to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period on this action, including the Tribes preference for the name of the nonattainment area located within the Fort Hall Indian Reservation.

## IV. Administrative Requirements

*A. Executive Order (E.O.) 12866*

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.''

The OMB has exempted this action from review under E.O. 12866. In addition, the Agency has determined that EPA's proposal to split the nonattainment area into two nonattainment areas would result in none of the effects identified in section 3(f).

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A regulatory flexibility screening analysis of this proposed action revealed that it would not have a significant adverse economic impact on a substantial number of small entities. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). To the extent that a State, Tribe or EPA must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time EPA takes action on those regulations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that the approval of the revised designation action proposed today does not have a significant economic impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

*C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA has determined that this proposed action, if promulgated, would not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. A rule revising the designation of an area by creating two separate nonattainment areas under section 107(d)(3) of the CAA does not impose any new requirements on the State, Tribes or the private sector. Redesignation is an action that affects the air quality status of a geographic area or the boundary of the geographic area and does not impose any regulatory requirements on the State, Tribes or private sector. Accordingly, EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector.

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

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

## V. Request for Public Comments

EPA is, by this document, proposing that the PM–10 designation for the Power-Bannock Counties PM–10 nonattainment area be revised. The EPA is requesting public comments on all aspects of this proposal, including the appropriateness of the proposed designation and the scope of the proposed boundary. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

## List of Subjects in 40 CFR Part 81

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

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

Dated: June 10, 1998.

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 98–16403 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[ID 22–7002; FRL–6113–3]**

## Clean Air Act Reclassification; Fort Hall Indian Reservation Particulate Matter (PM–10) Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to determine that a portion of the Fort Hall Indian Reservation has not attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the applicable attainment date for moderate PM–10 nonattainment areas under the Clean Air Act (CAA). In a concurrent notice of proposed rulemaking published today, EPA has proposed that the existing Power-Bannock Counties PM–10 nonattainment area, which is currently classified as moderate with an attainment date of December 31, 1996,

be separated into two nonattainment areas at the boundary between State lands and the Fort Hall Indian Reservation. If EPA takes final action to revise the Power-Bannock Counties PM–10 nonattainment area into two nonattainment areas, EPA proposes in this action to find that the PM–10 nonattainment area within the exterior boundary of the Fort Hall Indian Reservation (which EPA has proposed be referred to as the ''Fort Hall PM–10 nonattainment area'') has not attained the PM–10 NAAQS by December 31, 1996.

EPA's proposed finding that the proposed Fort Hall PM–10 nonattainment area has not attained the PM–10 NAAQS by December 31, 1996, is based on EPA's review of monitored air quality data from 1994 through 1996. If EPA takes final action on this proposal, the proposed Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area.

EPA recently established a new standard for particulate matter with a diameter equal to or less than 2.5 microns and also revised the existing PM–10 standards. Today's proposal, however, does not address these new and revised standards.

**COMMENTS:** Comments on this proposal must be received in writing by July 20, 1998.

**ADDRESSES:** Written comments should be addressed to Ms. Montel Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket ID 22–7002, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Shoshone-Bannock Tribes, Land Use Commission, Office of Air Quality, Fort Hall, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, Office of Air Quality, EPA Region 10, at the address above, or telephone (206) 553–0782.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. CAA Requirements and EPA Actions Concerning Designation and Classification*

A portion of Power and Bannock Counties in Idaho was designated nonattainment for PM–10 [1] and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA). *See* 40 CFR 81.313 (PM–10 Initial Nonattainment Areas); *see also* 55 FR 45799 (October 31, 1990); 56 FR 11101 (March 15, 1991); 56 FR 37654 (August 8, 1991); 56 FR 56694 (November 6, 1991).[2] For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. See section 188 (a) and (c)(1) of the CAA. States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of attainment of the PM–10 NAAQS by December 31, 1994. See section 189(a) of the CAA.[3]

### *B. Power-Bannock Counties PM–10 Nonattainment Area*

The Power-Bannock Counties PM–10 nonattainment area covers approximately 266 square miles in south central Idaho and comprises both trust and fee lands within the exterior boundary of the Fort Hall Indian Reservation and State lands in portions of Power and Bannock Counties. Approximately 75,000 people live in the nonattainment area, most of whom live in the cities of Pocatello and Chubbuck, which are located near the center of the nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the ''industrial complex,'' which includes the two major stationary sources of PM–10 in the nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex. One of the major stationary sources of PM–10, FMC Corporation (FMC), is located primarily on fee lands within the exterior boundary of the Fort Hall Indian Reservation.[4] The second major stationary source of PM–10 in the nonattainment area, J.R. Simplot Corporation (Simplot), is located on State lands immediately adjacent to the Reservation.

The State of Idaho has established and operates four PM–10 State and Local Air Monitoring Stations (SLAMS) in the current Power-Bannock Counties PM–10 nonattainment area, all of which are on State lands (State monitors). All of the State monitors meet EPA network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. There have been no exceedences of the 24-hour PM–10 standard recorded at any of the State monitors since January of 1993.

The Shoshone-Bannock Tribes began operating a PM–10 monitor in February 1995 on the portion of the nonattainment area within the exterior boundary of the Reservation in February 1995. Prior to this time, the Tribes relied on data from the State operated samplers for area designations and classifications because of a lack of resources to establish and operate their own Tribal monitoring stations. In 1994 the Tribes requested and EPA granted the Tribes additional program support grant funds to enable the Tribes to establish their own monitoring stations in order to collect ambient air quality data representative of conditions on the Reservation and to generate data to support Tribal air quality planning

[1] There are two pre-existing PM–10 NAAQS, a 24-hour standard and an annual standard. See 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to ten microns in diameter (PM–10). The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter up to 2.5 microns in diameter (PM–2.5). See 62 FR 38651 (July 18, 1997). The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour PM–10 standard, by itself, reflects a relaxation of that standard.

[2] The 1990 Amendments to the CAA made significant changes to the CAA. *See* Public Law No. 101–549, 104 Stat. 2399. References herein are to the CAA as amended in 1990. The Clean Air Act is codified, as amended, in the United States Code at 42 U.S.C. 7401, *et seq.*

[3] The moderate area SIP requirements are set forth in section 189(a) of the CAA.

[4] EPA has learned that a portion of the FMC facility is located on State lands. As discussed in the Federal Register document in which EPA is proposing to split the nonattainment area at the State-Reservation boundary, EPA is specifically requesting comment on whether the proposed Fort Hall PM–10 nonattainment area should include the portion of the FMC facility that is located on State lands.

efforts. This monitor, called the ''Sho-Ban site,'' is located approximately 100 feet north of the FMC facility across a frontage road. Due to operational problems with the sampler and quality assurance problems, valid data was not reported for this monitor until October 1, 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The ''primary site'' is located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site and approximately 600 feet from the boundary between the Fort Hall Indian Reservation and State lands. Both the Sho-Ban and primary sites are located in the area of expected maximum concentration of PM–10 in the ambient air. The ''Tribal background site'' is located approximately one and one-half miles southwest of the FMC facility upwind of the predominant wind direction from the industrial complex.

All three monitoring sites (Tribal monitors) are owned by the Tribes and operated by a contractor for the Tribes. The Tribal monitors meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E. Both the Sho-Ban and primary sites on the Reservation portion of the nonattainment area have recorded numerous PM–10 concentrations above the level of the 24-hour PM–10 NAAQS since October 1996.

Private industry operated a seven station air monitoring network, funded by FMC and Simplot, on and near the industrial complex from October 1, 1993, through September 30, 1994 (EMF monitors). There were no measured PM–10 concentrations above the level of the 24-hour PM–10 NAAQS at any of the EMF stations. EMF Site #2, however, which was on the Fort Hall Indian Reservation less than 300 yards east of where the primary site is now located, reported several 24-hour concentrations of PM–10 at or near the level of the NAAQS. EMF Site #2 also reported an annual concentration of 55.1 μg/m3 for the one year period the network was in operation. This is 10% greater than the 50 μg/m3 level of the annual NAAQS. Because the EMF network did not collect a calendar year's worth of data, EPA has previously concluded that data from EMF Site #2 did not document a violation of the annual PM–10 NAAQS. *See* 61 FR 66602, 66604 (December 18, 1996). EPA also stated, however, that the number of the recorded 24-hour concentrations at or near the level of the standard and the high annual concentration for the one-year period EMF Site #2 was in operation indicated that a serious air quality problem continued in the Power-Bannock Counties PM–10 nonattainment area. *Id.* This conclusion is confirmed by the more recent data from the Tribal monitors.

The current Power-Bannock Counties PM–10 nonattainment area encompasses two different regulatory jurisdictions: the State of Idaho for the State portion of the nonattainment area and the Shoshone-Bannock Tribes and EPA for the Reservation portion of the nonattainment area. Under the Clean Air Act, the State has the primary PM–10 planning responsibilities for the State portion of the nonattainment area. See CAA sections 110 and 189. In furtherance of those planning obligations, the State of Idaho, along with several local agencies, developed and implemented control measures on PM–10 sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures in 1993 as part of its moderate PM–10 nonattainment State Implementation Plan (SIP) under section 189(a) of the Act. These control measures include a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited unpaved road paving program; and a revised operating permit that represents reasonably available control technology (RACT) for the J.R. Simplot facility, the only major stationary source of PM–10 on the portion of the nonattainment area on Sate lands. Although EPA has not yet approved the State's moderate PM–10 SIP for the area, EPA has previously stated (in the context of approving the State's requests for extensions of the attainment date) that these control measures substantially meet EPA's guidance for reasonably available control measures (RACM), including RACT, for sources of primary particulate on the State portion of the nonattainment area. See 61 FR 66602, 66604–66605 (December 18, 1996).

In contrast, the PM–10 requirements for the Tribal portion of the nonattainment area are still under development.[5] Because of long-standing concerns about the air quality in the Power-Bannock County PM–10 nonattainment area, EPA has been developing a Federal Implementation Plan (FIP) for the portion of the nonattainment area within the exterior boundary of the Fort Hall Indian Reservation. The plan is being developed in close consultation with the Tribes and with extensive public participation. EPA intends to propose the FIP by the end of January 1999, and to finalize the FIP in the year 2000.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as States. See CAA sections 301(d) (1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled ''Indian Tribes: Air Quality Planning and Management,'' on February 12, 1998. 63 FR 7254. The rule is generally referred to as the ''Tribal Authority Rule'' or ''TAR''. The TAR implements the provisions of section 301(d) of the Act to authorize eligible Tribes to implement their own Tribal air programs. This includes a delegation of authority, to Tribes which meet certain requirements and request delegation, to develop, adopt and submit PM–10 nonattainment area Tribal Implementation Plans for lands within the exterior boundary of Indian Reservations, including fee lands. Until promulgation of the TAR in February 1998, however, the Shoshone-Bannock Tribes did not have authority under the Clean Air Act to carry out the PM–10 planning responsibilities for the Tribal portion of the nonattainment area.

The Shoshone-Bannock Tribes have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution on Tribal land under the Clean Air Act. Based on discussions with the Tribes, however, EPA believes that it will be at least several months before the Tribes will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, even should they do so, the Tribes intend to build their capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. EPA's understanding is that the Tribes continue to support EPA's efforts to promulgate a PM–10 nonattainment FIP for the Tribal portion of the nonattainment area notwithstanding the recent promulgation of the TAR.

### *C. Attainment Date Extensions*

Section 188(d) authorizes the EPA Administrator to grant up to two one-year extensions of the moderate area

[5] In developing its PM–10 control strategy and SIP, the State did not seek to impose controls on any sources located on Reservation lands, including fee lands within the exterior boundary of the Reservation, or attempt to demonstrate to EPA that it had authority to promulgate and enforce air controls on Reservation lands.

attainment date, provided certain requirements are met. The Power-Bannock Counties PM–10 nonattainment area did not attain the PM–10 NAAQS by December 31, 1994. Two monitors on State lands recorded a measured value above the level of the 24-hour PM–10 standard in January 1993, which resulted in six exceedences for each monitor because of a sampling frequency at those sites of once every six days. This, in turn, represented a violation of the NAAQS as of December 31, 1994. EPA granted the State's request for a one-year extension and extended the attainment date to December 31, 1995. See 60 FR 44452 (August 28, 1995) (proposed action); 61 FR 20730 (May 8, 1996) (final action). The area continued to violate the 24-hour PM–10 NAAQS through December 31, 1995 because of the exceedence recorded on the State monitors in January 1993. EPA granted a second one-year extension of the attainment date to December 31, 1996. See 61 FR 66602 (December 18, 1996).

*D. Reclassification to Serious*

1. Regulatory Requirements

EPA has the responsibility, pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, to determine within six months of the applicable attainment date, whether PM–10 nonattainment areas attained the PM–10 NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon an area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58, appendices A and B). The data are reviewed in accordance with 40 CFR part 50, appendix K, to determine the area's air quality status.

Pursuant to appendix K, the annual PM–10 standard is attained when the expected annual arthimetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m3). Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m3. The 24-hour PM–10 standard is attained when the expected number of days with levels above the standard, averaged over a three year period, is less than or equal to one. A total of three consecutive years of non-violating air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

EPA is publishing this proposal pursuant to section 188(b)(2) of the Act. Under subpart (A) of that section, a moderate PM–10 nonattainment area is reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a **Federal Register** document within six months after the applicable attainment date identifying those areas that have failed to attain the standard and that have been reclassified to serious by operation of law. See section 188(b)(2); see also section 179(c)(1).

2. Ambient Air Monitoring Data

Attainment determinations are based upon an area's ''air quality as of the attainment date.'' See section 179(c) of the CAA. Therefore, EPA determines whether an area's air quality has met the 24-hour PM–10 NAAQS by December 31, 1996, based upon calendar year data from 1994, 1995, and 1996.

As stated above, there are three Tribal PM–10 monitors within the Fort Hall PM–10 nonattainment area which were installed during 1995 and 1996. All three monitors meet EPA's SLAMS network design and siting requirements, which are set forth in 40 CFR Part 58, appendices D and E. A description of the monitoring network and instrument siting relative to the EPA SLAMS siting criteria as specified in 40 CFR Part 58, appendices D and E, can be found in the air quality data report in the Docket for this proposal.

The air quality data for the period from October 8, 1996, to December 31, 1996, was validated by the Shoshone-Bannock Tribes. EPA has reviewed the air quality data collected and reported by the Tribes during this period and quality assured the data for precision and accuracy prior to entering the data into the AIRS data base. In addition, a contractor with extensive experience in operating large state monitoring networks, conducted an independent audit of the Tribal monitoring data. The audit included a review of both the sampling effort and filter analysis, and concluded that the data reported by the Tribes during 1996 and 1997 was valid and reliable data.

Table 1 lists each of the monitoring sites within the proposed Fort Hall PM–10 nonattainment area where the 24-hour PM–10 NAAQS was exceeded during 1994–1997.[6] Table 2 lists the concentration, in micrograms per cubic meter, of each exceedence.

TABLE 1.—FORT HALL PM–10 MONITORING DATA—1994, 1995, 1996

| Site | Year | Number of exceedences | Expected exceedences | 3 year average of exceedences |
|---|---|---|---|---|
| Primary | 1994 | No data | Assume 0 | Assume 0. |
| | 1995 | No data | Assume 0 | Assume 0. |
| | 1996 | 18 | 20.96 | 7.0. |
| | 1997 | 19 | 20.1 | 13.69. |
| Sho-Ban | 1994 | No data | Assume 0 | Assume 0. |
| | 1995 | No data | Assume 0 | Assume 0. |
| | 1996 | 9 | 11.34 | 3.78. |
| | 1997 | 13 | 14.20 | 8.5. |
| Upwind Site | 1994 | No data | Assume 0 | Assume 0. |
| | 1995 | No data | Assume 0 | Assume 0. |
| | 1996 | 0 | 0.00 | 0.00. |
| | 1997 | 1 | 1.05 | .35. |

[6] Data from 1997 is after the attainment date and is included for informational purposes only.

TABLE 2.—PM–10 EXCEEDENCES AT TRIBAL MONITORS

| Date | Primary site (ug/m3) | Sho-ban site (ug/m3) | Background site (ug/m3) |
|---|---|---|---|
| Oct. 10, 1996 | 165.2 | ..... | ..... |
| Oct. 16, 1996 | 198.6 | ..... | ..... |
| Oct. 18, 1996 | 184.2 | 193.3 | ..... |
| Oct. 22, 1996 | 200.4 | ..... | ..... |
| Oct. 24, 1996 | 228.5 | ..... | ..... |
| Nov. 17, 1996 | ..... | 245.3 | ..... |
| Nov. 18, 1996 | ..... | 276.8 | ..... |
| Nov. 19, 1996 | ..... | 419.7 | ..... |
| Nov. 28, 1996 | ..... | 163.2 | ..... |
| Dec. 3, 1996 | 168.4 | ..... | ..... |
| Dec. 4, 1996 | ..... | 199.1 | ..... |
| Dec. 9, 1996 | 184.3 | 198.8 | ..... |
| Dec. 10, 1996 | ..... | 208.1 | ..... |
| Dec. 15, 1996 | 218.8 | ..... | ..... |
| Dec. 20, 1996 | 155.9 | 156.3 | ..... |
| Dec. 24, 1996 | 173.6 | ..... | ..... |
| Dec. 25, 1996 | 174.3 | ..... | ..... |
| Dec. 26, 1996 | 316.8 | ..... | ..... |
| Dec. 27, 1996 | 236.1 | ..... | ..... |
| Dec. 29, 1996 | 290.4 | 282.1 | ..... |
| Dec. 30, 1996 | 187.1 | 292.6 | ..... |
| Dec. 31, 1996 | 186.0 | 441.8 | ..... |
| Jan. 1, 1997 | 267.7 | 408.5 | ..... |
| Jan. 2, 1997 | 160.8 | ..... | ..... |
| Jan. 22, 1997 | 164.8 | ..... | ..... |
| Jan. 25, 1997 | ..... | ..... | 245.5 |
| Feb. 14, 1997 | 221.7 | ..... | ..... |
| Feb. 17, 1997 | 198.0 | ..... | ..... |
| Feb. 19, 1997 | 215.0 | 259.3 | ..... |
| Mar. 1, 1997 | 222.7 | 220.6 | ..... |
| Mar. 2, 1997 | 195.8 | ..... | ..... |
| Mar. 9, 1997 | 239.4 | ..... | ..... |
| Mar. 10, 1997 | 336.8 | ..... | ..... |
| Mar. 11, 1997 | 205.6 | ..... | ..... |
| Mar. 18, 1997 | ..... | 173.1 | ..... |
| Mar. 26, 1997 | 165.9 | ..... | ..... |
| Mar. 30, 1997 | ..... | 234.3 | ..... |
| Jun. 3, 1997 | ..... | 167.3 | ..... |
| Aug. 26, 1997 | ..... | 183.6 | ..... |
| Sept. 13, 1997 | ..... | 229.6 | ..... |
| Sept. 14, 1997 | ..... | 345.8 | ..... |
| Sept. 15, 1997 | 166.5 | ..... | ..... |
| Sept. 26, 1997 | 222.3 | ..... | ..... |
| Oct. 3, 1997 | 186.3 | 156.4 | ..... |
| Oct. 4, 1997 | 253.7 | ..... | ..... |
| Oct. 5, 1997 | 273.1 | ..... | ..... |
| Oct. 8, 1997 | ..... | 200.0 | ..... |
| Oct. 9, 1997 | ..... | 271.4 | ..... |
| Dec. 17, 1997 | 158.1 | ..... | ..... |
| Dec. 27, 1997 | 169.2 | ..... | ..... |
| Dec. 29, 1997 | 245.3 | ..... | ..... |

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m3, averaged over three years, is equal to or less than one. Because the Tribal monitoring sites did not begin full operation until October 1996, the data base is less than the three years of data generally needed for determination of compliance with the PM–10 NAAQS under 60 CFR 50.6. Nevertheless, the number of PM–10 concentrations above the level of the 24-hour PM–10 NAAQS between October 8, 1996, and December 31, 1996 results in the Tribal monitors showing a violation of the 24-hour PM–10 NAAQS as of the December 31, 1996, attainment date for the area. Appendix K of 40 CFR part 50 contains ''gapfilling'' techniques for situations where less than three complete years of data are available. In brief, that procedure allows a determination of non-compliance with a standard if it can be unambiguously demonstrated that a violation occurred. With respect to the Sho-Ban and primary sites, the expected exceedence rate of the 24-hour standard, averaged over the years 1994, 1995, and 1996, for each site is substantially greater than the 1.1 allowed for the PM–10 NAAQS, even if the days during which the monitors did not operate or collect valid data would have reported zero PM–10 levels. For example, the expected exceedence rate for 1996 was 20.96 at the primary site and 11.34 at the Sho-Ban site. When this rate is averaged with an assumed zero for 1994 and 1995, the three year average expected exceedence rate of 7.0 for the primary site and 3.78 for the Sho-Ban site are above the 1.1 required to show

attainment of the 24-hour PM–10 NAAQS. In other words, even if there were zero exceedences from January 1, 1994, to October 8, 1996, a violation of the standard would occur because of the number of exceedences that occurred from October 8, 1996, to December 31, 1996. EPA therefore believes that there is a violation of the 24-hour NAAQS for PM–10 under 40 CFR 50.6 in the proposed Fort Hall PM–10 nonattainment area using calendar year data from 1994, 1995, and 1996. Based on this data, EPA proposes to find that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 NAAQS by the attainment date of December, 31, 1996.

None of the Tribal monitors collected sufficient data during 1994, 1995 and 1996 to make an attainment determination with respect to the annual PM–10 standard. Generally, three years worth of data must be collected in order to calculate the three year average of each year's annual average, and the gap filling approach does not show a violation in this instance.

EPA notes that it is evident from a review of the data recorded at the Tribal monitors since December 31, 1996, that the values recorded on the Tribal monitors from October through December 1996 are not an aberration. Numerous levels above the 24-hour PM–10 standard have been recorded since December 31, 1996, and these values have been fairly consistent with the values recorded during 1996. Please refer to the air quality data report in the Docket for further analysis of the data from the Tribal monitors and appendix K ''gapfilling'' techniques.

*E. Portneuf Environmental Council Lawsuit*

On November 20, 1997, the Portneuf Environmental Council (PEC) filed suit against EPA alleging that EPA had failed to make a finding that the Power-Bannock Counties PM–10 nonattainment area had not attained the PM–10 NAAQS by the December 31, 1996, attainment date, as provided for in CAA section 188(b)(2)(A). EPA is making this proposal in response to that lawsuit.

*F. Revision to the Area Designation*

In a concurrent notice of proposed rulemaking published in the Federal Register today, EPA is proposing to revise the designation of the Power-Bannock Counties PM–10 nonattainment area by creating two distinct nonattainment areas along the State-Reservation boundary that together cover the identical geographic area of the existing nonattainment area. EPA has proposed that one revised area be comprised of State lands (to be referred to as the ''Portneuf Valley PM–10 nonattainment area'') and that the other revised area be comprised of lands within the exterior boundary of the Fort Hall Indian Reservation (to be referred to as the ''Fort Hall PM–10 nonattainment area''). If EPA finalizes its proposal to split the Power-Bannock Counties PM–10 nonattainment area, the areas will thereafter be considered separately for PM–10 planning purposes and on the basis of the air quality data within each separate nonattainment area.

## II. Implications of This Action

*A. Reclassification to Serious*

By today's action, EPA is proposing to find that the proposed Fort Hall PM–10 nonattainment area did not attain the PM–10 NAAQS by the applicable attainment date of December 31, 1996. As discussed above, this finding is based on air quality data showing exceedences and violations of the PM–10 NAAQS during calendar years 1994, 1995 and 1996. If EPA takes final action on this proposed finding, the Fort Hall PM–10 nonattainment area will be reclassified by operation of law as a serious PM–10 nonattainment area under section 188(b)(2)(A) of the Act.

*B. Serious Area Planning Requirements*

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the Act are required to submit, within 18 months of the area's reclassification, SIP provisions providing for, among other things, the adoption and implementation of best available control measures (BACM), including best available control technology (BACT), for PM–10 no later than four years from the date of reclassification. The SIP must also contain a demonstration that its implementation will provide for attainment of the PM–10 NAAQS. These requirements are in addition to the moderate PM–10 nonattainment requirements of RACT/RACM.

As discussed above, EPA, in consultation with and with the support of the Tribes, has been developing a FIP that will address the PM–10 planning requirements for the proposed Fort Hall PM–10 nonattainment area. EPA intends to propose the FIP for the Fort Hall PM–10 nonattainment area no later than January 31, 1999, and to finalize the FIP no later than July 31, 2001. As also discussed above, the Shoshone-Bannock Tribes have expressed interest in applying for authority within the next few years under EPA's newly promulgated Tribal Authority Rule (TAR) to assume the PM–10 planning requirements for the Fort Hall Indian Reservation, including the Fort Hall PM–10 nonattainment area. Until the Tribes apply for and receive EPA approval under the TAR for the PM–10 planning requirements for the Fort Hall Indian Reservation, however, EPA will carry out, in consultation with the Tribes, the PM–10 planning responsibilities for the Fort Hall Indian Reservation.

Based on discussions with the Tribes, EPA is aware that the Tribes are concerned that the reclassification of the Tribal portion of the nonattainment area to serious will imply that the Tribes have not been diligent in addressing the PM–10 planning requirements for the Tribal portion of the nonattainment area. In this respect, EPA would like to emphasize that until EPA promulgated the TAR in February of 1998, the Tribes did not have authority under the Clean Air Act to address the PM–10 planning requirements for the Reservation portion of the nonattainment area. EPA will carefully consider any additional comments or concerns raised by the Tribes during the public comment period.

*C. New Particulate Matter NAAQS*

On July 18, 1997, EPA promulgated revisions to both the annual and the 24-hour PM–10 standards and also established two new standards for particulate matter, both of which apply only to particulate matter equal to or less than 2.5 microns in diameter (PM–2.5). See 62 FR 38651. The revised standards became effective on September 16, 1997. Although the revised suite of particulate matter standards reflects an overall strengthening of the regulatory standards for particulate matter, the revised 24-hour standard, by itself, reflects a relaxation of that standard.

EPA notes that, after converting the 1996 and 1997 PM–10 data as reported by the Tribes to local temperature and pressure and calculating the 99th percentile as is done under the revised 24-hour PM–10 NAAQS, there is a strong likelihood that the proposed Fort Hall PM–10 nonattainment area will violate the revised PM–10 NAAQS if the number and extent of exceedences remain constant.

In the preamble to the final rule setting the new and revised particulate matter standards, EPA stated that the pre-existing PM–10 standards would remain in effect for a period of time after the effective date of the new standards to ensure a smooth transition to the new

standards. 62 FR 38701. Given that the revision of the PM–10 NAAQS, by itself, constitutes a relaxation, the proposed Fort Hall PM–10 nonattainment area will be subject to the provisions of section 172(e) of the Act. Section 172(e) applies to prevent backsliding in those areas that have not attained the pre-existing PM–10 standard as of the date the PM–10 NAAQS revision became effective. As a result, the pre-existing PM–10 standards will continue to apply in the proposed Fort Hall PM–10 nonattainment area until EPA has completed the rulemaking required under section 172(e). See 62 FR 38701. The rule promulgated under section 172(e) must require controls in the proposed Fort Hall PM–10 nonattainment area that are ''not less stringent than the controls applicable to areas designated nonattainment before the relaxation of the 24-hour PM–10 standard.''

## III. Administrative Requirements

### *A. Executive Order (E.O.) 12866*

Under E.O. 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.'' The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain are based upon air quality considerations and the resulting reclassifications must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities.

### *B. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Findings of failure to attain and reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in and of themselves create any new requirements. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking only proposes to make a factual determination, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

### *C. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under the UMRA, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the proposed Fort Hall PM–10 nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

### *D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885 (April 23, 1997)) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

## IV. Request for Public Comments

EPA is, by this document, proposing a finding that the proposed Fort Hall PM–10 nonattainment area failed to attain the PM–10 standard by December 31, 1996, the applicable attainment date. EPA solicits public comments on all aspects of this proposal. Public comments should be submitted to EPA at the address identified above by July 20, 1998.

## List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

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

Dated: June 10, 1998.

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 98–16404 Filed 6–18–98; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 393

**[FHWA Docket No. MC–94–1; FHWA–1997–2222]**

**RIN 2125–AD27**

## Parts and Accessories Necessary for Safe Operation; Lighting Devices, Reflectors, and Electrical Equipment

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers engaged in interstate commerce install retroreflective tape or reflex reflectors on the sides and rear of trailers that were manufactured prior to