

By the Commission.

**Erica A. Barker,**  
Secretary.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R08-OAR-2020-0741; FRL-10022-27-Region 8]

### Approval and Promulgation of Implementation Plans; Montana; Butte PM<sub>10</sub> Nonattainment Area Limited Maintenance Plan and Redesignation Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to fully approve the Limited Maintenance Plan (LMP) submitted by the State of Montana to EPA on March 23, 2020, for the Butte Moderate nonattainment area (NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) and concurrently redesignate the NAA to attainment for the 24-hour PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS). In order to approve the LMP and redesignation, EPA is proposing to determine that the Butte, MT NAA has attained the 1987 24-hour PM<sub>10</sub> NAAQS of 150 µg/m<sup>3</sup>. This determination is based upon monitored air quality data for the PM<sub>10</sub> NAAQS during the years 2014–2018. EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before May 19, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2020-0741 to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will

generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 electronically in [www.regulations.gov](http://www.regulations.gov). To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Kate Gregory, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6175, [gregory.kate@epa.gov](mailto:gregory.kate@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

### I. Background

#### *Description of the Butte NAA*

The Butte NAA is the only NAA in Silver Bow County, is irregularly shaped, and generally encompasses the populated areas surrounding the city of Butte, except for the town of Walkerville. Butte was originally designated as a Group I area on August 7, 1987, meaning it was likely to violate the PM<sub>10</sub> NAAQS, and was subsequently classified as a Moderate NAA for the 1987 24-hour PM<sub>10</sub> NAAQS on March 15, 1991. *See* 56 FR 11101. States containing initial Moderate PM<sub>10</sub> NAAs were required to submit, by November 15, 1991, a Moderate NAA State Implementation Plan (SIP) that, among other requirements, implemented Reasonably Available Control Measures (RACM) by December 10, 1993, and demonstrated whether it was practicable to attain the PM<sub>10</sub> NAAQS by December 31, 1994. *See generally* 57 FR 13498 (April 16, 1992); *see also* 57 FR 18070 (April 28, 1992).

The State of Montana submitted an initial PM<sub>10</sub> SIP to EPA on July 9, 1992, and a subsequent submission on January 13, 1993. EPA approved the Butte initial control plan on March 11, 1994 (59 FR 11550). Revisions to emissions limits, associated attainment and maintenance demonstrations and contingency measures were submitted to EPA on August 26, 1994. The State of Montana’s SIP for the Butte Moderate NAA included, among other things: A comprehensive emissions inventory; RACM; A demonstration that attainment of the PM<sub>10</sub> NAAQS would be achieved in Butte by December 31, 1994; Reasonable Further Progress (RFP) requirements; and control measures that satisfy the contingency measures requirement of section 172(c)(9) of the CAA. The EPA fully approved the Butte NAA PM<sub>10</sub> attainment plan on March 22, 1995 (60 FR 15056).

### II. Requirements for Redesignation

#### *A. CAA Requirements for Redesignation of NAAs*

NAAs can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I provide the criteria for redesignation. *See* 57 FR 13498 (April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, “Procedures for Processing Requests to Redesignate Areas to Attainment.”<sup>1</sup> The criteria for redesignation are:

(1) The Administrator has determined that the area has attained the applicable NAAQS;

(2) The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;

(3) The state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA;

(4) The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and

(5) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

<sup>1</sup> The “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memo) outlines the criteria for redesignation (*see* docket for memo).

*B. The LMP Option for PM<sub>10</sub> NAAs*

On August 9, 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM<sub>10</sub> NAAs seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled “Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas,” (hereafter the LMP Option memo)).<sup>2</sup> The LMP Option memo contains a statistical demonstration to show that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, the EPA has already provided the maintenance demonstration for areas meeting the criteria outlined in the LMP Option memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP Option, the area should have attained the 1987 24-hour PM<sub>10</sub> NAAQS, based upon the most recent 5 years of air quality data at all monitors in the area, and the 24-hour design value should be at or below the Critical Design Value (CDV). The CDV is a calculated design value that indicates that the area has a low probability (1 in 10) of exceeding the NAAQS in the future. For the purposes of qualifying for the LMP option, a presumptive CDV of 98 µg/m<sup>3</sup> is most often employed, but an area may elect to use a site-specific CDV should the average design value be above 98 µg/m<sup>3</sup>, while demonstrating that the area has a low probability of exceeding the NAAQS in the future. The annual PM<sub>10</sub> standard was effectively revoked on December 18, 2006 (71 FR 61143), and as such will not be discussed as a

requirement for qualifying for the LMP option. In addition, the area should expect only limited growth in on-road motor vehicle PM<sub>10</sub> emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP Option memo also identifies core provisions that must be included in the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

*C. Conformity Under the LMP Option*

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to NAAs and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While the EPA’s LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM<sub>10</sub> NAAQS would result. For transportation conformity purposes, the EPA would conclude that emissions in these areas need not be capped for the maintenance period; and therefore, a regional emissions analysis would not be required. Similarly, federal actions subject to the general conformity rule could be considered to

satisfy the “budget test” specified in 40 CFR 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered not limited.

**III. Review of Montana’s Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plan**

*A. Has the Butte NAA attained the applicable NAAQS?*

States must demonstrate that an area has attained the 24-hour PM<sub>10</sub> NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM<sub>10</sub> concentrations. The data should be stored in the EPA Air Quality System (AQS) database. Today, EPA is proposing to determine that the Butte NAA has attained the PM<sub>10</sub> NAAQS based on monitoring data from calendar years 2014–2018. The 24-hour standard is attained when the expected number of days with levels above 150 µg/m<sup>3</sup> (averaged over a 3-year period) is less than or equal to one. See 40 CFR 50.6(a). Three consecutive years of air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM<sub>10</sub>. See 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75% of the scheduled sampling days.

The Butte NAA has one State and Local Air Monitoring Station (SLAMS) monitor operated by the Montana Department of Environmental Quality (MDEQ). Table 1 summarizes the PM<sub>10</sub> data collected from 2014–2019 for the Butte NAA.<sup>3</sup> The EPA deems the data collected from these monitors valid, and the data have been submitted by the MDEQ to be included in AQS.

TABLE 1—SUMMARY OF MAXIMUM 24-HOUR PM<sub>10</sub> CONCENTRATIONS (µg/m<sup>3</sup>) FOR BUTTE 2014–2019

[Based on data from Greeley School site, AQS identification number (30–093–0005)]

| Year | Maximum concentration | 2nd Maximum concentration | Number of exceedances | Monitoring site |
|------|-----------------------|---------------------------|-----------------------|-----------------|
| 2014 | 60                    | 57                        | 0                     | Greeley School. |
| 2015 | 118                   | 115                       | 0                     | Greeley School. |
| 2016 | 52                    | 51                        | 0                     | Greeley School. |
| 2017 | 144                   | 111                       | 0                     | Greeley School. |
| 2018 | 72                    | 66                        | 0                     | Greeley School. |
| 2019 | 69                    | 56                        | 0                     | Greeley School. |

The PM<sub>10</sub> concentrations reported at the Butte monitoring site showed no

measured exceedances of the 24-hour PM<sub>10</sub> NAAQS from 2014–2018, and as

such, the EPA proposes to determine that the Butte NAA has attained the

<sup>2</sup> The “Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas” outlines the criteria for development of a PM<sub>10</sub> limited maintenance plan (see docket for memo).

<sup>3</sup> While the submission from the State for this action includes 2014–2018 monitoring data, the EPA supplied 2019 monitoring data in this action in order to provide an analysis of PM<sub>10</sub>

concentrations in the Butte, MT area using the most current monitoring data available.

standard for the 24-hour PM<sub>10</sub> NAAQS. Additionally, EPA analysis of PM<sub>10</sub> concentrations reported at the Butte monitoring site in the year 2019 show no measured exceedances.

*B. Does the Butte NAA have a fully approved SIP under CAA section 110(k)?*

In order to qualify for redesignation, the SIP for the area must be fully approved under CAA section 110(k) and must satisfy all requirements that apply to the area. Section 189 of the CAA contains requirements and milestones for all initial Moderate NAA SIPs including: (1) Provisions to assure that RACM (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology (RACT) shall be implemented no later than December 10, 1993; (2) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable by no later than December 31, 1994, or, where the state is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 1994, is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 189(a)(1)(A)); (3) Quantitative milestones which are to be achieved every 3 years and which demonstrate RFP toward attainment by December 31, 1994, (CAA sections 172(c)(2) and 189(c)); and (4) Contingency measures to be implemented if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the state or the EPA. (CAA section 172(c)(9)).

The EPA approved the Butte Moderate area plan on May 22, 1995 (60 FR 15056). The Butte plan included RACM, an attainment demonstration, emissions inventory, quantitative milestones, and control and contingency measure requirements. As such, the area has a fully approved NAA SIPs under section 110(k) of the CAA.

*C. Has the State met all applicable requirements under section 110 and Part D of the CAA?*

Section 107(d)(3)(E) of the CAA requires that a state containing a NAA must meet all applicable requirements under section 110 and Part D of the CAA for an area to be redesignated to attainment. The EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation

request. The following is a summary of how Montana meets these requirements.

1. CAA Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for SIPs. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. See 57 FR 13498 (April 16, 1992).

For purposes of redesignation, the EPA's review of the Montana SIP shows that the State has satisfied all requirements under section 110(a)(2) of the CAA. Further, in 40 CFR 52.1372, the EPA has approved Montana's plan for the attainment and maintenance of the national standards under section 110.

2. Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM<sub>10</sub> NAAs must meet the general provisions of Subpart 1 and the specific PM<sub>10</sub> provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Butte NAA.

3. Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for NAA plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). CAA section 172(c)(2) requires nonattainment plans to provide for RFP. Section 171(1) of the CAA defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by

the applicable date." Since EPA is proposing to determine that the Butte NAA is in attainment of the PM<sub>10</sub> NAAQS, we believe that no further showing of RFP or quantitative milestones is necessary.

4. Section 172(c)(3)—Emissions Inventory Section

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Butte PM<sub>10</sub> NAA. Montana included an emissions inventory for the calendar year 2014 with the March 23, 2020 submittal of the LMP for the NAA. The LMP Option memo states that an attainment inventory should represent emissions during the same 5-year period associated with the air quality data used to determine that the area meets the applicability requirements of the LMP option. The Butte LMP includes an emission inventory from 2014, representative of the 2013–2017 5-year period which served as the 5-year period relied upon in the LMPs as meeting the air quality data requirements of the LMP option memo.<sup>4</sup>

5. Section 172(c)(5)—NSR

The 1990 CAA Amendments contained revisions to the NSR program requirements for the construction and operation of new and modified major stationary sources located in NAAs. The CAA requires states to amend their SIPs to reflect these revisions but does not require submittal of this element along with the other SIP elements. The CAA established June 30, 1992, as the submittal date for the revised NSR programs (section 189 of the CAA).

Montana has a fully approved nonattainment NSR program, approved on August 30, 1995 (60 FR 45051). Montana also has a fully approved PSD program, approved on August 30, 1995 (60 FR 45051). Upon the effective date of redesignation of an area from nonattainment to attainment, the requirements of the Part D NSR program will be replaced by the PSD program and the maintenance area NSR program.

<sup>4</sup> The emissions inventory included in the Butte MT submission is the 2014 National Emissions Inventory (NEI). The NEI is a composite of data from many different sources, with PM data coming primarily from EPA models as well as from state, tribal, and local air quality management agencies. Different data sources use different data collection methods, and many of the emissions data are based on estimates rather than actual measurements. The EPA considers the 2014 NEI representative of the period from 2014–2018 because MT provided comparable vehicle miles traveled (VMT) data in their submission. See Butte, MT Submission, Appendix C, Montana Department of Transportation Future VMT Projections, p.C–1 in docket.

#### 6. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify attainment status of the area. The State of Montana operates one PM<sub>10</sub> SLAMS in each of the NAAs. The Butte monitoring site meets EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E. In section 3.5 of the LMP that we are proposing to approve, the State commits to continued operation of the monitoring network.

#### 7. Section 172(c)(9)—Contingency Measures

The CAA requires that contingency measures take effect if the area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Since the Butte NAA has attained the 1987 24-hour PM<sub>10</sub> NAAQS, contingency measures are no longer required under section 172(c)(9) of the CAA. However, contingency provisions are required for maintenance plans under section 175(a)(d). We describe the contingency provisions Montana provided in the LMP section below.

#### 8. Part D Subpart 4

Part D subpart 4, section 189(a), (c) and (e) requirements apply to any Moderate NAA before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include: (a) Provisions to assure that RACM was implemented by December 10, 1993; (b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable; (c) Quantitative milestones which were achieved every 3 years and which demonstrate RFP toward attainment by December 31, 1994; and (d) Provisions to assure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors except where the Administrator determined that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area. These provisions were fully approved into the SIP upon the EPA's approval of the PM<sub>10</sub>

Moderate area plan for the Butte NAA on March 22, 1995 (60 FR 15056).

#### D. Has the State demonstrated that the air quality improvement is due to permanent and enforceable reductions?

The state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the state must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic. Permanent and enforceable control measures in the Butte NAA SIP includes RACM. Emission sources in the NAA has been implementing RACM for at least 10 years.

Areas that qualify for the LMP will meet the NAAQS, even under worst case meteorological conditions. Under the LMP option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. Thus, by qualifying for the LMP, Montana has demonstrated that the air quality improvements in the Butte NAA is the result of permanent emission reductions and not a result of either economic trends or meteorology. A description of the LMP qualifying criteria and how the Butte area meets these criteria is provided in the following section.

Permanent and enforceable emission reductions in the Butte NAA have reduced emissions 76% since 1990. The primary controls incorporated into the SIP included rules specifying wood combustion control, rules specifying open burning controls, rules specifying fugitive road dust control, permit condition revisions at the Montana Resources mine, crusher, and concentrator and at Rhône-Poulenc industrial sources, and federal tailpipe standards. Based on the 2014 national emissions inventory, PM<sub>10</sub> emissions in all source areas are below the levels approved in the original control plan.<sup>5</sup>

#### E. Does the area have a fully approved maintenance plan pursuant to section 175A of the CAA?

In this action, we are proposing to approve the LMP for the Butte NAA in accordance with the principles outlined in the LMP Option.

<sup>5</sup> See Butte, MT submission in docket, Table 2.4—Butte, MT—PM<sub>10</sub> Emission Summary, p. 18.

#### F. Has the State demonstrated that the Butte NAA qualifies for the LMP Option?

The LMP Option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. As stated above in Section III. A., the EPA has determined that the Butte NAA is attaining the PM<sub>10</sub> NAAQS.

Second, the average design value (ADV) for the past 5 years of monitoring data (2014–2018) must be at or below the CDV. As noted in Section II.B., the CDV is a margin of safety value and is the value at which an area has been determined to have a 1 in 10 probability of exceeding the NAAQS. The LMP Option memo provides two methods for review of monitoring data for the purpose of qualifying for the LMP option. The first method is a comparison of a site's ADV with the CDV of 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS. A second method that applies to the 24-hour PM<sub>10</sub> NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past 5 years of monitoring data. Table 2 outlines the design values for the years 2014–2018, and presents the ADC.

Table 3 summarizes the wildfire related events that were excluded from the calculated design values in Table 2. Table 3 include all regionally concurred exceptional events, as well as values between 98 µg/m<sup>3</sup> and 155 µg/m<sup>3</sup>, which were treated in a manner analogous to exceedance data under the Exceptional Events Rule (EER) for the purpose of determining the LMP option eligibility. The values between 98 µg/m<sup>3</sup> and 155 µg/m<sup>3</sup> will remain in the Air Quality System (AQS) database for use in calculating DV's for every purpose besides determining LMP eligibility.<sup>6</sup> The EER can be found in 40 CFR 50.14 and 40 CFR 51.930, and outlines the requirements for the treatment of monitored air quality data that has been heavily influenced by an exceptional event. 40 CFR 50.1(j) defines an exceptional event as an event which affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Exceptional events do not include stagnation of air masses or meteorological inversions,

<sup>6</sup> Update on Application of the Exceptional Events Rule to the PM<sub>10</sub> Limited Maintenance Plan Option, U.S. EPA, William T. Harnett, Director, Air Quality Policy Division, OAQPS, May 7, 2009.

meteorological events involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance. 40 CFR 50.14(b) states that the EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to the EPA's satisfaction that an exceptional event caused a

specific air pollution concentration in excess of one or more NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of section 50.14. Table 3 below includes some exceptional events not formally concurred on by EPA. These exceptional events were excluded by EPA in accordance with the LMP

guidance.<sup>7</sup> We have concurred that these values can be excluded for the sole purpose of determining PM<sub>10</sub> LMP eligibility and supporting documentation of EPA's concurrence with the wildfire related events can be found in the docket.<sup>8</sup>

TABLE 2—SUMMARY OF 24-HOUR PM<sub>10</sub> DESIGN CONCENTRATIONS (µg/m<sup>3</sup>) FOR BUTTE 2014–2018  
[Based on data from Greeley School site, AQS identification number (30–029–0049)]

| Design concentration years  | Design concentration (µg/m <sup>3</sup> ) | Monitoring site      |
|---|---|----------------------|
| 2014–2016 .....   | 60  | Greeley School.      |
| 2015–2017 .....   | 85  | Greeley School.      |
| 2016–2018 .....   | 80  | Greeley School.      |
| Average Design Concentration (Of Most Recent 3 Design Concentrations) |   | 75 µg/m <sup>3</sup> |

TABLE 3—BUTTE 24-HOUR PM<sub>10</sub> EVENTS EXCLUDED FROM THE 2014–2019 DATA FOR THE PURPOSE OF DETERMINING LMP ELIGIBILITY

| Date            | 24-Hour value (µg/m <sup>3</sup> ) | Monitoring site |
|-----------------|------------------------------------|-----------------|
| 8/15/2015 ..... | 100                                | Greeley School. |
| 8/20/2015 ..... | 103                                | Greeley School. |
| 8/28/2015 ..... | 115                                | Greeley School. |
| 8/29/2015 ..... | 118                                | Greeley School. |
| 9/2/2017 .....  | 111                                | Greeley School. |
| 9/3/2017 .....  | 144                                | Greeley School. |

These values were excluded by EPA solely for the purpose of determining limited maintenance plan (LMP) eligibility in accordance with LMP guidance. The values remain in AQS and are still used for all other purposes (including calculating the estimated exceedances and official design concentrations).

The ADV for the 24-hour PM<sub>10</sub> NAAQS for Butte, based on data from the SLAMS monitor for the years 2014–2018 is 75 µg/m<sup>3</sup>. This value falls below the presumptive 24-hour CDV of 98 µg/m<sup>3</sup> and would all meet the first threshold for LMP eligibility.

In addition to having an ADV that is lower than either the presumptive or area specific CDV, and in order to qualify for the LMP, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP Option memo. Using the methodology outlined in the memo, based on monitoring data for the period 2014–2018, the EPA has determined that the Butte NAA passes the motor vehicle regional emissions analysis test, with a projected design value of 74.3 µg/m<sup>3</sup> after 10 years, respectively, attributable to motor vehicle emission growth. For the calculations used to determine how

the Butte NAA passed the motor vehicle regional analysis test, see the supporting documents in the docket.<sup>9</sup>

The monitoring data for the period 2014–2018 shows that Butte has attained the 24-hour NAAQS for PM<sub>10</sub>, and the 24-hour ADV for the area is less than the 24-hour PM<sub>10</sub> presumptive and area-specific CDV. Finally, the area has met the regional vehicle emissions analysis test. Thus, the Butte NAA qualifies for the LMP Option described in the LMP Option memo. The LMP Option memo also indicates that once a state selects the LMP Option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM<sub>10</sub> concentrations enough to requalify for the LMP. One possible approach the state could take is to

implement contingency measures. Please see section 3.6 of the Butte LMP for a description of contingency provisions submitted as part of the State's submittal.

*G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?*

The state's approved attainment plan should include an emissions inventory (attainment inventory) which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same 5-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every 3 years to ensure emissions growth is incorporated in the attainment inventory if necessary.

<sup>7</sup> See Update on Application of the Exceptional Events Rule to the PM<sub>10</sub> Limited Maintenance Plan Option, U.S. EPA, William T. Harnett, Director, Air Quality Policy Division, OAQPS, May 7, 2009 and Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events, U.S. EPA, Richard Wayland, Director, Air Quality Assessment Division and Anna Marie

Wood, Director, Air Quality Policy Division, April 4, 2019 memos in docket.

<sup>8</sup> February 8, 2019 letter to MDEQ, Re: Exceptional Events Requests Regarding Exceedances of the 24-hour PM<sub>10</sub> NAAQS and the LMP Eligibility Threshold at Montana Monitoring Sites with PM<sub>10</sub> Nonattainment Areas; and November 1, 2018 letter to MDEQ, Re: Request for

EPA concurrence on exceptional event claims for fine (PM<sub>2.5</sub>) and coarse (PM<sub>10</sub>) particulate matter data impacted by wildfires in 2015 and 2016. See Butte, MT submission in docket.

<sup>9</sup> See memo to file in docket dated February 16, 2021 titled "Memo to File—Butte, MT Motor Vehicle Regional Emissions Analysis".

In this instance, Montana completed an attainment year inventory for the attainment year 2014 for the Butte NAA. The EPA has reviewed the 2014 emissions inventories and determined that they are current, accurate and complete. In addition, the emissions inventory submitted with the LMP for the calendar year 2014 is representative of the level of emissions during the time period used to calculate the ADV since 2014 is included in the 5-year period used to calculate the design values (2014–2018).

*H. Does the LMP include an assurance of continued operation of an appropriate epa-approved air quality monitoring network, in accordance with 40 CFR part 58?*

The PM<sub>10</sub> monitoring network for the Butte NAA has been developed and maintained in accordance with federal siting and design criteria in 40 CFR part 58, appendices D and E and in consultation with the EPA Region 8. In Section 3.5 of the Butte LMP, Montana states that it will continue to operate its monitoring network to meet EPA requirements.

*I. Does the plan meet the CAA requirements for contingency provisions for maintenance plans?*

Section 175A of the CAA states that a maintenance plan must include contingency provisions, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP Option memo, these contingency measures do not have to be fully adopted at the time of redesignation. As noted above, CAA section 175A requirements are distinct from CAA section 172(c)(9) contingency measures. Section 3.6 of the Butte LMP describes a process and timeline to identify and evaluate appropriate contingency measures in the event of a quality assured violation of the PM<sub>10</sub> NAAQS. Upon notification of a PM<sub>10</sub> exceedance in any of the three areas, the MDEQ and the appropriate local government will develop contingency measures designed to prevent or correct a violation of the PM<sub>10</sub> standard. This process will be completed within twelve months of the exceedance notification. Upon violating the PM<sub>10</sub> standard, the MDEQ and local government will determine if the local contingency measures will be adequate to prevent further exceedances or violations. If the agencies determine that local measures will be inadequate, the MDEQ and local government will adopt state-enforceable measures.

The current and proposed contingency provisions in the Butte LMP meet the requirements for contingency provisions as outlined in the LMP Option memo.

*J. Has the State met transportation and general conformity requirements?*

#### 1. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA section 176(c)(1)(B)). The EPA's conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule typically requires a demonstration that emissions from the applicable Regional Transportation Plan and the Transportation Improvement Program are consistent with the motor vehicle emission budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). The EPA notes that a MVEB is usually defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance areas. MVEBs are, however, treated differently with respect to LMP areas.<sup>10</sup>

Our LMP Option memorandum does not require that MVEBs be identified in the maintenance plan. While the EPA's LMP Option memorandum does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate transportation conformity without identifying and submitting a MVEB. The basis for this provision is that it is unreasonable to expect that an LMP area will experience so much growth during the maintenance period that a violation of the PM<sub>10</sub> NAAQS would result. Therefore, for transportation conformity purposes, the EPA has concluded that mobile source emissions in LMP areas need not be capped, with respect to a MVEB, for the maintenance period and a regional emissions analysis (40 CFR 93.118), for

transportation conformity purposes, is also not required.

However, since LMP areas are still maintenance areas, certain aspects will continue to be required for transportation projects located within the Butte PM<sub>10</sub> maintenance area. Specifically, for conformity determinations, projects will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and timely implementation (as applicable) of Transportation Control Measures (40 CFR 93.113). In addition, projects located within the Butte PM<sub>10</sub> LMP area will be required to be evaluated for potential PM<sub>10</sub> hot-spot issues in order to satisfy the "project level" conformity determination requirements. As appropriate, a project may then need to address the applicable criteria for a PM<sub>10</sub> hot-spot analysis as provided in 40 CFR 93.116 and 40 CFR 93.123.

Finally, our proposed approval of the Butte PM<sub>10</sub> LMP may affect future PM<sub>10</sub> project-level transportation conformity determinations prepared by the Montana Department of Transportation in conjunction with the Federal Highway Administration and the Federal Transit Administration. See 40 CFR 93.100. As such, the EPA is proposing to approve the Butte LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

#### 2. General Conformity

Federal actions, other than transportation conformity, that meet specific criteria need to be evaluated with respect to the requirements of 40 CFR part 93, subpart B. The EPA's general conformity rule requirements are designed to ensure that emissions from a federal action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. However, as noted in our LMP Option memorandum and similar to the above discussed transportation conformity provisions, federal actions subject to our general conformity requirements would be considered to satisfy the "budget test," as specified in 40 CFR 93.158(a)(5)(i)(A). As discussed above, the basis for this provision in the LMP Option memorandum is that it is unreasonable to expect that an LMP area will experience so much growth during the maintenance period that a violation of the PM<sub>10</sub> NAAQS would result. Therefore, for purposes of general conformity, a general conformity PM<sub>10</sub> emissions budget does not need to be identified in the maintenance plan, nor

<sup>10</sup> Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193–62196).

submitted, and the emissions from federal agency actions are essentially considered to not be limited.

#### IV. The EPA's Proposed Action

For the reasons explained in Section III, we are proposing to approve the LMP for the Butte NAA and the State's request to redesignate the Butte NAA from nonattainment to attainment for the 1987 24-hour PM<sub>10</sub> NAAQS. Additionally, the EPA is proposing to determine that the Butte NAA has attained the NAAQS for PM<sub>10</sub>. This determination is based upon monitored air quality data for the PM<sub>10</sub> NAAQS during the years 2014–2018. The EPA is proposing to approve the Butte LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

#### V. Statutory and Executive Order Reviews

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; 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 proposed 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

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

##### 40 CFR Part 81

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

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

Dated: April 8, 2021.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2021–07793 Filed 4–16–21; 8:45 am]

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#### GENERAL SERVICES ADMINISTRATION

##### 48 CFR Part 532

[GSAR Case 2020–G521; Docket No. 2021–0008; Sequence No. 1]

RIN 3090–AK35

#### General Services Administration Acquisition Regulation; Remove Office of General Counsel Review for Final Payments

**AGENCY:** Office of Acquisition Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures for processing a final payment for construction and building service contracts where, after 60 days, a contracting officer is unable to obtain a release of claims from a contractor.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before June 18, 2021 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to GSAR Case 2020–G521 to: *Regulations.gov*: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “GSAR Case 2020–G521”. Select the link “Comment Now” that corresponds with GSAR Case 2020–G521. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “GSAR Case 2020–G521” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**Instructions:** Please submit comments only and cite GSAR Case 2020–G521 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov> approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Logan Kemp, GSA Acquisition Policy Division, at 202–969–4066 or by email at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite GSAR Case 2020–G521.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

GSA is proposing to amend the General Services Administration Regulations (GSAR) to modify GSAR 532.905–70 so it no longer requires contracting officers to obtain approval of legal counsel before processing final payments for construction and building service contracts where, after 60 days, the contracting officer is unable to