

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0254; FRL-9930-47-Region 8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing 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 determining that the Libby nonattainment area attained the 1997 annual PM_{2.5} NAAQS by the applicable attainment date, April 2010. This determination is based on quality-assured and certified ambient air quality data for the 2007–2009 monitoring period. Second, EPA is finalizing 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 will 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, which include an approved maintenance plan. These proposed actions are being taken under the CAA.

DATES: This final rule is effective on August 13, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2014-0254. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 electronically through

www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 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 a.m. to 4 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. Background

The Libby nonattainment area is comprised of the City of Libby within Lincoln County. See 40 CFR 81.327. On April 14, 2015 (71 FR 19935), EPA published a proposed rulemaking for the Libby nonattainment area. In the April 14, 2015 rulemaking action, EPA proposed 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. EPA also proposed to make a determination that the Libby nonattainment area continues to attain the 1997 annual PM_{2.5} NAAQS. No comments were received on the April 14, 2015 proposed rule.

II. Summary of Rulemaking Actions

These actions do not constitute a redesignation of the Libby nonattainment area to attainment for the 1997 annual PM_{2.5} NAAQS under CAA section 107(d)(3). Neither determination of attainment involves approving a maintenance plan for the Libby nonattainment area, nor determines that the Libby nonattainment area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures. Therefore, the designation status of the Libby nonattainment area will remain nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA takes a final rulemaking action to determine that the Libby nonattainment area meets the CAA requirements for redesignation to attainment.

A. Determination of Attainment by the Attainment Date

Pursuant to section 188(b)(2) of the CAA, EPA is making a determination that the Libby nonattainment area has attained the 1997 annual PM_{2.5} NAAQS

by the area's attainment date, April 2010. This 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 to the 1997 PM_{2.5} annual NAAQS attainment date. The effect of this final determination of attainment to the 1997 PM_{2.5} annual NAAQS attainment date is to discharge EPA's obligation under CAA section 181(b)(2) to determine, based on the Libby nonattainment area's air quality whether the area attained the standard.

B. "Clean Data" Determination of Attainment

EPA is also making a determination that the Libby nonattainment area continues to attain the 1997 annual PM_{2.5} NAAQS. This "clean data" determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 annual PM_{2.5} NAAQS for the 2012–2014 monitoring period. As a result of this determination, the requirement for the Libby nonattainment area to submit 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.¹

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

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the annual PM_{2.5} ambient air quality monitoring data for the 2007–2009 and 2012–2014 monitoring periods for the Libby nonattainment area, as recorded in EPA's Air Quality System (AQS) database. On the basis of that review, EPA has concluded that the Libby nonattainment area attained the 1997 annual PM_{2.5} NAAQS, based on data for the 2007–2009 monitoring period. EPA has also concluded that the Libby nonattainment area continues to attain, based on data for the 2012–2014 monitoring period.

III. Final Action

EPA is making two separate and independent determinations regarding the Libby nonattainment area. First,

¹ Even though the requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval. On March 17, 2011 (76 FR 14584), EPA took final action to approve the submitted SIP revision for the Libby PM_{2.5} nonattainment area, which included an attainment demonstration, RACM, RFP, and contingency measures.

pursuant to section 188(b)(2) of the CAA, EPA is making a determination that the Libby nonattainment area has attained the 1997 annual PM_{2.5} NAAQS attainment date of April 2010. Second, EPA is making a determination that the Libby nonattainment area is attaining the 1997 annual PM_{2.5} NAAQS, based on quality assured and certified ambient air monitoring data for the 2012–2014 monitoring period. This final determination suspends the requirements for the Libby nonattainment area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 annual PM_{2.5} NAAQS for so long as the area continues to attain the 1997 annual PM_{2.5} NAAQS. 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 CAA requirements for redesignation to attainment, including an approved maintenance plan.

IV. Statutory and Executive Orders Review

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not 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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 2015. 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 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: June 25, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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. Section 52.1374 is amended by adding paragraph (c) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

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(c) *Determination of Attainment.* EPA has determined, July 14, 2015, based on quality-assured air monitoring data for 2007–2009 and 2012–2014 ambient air quality data, that the Libby, MT fine particulate matter (PM_{2.5}) nonattainment area attained the 1997 annual PM_{2.5} national ambient air quality standards (NAAQS). Therefore, EPA has met the requirement of CAA section 188(b)(2) to determine, based on the area's air quality as of the attainment date or as expeditiously as practicable, whether the area attained the 1997 annual PM_{2.5} NAAQS. Additionally, this determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual PM_{2.5} NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 1997 annual PM_{2.5} NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

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