emissions Reporting Rule (73 FR 76539, December 17, 2008). The 2017 base year represents the most recent emissions inventory data available when the state prepared the submissions, is representative of the level of emissions during the time that the area shows monitored attainment of the NAAQS and is consistent with the data used to determine applicability of the LMP option (*i.e.*, having no violations of the NAAQS during the 5-year period used to calculate the design value). Table 5 shows the 2017 emissions of the Milwaukee-Racine maintenance area in tons per day included in the state's submission. EPA also considered emissions from the 2020 NEI as shown in table 6, as more recent emissions data was subsequently available since Wisconsin's submission. The 2017 NEI emissions from table 5 show slightly overall higher emissions of certain pollutants compared to the 2020 NEI emissions from table 6 in the Milwaukee-Racine maintenance area. Some of the differences may be attributed to changes and improvements in the process and methods used for estimating emissions while creating the 2020 NEI compared to 2017 methods. Key process changes for the 2020 cycle includes changes in pollutant, source classification codes, and North American Industry Classification System codes, refined quality assurance checks and features.[15] In summary, the 2020 NEI

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[14] *See https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.*

[15] *See* 2020 National Emissions Inventory Technical Support Document: Overview (March 2023)

updated emission methods pertain to nonpoint solvent utilization, nonpoint agricultural silage, nonpoint asphalt paving, improved VOC and $PM_{2.5}$ speciation models, improvements to residential wood combustion emission factors and speciation, and biogenic model updates.

Table 5. 2017 Emissions (tons per day) for the Milwaukee-Racine Maintenance Area

Sector	$PM_{2.5}$	SO_2	NO_x	VOC	NH_3	Total Emissions
Milwaukee County Total	**6.92**	**2.86**	**42.84**	**43.75**	**3.36**	**99.73**
Point	0.73	2.30	14.30	4.11	1.74	23.18
Nonpoint	5.22	0.47	10.98	27.62	1.10	45.39
Onroad	0.60	0.09	14.24	8.39	0.52	23.84
Nonroad	0.36	0.01	3.31	3.63	0.01	7.32
Event	0.00	0.00	0.00	0.00	0.00	0.00
Waukesha County Total	**7.35**	**0.43**	**19.85**	**32.37**	**1.51**	**61.51**
Point	0.09	0.00	0.26	2.14	0.01	2.50
Nonpoint	6.50	0.37	8.03	21.83	1.19	37.92
Onroad	0.32	0.05	8.13	4.80	0.29	13.59
Nonroad	0.38	0.01	3.42	3.45	0.01	7.27
Event	0.06	0.01	0.02	0.15	0.01	0.25
Racine County Total	**3.52**	**0.64**	**9.03**	**13.74**	**0.98**	**27.91**
Point	0.31	0.49	0.85	1.31	0.00	2.96
Nonpoint	2.97	0.13	3.59	9.57	0.86	17.12
Onroad	0.13	0.02	3.31	1.97	0.12	5.55
Nonroad	0.11	0.00	1.28	0.88	0.00	2.27
Event	0.00	0.00	0.00	0.00	0.00	0.00
Milwaukee-Racine Maintenance Area Total	**17.79**	**3.94**	**71.72**	**89.86**	**5.85**	**189.16**

Table 6. 2020 NEI Emissions (tons per day) for the Milwaukee-Racine Maintenance Area

Sector	$PM_{2.5}$	SO_2	NO_x	VOC	NH_3	Total Emissions
Milwaukee County Total	**8.52**	**2.20**	**34.29**	**44.89**	**2.20**	**92.09**
Point	0.92	1.89	12.21	3.63	0.09	18.74
Nonpoint	6.89	0.26	9.16	32.53	1.66	50.50
Onroad	0.39	0.05	10.08	5.23	0.44	16.19
Nonroad	0.32	0.00	2.84	3.49	0.01	6.67
Waukesha County Total	**8.73**	**0.37**	**15.10**	**34.41**	**2.34**	**60.95**
Point	0.12	0.04	0.48	1.85	0.01	2.50
Nonpoint	8.08	0.29	6.36	26.51	2.07	43.32
Onroad	0.20	0.03	5.38	2.76	0.26	8.63
Nonroad	0.33	0.00	2.88	3.29	0.01	6.51
Racine County Total	**4.07**	**0.60**	**7.21**	**17.48**	**1.31**	**30.67**
Point	0.38	0.48	0.91	1.08	0.00	2.85
Nonpoint	3.52	0.11	2.91	14.37	1.20	22.10
Onroad	0.09	0.01	2.34	1.22	0.11	3.77
Nonroad	0.09	0.00	1.05	0.81	0.00	1.96
Milwaukee-Racine Maintenance Area Total	**21.32**	**3.17**	**56.59**	**96.78**	**5.86**	**183.71**

C. Air Quality Monitoring Network

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. WDNR continues to operate a $PM_{2.5}$ monitoring network sited and maintained in accordance with Federal siting and design criteria in 40 CFR part 58, and in consultation with EPA Region 5. WDNR submitted the 2022-2023 Annual Monitoring Network Plan[16], which EPA approved on November 7, 2022.[17]

In its submission, WDNR details the four existing EPA-approved $PM_{2.5}$ monitoring sites in the Milwaukee-Racine maintenance area. Consistent with the EPA-approved WDNR annual network plan, in order to meet the EPA requirements at appendix D of 40 CFR part 58, WDNR is required to maintain a minimum of two monitors in the Milwaukee Metropolitan Statistical Area, including Milwaukee, Waukesha, and West Allis counties based on population criteria. EPA proposed to find that the WDNR annual Air Monitoring Network Plan is adequate to verify the continued attainment of the 2006 $PM_{2.5}$ NAAQS in the Milwaukee-Racine area.

D. Verification of Continued Attainment.

The level of the 2006 $PM_{2.5}$ NAAQS is 35 $\mu g/m^3$. The NAAQS is attained when the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations is equal to or less than 35 $\mu g/m^3$ (40 CFR 50.6). As stated previously, WDNR commits to continue to

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[16] *See* WDNR's Air Monitoring website containing the annual network plans at *https://dnr.wisconsin.gov/topic/AirQuality/Monitor.html.*

[17] *See* EPA'S Approval Letter for WDNR'S 2022-2023 Annual Network Monitoring Plan in the docket of this rulemaking.

operate a monitoring network in accordance with 40 CFR part 58. In addition, WDNR commits to verifying continued attainment of the $PM_{2.5}$ standard through the maintenance plan period with the operation of an appropriate $PM_{2.5}$ monitoring network. In developing the second 10-year maintenance plan, WDNR evaluated the most recent three years of complete, quality-assured data for the Milwaukee-Racine maintenance area at the time the submissions were made (2018 through 2020) to verify continued attainment of the standard. Air quality data from 2021, and air quality data from 2022 confirm continued attainment of the standard as described in Table 1.

E. Contingency Provisions.

CAA section 175A(d) states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the relevant NAAQS which may occur after redesignation of the area to attainment. As explained in the Calcagni Memo, these contingency provisions are an enforceable part of the federally approved SIP. The maintenance plan should clearly identify the events that would "trigger" the adoption and implementation of a contingency provision, the contingency provision(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the provision(s). The Calcagni Memo states that EPA will determine the adequacy of a contingency plan on a case-by-case basis. At a minimum, the plan must require that the state implement all measures

contained in the CAA part D nonattainment plan for the area prior to redesignation.

In the Milwaukee-Racine $PM_{2.5}$ LMP submission, WDNR included maintenance plan contingency provisions to ensure the area will continue to meet the 2006 $PM_{2.5}$ NAAQS. The submission describes a process and a timeline to identify, evaluate, and select the appropriate contingency measure(s) from a list of measures in the event of a violation of the $PM_{2.5}$ NAAQS. Wisconsin commits to two levels of contingency response that may be implemented to reduce emissions, a "warning level response" and an "action level response" that are initially prompted if the 98^{th} percentile 24-hour $PM_{2.5}$ concentration at any monitoring site in the Milwaukee-Racine maintenance area shows a renewed exceedance or violation, respectively above the 2006 $PM_{2.5}$ NAAQS. A warning level response will initiate a study no later than 6 months following data certification to assess whether actual emissions have deviated significantly from the emission projections in the maintenance plan, evaluate the sectors responsible for any increases in precursor emissions, evaluate the sectors and states responsible for any increases in precursor emissions transported to the maintenance area, and determine if unusual meteorological conditions or exceptional events during the period led to high $PM_{2.5}$ concentrations. In the event an action level response is prompted, a study will be initiated no later than 6 months following data certification with the following factors: level, distribution, and severity of ambient $PM_{2.5}$

concentrations; weather patterns contributing to $PM_{2.5}$ levels; potential contributing emissions sources; geographic applicability of possible contingency measures; emissions trends including impact of existing and forthcoming control measures not yet implemented; current and recently identified control technologies; and air quality contributions from outside the maintenance area. *See* Section 6 of the state's LMP submission in the docket for this action for further description of the contingent response to triggering events. The submission describes the consultation from interested and affected parties in the area that would occur after a violation in order to determine the control measures necessary to assure attainment of the NAAQS that can be implemented within 18 months from the close of the calendar year that prompted the violation. EPA proposes to find that the contingency provisions in the $PM_{2.5}$ LMP for the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area meet the requirements of section 175A(d) of the CAA.

IV. What Action is EPA Taking?

EPA is proposing to approve the second 10-year $PM_{2.5}$ LMP for the Milwaukee-Racine 2006 $PM_{2.5}$ maintenance area submitted by WDNR. EPA's review of the air quality data for the maintenance area indicates that the area continues to show attainment well below the level of the 2006 $PM_{2.5}$ NAAQS and meets all the LMP qualifying criteria as described in this action. If finalized, EPA's approval of this LMP will satisfy the CAA section 175A requirements for the second 10-year period for the Milwaukee-

Racine 2006 $PM_{2.5}$ maintenance area. EPA is also initiating the process to determine if the LMP is adequate for transportation conformity purposes. As discussed in section II.B, EPA may complete that process either in its final action on the LMP or through a separate process provided for in the transportation conformity regulations. *See* 40 CFR 93.118(f).

V. Environmental Justice Considerations.

To identify environmental burdens and potentially susceptible populations in the Milwaukee-Racine maintenance area, EPA performed a screening-level analysis using EPA's environmental justice (EJ) screening and mapping tool (EJSCREEN).[18] The results of EPA's screening analysis are being provided for informational and transparency purposes, and EPA did not rely on these findings in its action on Wisconsin's submissions. EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within each county contained in the Milwaukee-Racine maintenance area including Milwaukee, Racine, and Waukesha counties. Each of the tool output reports are contained in the docket for this action. EPA's screening-level analysis indicates that communities affected by this action score below the national average for the EJSCREEN "Demographic Index", which is the average of an area's percent minority and percent low-income populations, *i.e.*, the two demographic indicators explicitly named in Executive Order 12898 in Waukesha and Racine counties, and the demographic index

[18] *See https://www.epa.gov/ejscreen.*

is nine percent higher than the national average. Additionally, the results indicate that Racine and Waukesha counties score below the 80th percentile (in comparison to the Nation as a whole) in the twelve EJ Indices established by EPA, which include a combination of environmental and demographic information. Milwaukee county is above the 80th percentile for the Traffic Proximity, Lead Paint, and Hazardous Waste Proximity EJ indices.[19]

This proposed action would approve the 2nd 10-year maintenance plan as an LMP submitted by Wisconsin for the Milwaukee-Racine area. We expect that this action, which would, among other things, find that the state has adequately provided for maintenance of the NAAQS and approve the state's contingency plan to address any potential violations of the NAAQS in the future, will be generally neutral or have a positive contribution to reduced environmental and health impacts on all populations in the Milwaukee-Racine area, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to maintain the air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

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[19] *See EPA's EJSCREEN Technical Documentation, available at https://gaftp.epa.gov/EJSCREEN/2015/EJSCREEN_Technical_Document_20150505.pdf for more information on these select indices.*

VI. Statutory and Executive Orders Reviews.

Under the CAA, 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April

23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

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 rulemaking 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair

treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

WDNR did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in section V. titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 13, 2024.

Debra Shore,
Regional Administrator, Region 5.

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