Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 12, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for ''2015 Ozone Clean Data Determination'' immediately after the entry for ''Determination of failure to attain the 2010 SO_2 standard'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA—APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
*	*	*	*	* * *
2015 Ozone Clean Data Determination.	Detroit area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	.....	5/19/2023, [INSERT **FEDERAL REGISTER** CITATION].	EPA's final determination suspends the requirements for EGLE to submit an attainment demonstration and other associated nonattainment planning requirements for the Detroit nonattainment area for as long as the area continues to attain the 2015 ozone NAAQS.
*	*	*	*	* * *

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[FR Doc. 2023–10562 Filed 5–18–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2022–0004; FRL–9629–04–R5]

Air Plan Approval; Michigan; Redesignation of the Detroit, MI Area to Attainment of the 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its redesignation of the Detroit, Michigan area to attainment for the 2015 ozone National Ambient Air Quality Standards (NAAQS) in accordance with a request from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). EGLE submitted this request on January 3, 2022. EPA is approving, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2035 in the Detroit area. EPA is also finding adequate and approving Michigan's 2025 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) motor vehicle emissions budgets (budgets) for the Detroit area. The Detroit area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties.

DATES: This final rule is effective on May 19, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0004. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

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

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

I. Background

EPA is redesignating the Detroit area to attainment of the 2015 ozone standard, in accordance with EGLE's January 3, 2022, submission. The background for this action is discussed in detail in EPA's proposal, dated March 14, 2022 (87 FR 14210). In that proposal, we noted that, 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 (*i.e.,* the design value) is equal to or less than 0.070 parts per million (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.) Under the Clean Air Act (CAA), EPA may redesignate nonattainment areas to attainment if complete, quality-assured data show that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule provides a detailed discussion of how Michigan has met these CAA requirements and EPA's rationale for approving the redesignation request.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2019–2021 show that the area has attained the 2015 ozone standard, and EPA has determined that the

attainment is due to permanent and enforceable measures. In the maintenance plan submitted for the area, Michigan has demonstrated that compliance with the ozone standard will be maintained in the area through 2035. As also discussed in the proposed rule, Michigan has adopted 2025 and 2035 VOC and NO_X motor vehicle emissions budgets for the area that are supported by Michigan's maintenance demonstration.

Michigan has met the requirements applicable to redesignations through various SIP submittals. On July 6, 2022 (87 FR 40097), consistent with conditions identified in our proposed rulemaking, EPA approved portions of separate December 18, 2020, submittals as meeting the applicable requirements for a base year emissions inventory and an emissions statement program. In this rulemaking EPA is also approving, as a revision to the Michigan SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. Additionally, EPA is finding adequate and approving Michigan's newly established 2025 and 2035 motor vehicle emissions budgets for NO_X and VOCs for the area. With these approvals of Michigan's SIP submissions, all SIP requirements applicable to redesignation are fully approved.

After publication of the proposed rule, EPA finalized two additional rulemakings related to the attainment status of the Detroit nonattainment area. First, on February 1, 2023, EPA found that the Detroit area failed to attain the 2015 ozone NAAQS by its Marginal attainment date of August 3, 2021, based on the area's design value as of the attainment date (*i.e.,* monitoring data from 2018–2020). As a result of that determination, the area was reclassified by operation of law to Moderate, with SIP submissions associated with the Moderate area classification due March 1, 2023 (88 FR 6633). As described below in EPA's response to comments, consistent with EPA's longstanding interpretation of CAA section 107(d)(3)(E)(ii) and (v), and as described in the final determination and classification, EPA's role is to assess whether Michigan adequately addressed all requirements applicable to redesignation that applied to Detroit on the date of EGLE's submittal (88 FR 6633, 6635). Because EGLE submitted a complete and approvable redesignation request on January 3, 2022, the Moderate area requirements that became due on March 1, 2023, are not applicable for purposes of this redesignation. Second, EPA has issued a determination that the area is attaining the 2015 ozone NAAQS based on air quality monitoring data from 2020–2022, *i.e.,* a clean data determination. In issuing the clean data determination, EPA took notice and comment on its concurrence on a January 26, 2023, exceptional events demonstration submitted by EGLE. The demonstration requested exclusion of wildfire event-influenced data from the 2020–2022 design value period for the 2015 ozone NAAQS for the Detroit nonattainment area.

II. 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 or contribute to any new air quality violations, increase the frequency or severity of any existing air quality violations, or delay timely attainment or any required interim emissions reductions or any other milestones. Transportation conformity continues to apply in areas redesignated to attainment with a maintenance plan, so the Detroit area will continue to be subject to transportation conformity requirements.

As shown in Table 1, Michigan's maintenance plan includes NO_X and VOC motor vehicle emission budgets (''budgets'') for the Detroit area for 2025, the interim year, and 2035, the last year of the maintenance period. The budgets 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 Detroit area, are projected to result in air quality that either attains or maintains the NAAQS. These budgets represent the projected 2025 and 2035 on-road emissions plus a safety margin allocation and are consistent with the State's demonstration of maintenance of the 2015 ozone NAAQS. The safety margin and the allocation of a portion of it to the motor vehicle emissions budgets are described below. Detailed information on the transportation conformity program can be found in our March 14, 2022, proposed approval of Michigan's redesignation request (87 FR 14210).

TABLE 1—2025 AND 2035 BUDGETS FOR THE DETROIT AREA FOR THE 2015 OZONE NAAQS MAINTENANCE PLAN

[Tons per summer day]

	2025 Interim year			2035 Maintenance year		
	Projected on-road emissions	Safety margin allocation	Total budget	Projected on-road emissions	Safety margin allocation	Total budget
NO_X	61.20	43.15	104.35	40.30	62.11	102.41
VOCs	34.40	13.46	47.86	22.00	22.67	44.67

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. Further, the transportation conformity regulations allow states to allocate all or a portion of a documented safety margin to the motor vehicle emissions budgets for an area (40 CFR 93.124(a)). Michigan is allocating a considerable portion of that safety margin to the mobile source sector. Specifically, in 2025, Michigan is allocating 43.15 tons per summer day (TPSD) and 13.46 TPSD of the NO_X and VOC safety margins, respectively, representing approximately 65 percent of the available safety margins, to the motor vehicle emissions budgets. In 2035, Michigan is allocating 62.11 TPSD and 22.67 TPSD of the NO_X and VOC safety margins, respectively, representing approximately 65 percent of the available safety margins, to the motor vehicle emissions budgets. Since only a part of the safety margin is being used for this purpose, maintenance requirements are still met. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

III. Environmental Justice (EJ) Considerations

To identify environmental burdens and susceptible populations in communities in the Detroit area, EPA performed a screening-level analysis using EPA's EJ screening and mapping tool (''EJSCREEN'').[1] EPA utilized EJSCREEN to evaluate environmental and demographic indicators at the county level for each county within the area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).

EJSCREEN provides environmental indicators for 12 pollutants or sources, which include fine particulate matter ($PM_{2.5}$), ozone, air toxics cancer risk, traffic proximity, lead paint, Superfund site proximity, underground storage tanks, and wastewater discharge. Of the seven counties in the Detroit area, all but St. Clair County score at or above the 80th percentile nationally for at least one indicator: Livingston County for Superfund site proximity and wastewater; Macomb County for $PM_{2.5}$, traffic proximity, Superfund site proximity, and underground storage tanks; Monroe County for ozone; Oakland County for traffic proximity, underground storage tanks, and wastewater; Washtenaw County for underground storage tanks; and Wayne County for $PM_{2.5}$, air toxics cancer risk, traffic proximity, lead paint, underground storage tanks, and wastewater discharge.

EPA's screening-level analysis indicates that, of the seven counties in the Detroit area, only Wayne County scores above 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. As discussed in EPA's EJ technical guidance, people of color and low-income populations often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[2] As a function in part of its relatively high demographic index, Wayne County is the only county in the Detroit area scoring at or above the 80th percentile in at least one EJ Index, which is derived by combining a single environmental factor with the demographic indicator. Specifically, Wayne County has EJ Indexes above the 80th percentile in $PM_{2.5}$, ozone, traffic proximity, lead paint, and underground storage tanks. EPA has provided that if any of the EJ indexes for the areas under consideration are at or above the 80th percentile nationally, then further review may be appropriate.[3]

For further review, EPA has evaluated the ozone monitor trends and determined that all the monitors in the nonattainment area are similarly demonstrating attainment and therefore, there is no evidence that any one community is experiencing different air quality for this NAAQS from another. To consider whether the improvement in air quality has been observed throughout the area, including the portions of the area containing communities that are pollution-burdened and underserved, EPA conducted an additional analysis of historical ozone design values in the Detroit area. Specifically, EPA reviewed data from the seven monitors in the area that have been operating since the 2001–2003 design value period: the Macomb County monitor at New Haven with Site ID 26–099–0009, the Macomb County monitor at Warren with Site ID 26–099–1003, the Oakland County monitor at Oak Park with Site ID 26–125–0001, the St. Clair County monitor at Port Huron with Site ID 26–147–0005, the Washtenaw County monitor at Ypsilanti with Site ID 26–161–0008, the Wayne County monitor at Allen Park with Site ID 26–163–0001, and the Wayne County monitor at East 7 Mile with Site ID 26–163–0019. Ozone design values in the Detroit area have declined significantly from 0.097 ppm in 2001–2003 to 0.070 ppm in 2019–2021. As shown in Table 2, the improvement in air quality has been observed at every monitor in the Detroit area. Specifically, ozone design values at each monitor have improved by between 20% and 31%.

TABLE 2—IMPROVEMENT IN OZONE DESIGN VALUES BETWEEN THE 2001–2003 PERIOD AND 2019–2021 PERIOD

Monitor	2001–2003 Design value (ppm)	2010–2012 Design value (ppm)	2019–2021 Design value (ppm)	Improvement between 2001–2003 and 2019–2021 (%)
New Haven	0.097	0.078	0.068	30
Warren	0.095	0.079	0.066	31
Oak Park	0.091	0.078	0.069	24
Port Huron	0.090	0.077	0.070	22
Ypsilanti	0.091	0.076	0.066	27
Allen Park	0.084	0.074	0.067	20
East 7 Mile	0.091	0.081	0.070	23

Not only have ozone design values at all monitors improved by the relatively consistent margin of 20% to 31%, but the design values at all monitors have been relatively consistent within each 3-year period.

IV. Response to Comments

Upon publication of the March 14, 2022, proposed rulemaking, EPA opened a 30-day comment period, ending April 13, 2022 (87 FR 14210). On April 4, 2022, in response to a request from Sierra Club, EPA extended the comment period by an additional 14 days through April 27, 2022 (87 FR 19414). During the comment period EPA received three supportive comment letters and three adverse comment letters. Two adverse comment letters were submitted by students at the University of Michigan. The third adverse comment letter was submitted by Sierra Club and Great Lakes Environmental Law Center (GLELC), on behalf of themselves and 19 other groups based in Michigan. On March 14, 2023, after the close of the comment period for this rulemaking or any rulemaking relating to the Detroit area,

[1] *See* documentation on EPA's Environmental Justice Screening and Mapping Tool at *https://www.epa.gov/ejscreen.*

[2] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[3] EPA, ''EJSCREEN Technical Documentation,'' appendix H (September 2019).

GLELC and Sierra Club sent what they described as ''supplemental comments'' regarding the proposed redesignation. EPA is exercising its discretion to respond to these comments herein. Summaries of the adverse comments and EPA's responses are provided below.

Comment: Two students at the University of Michigan raised concerns with EPA's proposed approval of EGLE's redesignation request. One student shared their fear that redesignating the Detroit area could increase ground-level ozone and suggested that deregulation in the past has ''worsened our fight against climate change.'' The second student raised concerns about Detroit's air quality, given the existence of power plants and other facilities in the area. Given EPA's April 13, 2022, proposed determination that the Detroit area failed to attain the 2015 ozone NAAQS by its attainment date based on 2018–2020 data, this student believes it is inappropriate to reevaluate the area's legal designation at this time. This student suggested that ''legal status should only be considered when changes have been made and have been upheld over a substantial period of time.''

Response: These commenters raise issues that are similar to the concerns of Sierra Club and GLELC, which we discuss more extensively below.

A redesignation to attainment does not remove any emission control measures for existing sources that are already adopted into the EPA approved SIP for Michigan. As we discuss below and in the March 14, 2022, proposal, EGLE's redesignation request includes a demonstration that attainment of the 2015 ozone NAAQS was attributable to permanent and enforceable emissions reductions. Further, EGLE's January 3, 2022, submission includes a plan to maintain the NAAQS through 2035 in the Detroit area, as well as a contingency plan that would be triggered if the area were to violate the 2015 ozone NAAQS in the future. While EPA agrees that climate change is an important issue, this rulemaking addresses the separate issue of the Detroit area's designation for the 2015 ozone NAAQS.

Regarding concerns about the existence of power plants and other industrial facilities in the area, we refer the commenter to Table 2 in EPA's March 14, 2022, proposal, which shows significant emissions decreases in the Detroit area from 2014 to 2019. Specifically, NO_X and VOC emissions from point, nonpoint, on-road, and nonroad sources in the Detroit area declined by 203.21 tons per ozone season day and 104.33 tons per ozone season day, respectively, between 2014 and 2019. Decreases in NO_X and VOC emissions from point sources, which is the category including power plants, account for 69.85 TPSD and 18.50 TPSD, respectively, of the total decrease. These emissions decreases have contributed to the gradual reductions in ozone concentrations in the Detroit area. Further discussion of the commenter's suggestion that EPA should delay action on Michigan's redesignation request is found below.

A. Monitoring Data

Comment: Sierra Club and GLELC observe that the Detroit area attained the 2015 ozone NAAQS, but they raise concerns that the ''margin for NAAQS compliance is particularly thin'' at two monitors in the Detroit area. The commenters predict future values at which the NAAQS would be exceeded at four monitors in the area, and raise additional concerns that the area may violate the NAAQS during the 2022 ozone season. The commenters contend that, in order to approve a redesignation request, EPA must find that the improvement in air quality is ''permanent'' and the result of ''enforceable reductions to emissions,'' and that, in this case, neither of those conditions has been met.

Response: The 2015 ozone NAAQS is defined at 40 CFR 50.19, and appendix U to 40 CFR part 50 contains the data handling conventions and computations necessary for determining whether the NAAQS has been met at a monitoring site. To attain the 2015 ozone 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. As described in appendix U, design values are reported in ppm to three decimal places, with additional digits to the right of the third decimal place truncated.

The commenters conflate two separate demonstrations that are required under the statutory criteria for redesignation. CAA section 107(d)(3)(E)(i) provides that EPA may not promulgate a redesignation to attainment unless the Administrator ''determines that the area has attained the national ambient air quality standard.'' In finding that an area has met the first criterion, the statute does not require EPA to assess how long that attainment has been occurring for or by what margin the area is attaining. Therefore, the margin by which an area (or monitor) attains the NAAQS is not relevant to the question of whether or not the area is attaining the NAAQS. Separately, CAA section 107(d)(3)(E)(iii) provides that the Administrator must also determine ''that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.'' As used in CAA section 107(d)(3)(E), the term ''permanent'' does not describe the improvement in air quality, as commenters suggest, but instead describes the emissions reductions to which attainment must be attributable.

Michigan's plan for maintaining the NAAQS is relevant under CAA section 107(d)(3)(E)(iv), which provides that the Administrator must fully approve ''a maintenance plan for the area as meeting the requirements of section 175A.'' The requirement for a maintenance plan includes the requirement for contingency provisions to be triggered should an area violate the NAAQS after redesignation, which illustrates that the CAA anticipates some possibility that areas may in the future violate the NAAQS despite meeting all requirements under CAA section 107(d)(3)(E). In this final rule EPA is approving EGLE's plan for maintaining the NAAQS through 2035, as described below and in the proposed rule.

B. Planning Requirements

Comment: Sierra Club and GLELC raise concerns that redesignation ''could jeopardize public health by unnecessarily delaying needed air quality planning requirements.'' The commenters note EPA's separate proposal to reclassify the Detroit area as Moderate, which would trigger new requirements for SIP submissions. The commenters allege that redesignation would ''prematurely halt ongoing planning efforts to reduce NO_X and VOCs'' and without a nonattainment designation the State will face ''no obligation to select or implement any of these control measures to assure ozone levels are maintained below the NAAQS.'' The commenters allege that although ''similar discussions and planning might resume upon redesignation to nonattainment, there could be several years of delay in the meantime while excess ozone levels endanger public health.'' The commenters reference requirements for Reasonably Available Control Technology (RACT), and the potential for reductions in NO_X emissions from the Monroe power plant, claiming that this facility emitted 15,219 tons of NO_X in 2014.

Response: In a separate rulemaking published April 13, 2022, EPA proposed to reclassify the Detroit area as Moderate, based on air quality data from 2018–2020 showing the Detroit area failed to attain the 2015 ozone NAAQS by its Marginal attainment date. EPA finalized the reclassification as Moderate on February 1, 2023, and established a deadline of March 1, 2023, for most SIP revisions associated with Moderate area requirements, including requirements for an attainment plan and RACT. However, upon the effective date of this redesignation to attainment, nonattainment requirements, including Moderate area requirements, will no longer apply to the Detroit area.

As described below, if the Detroit area violates the 2015 ozone NAAQS after this redesignation, then Michigan would be required to implement its contingency plan to bring the area back into attainment. The contingency provisions submitted by EGLE include adoption or expansion of NO_X RACT rules and/or VOC RACT rules for existing stationary sources. This is the construct of the CAA with regard to redesignated attainment areas to provide for protections associated with air quality in designated attainment areas. It should be noted that many sources that would be subject to VOC RACT under the 2015 ozone NAAQS have implemented VOC controls as required by the rules Michigan adopted to meet VOC RACT requirements under the 1979 ozone NAAQS. *See* 59 FR 46182, September 7, 1994.

To illustrate the example of a facility with high NO_X emissions which could be subject to additional control requirements, the commenters reference the Monroe power plant, and incorrectly claim this facility emitted 15,219 tons of NO_X in 2014. According to EPA's 2014 National Emissions Inventory (NEI), the Monroe power plant emitted 8,320 tons of NO_X in 2014.[4] A separate data source, EPA's Clean Air Markets Program Data (CAMPD), shows a similar result of 8,296 tons of NO_X in 2014.[5] However, as shown in the CAMPD database, more recent emissions data indicate reduced NO_X emissions and improved control efficiency at this facility. NO_X emissions from the Monroe facility declined by 45% between 2014 and 2021, even though heat input declined by only 5% over the same period.[6] Because heat input corresponds to power generation, these data show that the significant decrease in NO_X emissions was not due to significantly decreased operation of the facility. Rather, the decrease in NO_X emissions is attributable to increased efficacy of pollution control equipment that was installed and operated to reduce NO_X emissions. Specifically, Monroe power plant has Selective Catalytic Reduction (SCR) NO_X controls on all four units. The most recent installation of SCR was in November of 2014, and therefore would have been minimally represented in the 2014 emissions data. As discussed in more detail further below, these significant reductions in NO_X emissions from Electric Generating Units (EGUs) such as the Monroe facility can be attributed to permanent and enforceable measures such as the Cross-State Air Pollution Rule (CSAPR), which is a Federal rule that established emissions budgets designed to incentivize the installation and operation of emissions controls.

The commenters also raise concerns that implementation of Moderate area requirements could be delayed by a violation of the 2015 ozone NAAQS subsequent to redesignation. The commenters speculate that under this scenario EPA would redesignate the area to nonattainment in 2023 and set a new attainment date for three years later, which would be 2026. As discussed below, under the CAA, a violation of the NAAQS after redesignation to attainment does not trigger an automatic redesignation to nonattainment. Rather, as discussed above, the initial required action under such circumstances would be the State's implementation of the contingency provisions in a State's approved maintenance plan for the relevant NAAQS, and Michigan's maintenance plan here would require the State to implement the contingency provisions more quickly than the three-year timeline identified by the commenters. The redesignation of an area to nonattainment under section 107(d)(3) is discretionary, and could take significantly longer whether initiated at the request of the State or by EPA itself.

C. Environmental Justice Concerns

Comment: The commenters state that EPA must consider environmental justice in this action, as much of the nonattainment area contains already overburdened communities facing disproportionate environmental impacts. The commenters reference various rates of asthma incidence across demographic or geographic groups, including asthma rates in Detroit that are higher than rates in the rest of Michigan, and rates of asthma hospitalizations within both Wayne and Washtenaw counties that are higher for Black children relative to white children. The commenters also raise concerns that ''the asthma burden in Detroit appears to be worsening'' and reference statistics showing that asthma rates for adults in Detroit increased from 15.5% in 2016 to 16.2% in 2021. In support of their comments, the commenters reference a peer-reviewed study from 2009 associating ozone exposure with health effects on adults with asthma in Atlanta. Additionally, the commenters contend that EPA has not followed the portion of Executive Order 12898 that calls for ''meaningful involvement'' from impacted communities beyond the minimum requirements for a rulemaking. The commenters further contend that EPA ''must also consider Title VI of the Civil Rights Act in evaluating the disproportionate consequences of prematurely approving'' the redesignation request. Commenters cite 40 CFR 7.35(b) to state that EGLE cannot use ''criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin''. Commenters then state that ''[g]iven the links between ozone pollution and asthma as well as the racial disparities regarding asthma burdens in Michigan, there is significant risk of EPA's decision violating Title VI's prohibition'' against administering programs in a manner that has a discriminatory effect. Commenters end this portion of the comments by stating, ''It's unclear how, if at all, EGLE or EPA accounted for the Title VI requirements and ensured compliance in regards to this proposal.''

Response: EPA is committed to the meaningful involvement and fair treatment of vulnerable populations disproportionately affected by pollution. EPA does not agree with all of the commenters' characterizations in this letter. EPA has considered both environmental justice and title VI of the Civil Rights Act in the context of this action, and an overview of EPA's considerations of both are described below. Further, EPA has complied with public notice and comment requirements for this action.

With regard to EPA's consideration of environmental justice, EPA is aware of the demographic data for the Detroit nonattainment area that is the subject of this final action. EPA acknowledges that the Detroit area includes communities that are pollution-burdened and underserved. As described above, EPA considered this information as it

[4] *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

[5] *https://campd.epa.gov/.*

[6] In 2014, heat input was 157,824,072 Metric Million British Thermal Units (MMBtu) and NO_X emissions were 8,296 tons. In 2021, heat input was 149,865,102 MMBtu and NO_X emissions were 4,544 tons.

pertains to actions being taken in this action, and further discussion on this consideration is below in this response.

Consistent with regulatory obligations associated with this action, EPA held a public notice and comment period for this action. In addition, EPA conducted related outreach with Detroit community members, advocacy groups, and local government officials, regarding air quality issues that have been identified as priorities by these stakeholders. In a meeting EPA held with representatives from the City of Detroit, Michigan Environmental Council, GLELC, Southwest Detroit Environmental Vision, and the Ecology Center regarding a separate regulatory action, following a presentation by EPA and a roundtable discussion with these stakeholders, EPA solicited opinions from these stakeholders regarding topics for future meetings.[7] EPA suggested three topics: permitting, enforcement and inspections, and ground-level ozone, which we explained included our proposed redesignation. Of those stakeholders who shared an opinion, all voiced interest in topics other than ozone, and no stakeholders indicated an interest in future engagement on ozone. Through community engagement, EPA took steps to understand different levels of public interest for different rulemakings that were impacting the Detroit, MI area on more than one topic around the same time (which was in addition to public notice and comment requirements).

In addition to communicating directly with stakeholders, EPA went beyond the obligations of notice-and-comment rulemaking by issuing a press release on the day the proposed redesignation was published in the **Federal Register**.[8] The press release was picked up by The Detroit News, one of the area's two major newspapers.[9] In its article, The Detroit News noted that EPA would be accepting public comments on the proposed redesignation. Additionally, on April 4, 2022, EPA extended the comment period on the proposed redesignation by 14 days, in response to a request from Sierra Club for additional time to ''fully review the basis for EPA's proposal and confer with local partners'' given Sierra Club's suggestion that the proposed action was a ''consequential decision impacting environmental justice communities.''

With regard to the comments concerning the demographics of the community and asthma burdens in the area, EPA considered a variety of relevant factors in its determination to propose approval of the Detroit area redesignation and maintenance plan. Importantly, the comment letter indicates that EPA is now ''prematurely'' approving the request for redesignation. As is explained throughout this action, this action is not premature. Rather, it is consistent with the applicable requirements of the CAA for an area to qualify for a redesignation. This redesignation request recognizes that the area has achieved a national ambient air quality standard and alters the designation of the area; however, applicable emission reduction measures remain in effect, as do contingency provisions in the maintenance plan now being approved that will be triggered if the area fails to continue to attain the standards. Additional information is provided below in this response to comment.

Further, under section 109 of the CAA, EPA sets primary, or health-based, NAAQS for all criteria pollutants to provide requisite protection of public health, including the health of at-risk populations, with an adequate margin of safety. It establishes secondary, or welfare-based, standards to provide requisite protection of public welfare from any known or anticipated adverse effects of the criteria pollutant in ambient air. In EPA's October 26, 2015, rulemaking strengthening the ozone NAAQS to the level of 0.070 ppm, we provided a detailed rationale for the Administrator's determination that the 2015 ozone NAAQS would be protective of public health (80 FR 65292). This rationale included explicit consideration of protection for people, including children, with asthma.

EPA considered commenters' concerns regarding asthma rates and considered that information in light of the action being finalized. As we explained in the October 26, 2015, rulemaking, asthma is a multi-etiologic disease, and air pollutants, including ozone, represent only one potential factor that may trigger an asthma exacerbation.

Importantly, as is explained throughout this action, if, following redesignation, there are increases in ozone that result in a violation of the 2015 ozone standard, the contingency provisions of the maintenance plan would trigger additional actions by EGLE.

In support of their comments, the commenters reference a peer-reviewed study from 2009 associating ozone exposure with health effects on adults with asthma in Atlanta.

As we noted in a Technical Support Document in the docket folder for the June 4, 2018, rulemaking designating the Detroit area as nonattainment for the 2015 ozone standard, the 2014–2016 design value for the area was 0.073 ppm (83 FR 25776). As noted above, the 2019–2021 design value is 0.070 ppm. The commenters do not clarify how the ozone levels in the area might be a primary cause or primary contributor to the increase in asthma rates they cite as occurring over that same period (between 2016 and 2021).

As discussed above, the entire Detroit area is attaining the 2015 ozone NAAQS, which EPA established to provide requisite protection of public health, including the health of at-risk populations, with an adequate margin of safety.

EPA also reviewed current and upcoming emission reduction measures that are anticipated to further mitigate pollution issues in the Detroit area. Existing Federal mobile source and point source emission reduction programs will result in ongoing NO_X and VOC emissions reductions in the Detroit area. For example, NO_X cap and trade programs such as CSAPR continue to achieve emissions reductions that are protective of human health regardless of whether EPA redesignates downwind areas for any NAAQS. In addition, the Federal Good Neighbor Plan for the 2015 ozone NAAQS is projected to achieve emissions reductions that will provide health benefits to populations living in proximity to covered facilities beginning in the 2023 ozone season. Further, Michigan has submitted a maintenance plan that projects continuing reductions in NO_X and VOC emissions through 2035 from the point, nonpoint, on-road, and nonroad categories, based on outputs from EPA's MOVES3 and 2016v2 modeling platforms.

In addition, EPA is now approving the contingency provisions in Michigan's maintenance plan for the Detroit area. As noted elsewhere in this rulemaking if the Detroit area were to violate the 2015 ozone NAAQS after redesignation, then Michigan would be required to correct the violation by expeditiously implementing the contingency provisions in its maintenance plan. EPA reviewed the contingency provisions submitted by EGLE, and found that many of these actions would benefit

[7] *See* Appendix A to May 11, 2023, memorandum entitled ''Memorandum to the Docket: Technical Support Document for the Detroit Redesignation to Attainment for the 2015 Ozone National Ambient Air Quality Standard'' (hereafter referred to as May 11, 2023, TSD).

[8] *https://www.epa.gov/newsreleases/epa-and-michigan-propose-detroit-now-meets-federal-air-quality-standard-ozone.*

[9] *https://www.detroitnews.com/story/news/environment/2022/03/14/pollution-reduction-prompts-epa-improve-metro-detroits-air-quality-rating/7041856001.*

pollution-burdened and underserved communities that may be located near heavily industrial areas (*i.e.,* fuel and diesel retrofit programs, which may have significant impacts around truck corridors and rail yards).

Turning to the issues raised regarding title VI of the Civil Rights Act of 1964 (title VI), EPA does not agree with commenters' characterization of potential concerns raised under title VI. Title VI prohibits discrimination by recipients of EPA financial assistance on the basis of race, color, or national origin. Under EPA's nondiscrimination regulations, which implement title VI and other civil rights laws,[10] recipients of EPA financial assistance are prohibited from taking actions in their programs or activities that are intentionally discriminatory and/or have an unjustified disparate impact.[11] Because EPA is not a recipient of Federal financial assistance, title VI does not apply to EPA itself. EPA carries out its mandate to ensure that recipients of EPA financial assistance comply with their nondiscrimination obligations by investigating administrative complaints filed with EPA alleging discrimination prohibited by title VI and the other civil rights laws; [12] initiating affirmative compliance reviews; [13] and providing technical assistance to recipients to assist them in meeting their title VI obligations. Importantly, compliance with the CAA does not constitute compliance with title VI.

As part of this redesignation, EPA is approving the maintenance plan for the area, including contingency provisions, which will be incorporated into the SIP. Title VI does apply to EGLE as a recipient of Federal financial assistance.

In the context of SIP actions, EPA has evaluated issues similar to the title VI comments through CAA section 110(a)(2)(E)(i). *See, e.g.,* 77 FR 65294 (October 26, 2012); 87 FR 60494 (October 5, 2022). EPA has previously acknowledged that it has not issued national guidance or regulations concerning implementation of section 110(a)(2)(E) as it pertains to consideration of title VI and disparate impacts on the basis of race, color, or national origin in the context of the SIP program. 87 FR at 60530. Such guidance is forthcoming and will address CAA section 110(a)(2)(E)'s necessary assurance requirements as they relate to title VI.

In the context of a SIP action, however, section 110(a)(2)(E) requires that a State provide ''necessary assurances'' that the SIP submission at issue would not result in violations of any State or Federal law. Thus, as the commenters suggest, a relevant inquiry for EPA in this rulemaking is whether the air agency has provided adequate necessary assurances that implementation of the content of the SIP submission at issue is not prohibited by title VI (*i.e.,* implementation of the SIP would not result in an unjustified adverse disparate impact on the basis of race, color, or national origin). *See, e.g.,* CAA section 110(a)(2)(E)(i).

This redesignation action, at its core, recognizes that an area is meeting the NAAQS and has all the required CAA measures in place, including the required maintenance plan with contingency provisions. The contingency provisions of the maintenance plan would require additional control measures in the event that a future design value for the area exceeds the level of the ozone standard, or if the fourth-highest monitored value, averaged over two years, is 0.071 ppm or higher.[14] In this action, the plan being finalized includes required contingency provisions (as was described above) as well as additional ozone related measures already approved into the SIP due to prior ozone standards (also described earlier in this action).

For all these reasons, there is no information to support a conclusion that EGLE's implementation of this SIP submittal, including the maintenance plan now being approved (including contingency provisions), would result in an unjustified disparate impact or is otherwise prohibited by title VI of the Civil Rights Act. Thus, EPA is not requiring any further necessary assurances at this time for purposes of compliance with section 110(a)(2)(E)(i).

D. Trend in Design Values

Comment: The commenters contend that EPA does not have sufficient data to determine that the 2021 emission reductions were part of a downward trend, as the fourth highest recorded concentration increased at all monitor locations except St. Clair County between the years of 2019 and 2020. As the 2018–2020 design values show nonattainment at half of the monitor locations in the area, the commenters contend that there is no reason to believe that the 2019–2021 design values will be representative of future ozone concentrations.

Response: Attainment of the 2015 ozone NAAQS, like the 1997 ozone NAAQS and 2008 ozone NAAQS before it, is measured by averaging the annual fourth-highest daily maximum 8-hour average concentrations over a 3-year period. In our rulemaking promulgating the 1997 ozone NAAQS, EPA noted the ''lack of year-to-year stability'' inherent to the prior 1979 ozone NAAQS, and determined that a form including a 3-year average would ''provide some insulation from the impacts of extreme meteorological events that are conducive to ozone formation.'' (62 FR 38856, July 18, 1997). Similarly, when EPA revised the NAAQS in 2008, we recognized ''that it is important to have a form that is stable and insulated from the impacts of extreme meteorological events that are conducive to ozone formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due of meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that EPA moved to a concentration-based form in 1997.'' (73 FR 16435, March 27, 2008). In our October 26, 2015, rulemaking which retained the form of the 1997 ozone NAAQS and 2008 ozone NAAQS but strengthened the NAAQS to the level of 0.070 ppm, EPA found that the three-year average ''provides an appropriate balance between public health protection and a stable target for implementing programs to improve air quality.'' We therefore observe that as a general matter, EPA designed the form of the 2015 ozone NAAQS to accommodate some year-to-year variation in ozone concentrations. The

[10] 40 CFR part 7 and part 5.

[11] 40 CFR 7.30 and 7.35.

[12] 40 CFR 7.120.

[13] 40 CFR 7.115.

[14] The list of potential contingency provisions is provided in EGLE's submittal dated January 3, 2022. They include: Adoption of or updating of VOC or NO_X Reasonable Available Control Technology (RACT) rules for existing sources covered by USEPA Control Technique Guidelines, Alternative Control Guidelines, or other appropriate guidance issued after the 1990 CAA, such as VOC RACT for increased methane leak monitoring and repair at oil and gas compressor stations, automobile and light-duty truck assembly coatings, miscellaneous metal and plastic parts coatings, paper, film, and foil coatings, miscellaneous industrial adhesives, or industrial cleaning solvents, or NO_X RACT for stationary internal combustion sources, utility boilers, process heaters, iron and steel mills, or glass manufacturing; Applying VOC RACT on existing smaller sources; Implementing alternative fuel and diesel retrofit programs for fleet vehicle Operations; Requiring VOC or NO_X control on new minor sources (less than 100 tons per year); Increasing the VOC or NO_X emission offsets for new and modified major sources; Reducing idling programs; Trip reduction programs; Traffic flow and transit improvements; Working with the Michigan Department of Licensing and Regulatory Affairs to encourage natural gas utilities to increase turnover of legacy distribution pipelines; Stationary engine controls to reduce formaldehyde and NO_X Emissions; Phase 2 AIM rules; Phase 5 Consumer Products rules; and additional measures as identified by EGLE.

design value is intended to be the simple average of the annual fourth-highest daily maximum 8-hour average concentrations over the 3-year period, with no special consideration given to any of those three years. When we structured the form of the 2015 ozone NAAQS, EPA created no requirement that for a monitor or an area to attain the standard, a downward trend must be observed within the 3-year period.

Over a longer period, however, EPA has observed a clear downward trend in ozone design values in the Detroit area. In evaluating the commenters' claims regarding trends in ozone concentrations, EPA reviewed past data from all monitors in the Detroit area. These data cover the period ending with the most recent design value period, which is 2020–2022, and starting with the design value period that was the basis of our nonattainment designation for the 1997 ozone NAAQS, which was 2001–2003 (69 FR 56697, September 22, 2004). The historic ozone design values for the seven-county Detroit area are summarized in Table 3. For each 3-year period, the design value is determined by the monitor or monitors with the highest 3-year averaged concentration. For all 3-year periods, the highest design value was observed at one or more of the following five monitors: Port Huron, East 7 Mile, New Haven, Allen Park, or Warren.

TABLE 3—3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS (OZONE DESIGN VALUES) FOR THE DETROIT AREA

3-Year period	Average fourth-highest daily maximum 8-hour ozone concentration (ppm)
2001–2003	0.097
2002–2004	0.092
2003–2005	0.090
2004–2006	0.082
2005–2007	0.086
2006–2008	0.082
2007–2009	0.080
2008–2010	0.075
2009–2011	0.078
2010–2012	0.081
2011–2013	0.077
2012–2014	0.074
2013–2015	0.072
2014–2016	0.073
2015–2017	0.073
2016–2018	0.074
2017–2019	0.072
2018–2020	0.071
2019–2021	0.070
2020–2022	0.070

As shown in Table 3, ozone design values in the Detroit area have declined significantly from 0.097 ppm in 2001–2003 to 0.070 ppm in 2019–2021, and 2020–2022. On this point, we agree with the commenters' statement that ''there is no doubt that, in general, ozone precursor emissions have decreased over the past two decades as noted by the studies and that, as a result, ozone concentrations have decreased.'' This decrease is clear across the overall time period presented in Table 3.

However, as also shown in Table 3, EPA has sometimes observed an increase in ozone design values, such as the increase from 0.073 ppm in 2015–2017 to 0.074 ppm in 2016–2018. In EPA's view, fluctuation in design values over a shorter period does not detract from the overall trend in air quality improvements over a longer period. On three occasions, at the 2004–2006, 2008–2010, and 2013–2015 3-year periods, the design value reached a new low, before experiencing an increase in the subsequent 3-year period. However, after each of these occasions, the design value returned to its low point within several years and did not exceed that low point for a second time. This is consistent with national decreasing trends in ozone concentrations which face some year-to-year variability in measured concentrations.[15] Interannual variability is expected even when there are longer-term downward trends driven by emissions reductions (Strode et al., 2015;[16] Simon et al., 2015[17]). This suggests that, despite variability within a 3-year period and occasionally across several 3-year periods, historic permanent and enforceable emissions reductions have been effective in reducing ozone concentrations in the area, and these reduced ozone concentrations have become more durable as the associated control programs have progressed through implementation. As we discuss below, if a future design value in the Detroit area exceeds the level of the 2015 ozone NAAQS, then implementation of Michigan's contingency provisions, combined with the ongoing implementation of State and Federal control measures documented in EGLE's maintenance plan, would be the appropriate remedy.

[15] *https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions.*

[16] Strode, S.A., Rodriguez, J.M., Logan, J.A., Cooper, O.R., Witte, J.C., Lamsal, L.N., Damon, M., Van Aartsen, B., Steenrod, S.D., and Strahan, S.E.: Trends and variability in surface ozone over the United States, J. Geophys. Res.-Atmos., 120, 9020–9042, *https://doi.org/10.1002/2014JD022784, 2015.*

[17] Heather Simon, Adam Reff, Benjamin Wells, Jia Xing, and Neil Frank, Ozone Trends Across the United States over a Period of Decreasing NO_X and VOC Emissions, Environmental Science & Technology, 2015 49(1), 186–195.

E. Timeline

Comment: The commenters suggest that EPA should wait until the end of the 2022 ozone season to act upon the redesignation request.

Response: EPA is finalizing this action after considering the additional year of monitoring data from 2022. In our separate rulemaking finalizing a

clean data determination for the Detroit area, EPA has found that the area continued to attain the standard for the 2020–2022 period, which is one year beyond the 2019–2021 period which is the basis of the State's redesignation request.

F. Meteorology

Comment: The commenters stated that EPA did not fully consider unusually favorable meteorological conditions as the cause for decreased ozone concentrations, since EPA relies on temperature studies done by EGLE and the Lake Michigan Air Directors Consortium (LADCO) that consider long-term ozone concentrations rather than concentrations during the design value years. Additionally, the commenters contend that although temperature is a large factor in the creation of ozone, there are other factors that should be considered. While factors besides temperature were considered for the LADCO study, they were only considered through 2019 and did not include 2020 or 2021, and the commenters stated that the higher 2021 humidity levels could have contributed to decreased ozone concentrations. Lastly, the commenters also claim that EPA did not account for ''how lower than average temperatures and fewer days above 80 degrees Fahrenheit have impacted ozone concentrations'' and that ''2019 appears to have been a year with exceptionally few high temperature days. In that year, there were only 76 days with a maximum temperature equal to or above 80 degrees Fahrenheit, which is the lowest total since 2009.'' Broadly, the commenters question if EGLE and EPA have appropriately considered whether temperature and other meteorological conditions, as opposed to emissions reductions, were the cause of lower ozone concentrations.

Response: The analyses of long-term meteorological trends including both Michigan's meteorological analysis and LADCO's classification and regression tree (CART) analysis helps to illustrate the cause for decreasing ozone concentrations over time in the Detroit area. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions show that while the Detroit area benefited from unconducive meteorology in 2019, the weather adjusted ozone trends show that meteorological conditions were more conducive than average in 2020. Thus, the area did not experience three consecutive years of unconducive meteorology in 2019–2021, therefore the meteorology for the 3-year period as a whole was not ''unusual''.[18]

Michigan's January 3, 2022, submittal presents LADCO's CART analysis for years 2005 through 2019, which evaluates 21 separate meteorological factors that can influence ozone formation in Detroit. This analysis ranks each variable by its relative importance. The most important factor in ozone formation in Detroit is Average PM Temperature, which is assigned a relative importance level of 1.000. Closely following Average PM Temperature are Max Daily Temperature, Max Apparent Temperature, and Average AM Temperature which are all assigned relatively high variable importance to ozone formation. The last of these four, Average AM Temperature, has a relative importance level of 0.9273. After this variable, there is a steep drop-off before arriving at the importance of the fifth variable, which is Average Wind South Vector with a relative importance level of 0.5763. In other words, the top four variables all relate to temperature, and these temperature variables are much more important than any other variable. As shown in LADCO's CART analysis for 2005 through 2019, temperature is the peak driving meteorological factor determining ozone formation in the Detroit area. Additionally, EPA's weather adjusted ozone trends, which go through 2021, also have daily max temperature as the most important variable at every site in the Detroit area. The next five are PM wind direction, AM wind speed, mid-day relative humidity and 24-hour transport direction, in varying orders of importance for individual ozone sites.

In evaluating the commenters' concerns that LADCO's CART analysis included data only through 2019, EPA reviewed a CART analysis which LADCO prepared more recently, and which analyzes data for 2005 through 2020. Inclusion of the more recent year does not support commenters' broader claims regarding meteorological impacts during the design value period. Rather, inclusion of the more recent year only reinforces the finding that variables relating to temperature are more important than any other meteorological variable in determining ozone formation in the Detroit area. In the newer analysis, LADCO evaluated a new variable, Average Apparent Temperature, which is grouped with the other four variables relating to temperature as the most important variables affecting ozone formation in Detroit, ahead of the variable for Average Wind South Vector and other less-important variables relating to factors such as precipitation and humidity.

Michigan's analysis for the years 2000–2021 considered temperature during the ozone season and its relationship with ozone concentrations. The State found that ozone concentrations declined over this period, even though temperatures increased over the same period. It is important to keep in mind that high ozone cannot form in the absence of precursor emissions. Michigan's finding is consistent with LADCO's CART analysis for the 2005–2019 period in the Detroit area, which shows that when the influence of meteorological variability is largely removed, ozone concentrations declined regardless, indicating that the downward trend in ozone levels is attributable to reductions in precursor emissions.

However, the commenters raise the concern that the State did not consider a wider breadth of meteorological factors besides temperature in 2020 and 2021. The commenters suggest that there may have been unanalyzed unusual meteorological conditions that might have affected ozone concentrations. The commenters state that there may have been higher levels of humidity in Detroit during the ozone season which may have depressed ozone formation in the area. To support this claim, the commenters present a graph of Hourly Humidity Comfort Levels Categorized by Dew Point for summers 2020 and 2021 in Detroit.[19] However, a presentation of dew point data does not illustrate anything useful about humidity levels, because dew point values are a function not only of humidity data but also of temperature data. In other words, a high dew point value may be caused by high temperatures, even if relative humidity is held constant. The commenters also fail to provide an analysis of humidity levels for previous years to back up their claim that humidity levels in 2020 and 2021 were unusual relative to historical levels. Regardless, meteorologically adjusted trends always show negative relationships between both relative humidity (RH) and ozone and dewpoint and ozone (meaning higher RH and dewpoint are associated with lower ozone), while temperature and ozone always have a positive relationship (higher temperature is associated with

[18] *https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions.*

[19] In the narrative section of their comment letter, the commenters include the incorrect chart for summer 2021. However, in a footnote, the commenters include a URL to the correct chart.

higher ozone). As explained above, other meteorological factors had a greater influence on Detroit ozone as evidenced by Michigan's, LADCO's and EPA's analyses.

EPA does not agree that we failed to provide significant evidence that the improvement in air quality is not attributed to unusual meteorological circumstances. EPA relied on Michigan's analysis and the LADCO CART analysis to conclude that air quality improvement has been a constant trend when meteorology is controlled for variance. The commenters have not presented any compelling evidence that the 2019–2021 design value period had unusual meteorology. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions corroborates these analyses.

As exhibited in LADCO's CART analysis, Detroit has seen decreasing ozone concentrations even when controlling for meteorological variance between 2005–2019. As presented in Michigan's analysis, ozone concentrations have been decreasing between 2000–2021 despite increasing temperatures in Detroit. This helps us conclude that the long-term trend of decreasing ozone concentrations can be attributed to decreases in ozone precursors and not because of meteorological factors. Additionally, EPA's Trends in Ozone Adjusted for Weather Conditions corroborates these analyses. EPA agrees with Michigan's conclusion that the air quality improvement in the Detroit area was caused by reductions in ozone precursors and not unusually favorable meteorological conditions.

G. Economic Conditions

Comment: The commenters contend that EPA's determination that improved air quality during 2019–2021 was caused by permanent and enforceable emissions reductions program has no basis because EPA did not fully evaluate whether decreased economic activity from the COVID–19 pandemic caused improved air quality in the Detroit area. The commenters suggest that effects of the COVID–19 pandemic on power plant emissions and automobile travel may be the likely cause of the reductions rather than the cited enforceable reduction measures. Specifically, the commenters raise concerns that reductions in vehicle miles traveled and emissions of ozone precursor emissions occurring in 2020 and 2021 were likely caused by the COVID–19 pandemic. The commenters conclude that EPA failed to consider an important aspect of the problem in not fully considering the impact of the pandemic in EPA's proposed rulemaking to redesignate the Detroit area to attainment of the 2015 ozone NAAQS.

Response: EPA recognizes the difficulties in assessing the impacts of the COVID–19 pandemic on ozone precursor emissions and ozone design values and the economic disparities from the COVID–19 pandemic, but we do not agree that the Detroit area's attainment is due to a temporary economic downturn associated with the COVID–19 pandemic. As discussed in the March 14, 2022, proposed rulemaking, we think that EGLE's submission and the rationale provided in EPA's proposal establishes that the area's attainment is due to the cited permanent and enforceable reductions and not temporary adverse economic conditions.

In their January 3, 2022, submittal, EGLE evaluated whether the improvement in air quality was caused by temporary adverse economic conditions, especially the economic conditions associated with the COVID–19 pandemic which first impacted Michigan in 2020. EGLE charted point source VOC and NO_X emissions in the Detroit area from 2012 to 2020. These two charts show the overall downward trend in point source emissions from 2012 to 2020. EGLE also evaluated both employment levels and VMT. While employment levels in the Detroit area were affected by COVID–19 and saw a 27 percent decrease in employment from March 2020 to April 2020, employment returned to 85 percent of March 2020 levels by June 2020, according to Bureau of Labor and Statistics (BLS) Quarterly Census of Employment and Wages.[20] Employment levels continued to increase through 2022, and as of March 2021 and March 2022, employment levels in the Detroit area were 93 and 99 percent of the employment in February 2020, before the onset of the COVID–19 pandemic, respectively. As noted by EGLE in their submission, the analysis performed by the Southeast Michigan Council of Governments (SEMCOG) indicated a reduction of less than 5 percent of VMT in 2020 based on their travel demand forecasting model.

Nevertheless, in response to this comment, EPA has performed additional analyses that further support our determination.

The commenters highlight nationally decreased power plant emissions during the COVID–19 pandemic recession beginning in 2020 and cite point source reductions that occurred from 2019 to 2020. EPA therefore analyzed total heat input from EGUs across the State of Michigan from 2018 to 2022 to investigate whether Detroit's attainment of the NAAQS during the 2020 ozone season could be attributable to economic effects from the COVID–19 pandemic.[21] Of the five years of data examined, our analysis found that April 2020 had the single lowest total monthly heat input for EGUs located in the seven Southeast Michigan counties in the Detroit area. This monthly value is correlated with the strongest economic effects that could be attributable to lockdown orders, declining employment figures, or decreases in vehicle miles traveled, as discussed later in this section. However, we note that the total monthly heat input at these power plants began rebounding in May 2020 and increased to an annual peak in July 2020. This pattern of monthly total heat inputs increasing from April onwards and peaking in July or August is consistent with annual trends over the five-year period for both EGUs in the seven-county Detroit area and across the State as a whole. The ozone monitoring season runs from March 1 to September 30 in Michigan, but the meteorology most conductive to conditions that could result in exceedances of the NAAQS typically occurs in summer months of May through July. EPA's analysis shows that while there was a pronounced effect on electricity production at EGU facilities in the Detroit area in April 2020, emissions activity from these sources increased in subsequent months following the same monthly patterns that were observed in 2018 and 2019. Moreover, we note similar annual patterns of EGU activity peaking in July or August continued again in 2021 and 2022. Therefore, EPA does not agree that economic effects of the COVID–19 pandemic on power plant emissions are responsible for the Detroit area's attainment of the NAAQS in 2020 or any year thereafter rather than the permanent and enforceable emissions reductions described in the notice of proposed redesignation.

In response to the commenters concerns that 2021 emissions were still impacted by the pandemic, EPA additionally examined emissions from EGUs in Michigan subject to the Cross-State Air Pollution Rule NO_X Annual Program, and found that there were similar annual NO_X emissions in 2021 relative to 2019, 31,743 tons per year (tpy) versus 31,123 tpy, respectively.[22]

[20] *See www.bls.gov/cew.*

[21] *See* Appendix B to May 11, 2023, TSD.

[22] *See* Appendix C to May 11, 2023, TSD.

EPA further evaluated coal consumption for electric power, which the commenters note was still lower in 2021 as compared to 2019 likely due to the pandemic. Calculations show that 2021 consumption was 97 percent of the level of coal consumption in 2019 in Michigan.[23] In May 2021, one of the largest coal-fired EGU facilities in the area, DTE River Rouge, permanently retired. The shutdown of this facility was estimated by EGLE to achieve annual reductions of 2,716 tons of NO_X.

EPA also analyzed the pandemic's impact on traffic in response to the commenters' assertion that automobile travel ''plunged'' in 2020 as a result of the pandemic, using data from StreetLight,[24] which is an on-demand mobility analytics platform that uses data from mobile devices. We found that traffic did decrease during the pandemic, but largely returned to pre-pandemic levels by the time of year that meteorological conditions are most conducive to ozone formation. As shown in the StreetLight data, the seven-county Detroit area experienced a drop in VMT during the period of the stay-at-home order, beginning March 23 and ending June 1. However, beginning in June 2020, VMT was comparable to VMT levels before the start of the pandemic.[25] This is significant because EPA has found that in the upper Midwest, the majority of ozone exceedances occur in late May though late July.[26] In addition, border crossing information, provided by SEMCOG, shows that heavy duty truck VMT remained near pre-pandemic levels in 2020. Given the many mobile source reduction measures in place in Michigan, EPA does not conclude that the reductions achieved are based on a brief period of decreased VMT in 2020 due to the COVID–19 pandemic.

Another important aspect of the economic changes that occurred during the COVID–19 pandemic in the Detroit area, which the commenters do not address, is that manufacturing processes in the Detroit area did not stop during the pandemic, but rather shifted towards new processes related to the pandemic. For example, the Oakland County Board of Commissioners appropriated over 300,000 dollars to six facilities to begin production on personal protection equipment (PPE) such as face masks and ventilator equipment.[27] Ford Motor Company and General Motors Corporation (GM) worked to reallocate their production to ventilators, which began training by April 2020. GM also began producing face masks by March 27, 2020 and worked with a local automation company to create an assembly line capable of producing 50,000 masks a day.[28] Several nonprofit groups worked to assist manufacturing facilities in shifting to production of surgical masks and gowns, such as the Industrial Sewing and Innovation Center (ISAIC), working with the City of Detroit, Michigan Economic Development Corporation, and others to establish efficient and automated production methods, noting that this effort was ''a way to keep people employed, and at the same time protecting people that are working on the front lines.'' [29] Carhartt worked with ISAIC, and offered one floor of their Detroit store to the nonprofit for factory space for this initiative, which received funding to produce 1 million surgical masks per month. These efforts speak to the rebounding of Detroit's employment rates post pandemic and highlight nonprofit work that drove much of the initiative to shift production. While the commenters highlight the highest single quarterly drop in Gross Domestic Product (GDP) of 31.4 percent in the second quarter of 2020, it is important to note the highest single quarterly increase in GDP in the third quarter of 2020, of 33.1 percent,[30] noted in the same report by the Congressional Research Service. Efforts such as those seen in Detroit have likely aided this rebound.

EPA does not agree that the Detroit area's attainment is due to a temporary economic downturn associated with the COVID–19 pandemic, but rather believes the Federally enforceable emission reduction measures were the main driving factor in the area coming into attainment.

H. Federal Control Programs

Comment: The commenters contend that EPA did not demonstrate that the Federal good neighbor rules and mobile source standards were key elements of the ozone reductions. The commenters assert that most of these rules were implemented and would have had emissions impacts prior to 2019, and even prior to 2018, and yet ozone concentrations increased in 2020 and most of the monitors in the area continued to be in nonattainment based on design values for the years 2018–2020. The commenters conclude that these facts undermine EPA's finding that the reduced ambient concentrations in 2019–2021 are in fact attributable to regulations that went into effect from 2004–2017. Additionally, the commenters contend that EPA relied on overall pollution reductions from the CSAPR Update, which covers areas that are downwind of the Detroit area. The commenters point out that EPA did not determine whether reductions in emissions specifically causing nonattainment in Southeast Michigan will occur, and that, because the CSAPR Update is a cap-and-trade program, facilities contributing to Detroit's ozone problem could comply with the rule by purchasing allowances, rather than reducing emissions. The commenters claim that ''reliance on these rules is illogical, incomplete, and fails to satisfy the requirements for redesignation.''

Response: Regarding EPA's mobile source standards, the commenters have incorrectly interpreted the timeline by which emissions reductions are achieved. The full benefit of these programs does not occur in the first year that a rule is effective, or even within the years that manufacturers must first begin manufacturing vehicles or engines in accordance with EPA's rules. These mobile source measures have resulted in, and continue to result in, large reductions in NO_X emissions over time due to fleet turnover (*i.e.,* the replacement of older vehicles that predate the standards with newer vehicles that meet the standards). Emissions reductions from these programs are modeled by EPA's 2016v2 platform and the MOVES3 mobile source emission modeling system, which we discuss below in greater detail. In our March 14, 2022, proposed rulemaking, in our discussions of Tier 3 motor vehicle emission standards as well as rules for heavy-duty diesel engines, nonroad diesel engines, large

[23] *See* Energy Information Administration, Coal Data Browser (Data Set: Total Consumption, Electric Power), *https://www.eia.gov/coal/data/browser/.*

[24] *See https://www.streetlightdata.com/.* EPA would not rely on StreetLight for the purpose of generating inventories, such as the inventories submitted by EGLE. However, this data source has a reasonable accuracy that is sufficient for the purpose of assessing claims made by the commenters regarding temporal changes in VMT during the COVID–19 pandemic. EPA believes this source of data is usable for this analysis in part because StreetLight data has very good performance when compared against traditional manual traffic counts, with an R^2 value of 0.9782. StreetLight has been utilized by many departments of transportation at the State and Federal level. *See https://www.streetlightdata.com/transportation-planning-case-studies/.*

[25] *See* Appendix D to May 11, 2023, TSD.

[26] *See* Appendix E to May 11, 2023, TSD.

[27] *See https://www.clickondetroit.com/news/local/2020/05/04/oakland-county-funds-manufacturers-to-switch-production-to-medical-equipment-protective-gear.*

[28] *See https://www.assemblymag.com/articles/95741-manufacturers-shift-to-ppe-production-to-fight-covid-19-pandemic.*

[29] *See https://www.modeldmedia.com/features/detroit-apparel-manufacturers-coalition.aspx.*

[30] *See* Congressional Research Service, Covid-19 and the U.S. Economy, *https://crsreports.congress.gov/product/pdf/R/R46606.*

spark-ignition engines, and marine diesel engines, we noted that some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles or engines are replaced with newer, compliant model years. It is incorrect that, by pointing out that the Detroit area did not attain the standard immediately upon promulgation or implementation of these rules, the commenters have demonstrated that it is ''illogical'' or ''incomplete'' for EPA to rely on these rules as permanent and enforceable emissions reductions as required by CAA section 107(d)(3)(E).

We also disagree that it was ''illogical,'' ''incomplete,'' or otherwise inappropriate for EPA to point to emissions reductions resulting from the Revised CSAPR Update as contributing to the Detroit area's attainment. First, we note that EPA did not only cite the Revised CSAPR Update; we also pointed to the historical and/or ongoing Federal programs such as the Clean Air Interstate Rule (CAIR), CSAPR, CSAPR Update, and Revised CSAPR Update, all of which addressed the interstate transport requirements of CAA section 110(a)(2)(D) and reduced ozone precursor emissions in the eastern United States over the relevant time period.

First, we note that multiple Federal Circuit Courts of Appeal have reviewed similar arguments challenging whether it is reasonable for EPA to rely upon regional interstate transport cap-and-trade programs as part of the cause of an area's attainment, and those courts have upheld EPA's reliance. *See Sierra Club* v. *EPA,* 774 F.3d 383 (7th Cir. 2014); *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015). Arguments raised in those cases were remarkably similar to commenters' contentions here: ''Sierra Club criticizes EPA's reliance on the NO_X SIP Call, because that program is aimed at reducing pollution in the region as a whole and permits the twenty-two affected states to purchase pollution 'allowances' from one another. Accordingly, Sierra Club believes that the effects on any one area in particular are not necessarily permanent and enforceable.'' *Sierra Club* v. *EPA,* 774 F.3d at 397. The Seventh Circuit noted that the overall structure of the trading program ensured a regional reduction in emissions, and that ''it is reasonable to rely on the program as one basis, among many, for concluding that reduced emissions levels will persist.'' *Id.* at 399. The Sixth Circuit similarly upheld challenges to EPA's reliance on interstate transport trading programs in a redesignation as one of the causes of an area's attainment. *Sierra Club* v. *EPA,* 793 F.3d at 665–68.

While commenters are correct that sources may comply with the Revised CSAPR Update by purchasing allowances rather than reducing emissions, the Revised CSAPR Update trading region (which includes Michigan and is currently comprised of 12 states in the eastern United States) is subject to an overall reduction in emissions via the State-level emissions budgets and assurance levels in that program. Commenters are not correct that EPA did not analyze whether reductions are and were required from states upwind of Michigan in the Revised CSAPR Update. While the Detroit area was not identified as having receptors in that rule, emission reductions required of Michigan and other states included in the Revised CSAPR Update will still result in air quality benefits in the Detroit area, due to the regional nature of ozone and ozone precursor transport.

Further, the control of ozone season NO_X emissions under the Good Neighbor Provision of the CAA will be continued and improved through the more recent final Good Neighbor Plan for the 2015 ozone NAAQS, which was signed on March 15, 2023.[31] This rule, as promulgated, is set to control ozone season NO_X emissions from power plants through a revised trading program beginning in 2023 and through emissions limits on certain other industrial sources beginning in 2026. The initial control stringency for power plants is based on the level of reductions achievable through immediately available measures, including consistently operating already-installed emissions controls. Power plant emissions budgets then decline over time based on the level of reductions achievable through phased installation of state-of-the-art emissions controls starting in 2024. The Good Neighbor Plan covers sources in Michigan, Ohio, Indiana, and Illinois, among other states. The final rule includes additional features to the trading program for power plants that promote consistent operation of emissions controls to enhance public health and environmental protection for the affected downwind regions and will also benefit local communities, including:

- A backstop daily emissions rate in the form of a 3-for-1 allowance surrender for emissions from large coal-fired units that exceed a protective daily NO_X emissions rate. This backstop would take effect in 2024 for units with existing controls and one year after installation for units installing new controls, but no later than 2030;
- Annually recalibrating the size of the emissions allowance bank to maintain strong long-term incentives to reduce NO_X pollution;
- Annually updating emissions budgets starting in 2030 to account for changes in power generation, including new retirements, new units, and changing operation. Updating budgets may start as early as 2026 if the updated budget amount is higher than the State emissions budgets established by the final rule for 2026–2029.

The commenters' concerns about prior NO_X cap and trade programs are misplaced, and these programs, up through the Revised CSAPR Update, can be counted on to deliver ozone air quality benefits. We continue to find it reasonable to rely on emissions reductions from these programs as one of the measures contributing to the attainment of this area. The more recent Good Neighbor Plan for the 2015 ozone NAAQS signed in March 2023 builds on these programs and will deliver continued assurance that permanent and enforceable emissions reductions providing air quality benefits to Detroit (among many other areas) will continue to be realized.

I. Maintenance Plan Contingency Provisions

Comment: The commenters contend that the contingency measure triggers in Michigan's maintenance plan are insufficient. The commenters conclude that the warning level response trigger of a 1-year 4th high daily maximum 8-hour average of 74 parts per billion (ppb) and the action level response trigger of a 4th high daily maximum 8-hour average monitoring value averaged over two years of 71 ppb or more are too lenient, and essentially meaningless given the current margin of attainment in the area. The commenters note that when considering current monitoring data, even a single monitoring value of 71 ppb in 2022 would result in a violation of the NAAQS and trigger a nonattainment designation.

Response: EPA disagrees with the commenters' contention that the contingency measure triggers are inadequate. Under the CAA, a violation of the NAAQS subsequent to redesignation to attainment does not trigger an automatic redesignation to nonattainment. As demonstrated by the contingency provisions requirement in section 175A(d), the CAA clearly anticipates and provides for situations where an area might monitor a violation

[31] *See https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs.*

of the NAAQS after having been redesignated to attainment. Section 175A(d) of the CAA states that in the event of a NAAQS violation after an area is redesignated to attainment a State is required to implement additional contingency provisions. Under this section of the CAA, states are not obligated to implement additional emission controls if an area is ''threatened'' with a future ozone standard violation. However, EPA does encourage the states to take preventative measures to prevent future ozone standard violations if at all possible, but does not definitively require the states to implement the identified contingency provisions unless a violation of the standard has actually occurred. *See* September 4, 1992, memorandum from John Calcagni entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memorandum) at 12. Michigan's commitment to respond to triggers of a 1-year 4th high daily maximum 8-hour average of 74 parts per billion (ppb) and a 4th high daily maximum 8-hour average monitoring value averaged over two years of 71 ppb or more in addition to responding to a violation of the 2015 ozone NAAQS goes beyond the minimum requirements of section 175A(d).

Comment: The commenters contend that the maintenance plan allows Michigan too much discretion in selecting and implementing contingency provisions, stating that the language does not commit Michigan to implementing any control measures and lacks specificity as to which measures should be implemented in response to different levels of increasing ozone pollution. The commenters further argue that the 18-month timeline allowed from the triggering event to implementation of a contingency measure is too long, stating that a nonattainment designation for the area would be finalized by the time a contingency measure is implemented.

Response: The commenters overlook the provisions of the CAA applicable to contingency provisions. Section 175A(d) provides that ''[e]ach plan revision submitted under this section shall contain such contingency provisions as the *Administrator deems necessary* to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.'' (emphasis added). Thus, Congress gave EPA discretion to evaluate and determine the contingency provisions EPA ''deems necessary'' to assure that the State will promptly correct any subsequent violation. EPA has long exercised this discretion in its rulemakings on section 175A contingency provisions in redesignation maintenance plans, allowing as contingency provisions commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation within 18 months of a violation complies with the requirements of section 175A. *See* past redesignations, *e.g.,* Columbus, OH 2015 ozone standard (84 FR 43508, August 21, 2019), Shoreline Sheboygan County, WI 2008 ozone standard (85 FR 41405, July 10, 2020), Columbus, OH, 2008 ozone standard (81 FR 93631, December 21, 2016), Cincinnati, OH-IN, 2008 ozone standard (81 FR 91035, December 16, 2016, and 82 FR 16940, April 7, 2017), Cleveland, OH 2008 ozone standard (82 FR 1603, January 6, 2017), St. Louis, MO-IL 2008 ozone standard (83 FR 8756, March 1, 2018), Chicago-Gary-Lake County, IL-IN 1997 ozone standard (75 FR 26113, May 11, 2010, and 77 FR 48062, August 13, 2012), Milwaukee-Racine, WI 1997 ozone standard (77 FR 45252, July 31, 2012), and Detroit-Ann Arbor, MI 1997 ozone standard (74 FR 30950, June 29, 2009).

Section 175A does not establish any specific deadlines for implementation of contingency provisions after redesignation to attainment. It also provides far more latitude than does section 172(c)(9), which applies to a different set of contingency measures applicable to nonattainment areas. Section 172(c)(9) contingency measures must ''take effect . . . without further action by the State or [EPA].'' By contrast, section 175A confers upon EPA the discretion to determine what constitutes adequate assurance, and thus permits EPA to take into account the need of a State to assess, adopt and implement contingency provisions if and when a violation occurs after an area's redesignation to attainment. Therefore, in accordance with the discretion accorded it by statute, EPA may allow reasonable time for states to analyze data and address the causes and appropriate means of remedying a violation. In assessing what ''promptly'' means in this context, EPA also may take into account time for adopting and implementation of the appropriate measure. *Cf. Greenbaum* v. *EPA,* 370 F.3d 527, 541 (6th Cir. 2004).

As discussed in the proposed rule at 87 FR 14218, EPA has determined that Michigan's maintenance plan comports with the requirements set forth at section 175A of the CAA. The contingency plan portion of Michigan's maintenance plan delineates the State's planned actions in the event of future 2015 ozone standard violations or increasing ozone levels threatening a subsequent violation of the ozone standard.

Michigan has developed a contingency plan with two levels of triggered actions. A warning level response is triggered if a 4th high daily maximum 8-hour average ozone concentration of 74 ppb or greater occurs within the maintenance area. If a warning level response is triggered, Michigan will conduct a study to determine whether the ozone value indicates a trend toward higher ozone values and 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. Michigan commits to implementing necessary controls within 18 months.

An action level response is triggered if: (1) a two-year average of the 4th high daily maximum 8-hour average ozone concentration at a monitor within the maintenance area is 71 ppb or greater; or (2) if a violation of the 2015 ozone NAAQS is monitored within the maintenance area. If an action level is triggered and is not found to be due to an exceptional event,[32] malfunction, or noncompliance with a permit condition or rule requirement,[33] Michigan will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS.

Michigan's contingency plan for the Detroit area lists a number of possible contingency provisions. The list of possible contingency provisions in Michigan's plan include the following: (1) VOC or NO_X RACT rules for existing sources covered by Control Technique Guidelines, Alternative Control Guidelines, or other appropriate

[32] Should Michigan believe an action level response was triggered by an exceptional event, Michigan would need to submit an exceptional event demonstration in accordance with EPA's Exceptional Events Rule codified at 40 CFR 50.1, 50.14, and 51.930. Should EPA concur with the demonstration, the event-affected air quality data would be excluded from the data set used for certain regulatory decisions. Removal of such data would affect the monitoring values used to determine whether an action level response was triggered. Should EPA non-concur on the exceptional event demonstration or should an action level response still be triggered after removal of the affected data, Michigan would be required to address the action level trigger with control measures sufficient to return the area to attainment of the 2015 NAAQS.

[33] Should Michigan find that an action level response is triggered by malfunction or noncompliance with a permit or rule requirement, enforcement action or other measures to ensure an expeditious return to compliance may constitute an appropriate response to the trigger. Note that depending on the circumstances of the trigger, the appropriate response may be a combination of compliance assurance and contingency provision implementation.

guidance; (2) application of VOC RACT on existing smaller sources; (3) alternative fuel and diesel retrofit programs for fleet vehicle operations; (4) VOC or NO_X control on new minor sources (less than 100 tons per year); (5) increased VOC or NO_X emission offsets for new and modified major sources; (6) reduced idling programs; (7) trip reduction programs; (8) traffic flow and transit improvements; (9) increased turnover of legacy natural gas distribution pipelines; (10) stationary engine controls to reduce formaldehyde and NO_X emissions; (11) phase 2 architectural and industrial maintenance coatings (AIM) rules; (12) phase 5 consumer products rules; and, (13) additional measures as identified by EGLE. EGLE may also consider the timing of an action level trigger and determine if additional, significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and will constitute the response.

Upon triggering an action level response, Michigan may find that choosing a contingency provision from the list included in the maintenance plan is not necessary because there are significant new regulations already adopted that will address the elevated ozone levels. This does not mean that Michigan would be choosing not to implement control measures in response to a triggering event. A State can choose as its contingency provision any adopted but not fully implemented control measure providing that it is not included in the calculation of the maintenance inventory. The emissions reductions from these programs are real, not considered in maintenance plan emissions projections, and can be achieved more quickly since the State has already gone through the adoption process. To prohibit a State from using any control measure adopted prior to the actual triggering of a maintenance plan contingency provision would only penalize states that are proactive in addressing anticipated air quality problems.

Michigan's maintenance plan calls for the appropriate contingency provisions to be implemented within 18 months of a triggering event. In order to properly deal with potential future ozone standard violations and to comply with its own internal rulemaking procedure requirements, Michigan requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency provisions. The commenters provided no rationale for why a time period shorter than 18 months to adopt and implement contingency provisions is warranted. EPA finds that 18 months, as described in Michigan's maintenance plan, is a reasonable time period for Michigan to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct a potential monitored violation. This timeframe also conforms with EPA's many prior rulemakings on acceptable schedules for implementing section 175A contingency provisions as noted above.

Comment: The commenters argue that the maintenance plan should address the possibility of a violation of the NAAQS by committing Michigan to an expedited nonattainment designation process if that occurs.

Response: Under the CAA, a violation of the NAAQS subsequent to redesignation to attainment does not trigger an automatic redesignation to nonattainment. As demonstrated by the contingency provisions required by section 175A(d), the CAA clearly anticipates and provides for situations where an area might monitor a violation of the NAAQS after having been redesignated to attainment, and leaves it to the Administrator to determine whether redesignation to nonattainment and a new nonattainment plan SIP submission is necessary in such cases. Michigan's maintenance plan also accounts for this possibility by including a violation of the NAAQS as an action level trigger requiring the implementation of control measures to reduce ozone precursor emissions and bring the area back into attainment. Finally, EPA retains its authority under CAA section 107(d)(3)(A) to initiate a redesignation ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' Given this underlying authority, and the uncertainty of any cause of a potential future violation, we do not agree that it is necessary or appropriate to include the suggested commitment in the State's maintenance plan.

J. Maintenance Plan Modeling Platform

Comment: The commenters argue that because EGLE's 2019 emissions inventory shows emissions lower than in EPA's Emissions Inventory System, the 2016v2 model that EGLE used may be underpredicting emissions, which would impact the future emissions projections.

Response: The commenters misunderstand how 2016v2 emissions data are being used in the context of this redesignation. Air emissions modeling platform development is the process of preparing emission inventories for use in air quality models. Air quality models typically require hourly, gridded emissions of specific pollutants. An emissions modeling platform (hereafter referred to as emissions platform or platform) is the full set of emissions inventories, other data files, software tools, and scripts that process the emissions into the form needed for air quality modeling. Each platform relies on a version of the NEI for most of its data, although some adjustments are made to support air quality modeling. The 2016v2 platform incorporates emissions based on: MOVES3, the 2017 NEI nonpoint inventory (both anthropogenic and biogenic), the Western Regional Air Partnership oil and gas inventory, and updated inventories for Canada and Mexico. The 2016v2 platform includes emissions for the years 2016, 2023, 2026, and 2032. Methodologies are documented in the technical support document for the 2016v2 platform. The commenters have articulated no specific problems with any of the 2016v2 platform emission inventories or with the methodologies used to develop them.

EPA policy, as set forth in the Calcagni memorandum, and longstanding practice allows states to demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and to demonstrate maintenance by showing that future emissions are projected to remain below this level for ten years following redesignation.

Following this policy, Michigan selected a 2019 emission inventory to represent attainment level VOC and NO_X emissions, which is appropriate because it is one of the years in the period used to demonstrate monitored attainment of the NAAQS. In developing the 2019 attainment inventory for the Detroit area, Michigan interpolated between the 2016 and 2023 2016v2 platform inventories for point, nonpoint and nonroad inventories. For on-road emissions estimates, SEMCOG used EPA's MOVES3 model to generate emissions with local travel inputs including vehicle population, VMT, speeds, road types, Vehicle Hours of Travel, and vehicle age, as well as meteorological data. To demonstrate maintenance through 2035, Michigan developed emission inventories for 2035 and an interim year of 2025. To estimate point, nonpoint and nonroad emissions, Michigan used 2016v2 platform inventories. Specifically, for the 2025 interim year, Michigan interpolated between 2023 and 2026 2016v2 platform inventories. For the maintenance year, Michigan extrapolated to 2035 using the

2026 and 2032 2016v2 platform inventories. For on-road emissions in 2025 and 2035 SEMCOG used EPA's MOVES3 model to generate emissions with local travel inputs as described above. When comparing emissions between attainment year 2019 and maintenance year 2035, VOC and NO_X emissions decrease by 34.88 TPSD and 99.55 TPSD, respectively. Michigan's maintenance demonstration clearly follows the process set forth in the Calcagni memorandum, showing that future emissions are projected to decrease and remain below the level of the attainment inventory. Again, the commenters articulated no specific problems with Michigan's maintenance plan inventories or methodologies and suggested nothing specific that should have been done to improve those inventories.

In questioning the validity of these inventories for demonstrating maintenance, the commenters pointed to EPA's review of point source emissions data submitted through EIS. The commenters mistakenly inferred that EPA found all the inventories Michigan submitted based on the 2016v2 platform to underestimate emissions in comparison to EIS data. This is not the case. In reviewing Michigan's submission, EPA only compared the interpolated point source inventories for 2019 submitted by EGLE against point source emissions information available to EPA through EIS. EPA converted annual emission totals to a value of tons per ozone season day using the same conversion factors calculated by EGLE. Michigan's interpolated inventory estimates 2019 NO_X and VOC point source emissions to be 97.01 tons per ozone season day and 13.74 tons per ozone season day, respectively. Using EIS reported point source data and conversion factors, EPA estimated 2019 NO_X and VOC point source emissions to be 102.27 tons per ozone season day and 29.42 tons per ozone season day, respectively. While EIS-based 2019 point source estimates differed from estimates based upon interpolation between 2016v2 platform years, Michigan's maintenance demonstration remains valid. Regardless of whether EGLE had chosen to use point source emissions from EIS or from the 2016v2 platform in compiling its inventory for the 2019 attainment year, projected emissions for 2025 and future years would be well below the attainment inventory, as is demonstrated in Tables 4 and 5. Further, beyond making the statement that ''the 2016v2 model may be underpredicting emissions,'' the commenters offer no substantive evidence to support this conclusion.

TABLE 4—DETROIT NO_X EMISSIONS FOR 2019 ATTAINMENT YEAR (WITH EIS AND 2016v2 POINT SOURCE EMISSIONS), 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

Category	2019		2025	2035	Net change (2019–2035)	
	EIS point source	2016v2 interpolated point source			EIS point source	2016v2 interpolated point source
Point	102.27	97.01	80.8	76.44	−25.83	−20.57
Nonpoint	27.98	27.98	27.39	25.84	−2.14	−2.14
On-road	105.80	105.80	61.20	40.30	−65.50	−65.50
Nonroad	22.51	22.51	17.49	15.17	−7.34	−7.34
Total	258.56	253.30	186.91	157.75	−100.81	−95.55

TABLE 5—DETROIT VOC EMISSIONS FOR 2019 ATTAINMENT YEAR (WITH EIS AND 2016v2 POINT SOURCE EMISSIONS), 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

Category	2019		2025	2035	Net change (2019–2035)	
	EIS point source	2016v2 interpolated point source			EIS point source	2016v2 interpolated point source
Point	29.42	13.74	14.1	14.12	−15.30	0.38
Nonpoint	134.77	134.77	134.12	133.11	−1.66	−1.66
On-road	51.70	51.70	34.40	22.00	−29.70	−29.70
Nonroad	30.46	30.46	27.39	26.56	−3.90	−3.90
Total	246.35	230.67	209.97	195.79	−50.56	−34.88

Michigan's maintenance plan projected that in 2035, the area would see an overall reduction in NO_X and VOC emissions of 95.55 and 34.88 TPSD, relative to the 2019 attainment inventory. More than half of these reductions are attributable to the on-road sector with projected decreases of 65.50 and 29.70 TPSD in NO_X and VOC, respectively. The on-road sector was not interpolated or extrapolated. It was run using EPA's MOVES3 model and area specific data, which was not called into question by the commenters. The difference between interpolating point source emissions for 2019 rather than using emissions reported through EIS does not change the fact that projected emissions for future years 2025 and 2035 are below the level of the attainment inventory.

Comment: The commenters contend that the 2016v2 emissions platform-based air quality model predictions of ozone concentration decreases through 2023 appear overly optimistic, as the majority of the reductions would need to occur in the next two years. The commenters contend that unrealistic

predictions by the air quality model render suspect Michigan's reliance on the 2016v2 emissions platform for its attainment projections and that EPA should explain how it can assure the improvements in air quality predicted by the air quality model.

Response: To clarify, Michigan and EPA are not relying on the air quality modeling's predictions (*i.e.,* the projected future design values) to meet the CAA's requirement that the maintenance plan provide for maintenance of the NAAQS for ten years following redesignation. Michigan only used the emissions inventories generated for the 2016v2 platform and is not relying on the results of the air quality model (*i.e.,* the modeled future design values that are estimated using the air quality modeling performed using that emissions platform). We do not agree that EPA has an obligation to assure the air quality model's predicted design values come to pass.

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), and 68 FR 25413, 25430–25432 (May 12, 2003). EPA policy and longstanding practice allows states to demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and to project maintenance by showing that future emissions are projected to remain below this level for the next ten years. *See* Calcagni memorandum. Holding emissions at or below the level of attainment is adequate to reasonably assure continued maintenance of the standard. See 65 FR 37879, 37888 (June 19, 2000).

Comment: The commenters also express concern that some of the regulatory actions assumed in the 2016v2 emissions platform may not be implemented in the event of a change in Administration, causing emissions to rise.

Response: As noted above, EPA's longstanding practice is to permit states to ''provide for the maintenance of the NAAQS'' as required by CAA 175A by comparing current attainment emission inventories with projected future inventories. Inherent in the act of projection is some uncertainty; in order to accurately project future year inventories, the Agency must make assumptions that cannot be made enforceable, such as expectations about population growth and energy demand. We would also note that, as commenters point out, even adopted, enforceable measures can be revised. For the 2016v2 emissions platform, future year emissions were projected from the 2016 base case either by running models to estimate future year emissions from specific types of sources or by adjusting the base year emissions according to the best estimate of changes expected to occur in the intervening years. Rules and specific legal obligations that go into effect in the intervening years, along with anticipated changes in activity of the sector (*e.g.,* source retirements) were incorporated when possible. Documentation of the specific methodologies used to develop future year emissions for the 2016 emissions platform can be found in the technical support document for the 2016v2 platform. EPA contends that the methods used to develop the 2016v2 emissions platform were appropriate and it was reasonable for Michigan to use those emissions in developing inventories for the Detroit maintenance plan.

K. Approval of Infrastructure SIP

Comment: The commenters state that EPA must find that the State ''has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D'' of the CAA, which the commenters allege includes having an approved infrastructure SIP pursuant to CAA section 110(a)(2). The commenters allege that EPA's approval of Michigan's infrastructure SIP for the 2015 ozone NAAQS was entered in error, due to an oversight in failing to review and respond to comments from Sierra Club. The commenters allege that ''unless and until EPA reissues an approval that properly considers and responds to this comment, EPA should not consider Michigan to have an approved ozone infrastructure SIP for the purposes of redesignation.''

Response: As we noted in our March 14, 2022, proposed rulemaking, SIP requirements that are not linked with the area's ozone designation and classification are not ''applicable'' measures to evaluate when reviewing a redesignation request for the area under CAA section 107(d)(3)(E)(ii) and (v). We noted that section 110(a)(2)(D) requirements, like many section 110(a)(2) requirements, continue to apply to a State regardless of the designation of any one particular area within the State, and thus 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 not connected to an area's ozone nonattainment designation 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 2015 ozone NAAQS. This approach is consistent with EPA's interpretation of the applicability of conformity requirements for purposes of CAA section 107(d)(3)(E)(ii) and (v), 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).

In any case, on May 19, 2022 (87 FR 30420), EPA published a final rulemaking which corrected the omission of timely comment and response in our September 28, 2021, rulemaking approving most elements and disapproving the visibility protection requirements of CAA section 110(a)(2)(D)(i)(II) prong 4.[34] EPA has reissued the approval in question after responding to comments on the proposal, addressing concerns with Michigan's satisfaction of CAA section 110(a)(2)(E)(i) with respect to adequate resources.

L. Enforcement Authority

Comment: The commenters dispute the commitment in Michigan's SIP stating that the State ''has the authority to implement the requested SIP revision . . . includ[ing] the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.'' The commenters assert that the State does not have the authority to enforce emission control measures that may be needed to correct future ozone problems. The commenters rely on a decision from the Michigan Court of Claims which invalidated a State administrative rule, Michigan Administrative Code (MAC) 336.1430 ('Rule 430'), on the basis that the rule failed the State Administrative Procedures Act ''general applicability''

[34] Michigan has a partially approved Regional Haze Plan and is subject to FIPs for St. Marys Cement, Escanaba Paper Company, and Tilden Mining, a taconite processing facility. *See* 81 FR 21671 (April 12, 2016) and 83 FR 25375 (July 2, 2018) for more information on the FIPs that apply to this area.

requirement because of its focus on one particular facility. The commenters assert that EPA has failed to address the court's holding or explain why the Agency believes Michigan will have sufficient authority to impose enforceable emissions limitations as may be necessary when a particular polluter refuses to limit pollution as needed to bring an area into attainment with the NAAQS in the event of future violations of the NAAQS that trigger contingency provisions. The commenters urge EPA to reexamine whether Michigan has adequate authority to implement its maintenance plan in light of *U.S. Steel Corp.* and to disapprove the plan if the Agency concludes that Michigan does not.

Response: We do not agree that the *U.S. Steel Corp.* decision indicates that Michigan does not have authority to implement and enforce its maintenance plan. The State listed the following contingency provisions in its maintenance plan for the Detroit area: (1) VOC or NO_X RACT rules for existing sources covered by Control Technique Guidelines, Alternative Control Guidelines, or other appropriate guidance; (2) application of VOC RACT on existing smaller sources; (3) alternative fuel and diesel retrofit programs for fleet vehicle operations; (4) VOC or NO_X control on new minor sources (less than 100 tons per year); (5) increased VOC or NO_X emission offsets for new and modified major sources; (6) reduced idling programs; (7) trip reduction programs; (8) traffic flow and transit improvements; (9) increased turnover of legacy natural gas distribution pipelines; (10) stationary engine controls to reduce formaldehyde and NO_X emissions; (11) phase 2 architectural and industrial maintenance coatings (AIM) rules; (12) phase 5 consumer products rules; and, (13) additional measures as identified by EGLE. Given the nature of these provisions, we think it unlikely that these measures are designed to apply only to a single source, like the State rule at issue in the *U.S. Steel Corp.* decision, which the court found clearly applied to only one entity and could conceivably apply to only one entity. To the extent that the commenters are asserting that EPA should disapprove the State's maintenance plan because the State may need to target emissions from one particular source in the event of a future violation, and the 2017 Court of Claims decision calls into question whether the State could do so, we anticipate that the State will adopt future measures consistent with the applicable procedural State law requirements at issue in *U.S. Steel Corp.* The State has provided in its maintenance plan for twelve contingency provisions that on their face appear to be generally applicable, and it would be unreasonable to disapprove the SIP submission based on a measure the State has not adopted, nor suggested it would adopt, on the speculation that such a measure might be necessary.

Moreover, we note that in our May 19, 2022, final rulemaking correcting the omission in the September 28, 2021, rulemaking, EPA published a substantive response to Sierra Club's comment regarding Michigan's authority to enforce control measures. 87 FR 30420. As we noted then, EPA disagrees with the commenters' concern that the Michigan Court of Claims decision in *United States Steel Corp.* v. *Dept. of Environmental Quality,* indicates that Michigan lacks legal authority to regulate sources. EPA concluded that the court only decided that the State had improperly sought to impose emissions controls on the sources at issue through a rule that did not meet State law requirements for a ''rule of general applicability'' in violation of relevant State administrative procedures act requirements. EPA interprets the ruling to indicate that the State does have authority under Michigan law to impose necessary emission limitations on sources, as required to meet CAA requirements, via other legal mechanisms. In our May 19, 2022, final rulemaking, EPA identified several authorities by which Michigan may enforce its SIP.

M. Prevention of Significant Deterioration (PSD) Program

Comment: The commenters argue that EGLE did not properly implement the preconstruction monitoring requirement for several sources subject to PSD New Source Review (NSR), and thus the commenters contend that CAA section 107(d)(3)(E)(v), which requires that EPA determine the State has met all applicable SIP requirements described in CAA section 110, is not satisfied. The commenters assert that CAA section 110 includes a requirement to include provisions for the proper implementation of programs including PSD NSR. The commenters acknowledge that Michigan has adopted provisions meeting CAA requirements regarding preconstruction monitoring requirements into its SIP, but the commenters allege that the State has failed to properly implement those requirements. Specifically, the commenters State that Michigan has failed to collect air quality data as required from sources with net emissions increases of 100 tpy or more of VOCs or NO_X. The commenters also call into question the validity of the significant monitoring concentrations for ozone established in 40 CFR part 51 and 40 CFR part 52 based on a D.C. Circuit decision regarding Significant Monitoring Concentrations (SMCs) for particulate matter, and they state that the ozone SMCs are unlawful and must be vacated.

Response: CAA section 107(d)(3)(E)(v) states that EPA may not promulgate a redesignation of a nonattainment area to attainment unless ''the State containing such area has met all requirements applicable to the area under section 7410 [*i.e.,* section 110] of this title and Part D of this subchapter.'' Section 110, as it pertains to obligations for states, sets forth the required contents of the revisions to a State's implementation plan that must be adopted and submitted to EPA after the promulgation of a NAAQS. EPA therefore understands its role in determining whether CAA section 107(d)(3)(E)(v) is satisfied to be an inquiry into whether a State has adopted and submitted to EPA all those revisions to its SIP that are required by section 110 and part D. In this case, Michigan has met its obligations to submit those requirements applicable to it for purposes of redesignation.

As we noted in the March 14, 2022, proposed rulemaking, EPA fully approved Michigan's PSD program on March 25, 2010 (75 FR 14352), and most recently approved revisions to Michigan's PSD program on May 12, 2021 (86 FR 25954). The SIP-approved PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. *See* MAC R 336.2811.

We do not agree with the commenter that a State's implementation of its SIP is equivalent to whether the State has met the requirements of CAA section 110 and part D, which concern whether a State has made required revisions to its SIP. Any issues with respect to the State's application of the approved SIP are beyond the scope of this action and should be raised on a permit specific basis.

Similarly, comments regarding the lawfulness of EPA's PSD regulations pertaining to ozone at 40 CFR 51.166(i)(5)(i)(f) or 40 CFR 52.21(i)(5)(i)(f) are outside the scope of this action.

N. Supplemental Comments

Comment: In their March 14, 2023, supplemental comment, commenters contend that EPA cannot redesignate the

Detroit area until EPA has approved RACT and reasonably available control measures (RACM) for the area. Commenters note that under section 107(d)(3)(E), EPA cannot redesignate an area unless (among other things) ''the State containing such area has met all requirements applicable to the area under section [110] and part D of [title I of the Act].'' Effective March 1, 2023, EPA reclassified the Detroit ozone nonattainment area as Moderate. This triggered a requirement under sections 182(b)(2) and 182(f) of the CAA for Michigan to implement RACT for sources of VOCs and NO_X. The commenters, citing *Sierra Club* v. *U.S. EPA,* 793 F.3d 656 (6th Cir. 2015), contend that section 172(c)(1) of the CAA requires Michigan to implement RACM, regardless of whether the area is attaining the NAAQS.

The Commenters further contest EPA's position that, for purposes of redesignation ''all requirements applicable to the area'' are those that were due prior to the State's submittal of a complete redesignation request. The commenters cite the decision in *Sierra Club* v. *U.S. EPA* for the proposition that EPA does not have discretion to reinterpret the CAA's unambiguous requirement that nonattainment plans for areas in the Moderate category or worse must include RACT/RACM requirements. The commenters state, ''Just as EPA cannot excise [RACT/RACM] from the statutory requirement that a State meet 'all' requirements applicable to the area, EPA cannot create a wholesale exception to the State's requirement to meet 'all' requirements applicable to a moderate area based on the timing of the State's redesignation submission.'' The commenters assert that EPA's approach is contrary to the plain meaning of section 107(d)(3)(E)(v) that ''all'' means all. The commenters argue that the structure and purpose of the CAA confirm their interpretation, claiming that EPA's interpretation gives states an incentive to submit redesignation requests early, regardless of whether the State qualifies at the time of submission, in order to evade future requirements.

The commenters also contend that ''section 107(d)(3)(E) applies not only to redesignation requests from a State, but also to EPA's redesignation on its own initiative under section 107(d)(3)(A). Given this, EPA cannot explain why the submittal date of a redesignation request should have any relevance to section 107(d)(3)(E)(v)'s requirements.''

Response: Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas. 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. Detroit was designated as nonattainment and classified as Marginal for the 2015 ozone NAAQS, effective August 3, 2018. As provided in subpart 2, for Marginal ozone nonattainment areas such as the Detroit area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and RACM under section 172(c)(1), reasonable further progress under section 172(c)(2), and contingency measures under section 172(c)(9).

The only RACT provision applicable to ozone areas classified as Marginal is contained in CAA section 182(a)(2)(A), which requires states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Detroit area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and, in any case, Michigan complied with this requirement for the Detroit area under the prior 1-hour ozone NAAQS.[35] With respect to RACM, areas classified as Marginal are not required to perform a RACM analysis. This is clearly stated in the 2008 Ozone NAAQS SIP Requirements Rule, ''Note that a RACM analysis is not required for Marginal nonattainment areas since an attainment demonstration is not required for those areas.'' [36] EPA retained this approach in the Implementation Rule for the 2015 ozone NAAQS, based on the rationale and approach articulated in the final 2008 Ozone NAAQS SIP Requirements Rule.[37]

The Detroit area was reclassified as Moderate under the 2015 ozone NAAQS effective March 1, 2023.[38] As a Moderate area, Detroit became subject to the RACT provisions of CAA section 182(b)(2) and RACM requirements associated with the attainment demonstration. These moderate RACT and RACM plans became due March 1, 2023.

CAA section 107(d)(3)(E)(v) provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless, among other things, ''the State containing such area has met all requirements applicable to the area under section 7410 of this title and Part D of this subchapter.'' Since the CAA was amended in 1990, EPA has consistently interpreted the term ''applicable'' in this provision not to include those section 110 and part D requirements that came due after the submittal of a complete redesignation request. *See* Calcagni memorandum at 4. Specifically, the Calcagni memorandum explains that ''When evaluating a redesignation request, Regions should not consider whether the State has met requirements that come due under the CAA after submittal of a complete redesignation request'' but that per CAA section 175A(c), the requirements of part D remain in force and effect for the area until such time as it is redesignated. *Id.,* n.3. *See* also Michael Shapiro Memorandum, September 17, 1993.

As EPA has explained in actions applying this interpretation over the past 30 years, reading the CAA in this way balances the reasonable expectations of a requesting State and the timing the CAA provides for EPA to act on State submissions. *See, e.g.,* 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor for the 1979 1-hour ozone NAAQS). Per CAA section 107(d)(3)(D), EPA must approve or deny a State's request for redesignation within 18 months of receipt of a complete redesignation submittal. With respect to SIP submittals addressing applicable CAA section 110 and part D requirements, CAA section 110(k)(2) requires EPA to act on such submissions within 12 months of a determination that the submission is complete (*i.e.,* maximum 18 months from submission, given the maximum time frame provided under CAA section 110(k) for statutorily deeming a submission complete). In order for EPA to approve a redesignation request, per the requirements of CAA section 107(d)(3)(E)(ii) it needs to have fully approved (per 110(k)) the ''applicable'' implementation plan, which again is defined by the ''applicable'' requirements for redesignation as set forth in CAA section 107(d)(3)(D)(v). Therefore, if EPA were to read the CAA as commenters suggest, by withholding any approval of a redesignation until the State made submissions for deadlines

[35] *See* 60 FR 46182 (September 7, 1994).

[36] 80 FR 12264, 12271 (March 6, 2015).

[37] 83 FR 62998, 63007–63008 (December 6, 2018).

[38] 88 FR 6633 (February 1, 2023).

occurring after the original date of submittal, and until EPA had acted on those submissions, the State might never be able to have the area redesignated. Each CAA requirement coming due during the pendency of EPA's review of a redesignation request carries with it a necessary implication that EPA must also fully approve the SIP submission made to satisfy that requirement in order for the area to be redesignated. We do not think it is a reasonable reading of the CAA to require states to make additional SIP submissions on which EPA would need to fully act before it could act on the redesignation request before it; such an interpretation would almost necessarily delay action on the redesignation request beyond the 18-month time frame. EPA's interpretation in no way obviates the ongoing obligation of states to continue to comply with requirements coming due after the submission of the redesignation request. It simply means that areas may be redesignated even though the State may not have complied with those requirements. *See* 60 FR at 12466.

Reviewing courts have upheld EPA's interpretation that requirements coming due after a complete redesignation request is submitted are not ''applicable'' for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding the redesignation of St. Louis based on the timing of submittal and deadline of requirements, even though by the time EPA acted on the State's redesignation it had been reclassified to a higher classification and was subject to more stringent SIP requirements, 68 FR 25418, 25424–27 (May 12, 2003)).

EPA disagrees with the commenters' assertion that this longstanding approach is contrary to the plain meaning of section 107(d)(3)(E)(v). Commenters emphasize that ''all means all'' but in doing so, they excise ''applicable'' from CAA section 107(d)(3)(E)(v). States must meet ''all requirements applicable,'' and EPA's 30-year interpretation of that phrase is that not every requirement is necessarily applicable for purposes of evaluating a redesignation request. EPA further disagrees with the commenters' assertion that this longstanding interpretation is inconsistent with the Sixth Circuit Court's decision in *Sierra Club* v. *U.S. EPA,* 793 F.3d 656 (2015). In that case, the CAA section 172(c)(1) RACT/RACM requirements at issue had come due prior to submission of a complete redesignation request. Moreover, even in the 2015 *Sierra Club* decision, the 6th Circuit acknowledged that it had previously held that CAA section 107(d)(3)(E)(v) ''could be read to 'limit the number of actual requirements within [CAA section 110] and Part D that apply to a given area,' '' quoting *Wall* v. *EPA,* 265 F.3d 426, 439 (2001), and noting that it had deferred to the Agency's view that part D transportation conformity requirements were not ''requirements applicable to the area'' under CAA section 107(d)(3)(E)(v). *Sierra Club* v. *EPA,* 793 F.3d at 669.

When Michigan submitted the redesignation request, on January 3, 2022, the Detroit area was classified as Marginal. As a Marginal area, Detroit had no applicable RACT or RACM requirements. The RACT and RACM requirements triggered by the reclassification of the Detroit area as Moderate did not become due until March 1, 2023, well after Michigan submitted a complete redesignation request for the Detroit area. Thus, per EPA's interpretation provided above, the Moderate RACT and RACM requirements are not ''requirements applicable to the area'' for purposes of CAA section 107(d)(3)(E)(v), and EPA is not barred from approving the redesignation in the absence of the State having met those requirements. EPA determined that Michigan's redesignation request was complete for purposes of redesignation because at the time it was submitted the Detroit area was attaining the 2015 ozone NAAQS and Michigan had submitted all applicable SIP requirements for purposes of redesignation. The redesignation request continues to be complete because the area has not violated the NAAQS since the redesignation request was submitted. Contrary to what was implied by the commenters, the State did not submit the redesignation request before the area qualified for redesignation. Had Michigan failed to submit all SIP requirements applicable for redesignation or failed to demonstrate that the Detroit area was attaining the NAAQS, the submission would not have been considered complete for purposes of redesignation. Hence there is no incentive for states to submit a redesignation request before an area qualifies for redesignation.

Finally, we do not agree that commenters' observations that CAA section 107(d)(3)(E) applies also to redesignations initiated by EPA under CAA section 107(d)(3)(A) is relevant to which requirements should be considered ''applicable'' for purposes of CAA section 107(d)(3)(E)(v). The CAA contemplates that EPA-initiated redesignations under subsection (A) will be followed by response and submission from the State. *See* CAA section 107(d)(3)(B) and (C). While subsection (C) contemplates that the Administrator can promulgate some redesignations even in the absence of a State submission, other requirements in CAA section 107(d)(3)(E) suggest that states must play a key role for redesignations from nonattainment to attainment; in particular, the requirement under CAA section 107(d)(3)(E)(iv) that a maintenance plan be fully approved, because such plan would need to be prepared and submitted by a State. Other redesignations, such as redesignations from attainment or unclassifiable to nonattainment, are not subject to CAA section 107(d)(3)(E), and can therefore be promulgated without any submission from the State, as suggested by CAA section 107(d)(3)(C).

Comment: In their March 14, 2023, supplemental comment, commenters raise several additional issues. First, commenters contend that EPA's redesignation action was ''constructively reopened for comment'' given commenters' contention that EPA ''did not finalize its proposed redesignation based on the 2019–2021 data'' and 2022 monitoring data is ''a critical component of the 2020–2022 design value.'' Second, commenters reference EGLE's January 3, 2023, exceptional events demonstration for the East 7 Mile monitor, and state that ''they do not believe EGLE has adequately supported its exceptional event demonstration to meet the high evidentiary standard required to exclude the maximum daily 8-hour ozone average.'' The commenters suggest instead that ozone concentrations at the monitor may be affected by the Stellantis auto assembly complex. Third, commenters reference the requirement at CAA section 107(d)(E)(3)(iii) that EGLE must demonstrate that improvement in air quality is due to permanent and enforceable reductions in emissions, and claim that EGLE must complete such an analysis for 2022. Lastly, commenters reference Executive Order 12898, and claim that finalizing this redesignation without providing an opportunity for public comment on 2022 data would violate EPA policy regarding providing fair treatment and meaningful involvement of all people. Commenters also claim the weight-of-evidence analysis underlying EPA's concurrence determination on an exceptional events demonstration is ''inherently biased against environmental justice communities.''

Response: Many of the commenters' contentions are based on a misunderstanding of EPA's consideration of 2022 data within this

final action. EPA is finalizing our March 14, 2022, proposed approval of EGLE's January 3, 2022, request to redesignate the Detroit area based on attaining monitoring data for 2019–2021, and EPA's determination that the area meets all other requirements for redesignation at CAA section 107(d)(3)(E). As noted above, EPA's determination under CAA section 107(d)(3)(E)(i) also relies on our final action on EPA's concurrence of a January 26, 2023, demonstration submitted by EGLE, as well as preliminary monitoring data, which together show the area has continued to attain the standard subsequent to the 2019–2021 period. Contrary to the commenters' contention that EGLE must demonstrate that attainment in 2020–2022 was due to permanent and enforceable measures, EPA's determination under CAA section 107(d)(3)(E)(iii) is based only on the 2019–2021 period. EPA also disagrees that the redesignation action was ''constructively reopened for comment'' given that EPA's determination is based on the 2019–2021 period and continued attainment since that period, and not based on the 2020–2022 design value.

Although this redesignation is related to EPA's Clean Data Determination based on 2020 to 2022 data, regarding the data set used for regulatory purposes, EPA clearly and properly proposed that action and responded to public comments in that final rulemaking. Further, EPA conducted extensive public outreach during that public comment period, including notification of interest groups before publication of the proposed action in the **Federal Register**, creation of a public-facing website including fact sheets, and translation of materials into Arabic and Spanish.[39] EPA disagrees that further public involvement is required in order for EPA to take final action. Public notice and opportunity to comment were provided consistent with applicable requirements, and further information about additional engagement is offered earlier in this RTC.

Regarding commenters' claims that the weight-of-evidence approach of an exceptional events demonstration is ''inherently biased against environmental justice communities,'' the claim that EGLE's demonstration did not ''meet the high evidentiary standard,'' or the claim that emissions may be affected by the Stellantis facility, EPA already addressed substantially similar comments in a separate final rulemaking, and these comments have no further relevance to this action.

[39] *https://www.epa.gov/mi/detroit-clean-data-determination-2015-ozone-air-quality-standard.*

V. Final Actions

EPA is determining that the Detroit nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is also approving, as a revision to the Michigan SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. EPA is also determining that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Detroit area from nonattainment to attainment for the 2015 ozone NAAQS. Finally, EPA is finding adequate and approving the newly established 2025 and 2035 motor vehicle emissions budgets. Specifically, EPA is finding adequate and approving the budgets for 2025 (*i.e.,* an interim year) and 2035 (*i.e.,* the last year of the maintenance plan) as proposed. The 2025 budgets are 47.86 TPSD of VOCs and 104.35 TPSD of NO_X and the 2035 budgets are 44.67 TPSD of VOCs and 102.41 TPSD of NO_X including the assigned safety margins.

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

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment NSR permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive PSD permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

VI. 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.

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866, 13563 (76 FR 3821, January 21, 2011), and 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in

UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it approves a State action implementing a Federal standard.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. Demographic data identifies that the Detroit area includes communities that are pollution-burdened and underserved. Further, EPA performed a screening-level analysis using EPA's EJSCREEN to identify environmental burdens and susceptible populations in communities in the Detroit area.

EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. While EPA recognizes the importance of assessing impacts of our actions on potentially overburdened communities, approval of Michigan's redesignation request for the 2015 ozone NAAQS would not exacerbate existing pollution exposure or burdens for populations in the Detroit area.

As discussed in the Environmental Justice Considerations section and Response to Comments section of this preamble, there is no information to support a conclusion that EGLE's implementation of its 2015 ozone SIP, including the maintenance plan now being approved (including contingency measures) would result in a disparate impact on minority populations (people of color and/or Indigenous peoples) and low-income populations.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: May 12, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended under ''Maintenance Plans'' by adding an entry for ''Ozone (8-Hour, 2015)'' before the entry for ''Particulate matter'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* *	* *	*	*	*
Maintenance Plans				
Ozone (8-Hour, 2015)	Detroit area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	1/3/2022	5/19/2023, [INSERT **FEDERAL REGISTER** CITATION].	
* *	* *	*	*	*

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. Section 81.323 is amended by revising the entry for ''Detroit, MI'' in the table entitled ''Michigan-2015 8-Hour Ozone NAAQS [Primary and Secondary]'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* *	* *	*	*	*
Detroit, MI Livingston County. Macomb County. Monroe County. Oakland County. St Clair County. Washtenaw County. Wayne County. .	May 19, 2023	Attainment.		

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

[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2023–10563 Filed 5–18–23; 8:45 am]

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