

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by § 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 27, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00-30912 Filed 12-5-00; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[Docket Id-00-01; FRL-6912-4]

#### Finding of Attainment for PM-10; Portneuf Valley PM-10 Nonattainment Area, Idaho

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

**ACTION:** Notice of proposed rule.

**SUMMARY:** EPA is proposing to find that the Portneuf Valley nonattainment area in Idaho has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM-10) as of December 31, 1996.

**DATES:** Written comments must be received on or before December 26, 2000.

**ADDRESSES:** Written comments should be mailed to Debra Suzuki, SIP Manager, Office of Air Quality, Mailcode OAQ-107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.

#### FOR FURTHER INFORMATION CONTACT:

Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553-0782.

#### SUPPLEMENTARY INFORMATION:

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

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#### I. Background

##### A. Designation and Classification of PM-10 Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA) were designated nonattainment for PM-10 by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. See generally 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM-10 planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM-10 prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM-10 upon enactment of the 1990 Amendments, known as "initial" PM-10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Power-Bannock Counties PM-10 nonattainment area was one of these

initial moderate PM-10 nonattainment areas. As discussed below, the Portneuf Valley PM-10 nonattainment area was originally part of the Power-Bannock Counties PM-10 nonattainment area.

All initial moderate PM-10 nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM-10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM-10 NAAQS by the December 31, 1994 attainment date was practicable. See section 189(a).

##### B. How Does EPA Make Attainment Determinations

All PM-10 nonattainment areas are initially classified "moderate" by operation of law when they are designated nonattainment. See section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM-10 nonattainment areas attained the PM-10 NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM-10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon 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 Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A & B) and may be used to determine the attainment status of areas. We 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. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM-10 standard is achieved when the annual

arithmetic mean PM-10 concentration over a three year period (for example 1994, 1995, and 1996 for areas with a December 31, 1996 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m<sup>3</sup>). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM-10 concentrations greater than 150 ug/m<sup>3</sup>. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m<sup>3</sup> (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM-10. See 40 CFR part 50 and appendix K.

*C. What is the Attainment Date for the Portneuf Valley PM-10 Nonattainment Area*

As stated above, the Power-Bannock Counties PM-10 nonattainment area was designated nonattainment for PM-10 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. The area covered approximately 266 square miles in south central Idaho and included State lands in portions of Power and Bannock Counties, as well as both trust and fee lands within the Fort Hall Indian Reservation. The cities of Pocatello and Chubbuck were located near the center of this nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the "industrial complex," where two major stationary sources of PM-10 are located, which was also in the Power-Bannock Counties PM-10 nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex, with the Astaris-Idaho, LLC facility (formerly owned and operated by FMC Corporation) located on the Fort Hall Indian Reservation and the J.R. Simplot Corporation facility located on State lands immediately adjacent to the Reservation. 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).

The original attainment date for the Power-Bannock Counties PM-10 nonattainment area was December 31, 1994. The attainment date was later extended to December 31, 1995, and then to December 31, 1996, under the authority of section 188(d) of the Act. See 61 FR 20730 (May 8, 1996) (first one-year extension); 61 FR 66602

(December 18, 1996) (second one-year extension). Effective December 7, 1998, the Power-Bannock Counties PM-10 nonattainment area was split into two nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands: the Fort Hall PM-10 nonattainment area and the Portneuf Valley PM-10 nonattainment area. For a more detailed discussion of the rationale behind EPA's decision to split the Power-Bannock County PM-10 nonattainment area into two separate PM-10 nonattainment areas, please refer to the discussion at 63 FR 33597 (June 19, 1998)(proposed action) and 63 FR 59722 (November 5, 1998)(final action). The attainment date for both nonattainment areas continues to be December 31, 1996.

*D. What PM-10 Planning has Occurred for the Portneuf Valley PM-10 Nonattainment Area*

After the Power-Bannock Counties PM-10 nonattainment area was designated nonattainment for PM-10, the Idaho Division of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and EPA began to work together in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products, IDEQ, along with several local agencies, developed and implemented control measures on PM-10 sources in what is now known as the Portneuf Valley PM-10 nonattainment area. The State submitted these control measures to EPA in 1993 as a moderate PM-10 nonattainment state implementation plan (SIP) revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program, controls on fugitive road dust, and a revised operating permit for the J.R. Simplot facility, the only major stationary source of PM-10 in the Portneuf Valley PM-10 nonattainment area. EPA has not yet taken final action to approve the State's moderate PM-10 SIP for the area and additional air quality planning efforts may be needed because of recent air quality data. EPA will take action on IDEQ's SIP revision for the Portneuf Valley PM-10 nonattainment area in a separate rulemaking. For a discussion of the PM-10 planning for the Fort Hall PM-10 Nonattainment Area, please refer to 64 FR 7308 (February 12, 1999); 65 FR 51412 (August 23, 2000).

## II. EPA's Proposed Action

*A. What Does the Air Quality Data Show As of the December 31, 1996 Attainment Date?*

Whether an area has attained the PM-10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR 50, appendix K. For an area with a December 31, 1996, attainment date, data reported for calendar years 1994, 1995 and 1996 is considered.

The State of Idaho has established and operated four PM-10 SLAMS monitoring sites in the Portneuf Valley PM-10 nonattainment area during 1994 through 1996. The State began monitoring for PM-10 in 1986 at the Sewage Treatment Plant (STP) monitoring site, located approximately one mile to the northeast of the industrial complex. A site at Idaho State University (ISU), located near downtown Pocatello, began operation in 1988 and continued operation until June 1999. The Chubbuck School monitoring site (CS), located approximately four miles northeast of the industrial complex, began operation in 1989 and continued operation until July 1999. In 1990, a fourth PM-10 monitoring site was established at the intersection of Garrett and Gould (G&G), located approximately halfway between the industrial complex and downtown Pocatello. All four monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and continue to monitor for PM-10.

There have been no violations of the annual PM-10 standard at any of the State monitors since 1990. A violation of the 24-hour PM-10 NAAQS was recorded at the ISU and G&G monitoring sites on January 7, 1993. As a result of the one-in-every six day sampling frequency at each of these sites at that time, the expected exceedance rate for the 1993 calendar year at the SLAMS sites was 6.0. No measured values above the level of the 24-hour NAAQS were recorded, however, in the remainder of 1993, 1994, 1995, or 1996. Therefore, the three year average (1994, 1995, 1996) expected exceedance rate at the SLAMS sites as of the attainment date of December 31, 1996 is 0.0. This data was discussed in detail in the June 19, 1998, **Federal Register** notice which proposed to split the Power-Bannock Counties PM-10 nonattainment area at the State-Reservation boundary. See 63 FR 33597. In the public comments received on that proposal, no one disputed the validity of that data and EPA has received no additional air

quality data since that time for the period from 1994 to 1996 showing an exceedance of PM-10 standards. Therefore, EPA proposes to find that the Portneuf Valley PM-10 nonattainment area attained the PM-10 standard by extended attainment date of December 31, 1996.

#### *B. Does the More Recent Air Quality Data Also Show Attainment?*

Although the attainment date for the Portneuf Valley PM-10 nonattainment area is December 31, 1996, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1994, 1995, and 1996, EPA has also reviewed the air quality data collected at the State monitoring sites from 1997 through the second quarter of 2000. During 1997, the highest measured PM-10 concentration was recorded at the STP site at a level of 149 ug/m3, just below the level of the 24-hour standard. All other measurements in the Portneuf Valley PM-10 nonattainment area during 1997 were less than 100 ug/m3. During 1998, the highest measured PM-10 concentration recorded on any of the State monitors was at the CS site, at a level of 118 ug/m3. The second highest measured PM-10 concentration was at the ISU site, at a level of 108 ug/m3. All other measurements in the area were less than 100 ug/m3 during 1998.

During the end of December 1999 and the beginning of January 2000, there was a significant air pollution episode in the Portneuf Valley and Fort Hall PM-10 nonattainment areas during which elevated levels of PM-10 were recorded on the State monitors as well as on the Tribal monitors. In addition, both the State of Idaho and the Shoshone-Bannock Tribes received a significant number of air quality complaints during this time. During this several day episode, three levels above the level of the 24-hour PM-10 NAAQS were reported on the State monitors, all of which occurred at the G&G site: 183 ug/m3 on December 27, 1999, 168 ug/m3 on December 29, 1999, and 159 ug/m3 on December 31, 1999. The next highest concentration at the G&G site during 1999 was 146 ug/m3 on December 26, 1999, which is below the level of the 24-hour PM-10 standard. The G&G site samples every day between October 1st and March 30th. The other three State monitoring sites did not report levels above 150 ug/m3, the level of the 24-hour PM-10 standard. The next highest level reported at any of the other of the State monitoring sites during 1999 was 124 ug/m3 recorded at the STP site on December 26, 1999. The highest reported concentration during 1999 at

the ISU site was 74 ug/m3 on January 25, 1999, and at the CS site was 39 ug/m3 on January 30, 1999. During the first two quarters of 2000, the highest 24-hour PM-10 concentration was recorded at the G&G site, at 112 ug/m3 on February 6, 2000.

Although the three days with concentrations above the level of the 24-hour PM-10 NAAQS reported at the G&G site at the end of 1999 are of concern to EPA, these data do not represent a violation of the 24-hour PM-10 standard because there were no days with levels above the 24-hour PM-10 standard during 1997 and 1998. Three exceedances in three years results in an expected exceedance rate of 1.0 for the three-year period from 1997 to 1999, just below the rate that would represent a violation of the 24-hour PM-10 standard. Should any measured level above the 24-hour PM-10 standard be recorded at G&G site during the years 2000 or 2001, however, then a violation of the 24-hour PM-10 standard would exist in the Portneuf Valley PM-10 nonattainment area. EPA is continuing to closely follow the air quality data reported by the State of Idaho for the Portneuf Valley PM-10 nonattainment area.

In summary, there were no PM-10 concentrations above the level of the 24-hour standard at any of the four different SLAMS monitoring sites in the Portneuf Valley PM-10 nonattainment area in 1994, 1995, and 1996, which indicates that the Portneuf Valley area attained the 24-hour PM10 NAAQS as of December 31, 1996. Review of the annual standard for calendar years 1994, 1995 and 1996 reveals that the Portneuf Valley area also attained the annual PM-10 NAAQS as of December 31, 1996. The area has continued to attain the 24-hour and annual PM-10 standards since that time. Therefore, EPA proposes to find that the Portneuf Valley PM-10 nonattainment area attained the PM-10 NAAQS as of December 31, 1996. If we finalize this proposal, consistent with CAA section 188, the area will remain a moderate PM-10 nonattainment area and will avoid the additional planning requirements that apply to serious PM-10 nonattainment areas.

This proposed finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because Idaho has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Portneuf Valley PM-10

nonattainment area until such time as Idaho meets the CAA requirements for redesignations to attainment.

#### *C. Request for Public Comment*

We are soliciting public comments on EPA's proposal to find that the Portneuf Valley PM-10 nonattainment area has attained the PM-10 NAAQS as of the December 31, 1996 attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

### **III. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely makes a determination based on air quality data and does not impose any requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied

with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 81

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

Dated: November 21, 2000.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00-31053 Filed 12-5-00; 8:45 am]

BILLING CODE 6560-50-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 00-2676, MM Docket No. 00-241, RM-9968]

#### Digital Television Broadcast Service; Hastings, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the Nebraska Educational Telecommunications Commission, licensee of noncommercial educational Station KHNE(TV), NTSC Channel \*29, Hastings, Nebraska, requesting the substitution of DTV Channel \*28 for station KHNE(TV)'s assigned DTV Channel \*14. DTV Channel \*14 can be allotted to Hastings, Nebraska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40-46-20 N. and 98-05-21 W.). As requested, we propose to allot DTV Channel \*28 to Hastings with a power of 200 and a height above average terrain (HAAT) of 366 meters.

**DATES:** Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or

consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for Nebraska Educational Telecommunications Commission).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-241, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

##### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nebraska is amended by removing DTV Channel \*14 and adding DTV Channel \*28 at Hastings.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00-30974 Filed 12-5-00; 8:45 am]

BILLING CODE 6712-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 00-2677, MM Docket No. 00-242, RM-9998]

#### Digital Television Broadcast Service; Weston, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Withers Broadcasting Company of West Virginia, licensee of station WDTV-TV, NTSC channel 5, Weston, West Virginia, requesting the substitution of DTV channel 6 for station WDTV-TV's assigned DTV channel 58. DTV Channel 6 can be allotted to Weston, West Virginia, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (39-04-29 N. and 80-25-28 W.). As requested, we propose to allot DTV Channel 6 to Weston with a power of 10 and a height above average terrain (HAAT) of 253 meters.

**DATES:** Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Lee G. Petro, Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for Withers Broadcasting Company of West Virginia).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00-242, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete