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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[R07-OAR-2005-MO-0002; FRL-7906-5]

Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standard; for Some Counties in the States of Kansas and Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U. S. Environmental Protection Agency (EPA) is redesignating several counties in the Kansas City area from unclassifiable to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The counties are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

DATES: This rule is effective on June 2, 2005.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551-7651 or by e-mail at daniels.leland@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is the Background for This Action?

What Are the Statutory and Regulatory Requirements for Designations and Redesignations?

What New Information Is Available

Regarding Air Quality in Kansas City?

What Action Is EPA Taking?

What Is the Background for This Action?

The EPA published a final rule (69 FR 23858; April 30, 2004) promulgating designations under the 8-hour ozone NAAQS. That action designated several counties in the Kansas City area as unclassifiable and provided that the designation was effective on June 15, 2004.

The initial Kansas City area designation was based on review of ozone data from 2001 through 2003. The counties in the Kansas City area designated as unclassifiable are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay,

Jackson and Platte Counties in Missouri. In that action, we stated that we would review all available information and make an attainment or nonattainment decision after reviewing the 2004 ozone data. On February 10, 2005 (70 FR 7070), the EPA published a proposal to redesignate the Kansas City area from unclassifiable to attainment. The Mid-America Regional Council Air Quality Forum submitted comments generally supporting the redesignation to attainment but raising questions about the implications of the redesignation for Kansas City. The commenter withdrew the comments by letter dated April 13, 2005.

What Are the Statutory Requirements for Designations and Redesignations?

Section 107(d) of the Clean Air Act (CAA) sets forth the criteria and process for designations and redesignations. An explanation of statutory requirements for the 8-hour ozone designations that became effective on June 15, 2004, and the actions EPA took to meet those requirements can be found in the final rule that established the designations (69 FR 23858; April 30, 2004). In Section 107(d)(3), the CAA addresses redesignations and provides that the Administrator or the Governor of a state may initiate the redesignation process. One of the bases for redesignation under that section is air quality data.

To determine whether an area is attaining the 8-hour ozone NAAQS, we consider the most recent three consecutive years of data in accordance with 40 CFR part 50, appendix I. For the purpose of this rulemaking, we reviewed the ozone data from 2002 through 2004.

What New Information Is Available Regarding Air Quality in Kansas City?

The state of Missouri submitted a letter dated December 21, 2004, regarding air quality in Kansas City. The letter certified that the 8-hour ozone data collected during the 2004 ozone season is correct, complete and appropriate for regulatory use. The letter also requested that EPA redesignate the Kansas City area from unclassifiable to attainment. Similarly, the state of Kansas submitted letters of November 18, 2004, and January 10, 2005, certifying the accuracy of the ozone data and requesting redesignation from unclassifiable to attainment. The counties included in the redesignation request are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

Consistent with 40 CFR part 50, appendix I, section 2.3, paragraph (d)(1),

the 8-hour ozone standard is met if the three year average value of the annual fourth highest daily maximum (the design value) is 0.084 parts per million (ppm) or less. For the 2002-2004 time period, the design value for Kansas City is 0.082 ppm, indicating that the 8-hour ozone NAAQS has been attained.

What Action Is EPA Taking?

Based upon the applicable requirements in section 107(d)(3) of the CAA, the regulatory requirements in 40 CFR part 50, appendix I and the 8-hour ozone air quality data for the 2002 through 2004 time period, we are redesignating Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri to attainment for the 8-hour ozone standard. The basis for this action is described in more detail above and in the February 10, 2005, proposed rule referenced above.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely designates an area for planning purposes based on air quality, and does not establish any new regulations. Accordingly, the Administrator certifies that this 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.*). The redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional 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 (Pub. L. 104-4).

This redesignation does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action merely establishes the attainment status, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state redesignation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state recommendation, to use VCS in place of a state request that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note) do not apply. 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Ozone, National park, Wilderness area.

Dated: April 22, 2005.

James B. Gulliford,
Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.317 the table entitled "Kansas—Ozone (8-Hour Standard)" is amended by revising the entry for Kansas City, KS—MO to read as follows:

§ 81.317 Kansas.

* * * * *

KANSAS—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ¹	Type
Kansas City, KS-MO:				
Johnson County	May 3, 2005	Attainment.		
Linn County	May 3, 2005	Attainment.		
Miami County	May 3, 2005	Attainment.		
Wyandotte County	May 3, 2005	Attainment.		
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

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■ 3. In § 81.326 the table entitled "Missouri—Ozone (8-Hour Standard)" is

amended by revising the entry for Kansas City, MO-KS to read as follows:

§ 81.326 Missouri.

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MISSOURI—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ¹	Type
Kansas City, MO-KS:				
Cass County	May 3, 2005	Attainment.		
Clay County	May 3, 2005	Attainment.		
Jackson County	May 3, 2005	Attainment.		
Platte County	May 3, 2005	Attainment.		
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[NV-FOA-126; FRL-7907-3]

Determination of Attainment for the Ozone and Carbon Monoxide National Ambient Air Quality Standards in Washoe County, NV**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA has determined that the marginal one-hour ozone nonattainment area that includes all of Washoe County, Nevada has attained the 1-hour ozone National Ambient Air Quality Standard by the applicable attainment date (1993) and has continued to attain since that time. EPA has also determined that the moderate carbon monoxide nonattainment area that includes the Truckee Meadows area of Washoe County has attained the carbon monoxide National Ambient Air Quality Standard by the applicable attainment date (1995) and has continued to attain since that time. This determination of attainment does not redesignate the Washoe County area to attainment for the 1-hour ozone or the carbon monoxide standard. The Clean Air Act requires that, for an area to be redesignated, five criteria must be satisfied including the submittal of a maintenance plan as a State Implementation Plan revision. The intended effect of this action will be to relieve the State of Nevada of the obligation to submit revisions to the state implementation plan to address additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and carbon monoxide standards.

EFFECTIVE DATE: This finding is effective on June 2, 2005.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3901.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection

Agency, Region IX, (415) 947-4147 or kaplan.eleanor@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to U.S. EPA.

I. Background

Under sections 179(c), 181(b)(2) and 186(b)(2) of the Clean Air Act (CAA or “Act”), EPA has the responsibility for determining whether a nonattainment area has attained the 1-hour ozone and carbon monoxide (CO) national ambient air quality standards (NAAQS) by the applicable attainment dates. In this case, the EPA was required to make determinations concerning the Washoe County ozone nonattainment area and the Truckee Meadows CO nonattainment area. As a “marginal” 1-hour ozone nonattainment area, Washoe County was subject to a December 31, 1993 attainment date, and as a “moderate” CO nonattainment area, the Truckee Meadows area was subject to a December 31, 1995 attainment date.

On January 21, 2005 (70 FR 3170), we published a notice announcing a proposed finding that the Washoe County nonattainment area had attained the 1-hour ozone NAAQS by the applicable attainment date (December 31, 1993) and has continued to attain the 1-hour ozone standard since that time, and that the Truckee Meadows nonattainment area had attained the CO NAAQS by the applicable attainment date (December 31, 1995) and has continued to attain the CO standard since that time. A detailed discussion of EPA’s proposal is contained in the January 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

II. Public Comments and EPA Responses

EPA received one comment letter during the 30-day comment period. This letter, dated February 22, 2005, was submitted on behalf of a coalition of groups including the North West Great Basin Association, Environmental Defense, Progressive Leadership Alliance of Nevada, Western Resource Advocates, and Clean Air Task Force. The comments center on the possible effects on air quality in Washoe County resulting from operation of a coal-fired power plant for which plans are being developed and that would be located within Washoe County near the Town of Gerlach. In response to a request from EPA for additional information regarding a reference made in the letter, the commenter submitted to us an excerpt from a report on a pre-

construction monitoring site called Squaw Creek Valley located in the southeast corner of the proposed power plant site to collect on-site ambient air quality, meteorological and upper air data. The site was installed in mid-July 2004. Official data collection began in August 2004, and the excerpt submitted to us contained a summary of air quality data collected during the months of August through October 2004. The comments and EPA responses are as follows:

Comment 1

Notwithstanding a finding of attainment, Washoe County remains designated “nonattainment” for the 1-hour ozone and CO NAAQS, and any new major sources of ozone and CO emissions must comply with all nonattainment requirements.

Response 1

EPA agrees that a finding of attainment does not constitute a redesignation to “attainment” and that all new major sources or major modifications that are to be located in a nonattainment area and that receive permits to construct while the area remains designated as “nonattainment” must comply with all applicable nonattainment “new source review” (NSR) requirements, including installation of control technology representing the lowest achievable emission rate (LAER) and offsets. However, we note that the proposed power plant outside of Gerlach would be constructed in an area that is designated as “unclassifiable/attainment” for the CO NAAQS,¹ and thus, with respect to CO emissions, would be subject to the NSR requirements that apply within such areas (*i.e.*, the Prevention of Significant Deterioration, or PSD program), not those that apply to nonattainment areas. Also, because the power plant undoubtedly will not receive an authority to construct until after revocation of the 1-hour ozone NAAQS (*i.e.*, June 15, 2005) and because Washoe County is designated as “unclassifiable/attainment” for the 8-hour ozone NAAQS [see 69 FR 23858, 23919-23920 (April 30, 2004)], which is replacing the 1-hour ozone NAAQS, the applicable permitting agency (in this case, the Nevada Division of Environmental Protection, or NDEP) will be applying PSD requirements to ozone precursor emissions from this proposed power

¹ The Town of Gerlach is approximately 75 miles north-northeast of the northern boundary of the Truckee Meadows CO nonattainment area (*i.e.*, hydrographic area 87).