



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0254; FRL-9926-00-Region 8]

Determinations of Attainment of the 1997 Annual Fine Particulate Matter Standards for the Libby, Montana Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make two separate and independent determinations regarding the Libby, Montana nonattainment area for the 1997 annual fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). First, EPA is proposing to determine that the Libby nonattainment area attained the 1997 annual PM_{2.5} NAAQS by the applicable attainment date, April 2010. This proposed determination is based on quality-assured and certified ambient air quality data for the 2007-2009 monitoring period. Second, EPA is proposing that the Libby nonattainment area has continued to attain the 1997 annual PM_{2.5} NAAQS, based on quality-assured and certified ambient air quality data for the 2012-2014 monitoring period. Based on the second determination, EPA also proposes to suspend certain nonattainment area planning obligations. These determinations do not constitute a redesignation to attainment. The Libby nonattainment area will remain designated nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA determines that the

Libby nonattainment area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. These proposed actions are being taken under the CAA.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2014-0254, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: ostigaard.crystal@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2014-0254.

EPA's policy is that all comments received will be included in the public docket without change

and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop

Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or

section number.

- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The PM_{2.5} NAAQS

On July 18, 1997 (62 FR 38652), EPA established a health-based PM_{2.5} NAAQS at 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations (“the 1997 annual PM_{2.5} NAAQS” or “the 1997 annual standard”). At that time, EPA also established a 24-hour standard of 65 $\mu\text{g}/\text{m}^3$ (the “1997 24-hour standard”). *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS at 15 $\mu\text{g}/\text{m}^3$ based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a 24-hour standard of 35 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations (the “2006 24-hour standard”).

On January 15, 2013 (78 FR 3086), EPA lowered the primary annual PM_{2.5} NAAQS

from 15.0 to 12.0 $\mu\text{g}/\text{m}^3$. EPA retained the 2006 24-hour $\text{PM}_{2.5}$ NAAQS, and the 1997 secondary annual $\text{PM}_{2.5}$ NAAQS. EPA also retained the existing standards for coarse particulate pollution (PM_{10}). This rulemaking action proposes determinations solely for the 1997 annual $\text{PM}_{2.5}$ standard. It does not address the 1997 or 2006 24-hour $\text{PM}_{2.5}$ standards or the 2012 $\text{PM}_{2.5}$ annual NAAQS.

B. The Libby Nonattainment Area

On January 5, 2005 (70 FR 944), EPA promulgated our air quality designations for the 1997 $\text{PM}_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001-2003. These designations became effective on April 5, 2005. The Libby nonattainment area is comprised of the City of Libby within Lincoln County. *See* 40 CFR 81.327.

In response, the State of Montana submitted State Implementation Plan (SIP) revisions on June 26, 2006 and March 26, 2008 intended to meet planning requirements for the Libby nonattainment area. In particular, based on section 172(a)(2)(A) of the CAA and the April 5, 2005 effective date of designation as nonattainment, the attainment plan identified April 2010 as the applicable attainment date.¹ The state's attainment plan accordingly showed attainment by that date.

On September 14, 2010 (75 FR 55713), EPA proposed to approve Montana's attainment plan. EPA proposed this action in accordance with the "Final Clean Air Fine Particle Implementation Rule," 72 FR 20586 (Apr. 25, 2007), which EPA issued to assist states in their

¹ Under CAA section 172(a)(2)(A), the attainment date for a nonattainment area is "the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the date such area was designated nonattainment," except that EPA may extend the attainment date as appropriate "for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures."

development of SIPs to meet the Act's attainment planning requirements for the 1997 PM_{2.5} NAAQS. We received no adverse comments on our proposal, which we finalized on March 17, 2011 (76 FR 14584).

III. Summary of Proposed Action

EPA is proposing two separate and independent determinations regarding the Libby nonattainment area. First, pursuant to section 188(b)(2) of the CAA, EPA is proposing to make a determination that the Libby nonattainment area attained the 1997 annual PM_{2.5} NAAQS by the area's attainment date, April 2010. This proposed determination is based upon quality-assured and certified ambient air monitoring data for the 2007-2009 monitoring period that shows the area has monitored attainment of the 1997 PM_{2.5} annual NAAQS for that period.

EPA is also proposing to make a determination that the Libby nonattainment area continues to attain the 1997 annual PM_{2.5} NAAQS. This proposed "clean data" determination is based upon quality-assured and certified ambient air monitoring data that shows the area has monitored attainment of the 1997 PM_{2.5} NAAQS for the 2012-2014 monitoring period. If EPA finalizes this determination, any remaining requirements for the Libby nonattainment area under subpart 4, part D, title I of the CAA regarding an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures related to attainment of the 1997 annual PM_{2.5} NAAQS shall be suspended for so long as the area continues to attain the NAAQS.²

IV. EPA's Analysis of the Relevant Air Quality Data

² Even if these requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted by the State to EPA for review and approval.

The Montana Department of Environmental Quality (MDEQ) submitted quality-assured air quality monitoring data into the EPA Air Quality System (AQS) database for 2007-2009 and subsequently certified that data. EPA's evaluation of this data shows that the Libby nonattainment area had attained the 1997 annual PM_{2.5} NAAQS by April 2010. Additionally, the data set from the three most recent years, 2012-2014 (which is also quality-assured and certified), shows that the Libby nonattainment area continues to attain the 1997 annual PM_{2.5} NAAQS. The data is summarized in Tables 1 and 2 below. Additional information on the air quality data found in AQS for the Libby nonattainment area can be found in the docket for this action.

The criteria for determining if an area is attaining the 1997 annual PM_{2.5} NAAQS are set out in 40 CFR 50.13 and 40 CFR part 50, Appendix N. The 1997 annual PM_{2.5} primary and secondary standards are met when the annual design value is less than or equal to 15.0 µg/m³. Three years of valid annual means are required to produce a valid annual standard design value. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

This proposed determination of attainment for the Libby nonattainment area is based on EPA's evaluation of quality-controlled, quality-assured, and certified annual PM_{2.5} air quality data for the 2007-2009 and 2012-2014 monitoring periods. There is one PM_{2.5} monitor in the Libby nonattainment area (AQS Site ID 30-053-0018). This monitor had complete data for all

quarters in the years 2007 through 2014, except for one calendar quarter in 2011.³ The monitoring data and calculated design values for the Libby nonattainment area are summarized in Table 1 for the 2007-2009 monitoring period and in Table 2 for the 2012-2014 monitoring period.

Table 1. 2007-2009 Libby Nonattainment Area Annual PM_{2.5} Monitoring Data and Completeness

Location	Site ID	Annual Mean			2007-2009 Design Value (µg/m ³)	Complete Quarters			Complete Data?
		2007	2008	2009		2007	2008	2009	
City of Libby	30-053-0018	13.0	12.9	10.7	12.2	4	4	4	Yes

Table 2. 2012-2014 Libby Nonattainment Area Annual PM_{2.5} Monitoring Data and Completeness

Location	Site ID	Annual Mean			2012-2014 Design Value (µg/m ³)	Complete Quarters			Complete Data?
		2012	2013	2014		2012	2013	2014	
City of Libby	30-053-0018	11.3	10.9	9.3	10.5	4	4	4	Yes

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the PM_{2.5} ambient air monitoring data for the monitoring periods 2007-2009 and 2012-2014 for the Libby nonattainment area, as recorded in the AQS database. On the basis of that review, EPA proposes to determine that the Libby nonattainment area (1) attained the 1997 annual PM_{2.5} NAAQS by the attainment date, based on data for the 2007-2009 monitoring period, and (2) continued to attain during the 2012-2014 monitoring period.

V. Effect of Proposed Determinations of Attainment for 1997 PM_{2.5} NAAQS Under

³ The Libby nonattainment area monitor had less than complete data capture in 2011, due to quality assurance issues.

Subpart 4 of Part D of Title I of the CAA (Subpart 4)

This section and section VI of EPA's proposal addresses the effects of a final clean data determination and a final determination of attainment by the attainment date for the Libby nonattainment area. For the 1997 annual PM_{2.5} standard, EPA's "Final Clean Air Fine Particle Implementation Rule," 72 FR 20586 (Apr. 25, 2007), embodied EPA's "Clean Data Policy" interpretation under subpart 1 of Part D of Title I of the CAA (subpart 1). As promulgated by the rule, the provisions of 40 CFR 51.004 set forth the effects of a determination of attainment for the 1997 PM_{2.5} standard.

On January 4, 2013, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule, 73 FR 28321 (May 16, 2008) (collectively, "1997 PM_{2.5} Implementation Rule" or "Implementation Rule"). The Court found that EPA erred in implementing the 1997 PM_{2.5} NAAQS pursuant solely to the general implementation provisions of subpart 1, part D, title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4. The Court remanded EPA's Implementation Rule for further proceedings consistent with the Court's decision.

In light of the Court's decision and its remand of the Implementation Rule, EPA finalized the "Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) and 2006 PM_{2.5} NAAQS" on June 2, 2014 (79 FR 31566), ("PM_{2.5} Classification and Deadline Rule"). This rulemaking classified the Libby nonattainment

area as “Moderate” for the 1997 annual PM_{2.5} NAAQS. Under section 188 of the CAA, all areas designated nonattainment under subpart 4 would initially be classified by operation of law as “Moderate” nonattainment areas, and would remain Moderate nonattainment areas unless and until EPA reclassifies the area as a “Serious” nonattainment area or redesignates the area to attainment. Accordingly, it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to Moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to Moderate nonattainment areas and include an attainment demonstration (section 189(a)(1)(B)); provisions for RACM (section 189(a)(1)(C)); and quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

As set forth in more detail below, under EPA’s Clean Data Policy interpretation, a determination that the area has attained the standard suspends the state’s obligation to submit attainment-related planning requirements of subpart 4 (and the applicable provisions of subpart 1) for so long as the area continues to attain the standard. These include requirements to submit an attainment demonstration, RFP, RACM, and contingency measures, because the purpose of these provisions is to help reach attainment, a goal which has already been achieved.

A. Background on Clean Data Policy

Over the past two decades, EPA has consistently applied its Clean Data Policy interpretation to attainment-related provisions of subparts 1, 2, and 4. The Clean Data Policy is the subject of several EPA memoranda and regulations. In addition, numerous individual rulemakings published in the **Federal Register** have applied the interpretation to a spectrum of NAAQS, including the 1-hour and 1997 ozone, PM₁₀, PM_{2.5}, carbon monoxide (CO) and lead

(Pb) standards. The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in EPA's 1997 8-Hour Ozone Implementation Rule, 40 CFR 51.918.⁴ *NRDC v. EPA*, 571 F. 3d 1245 (D.C. Cir. 2009). Other U.S. Circuit Courts of Appeals that have considered and reviewed EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying EPA's interpretation. *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion); *Latino Issues Forum, v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. Mar. 2, 2009) (memorandum opinion).

As noted above, EPA incorporated its Clean Data Policy interpretation in both its 8-Hour Ozone Implementation Rule and in its PM_{2.5} Implementation Rule. While the D.C. Circuit, in its January 4, 2013 decision, remanded the 1997 PM_{2.5} Implementation Rule, the Court did not address the merits of that portion of the rule, nor cast doubt on EPA's existing interpretation of the statutory provisions.

However, in light of the Court's decision, EPA's Clean Data Policy interpretation under subpart 4 is set forth here, for the purpose of identifying the effects of a determination of attainment for the 1997 annual PM_{2.5} standard for the Libby nonattainment area. EPA has previously articulated its Clean Data interpretation under subpart 4 in implementing the PM₁₀ standard. *See, e.g.*, 75 FR 27944 (May 19, 2010) (determination of attainment of the PM₁₀ standard in Coso Junction, California); 71 FR 6352 (Feb. 8, 2006) (Ajo, Arizona Area); 71 FR 13021 (Mar. 14, 2006) (Yuma, Arizona Area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia Area); 71 FR 44920 (Aug. 8, 2006) (Rillito, Arizona Area); 71 FR 63642 (Oct. 30,

⁴ "EPA's Final Rule to implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2 (Phase 2 Final Rule)" (70 FR 71612, 71645-46; November 29, 2005).

2006) (San Joaquin Valley, California Area); 72 FR 14422 (Mar. 28, 2007) (Miami, Arizona Area); 75 FR 27944 (May 19, 2010) (Coso Junction, California Area). Thus, EPA has repeatedly established that, under subpart 4, an attainment determination suspends the obligations to submit an attainment demonstration, RACM, RFP, contingency measures, and other measures related to attainment.

B. Application of the Clean Data Policy to Attainment-Related Provisions of Subpart 4

In EPA's proposed and final rulemaking actions determining that the San Joaquin Valley nonattainment area attained the PM₁₀ standard, EPA set forth at length its rationale for applying the Clean Data Policy to PM₁₀ under subpart 4. The Ninth Circuit upheld EPA's final rulemaking, and specifically EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. Mar. 2, 2009) (memorandum opinion). In rejecting the petitioner's challenge to the Clean Data Policy under subpart 4 for PM₁₀, the Ninth Circuit stated, "As the EPA explained, if an area is in compliance with PM₁₀ standards, then further progress for the purpose of ensuring attainment is not necessary."

The general requirements of subpart 1 apply in conjunction with the more specific requirements of subpart 4, to the extent they are not superseded or subsumed by the subpart 4 requirements. Subpart 1 contains general air quality planning requirements for areas designated as nonattainment. *See* section 172(c). Subpart 4, itself, contains specific planning and scheduling requirements for PM₁₀ nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for PM_{2.5} nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for

nonattainment areas. *See*, “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (Apr. 16, 1992) (the “General Preamble”). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM₁₀ requirements.” *Id.* at 13538. These subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

EPA has long interpreted the provisions of subpart 1 (section 171 and 172) as not requiring the submission of RFP for an area already attaining the ozone NAAQS. For an area that is attaining, showing that the state will make RFP towards attainment “will, therefore, have no meaning at that point.” General Preamble, 57 FR 13564. *See also* 71 FR 40952 (July 19, 2006) and 71 FR 63642 (October 30, 2006) (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 (March 23, 2010) and 75 FR 27944 (May 19, 2010) (proposed and final determination of attainment for Coso Junction).

Section 189(c)(1) of subpart 4 states that:

“Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section [section 171(1)] of this title, toward attainment by the applicable date.”

With respect to RFP, section 171(1) states that, for purposes of part D, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this

part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.” Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM₁₀ areas of section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date.

Although section 189(c) states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show RFP “toward attainment by the applicable attainment date,” as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, EPA noted with respect to section 189(c) that the purpose of the milestone requirement “is to ‘provide for emission reductions adequate to achieve the standards by the applicable attainment date’ (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990)).” 57 FR 13539. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.⁵

⁵ Thus, EPA believes that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is “redesignated attainment,” as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the “attainment date,” since section 189(c)(1) defines RFP by reference to section 171(1) of the CAA. The reference to section 171(1) clarifies

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

“Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration...that the milestone has been met.”

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. This is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 EPA memorandum from John S. Seitz, “Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for the Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” (the “1995 Seitz memorandum”) with respect to the requirements of section 182(b) and (c). In the 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

“Inasmuch as each of these requirements is linked with the attainment demonstration or

that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required “for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” 42 U.S.C. 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.” *See*, 1995 Seitz memorandum at page 5.

With respect to the attainment demonstration requirements of section 172(c) and section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for “a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date...” As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, and the section 182(b) and (c) requirements set forth in the 1995 Seitz memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” 57 FR 13564.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9). EPA has interpreted the contingency measure requirements of sections 172(c)(9)⁶ as no longer applying when an area has attained the standard because those “contingency measures are directed at ensuring RFP and attainment by the applicable date.” 57 FR 13564; 1995 Seitz memorandum, pp. 5-6.

Section 172(c)(9) provides that SIPs in nonattainment areas:

⁶ And section 182(c)(9) for ozone.

“...shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].”

The contingency measure requirement is inextricably tied to the RFP and attainment demonstration requirements. Contingency measures are implemented if RFP targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: “The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.” *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

Both sections 172(c)(1) and 189(a)(1)(C) require “provisions to assure that reasonably available control measures” (i.e., RACM) are implemented in a nonattainment area. The General Preamble, (57 FR 13560; April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a “component” of an area’s attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to RFP or to attainment. General Preamble, 57 FR 13498. Thus, where an area is already attaining the standard, no

additional RACM measures are required.⁷ EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

The suspension of the obligations to submit SIP revisions concerning these RFP, attainment demonstration, RACM, contingency measure and other related requirements exists only for as long as the area continues to monitor attainment of the standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. In that case, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only if and when EPA redesignates the area to attainment would the area be relieved of these submission obligations. Attainment determinations under the Clean Data Policy do not shield an area from obligations unrelated to attainment in the area, such as provisions to address pollution transport.

As set forth previously, based on our proposed determination that the Libby nonattainment area is currently attaining the 1997 annual PM_{2.5} NAAQS, EPA proposes to find that any remaining obligations under subpart 4 to submit planning provisions to meet the requirements for an attainment demonstration, RFP plans, RACM, and contingency measures are suspended for so long as the area continues to monitor attainment of the 1997 annual PM_{2.5} NAAQS. If in the future, EPA determines after notice-and-comment rulemaking that the area

⁷ EPA's interpretation that the statute requires implementation only of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit, *Sierra Club v. EPA*, 314 F.3d 735, 743-745 (5th Cir. 2002), and the United States Court of Appeals for the D.C. Circuit, *Sierra Club v. EPA*, 294 F.3d 155, 162-163 (D.C. Cir. 2002).

again violates the 1997 annual PM_{2.5} NAAQS, the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure obligations would no longer exist.

VI. Determination of Attainment by the Attainment Date

As discussed in the Background section, on March 17, 2011 EPA approved April 2010 as the applicable attainment date for the Libby nonattainment area.⁸ Consistent with the D.C. Circuit's 2013 decision and its remand of the Implementation Rule, on June 2, 2014 (79 FR 31566), EPA published a final rule classifying all areas currently designated nonattainment for the 1997 and/or 2006 PM_{2.5} standards as Moderate under subpart 4. EPA also established a deadline of December 31, 2014 for states to submit attainment-related and nonattainment new source review SIP elements required for these areas under subpart 4. This rulemaking did not affect any action that EPA had previously taken under section 110(k) of the Act on a SIP for a PM_{2.5} nonattainment area. Accordingly, EPA's March 17, 2011 approval of the April 2010 attainment date for the Libby nonattainment area remains in effect. Based on monitoring data from 2007-2009, EPA is proposing to determine that the Libby nonattainment area attained the 1997 annual PM_{2.5} NAAQS by that attainment date. If we finalize this proposal, this will discharge EPA's obligation under CAA section 188(b)(2) to determine whether the area attained the standard by the applicable attainment date.

VII. Proposed Action

Pursuant to section 188(b)(2) of the CAA, EPA is proposing to determine that the Libby nonattainment area has attained the 1997 annual PM_{2.5} NAAQS by the area's attainment date, April 2010. Separately and independently, EPA is proposing to determine, based on the most

⁸ EPA's approval did not specifically identify the fifth of April as the attainment date. Regardless of the specific day in April, the monitoring data from the 2007-2009 period shows attainment by April 2010.

recent three years of quality-assured and certified data meeting the requirements of 40 CFR part 50, Appendix N, that the Libby nonattainment area is currently attaining the 1997 annual PM_{2.5} NAAQS. In conjunction with and based upon our proposed determination that the Libby nonattainment area has attained and is currently attaining the standard, EPA proposes to determine that any remaining obligations under subpart 4, part D, title I of the CAA to submit the following attainment-related planning requirements are not applicable for so long as the area continues to attain the PM_{2.5} standard: an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), and the RFP provisions of section 189(c). This proposed rulemaking action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3). These proposed determinations are based upon quality-assured and quality certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual PM_{2.5} NAAQS for the 2007-2009 and 2012-2014 monitoring periods.

VIII. Statutory and Executive Orders Review

This rulemaking action proposes to make determinations of attainment based on air quality data, and would, if finalized, result in the suspension of certain federal requirements and would not impose additional requirements beyond those imposed by state law. For that reason, these proposed determinations of attainment:

- are not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 25, 2015.

Shaun L. McGrath,
Regional Administrator.
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