

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2021–0003; FRL–10454–02–R8]

Air Approval and Promulgation of Implementation Plans; Montana; Libby 1997 Annual PM_{2.5} Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, the Environmental Protection Agency (EPA or Agency) is taking three separate but related actions. First, EPA is finalizing its determination that the Libby fine particulate matter (PM_{2.5}) nonattainment area (Libby Area) is attaining the 1997 Annual PM_{2.5} national ambient air quality standards (NAAQS or standard) based on 2014–2021 data. Secondly, EPA is finalizing approval of Montana’s plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan). Lastly, the EPA is finalizing approval of the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS, submitted by the State of Montana on June 24, 2020. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on August 23, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R08–OAR–2021–0003. All documents in the docket are listed on the www.regulations.gov website. Although listed in the docket, some information may not be publicly available, e.g., 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 through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means EPA.

I. Background

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for PM_{2.5}. The Agency established the primary and secondary Annual and 24-hour standards for PM_{2.5}. The annual standard was set at 15.0 micrograms per meter cubed (µg/m³) based on a 3-year average of Annual mean PM_{2.5} concentrations, and the 24-hour (daily) standard was set to 65 µg/m³ based on the 3-year average of the annual 98th percentile values of 24-hour PM_{2.5} concentrations at each population-orientated monitor within an area.

On December 14, 2012, EPA promulgated the 2012 PM_{2.5} NAAQS, including a revision of the Annual standard to 12.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations. The Agency maintained the 24-hour standard of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (see 78 FR 3086; January 15, 2013).

Subsequent to promulgation of the NAAQS, EPA issued the “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” (“PM_{2.5} SIP Requirements Rule”) (see 81 FR 58010; August 24, 2016). This rule interprets the Act’s nonattainment area requirements as they pertain to implementation of any of the PM_{2.5} NAAQS. The PM_{2.5} SIP Requirements Rule also addressed the revocation of the 1997 PM_{2.5} NAAQS for all areas. For the Libby Area, revocation of the 1997 PM_{2.5} NAAQS will occur upon the effective date of this action, i.e., after EPA has approved a maintenance plan and issued a redesignation for the 1997 PM_{2.5} NAAQS (see 81 FR 58010; August 24, 2016).

On March 17, 2011 (76 FR 14854), EPA approved Montana’s attainment plan which included an attainment demonstration, an analysis of reasonable available control technology/reasonable available control measure (RACT/RACM), base-year, and projection year inventories, and contingency measures for the 1997 PM_{2.5} NAAQS for the Libby Area. On July 14, 2015 (80 FR 40911), EPA finalized its determination that the Libby Area attained the 1997 Annual PM_{2.5} NAAQS by the Area’s statutory attainment date of December 31, 2011. The determination was based upon quality-assured and certified ambient monitoring data for the 2007–2009 monitoring period that demonstrated that the Libby area attained the 1997 Annual PM_{2.5} NAAQS by the attainment date. In the same rulemaking, EPA also issued a clean data determination under

the Agency’s Clean Data Policy based upon quality-assured and certified ambient air monitoring data that demonstrated that the Libby area continued to attain the 1997 Annual PM_{2.5} NAAQS based on the 2011–2014 monitoring data.

On June 24, 2020, the State of Montana requested that EPA redesignate the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS and submitted an associated SIP revision containing a limited maintenance plan (LMP) for the EPA to review. On December 5, 2022, the EPA issued a notice of proposed rulemaking to approve Montana’s request to approve Montana’s request to redesignate the Libby PM_{2.5} nonattainment area to attainment for the 1997 Annual PM_{2.5} standard, as well as proposing to approve Montana’s plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan).¹ The proposed rulemaking set forth the basis for determining that Montana’s redesignation request meets the CAA requirements for redesignation for the 1997 Annual PM_{2.5} standard. Our proposed rulemaking also described how Montana had provided for continued maintenance of the 1997 Annual PM_{2.5} NAAQS in accordance with EPA’s guidance for LMPs, and contained analysis of the complete, quality-assured, and certified air quality monitoring data for the Libby nonattainment area for 2014–2021.

The EPA’s proposed action provided a 30-day public comment period. During this period, we received two comments. The first comment was in support of the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS. The second comment was adverse. Our response to the adverse comment is below. The comments have been added to the docket (EPA–R08–OAR–2021–0003) for this action and are accessible at www.regulations.gov.

II. Response to Comments

Comment: The commenter alleged that if EPA did not include a requirement to phase out or ban wood burning as part of the “SIP/FIP” that the redesignation of the area to attainment would prove “worthless.” The commenter cited a review by Northeast States for Coordinated Air Use Management (NESAUM) which the commenter claims shows that “wood stoves pollute more than EPA says.” As a result, the commenter argued that the continued presence of wood stoves would be a liability to the Libby Area’s attainment of the NAAQS. Finally, commenter noted that “there is no safe

¹ See 87 FR 74577.

level of air pollution, which the NAAQS do not reflect.”

Response: We recognize that wood stoves have been a major contributor of PM_{2.5} pollution for the Libby Area, but we disagree that a phase out or ban of wood burning is a prerequisite before EPA may redesignate the Libby Area.

The CAA establishes that EPA may not redesignate an area to attainment unless (1) the area has attained the NAAQS in question, (2) EPA has fully approved the applicable implementation plan for the area, (3) the improvement in air quality is due to permanent and enforceable reductions in emissions, (4) EPA has fully approved a maintenance plan for the area meeting CAA section 175A, and (5) the state containing such area has met all CAA section 110 and Part D applicable requirements. As EPA explained in the proposal, Montana has met all these requirements. To the extent that commenter is arguing that these requirements are not met absent a ban or phaseout of wood burning in the Libby Area, we do not agree.

In its submission,² Montana acknowledged that wood combustion accounts for the majority of PM_{2.5} concentrations in the Libby nonattainment area based on the state’s 2005 baseline inventory analysis. In the proposed rulemaking, we explained how Montana’s approved Moderate nonattainment plan included permanent and enforceable rules from the Lincoln County Air Pollution Control Program that went into effect February 27th, 2006³ and that addressed emissions from solid fuel burning devices which means any fireplace, fireplace insert, wood stove, pellet stove, pellet furnace, wood burning heater, wood-fired boiler, wood or coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking, or heating purposes which has a rated capacity of less than 1,000,000 BTU’s per hour. We also explained in our proposal that the State has demonstrated that the area’s improved air quality is largely attributed to the emission reductions required by the Lincoln County residential wood combustion rules. Subchapter 2: Solid Fuel Burning Device Regulations which went into effect January 1, 2007, discusses the operating and emission limits restrictions for the Libby Area. Section 75.1.204 states that no person may install or operate any type of solid fuel burning device without a valid

Operating Permit issued by the Department. Section 75.1.205 states prior to installing or operating a solid fuel burning device in any residential or commercial property, a person shall apply to the Department for the permit and provide certain criteria of information. Section 75.1.206 discusses Air Pollution Alerts and states the Department may declare an Air Pollution Alert to be in effect whenever ambient PM concentrations, as averaged over a four-hour period, exceed a level 20 percent below any state or federal ambient 24-hour standard established for particulate matter; and when scientific and meteorological data indicate the average concentrations will remain at or above those levels over the next 24 hours.

Additionally, in the absence of an Air Pollution Alert, no person operating a solid fuel burning device may cause or allow the discharge of visible emissions greater than twenty percent opacity. During an Air Pollution Alert, no person operating a solid fuel burning device that is permitted for use during an Alert, may cause or allow the discharge of visible emissions greater than 10 percent opacity. No person may operate a standard catalytic or non-catalytic solid fuel burning device during an Air Pollution Alert.

There are conditions for burning that are enforceable in Subchapter 4: Outdoor Burning Regulations. Furthermore, the Lincoln County Air Pollution Control Program rules state that unless prohibited by section 75.1.104(2)(d), and within 60 days of notification from the Department or EPA, the Department shall implement the following contingency measures to reduce emissions from a source(s) identified as a contributor:

(a) If residential wood burning is determined to be a contributing source, the Department shall implement section 75.1.208.

(b) If re-entrained dust is determined to be a contributing source, the Department shall implement section 75.1.307.

(c) If industrial facility emissions are determined to be a contributing source, the Department shall initiate contingency measures to reduce emissions.

(d) The Department shall address failure to attain NAAQS or to make reasonable further progress in reducing emissions attributable to natural events or impacts generating activities occurring outside state or local jurisdictional control according to EPA policy while initiating interim contingency measures at the local level.

(e) If no emission source(s) can be identified as a contributor, the Department shall conduct a comprehensive review, including chemical and microscopic filter analysis. Until such time as the review and analyses have been completed, the Department shall implement at least one of the above contingency measures on an interim basis. Any selected interim contingency measure(s) shall remain in effect until the Department completes a comprehensive review and determines whether a permanent contingency measure is necessary.

Based on our proposed rulemaking, we analyzed the PM_{2.5} One-year Annual Mean Concentrations for the Libby Area from 2014–2021 which are all below the 1997 PM_{2.5} Annual NAAQS of 15.0 ug/m³. In addition, none of the annual design values from 2016–2021 from the Libby Area monitoring site exceeded the 1997 annual PM_{2.5} NAAQS of 15.0 ug/m³, and as such, EPA proposes to determine that the Libby Area has attained the 1997 annual PM_{2.5} NAAQS.

The NESCAUM report cited [<https://www.nescaum.org/documents/nescaum-review-of-epa-rwh-nsps-certification-program-rev-3-30-21.pdf>] does raise significant concerns with EPA’s certification program relevant to Cord Wood appliances, and EPA is taking steps to revise Cord Wood appliance test methods to rectify the concerns that NESCAUM has raised. However, these issues do not directly impact the Libby, MT 1997 PM_{2.5} NAAQS redesignation request and LMP approval, because we do not rely on any way the Cord Wood appliances test methods or results as a basis for the redesignation or as a part of the LMP. We therefore do not agree that the NESCAUM review has any relevance to this action.

The commenter’s statements regarding safe levels of pollution and whether the NAAQS are reflective of such safe levels are beyond the scope of this action, which revises one area’s designation for a promulgated NAAQS based on EPA’s assessment of the state’s submission.

III. Final Action

Based on our review of the Libby PM_{2.5} Plan submitted by State of Montana, air quality monitoring data, and other relevant materials, the comment letters we received, and for the reasons described in our proposed rule, the EPA is finalizing approval of Montana’s plan for maintaining the 1997 Annual PM_{2.5} NAAQS (limited maintenance plan) and is redesignating the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS.

² See Libby Area SIP submission, available in this docket for this rulemaking.

³ See Resolution No. 1660 Lincoln County Air Pollution Control Program, Health and Environment Regulations.

By finalizing the redesignation of the Libby Area to attainment for the 1997 Annual PM_{2.5} NAAQS and finalizing the approval of the LMP for the 1997 Annual PM_{2.5} NAAQS, the 1997 primary Annual PM_{2.5} NAAQS will be revoked in the Libby Area on the effective date of this redesignation, August 23, 2023. Beginning on that date, the Area will no longer be subject to transportation or general conformity requirements for the 1997 Annual PM_{2.5} NAAQS due to the revocation of the primary NAAQS (see 81 FR 58125; August 24, 2016). The Area is required to implement its approved LMP for the 1997 Annual PM_{2.5} NAAQS that is being approved in this action. The approved LMP can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193.

IV. 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 Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.

The State of Montana did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on

the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: July 15, 2023.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 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.*

Subpart BB—Montana

■ 2. In § 52.1370, the table in paragraph (e) is amended by adding the entry

“Libby 1997 PM_{2.5} Limited Maintenance Plan” under the heading entitled “(5) Lincoln County” at the end of the section to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
*	*	*	*
(5) Lincoln County			
*	*	*	*
Libby 1997 PM _{2.5} Limited Maintenance Plan	7/24/2023	[insert Federal Register citation].
*	*	*	*

■ 3. In § 52.1374, add paragraph (i) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(i) On June 24, 2020, the State of Montana submitted limited maintenance plans for the Libby PM_{2.5} nonattainment areas and requested that this area be redesignated to attainment for the PM_{2.5} National Ambient Air

Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

MONTANA—1997 ANNUAL PM_{2.5} NAAQS
[Primary and secondary]

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327, the table entitled “Montana—1997 Annual PM_{2.5} NAAQS” is amended by revising the entry “Lincoln County (part)” to read as follows:

§ 81.327 Montana.

* * * * *

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
*	*	*	*	*
Lincoln County (part) The area bounded by lines from Universal Transverse Mercator Zone 11 (North American Datum 1983) coordinates beginning at 600,000mE, 5,370,000mN east to 620,000mE, 5370,000mN south to 620,000mE, 5340,000mN west to 600,000mE, 5,340,000mN north to 600,000mE, 5,370,000mN.	August 23, 2023	Attainment.		
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

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