

New Section 101.222 (Demonstrations), except 101.222(h), 101.222(i), and 101.222(j)),

New Section 101.223 (Actions to Reduce Excessive Emissions).

We are also proposing to disapprove sections 101.222(h) (Planned Maintenance, Startup, or Shutdown Activity), 101.222(i) (concerning effective date of permit applications), and 101.222(j) (concerning processing of permit applications) into Texas SIP. The EPA is proposing to find that these 3 sections (101.222(h), 101.222(i), and 101.222(j)) are not severable from each other.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). If a portion of the plan revision does not meet all the applicable requirements of this chapter and Federal regulations, the Administrator may then disapprove portions of the plan revision in part that does not meet the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this proposed action, in part, approves state law as meeting Federal requirements and, in part, disapproves state law as not meeting Federal requirements; and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;
- 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); and
- This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2010.

Lawrence E. Starfield,
Acting Regional Administrator, Region 6.
[FR Doc. 2010-11429 Filed 5-12-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R10-OAR-2008-0391; FRL-9149-5]

Determination of Attainment for PM-10; Fort Hall PM-10 Nonattainment Area, Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing under the Clean Air Act (CAA) to determine that the Fort Hall PM-10 nonattainment area on the Fort Hall Indian Reservation in Idaho has 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). EPA's proposed finding that the Fort Hall PM-10 nonattainment area has attained the 24-hour PM-10 NAAQS is based on EPA's review of complete, quality-assured monitored air quality data for the three-year period ending December 31, 2009. Preliminary data for 2010 indicate that the area continues to attain the standard.

EPA's proposed determination of attainment is not equivalent to a proposed redesignation to attainment under CAA section 107(d)(3). If this proposal is finalized, the designation status for the Fort Hall PM-10 nonattainment area would remain moderate nonattainment until such time as the area is redesignated to attainment as provided in CAA section 107(d)(3).

DATES: Written comments must be received on or before June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2008-0391, by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-Mail:* R10-Public Comments@epa.gov.

C. *Mail:* Donna Deneen, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop: AWT-107, Seattle, WA 98101.

D. *Hand Delivery:* U.S. Environmental Protection Agency, Region 10, Attn: Donna Deneen (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, 9th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2008-0391. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information, *i.e.*, CBI or other information whose disclosure is restricted by statute, is not publicly available. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553-6706 or deneen.donna@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this notice, the words “we”, “us”, or “our” means the Environmental Protection Agency (EPA).

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IV. Statutory and Executive Order Reviews

I. Background

A. PM-10 Standard

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM-10: a 24-hour standard of 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and an annual PM-10 standard of 50 $\mu\text{g}/\text{m}^3$. EPA also promulgated secondary PM-10 standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM-10 standard but retained the 24-hour PM-10 standard. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standard is attained when the expected number of days per calendar year with a 24-hour concentration above 154 $\mu\text{g}/\text{m}^3$, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.¹ 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Fort Hall PM-10 Nonattainment Area

On August 7, 1987 (52 FR 29383), EPA identified a number of areas across the country as PM-10 “Group I” areas of concern, that is, areas with a 95% or greater likelihood of violating the PM-10 NAAQS and requiring substantial planning efforts. What is now known as the Fort Hall PM-10 nonattainment area was originally part of a Group I area called “Power-Bannock Counties (Pocatello).” In accordance with section 188(a) and (c)(1) of the CAA, at the time of designation all PM-10 nonattainment areas were initially classified as “moderate” by operation of law, with an attainment date of December 31, 1994. See also 56 FR 11101 (March 15, 1991).

This original nonattainment area has gone through two boundary changes. First, on June 12, 1995, EPA corrected the “Power-Bannock Counties (Pocatello)” boundaries to more closely represent the air shed in which the City of Pocatello is located. 61 FR 29667. Second, on November 5, 1998, EPA

¹ An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 $\mu\text{g}/\text{m}^3$) after rounding to the nearest 10 $\mu\text{g}/\text{m}^3$ (*i.e.*, values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 $\mu\text{g}/\text{m}^3$ would not be an exceedance since it would be rounded to 150 $\mu\text{g}/\text{m}^3$ whereas a recorded value of 155 $\mu\text{g}/\text{m}^3$ would be an exceedance since it would be rounded to 160 $\mu\text{g}/\text{m}^3$. See 40 CFR part 50, appendix K, section 1.0.

granted a request from the State of Idaho to divide the nonattainment area (as corrected) into two areas separated by the Fort Hall Indian Reservation boundary. 63 FR 59722. The area consisting of land under State jurisdiction that was previously part of the Power-Bannock Counties nonattainment area was renamed as the Portneuf Valley nonattainment area. The Portneuf Valley nonattainment area was redesignated to attainment on July 13, 2006 (71 FR 39574). The area consisting of land within the exterior boundary of the Fort Hall Indian Reservation that was previously part of the Power-Bannock Counties nonattainment area is now identified as the Fort Hall PM-10 nonattainment area. See 40 CFR 81.313. Today’s proposal applies only to the Fort Hall PM-10 nonattainment area.

C. PM-10 Planning in the Fort Hall PM-10 Nonattainment Area

In the early 1990s, EPA, the Shoshone-Bannock Tribes (Tribes), and the Idaho Department of Environmental Quality (IDEQ) began to work together to prepare the technical elements needed to bring the area into attainment with the PM-10 NAAQS. Air quality and other information from the 1980s and 1990s indicated that the elemental phosphorous facility located on fee lands within the Fort Hall PM-10 nonattainment area and owned and operated by FMC Corporation (FMC facility)² was the primary cause of the PM-10 nonattainment problem in the Fort Hall nonattainment area. To address this nonattainment problem, EPA promulgated a Federal Implementation Plan for PM-10 emissions from the FMC facility in August 2000 (FMC FIP) under the authority of section 301(a) and (d)(4) of the CAA and 40 CFR 49.11(a). See 65 FR 51412 (August 23, 2000). The FMC FIP contained PM-10 emission limits and work practice, recordkeeping, and reporting requirements designed to reduce PM-10 emissions from the FMC facility to a level that would attain the PM-10 standard.

In December 2001, after operating under the FMC FIP for approximately one year, the FMC facility ceased producing elemental phosphorous from phosphate ore. The buildings and process equipment on the property have since been decontaminated and demolished and the construction debris has been taken off-site. Removal of all point sources identified in the FMC FIP was completed in November 2006. The storage piles specifically identified in

² The property on which the FMC was located is now owned by FMC Idaho, LLC (FMC).

the FIP have been taken off-site or placed below grade and planted over. In a letter dated November 1, 2007, EPA advised the Shoshone-Bannock Tribes of EPA's view that there no longer are any sources subject to the FMC FIP because the FMC FIP applies to the owner or operator of an "elemental phosphorous facility" and because there is no longer an "elemental phosphorous facility" located on the FMC property. All sources in the Fort Hall nonattainment area, however, are subject to the Federal Air Rules for Reservations (FARR) for Indian Reservations in Idaho, Oregon, and Washington, which are air quality regulations designed to protect health and welfare on Indian reservations located in the Pacific Northwest, including the Fort Hall Indian Reservation. See 67 FR 18074 (April 8, 2005) (codified at 40 CFR 49.121 to 49.139).

D. Attainment Date for the Fort Hall PM-10 Nonattainment Area

As discussed above, the original attainment date for the Fort Hall nonattainment area was December 31, 1994. Section 188(d) authorizes the EPA Administrator to grant up to two one-year extensions of the moderate area attainment date, provided certain requirements are met. Because the area was not attaining the PM-10 NAAQS at the time of the December 31, 1994 attainment date, and finding that the area met the requirements for an extension, EPA granted a request for a one-year extension and extended the attainment date to December 31, 1995. See 61 FR 20730 (May 8, 1996). The area continued to violate the 24-hour PM-10 standard through December 31, 1995. After finding that the area met the requirements for a second extension, EPA granted a second one-year extension of the attainment date to December 31, 1996. See 61 FR 66602 (December 18, 1996).³

E. Reclassification Upon Failure to Attain

Section 188(b)(2) of the CAA requires EPA to determine within six months of the applicable attainment date whether PM-10 nonattainment areas attained the PM-10 NAAQS by the attainment date. Under Section 188(b)(2)(A), a moderate PM-10 nonattainment area is reclassified as serious by operation of law if EPA finds that the area was not in attainment by the applicable attainment date. Section 188(b)(2)(B) of

the CAA states that EPA shall publish a notice in the **Federal Register** within six months after the applicable attainment date identifying those areas that failed to attain the standard and that have been reclassified to serious by operation of law.

F. Portneuf Environmental Council (PEC) Lawsuit

On November 20, 1997, the Portneuf Environmental Council (PEC) filed a lawsuit against EPA, alleging that EPA had failed to make a finding regarding whether the Fort Hall PM-10 nonattainment area⁴ had attained the PM-10 NAAQS by the December 31, 1996, extended attainment date, as required by CAA section 188(b)(2)(A). Subsequently, EPA published a **Federal Register** notice on June 18, 1998, in which EPA proposed to find that the Fort Hall PM-10 nonattainment area had failed to attain the PM-10 NAAQS by the applicable attainment date of December 31, 1996. See 63 FR 33605 (June 19, 1998).

As part of a subsequent settlement with PEC, PEC agreed to dismiss its lawsuit against EPA provided that EPA promulgated no later than July 31, 2000 a Federal Implementation Plan to control PM-10 in the Fort Hall PM-10 nonattainment area. EPA fulfilled its obligation to promulgate the FMC FIP, and did not take final action on the June 19, 1998 proposal regarding the attainment status for the area.

G. Sierra Club Lawsuit

On September 14, 2000, Sierra Club and Group Against Smog and Pollution, Inc. (jointly referred to as "Sierra Club") filed suit against EPA alleging that EPA had failed to carry out its statutory obligations with respect to certain nonattainment areas throughout the United States. The complaint included a claim that EPA had failed to make a finding regarding whether the Fort Hall nonattainment area had attained the PM-10 NAAQS by the extended attainment date of December 31, 1996, as required by CAA section 188(b)(2)(A). The Sierra Club subsequently agreed in a Consent Decree in settlement of its lawsuit to give EPA until July 31, 2004 to determine whether the Fort Hall area had attained the PM-10 standard. The Consent Decree provided that if EPA was not able to determine that the Fort Hall area had attained the PM-10 standard by July 31, 2004, EPA had to determine that the area had not attained the standard by December 31, 1996 (the

extended attainment date for the area), which would result in reclassification of the area to serious nonattainment. EPA expected that the FMC FIP, which was promulgated just prior to the Sierra Club's lawsuit, would be effective in bringing the Fort Hall PM-10 nonattainment area into attainment of the PM-10 NAAQS.

Subsequent amendments to the Consent Decree gave EPA additional time to make a determination of attainment or nonattainment for the area. Under the terms of the most recent amendment to the Consent Decree with Sierra Club, EPA is required to sign a notice for publication in the **Federal Register** by August 31, 2010, containing either EPA's final determination that the Fort Hall nonattainment area has attained the PM-10 NAAQS or EPA's final determination that the area did not attain the PM-10 NAAQS by the applicable attainment date of December 31, 1996, and identifying the appropriate reclassification of the area pursuant to 42 U.S.C. 7513(b)(2)(A).

II. Proposed Attainment Determination

A. What are the requirements for attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the PM-10 NAAQS based upon complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Air Quality System (AQS). Data from air monitors operated by state/local/tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A, 40 CFR 58.14 (2006) and 58.20 (2007);⁵ 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in

³ At the time of the extensions, the Fort Hall PM-10 nonattainment area was still part of the Power-Bannock County nonattainment area.

⁴ At the time of the lawsuit, the Fort Hall PM-10 nonattainment area was still part of the Power-Bannock County nonattainment area.

⁵ EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. See 71 FR 61236. The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM-10 standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour standard is attained when the expected exceedances averaged over a three-year period is less than or equal to one. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM-10 standard. See 40 CFR part 50 and appendix K.⁶

B. What monitoring data are available for the area?

In 1994 the Tribes requested and EPA granted the Tribes program support grant funds to enable the Tribes to establish their own monitoring station to collect ambient air quality data representative of conditions on the Fort Hall Indian Reservation and to generate data to support Tribal air quality planning efforts.⁷ The first Tribal monitor, located at the "Sho-Ban site," was a Federal Reference Monitor (FRM) that became operational in February 1995. The Sho-Ban site was located approximately 100 feet north of the FMC facility across a frontage road. Because of operational problems, this monitor did not begin to collect valid data until October 1996. Also in October 1996, the Tribes initiated monitoring at two new sites. The "primary site" contained an FRM located approximately 100 feet north of the FMC facility across the frontage road, approximately 600 feet east of the Sho-Ban site. There were two filter-based FRMs located at the primary site: The primary FRM and a co-located audit FRM for quality assurance purposes. Both the Sho-Ban and primary sites were located in the general area of expected maximum concentrations of PM-10 in the ambient air at the time the FMC facility was in operation. The "background site" was an FRM site located approximately one and one-half miles southwest of the FMC facility, upwind of the predominant wind direction from FMC. All three monitoring sites met EPA SLAMS network design and siting requirements set forth at 40 CFR part 58, appendices D and E.

Because the data reported at the background site over a number of years remained constant, with no discernible

trends, both the Tribes and EPA determined that background PM-10 concentrations were adequately characterized. Therefore, to conserve resources, the Tribes and EPA agreed to terminate operation of the FRM at the background site in early 2000. Sampling ended at the Sho-Ban site at the end of March 2003 because the FMC facility had ceased production and, given the close proximity of the Sho-Ban and primary monitoring sites, the comparability of the data between the two sites, and a continued interest in conserving resources, a single monitoring location was considered sufficient to identify any remaining air quality concerns in the area. The primary FRM and the audit FRM at the primary site remained in operation through December 31, 2009, with the primary FRM operating once every three days and the co-located audit FRM operating once every six days, or once every three days, depending on whether or not additional co-located data were needed to meet certain federal monitoring requirements.⁸

In addition to the primary and audit filter-based FRMs, from November 1998 through September 2008, a continuous PM-10 sampler, called a Tapered Element Oscillating Microbalance monitor (TEOM), also operated at the primary site. Whereas it generally takes a minimum of several weeks to obtain PM-10 data from a filter-based FRM,⁹ a TEOM monitors PM-10 levels on a continuous basis and provides real-time data on PM-10 levels in an area. This TEOM monitor was shut down in September 2008 because of a bad pump and other operational problems and replaced by another type of continuous sampler, called a Beta Attenuation Mass monitor (BAM). The BAM was installed at the primary site at the beginning of 2009, but because of start-up problems, did not begin to collect valid data until the fall of 2009.

In 2008, an additional filter-based PM-10 monitor began operating in the Fort Hall PM-10 nonattainment area. This FRM monitor operates at the "Ballard site," which is located approximately 6 miles north of the primary site and is closer than the primary site to the population center of the Fort Hall PM-10 nonattainment

area. The Ballard site was established because of concerns that the primary site property might no longer remain available for monitoring. With those concerns in mind, a saturation study was conducted by the Tribes and EPA prior to the establishment of the Ballard site to determine the correlation of monitoring data between the primary site and several potential alternate sites. The potential alternate sites represented locations that were as close to the primary site as possible and to which the Tribes had access. Temporary monitors were placed at these locations and operated in the late summer and early fall of 2006. The study showed that there was good correlation of data between the primary site and several of the potential alternate site locations and that the Ballard site was particularly desirable because a site pad and deck were already established at that location.¹⁰ In light of the results from the study, the relative proximity of the Ballard site to the population center of the nonattainment area, and the lack of access to property closer to the primary site, the Ballard site was selected as an alternate site to the primary site. On April 21, 2008, the primary FRM at the Ballard site became operational and continues to collect data on a once-every-three-day schedule.¹¹ Based on a review of recent AQS data from April 2008 through January 2010 showing good correlation between the Ballard site and the primary site, the fact that the Ballard site is closer in proximity to the population center of the nonattainment area than the primary site, and the fact that the FMC facility is no longer operating as an elemental phosphorous facility, EPA believes that the Ballard monitoring site is representative of PM-10 levels in the Fort Hall nonattainment area.

Data collection at the primary site ended on December 31, 2009 because the property owner would not renew the lease. At the request of the property owner, all monitoring and associated equipment was removed from the primary site, and beginning on January 1, 2010, the Ballard site became the only PM-10 monitoring site in the nonattainment area. To meet monitoring network requirements, one of the FRMs from the primary site was moved to the Ballard site and began operating as an audit FRM in January 2010. The BAM from the primary site was moved to the Ballard site and began operating in

⁶ Because the annual PM-10 standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM-10 standard.

⁷ Prior to this time, the Tribes relied on data from State-operated samplers on State lands for area designations and classifications.

⁸ At times a higher sampling frequency may be needed in order to produce approximately 25 valid sample pairs per year. 40 CFR part 58 Appendix A, section 3.3.1.3.

⁹ FRMs are manual samplers that pull air through a filter for 24 hours (midnight to midnight). The filters are then weighed in a lab and a PM concentration is calculated based on the mass increase of the filter and the volume of air drawn through it.

¹⁰ Memo from Chris Hall to Donna Deneen, dated January 19, 2007, regarding Fort Hall PM-10 Saturation Study.

¹¹ AQS raw data report for the Ballard site for 2010.

April 2010. PM-10 monitoring for the Fort Hall PM-10 nonattainment area continues at the Ballard site, with the PM-10 BAM operating daily, and both the primary FRM and the audit FRM collecting data on a once-every-three-day schedule.

C. What do the air quality data show for the area?

The number of PM-10 exceedances in the Fort Hall PM-10 nonattainment area has dropped substantially since the area was designated nonattainment in the early 1990s. There were 16 exceedances recorded at the primary site in 1997, the first full year of monitoring for the area. The number of exceedances had decreased to four in 1999, when FMC began installing some control equipment and implementing some emission reduction measures in anticipation of promulgation of the FMC FIP.¹² By 2001, the first full year the FMC FIP was in place and the final year the FMC facility was fully operational, there were no exceedances recorded on the FRMs and three exceedances recorded on the TEOM. Beginning in 2002, the first year after the FMC facility ceased production, the FRMs at the primary site reported one exceedance of the 24-hour PM-10 standard in 2002 and one in 2006.¹³ The TEOM at the primary site, which operated every day, recorded one exceedance per year in each of 2002, 2004, 2005, and 2006, and

three in 2008. All of the exceedances that have been recorded since FMC ceased production of elemental phosphorous in December 2001 occurred on days with sustained winds of more than 20 mph for several hours. The exceedances in the relevant data years for this determination are discussed more fully in section D below.

D. Determination of Attainment

As discussed above, section 188(b)(2) of the CAA requires EPA to determine within six months of the applicable attainment date whether the Fort Hall PM-10 nonattainment area attained the PM-10 NAAQS by the extended attainment date of December 31, 1996. Under the terms of the most recent amendment to the Consent Decree with Sierra Club, EPA is required to sign a notice for publication in the **Federal Register** by August 31, 2010 containing either EPA's final determination that the Fort Hall PM-10 nonattainment area has attained the PM-10 NAAQS or EPA's final determination as to whether the area attained or failed to attain the PM-10 NAAQS by the extended attainment date of December 31, 1996 and identifying the appropriate reclassification of the area pursuant to 42 U.S.C. 7513(b)(2)(A).

EPA is proposing to determine that the area has attained the PM-10 standard based on the most recent three years of complete, quality-assured data

for 2007-2009. Preliminary data for 2010 also indicate that the area continues to attain the standard. EPA regulations require that a determination of attainment be based on three consecutive years of data that meet the quality assurance and quality control requirements of 40 CFR part 58, appendix A. EPA has confirmed that complete air quality data in AQS for 2007, 2008, and 2009 meet quality assurance and quality control requirements for use in determining attainment with the 24-hour PM-10 standard.

For calendar years 2007 through 2009, the data recorded for the Fort Hall PM-10 nonattainment area show generally low levels of PM-10, with 99 percent of the daily average concentrations below 83 µg/m³ (less than two-thirds of the standard) and annual average PM-10 concentrations of 23 µg/m³, 28 µg/m³ and 19 µg/m³ for 2007, 2008, and 2009, respectively.¹⁴ There were no exceedances of the standard in 2007, three exceedances in 2008, and no exceedances in 2009.

There were no exceedances of the PM-10 standard measured at the primary site filter-based FRM monitors or at the Ballard site. Table 1 identifies all the monitors that were operating in the Fort Hall nonattainment area during the 2007 through 2009 period, and the number of PM-10 exceedances recorded at each.

TABLE 1—NUMBER OF EXCEEDANCES OF THE 24-HOUR PM-10 STANDARD IN THE FORT HALL PM-10 NONATTAINMENT AREA FROM JANUARY 1, 2007 THROUGH DECEMBER 31, 2009

Year	Primary site— Primary FRM 160770011 ^a (Data from 01/01/2007 through 12/31/ 2009)	Primary site— Audit FRM 160770011 ^a (Data from 01/01/2007 through 12/31/ 2009)	Primary site— TEOM 160770011 ^b (Data from 01/01/ 2007 through 09/ 23/2008)	Primary site— BAM 160770011 ^b (Data from 09/01/ 2009 through 12/ 31/2009)	Ballard site— FRM 160050020 ^a (Data from 04/21/ 2008 through 12/ 31/2009)
2007	0	0	0	NA	NA
2008	0	0	^c 3	NA	0
2009	0	0	0	0	0

^a Every-three-day sampling.

^b Continuous monitor.

^c Hourly wind speeds of more than 26 mph and sustained hourly wind speeds of more than 20 mph for several hours on the day of each exceedance.

The calculated number of expected exceedances of the PM-10 standard (in days per year) for 2007-2009 is 0.0 for the primary site FRMs, 1.0¹⁵ for the

primary site TEOM and BAM,¹⁶ and 0.0 for the Ballard site FRM. Because neither the primary site TEOM and BAM data nor the Ballard site FRM data

are complete for 2007-2009,¹⁷ the data from these monitors may not be used for a determination of attainment. The data from these monitors may, however, be

¹² Table dated April 26, 2010, summarizing the number of exceedances of the 24-hour PM-10 standard in the Fort Hall nonattainment area since 1997.

¹³ Although EPA believes the data collected at the FRMs and TEOM from 2004 through 2006 are generally indicative of air quality in the Fort Hall PM-10 nonattainment area, they did not meet all quality assurance/quality control (QA/QC)

requirements and therefore may not be used to determine whether or not the Fort Hall area is in attainment with the 24-hour PM-10 standard. See 40 CFR 58.11(a) and 58.20; 71 FR 61242 (October 17, 2006); see also 40 CFR 58.14 (2006).

¹⁴ AQS PM-10 raw data report for primary site and Ballard site, 2007-2009.

¹⁵ The value of 1.0 accounts for the three exceedances that occurred in 2008.

¹⁶ The TEOM and BAM data are combined; the data for these two monitors was submitted under the same code in AQS and is considered one monitoring record.

¹⁷ The primary site TEOM ceased operations on September 23, 2008, and the replacement primary site BAM did not begin collecting valid data until September 1, 2009. The Ballard site FRM did not begin operating until April 21, 2008.

used to determine that an area has not attained the standard, a showing that is less stringent than a showing that an area has attained the standard. In this case, neither the expected exceedance rate of 1.0 (for the primary site TEOM and BAM) nor the exceedance rate of 0.0 (for Ballard site FRM) show that the area has failed to attain the PM-10 standard,

The data from the primary site FRMs are complete for 2007–2009 and therefore may be used for a determination of attainment. The expected exceedance rate of 0.0 for the primary site FRMs is equal to or less than the expected exceedance rate of 1.0 that is allowed under the PM-10 NAAQS. Because complete data from the primary site FRMs show an expected exceedance rate equal to or below the PM-10 standard, because the other monitors at the primary and Ballard sites show expected exceedance rates equal to or less than the PM-10 standard, and because, based on data available to date, there have been no additional exceedances of the PM-10 standard in the nonattainment area in 2010, EPA concludes that the area has met the standard. EPA therefore proposes to determine that the Fort Hall PM-10 nonattainment area has attained the 24-hour PM-10 NAAQS.¹⁸

EPA has carefully reviewed the monitoring data, meteorological data and other available information regarding the exceedances that occurred at the TEOM in 2008. The meteorological data for this review came from a meteorological station that was co-located with the PM-10 monitors at the primary site. Because each of the PM-10 exceedances was recorded on a continuous monitor, it is possible to compare hourly PM-10 levels on the day of each exceedance with hourly wind speed measured at the meteorological station. On all three days when exceedances were recorded, hourly spikes in PM-10 levels corresponded to increases in hourly wind speeds.¹⁹ Hourly wind speeds of more than 26 mph and sustained hourly wind speeds of more than 20 mph for several hours were measured on all three days.

All three exceedances were flagged timely by the Sho-Ban Tribes as high wind events under EPA's Exceptional Events Rule (72 FR 13560, March 22,

2007). Under EPA's Exceptional Events Rule, EPA may exclude data from regulatory determinations related to exceedances or violations of the NAAQS if it is adequately demonstrated that an exceptional event caused the exceedance or violation. 40 CFR 50.1, 50.14. In this case, EPA need not determine whether the flagged exceedances can be considered as caused by "exceptional events" under the Exceptional Events Rule. For the purposes of the current attainment determination, inclusion of these exceedances does not affect EPA's determination of the area's attainment status. In other words, even if EPA includes all three days of exceedances monitored at the TEOM in 2008, the data show that the area attained the PM-10 standard and under the existing monitoring record, EPA's proposed determination that the area has attained the standard is not dependent on whether the 2008 exceedances qualify for exclusion under the Exceptional Events Rule. If in the future we determine that it is appropriate to evaluate whether the exceedances qualify as caused by exceptional events and may be excluded from regulatory determinations, we will do so at that time in accordance with the Exceptional Events Rule.

III. Proposed Action

A. Proposed Determination of Attainment

EPA is, by this document, proposing to determine that the Fort Hall nonattainment area has attained the 24-hour PM-10 standard, based on complete, quality-assured monitoring data for 2007–2009, and data available to date for 2010. This proposed finding of attainment is not a proposed redesignation to attainment under CAA section 107(d)(3). If this proposal is finalized, the designation status in 40 CFR part 81 for the Fort Hall PM-10 nonattainment area would remain moderate nonattainment until such time as the area is redesignated to attainment as provided in CAA section 107(d)(3). If this proposal is finalized, and EPA subsequently determines after notice and comment rulemaking, that the area is no longer attaining the NAAQS, EPA will publish such determination in the **Federal Register**.

B. Withdrawal of June 19, 1998 Proposal

It has now been twelve years since EPA proposed to make a finding of nonattainment for the Fort Hall PM-10 nonattainment area (63 FR 33605, June 19, 1998). In light of all the changes that have taken place over that time,

including the promulgation of the FIP, the cessation of the production of elemental phosphorous at FMC, the low levels of PM-10 recorded in the area, and the consent decree with Sierra Club that provides for an attainment determination for the Fort Hall PM-10 nonattainment area based on 2007–2009 data, EPA is withdrawing its June 19, 1998 proposed rulemaking and issuing this proposal in its place. Accordingly, EPA will not be responding to comments on the June 19, 1998 proposal. Any person who wishes to comment on EPA's proposed finding that the Fort Hall nonattainment area attained the 24-hour PM-10 standard as of December 31, 2009 should do so at this time.

IV. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, not result in the imposition of any additional Federal requirements. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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

¹⁸ If this proposal is finalized, and EPA subsequently determines, after notice-and-comment rulemaking, that the area no longer is attaining the NAAQS, EPA will publish such determination in the **Federal Register**.

¹⁹ Memo from Donna Deneen to the Fort Hall Docket, dated April 26, 2010, regarding PM-10 Exceedances and Wind Speeds on April 15, May 20, and August 26, 2008.

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the proposed rule merely makes a required determination based on air quality data and would neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless provided a consultation opportunity to the Shoshone-Bannock Tribes in a letter to the Chairman of the Fort Hall Business Council, dated January 25, 2010, offering the Tribes the opportunity to consult on this determination and have meaningful and timely input into this proposed decision. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

List of Subjects in 40 CFR Part 81

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

Dated: May 3, 2010.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2010-11139 Filed 5-12-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2009-0927; FRL-9150-9]

Mandatory Reporting of Greenhouse Gases: Notice of Data Availability; Default Emission Factors for Semiconductor Manufacturing Refined Process Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Data availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public draft default emission factors for semiconductor manufacturing refined process categories. On April 12, 2010 EPA published a proposed rule, Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs (75 FR 18652) which

included proposed methods for monitoring and reporting greenhouse gases (GHGs) from electronics manufacturing. More specifically, as one option for monitoring and reporting, EPA proposed semiconductor manufacturers estimate emissions using default emission factors for nine distinct process categories. For each default emission factor, EPA proposed a range of values differentiated by production technology generation (*i.e.*, wafer size). Based on additional information received since the publication of the proposed rule, EPA has developed draft emission factors for the proposed process categories. EPA is making those draft emission factors as well as the underlying data that was used to develop the draft emission factors available to the public for review and comment in the report, *Draft Emission Factors for Refined Semiconductor Manufacturing Process Categories*.

DATES: Comments must be received on or before June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0927 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:*

GHGReportingFGHG@epa.gov.

- *Fax:* (202) 566-1741.

- *Mail:* EPA Docket Center, Attention Docket OAR-2009-0927, Mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, Attention Docket OAR-2009-0927, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0927. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an "anonymous access" system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Kirsten Cappel, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9556; fax number: (202) 343-2202; e-mail address: cappel.kirsten@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline

1. What is today's action?
2. What information is EPA making available for review and comment?
3. How does this information relate to the proposed rule Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs?
4. Where can I get the information?
5. What is EPA taking comment on and what supporting documentation do I need to include in my comments?