

the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone 214-665-6645; fax number 214-665-7263; e-mail address [young.carl@epa.gov](mailto:young.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: January 31, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[R07-OAR-2005-MO-0002; FRL-7871-3]

#### 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:** Proposed rule.

**SUMMARY:** On April 15, 2004, we, the U.S. Environmental Protection Agency (EPA) announced designations under the 8-hour ozone National Ambient Air Quality Standard (NAAQS). That action designated several counties in the Kansas City area as unclassifiable. The counties in the Kansas City area included in the designation were Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri. This document proposes to redesignate

the above counties to attainment. We are soliciting comments on this proposed action.

**DATES:** Comments must be received on or before March 14, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07-OAR-2005-MO-0002, by one of the following methods:

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

2. *Agency Web site:* <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail:* [daniels.leland@epa.gov](mailto:daniels.leland@epa.gov).

4. *Mail:* Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier.* Deliver your comments to: Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to RME ID Number R07-OAR-2005-MO-0002. 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://docket.epa.gov/rmepub/>, 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 RME, [regulations.gov](http://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site are "anonymous access" systems, 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 RME or [regulations.gov](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 RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. 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 RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Leland Daniels at (913) 551-7651, or by e-mail at [daniels.leland@epa.gov](mailto: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 requirements for designations and redesignations and what are EPA's regulatory requirements and policy regarding redesignations?

What new information is available regarding air quality in Kansas City?

What about Kansas City's air quality in the future?

What action is EPA taking in regard to the designation of the Kansas City area?

#### **What Is the Background for This Action?**

On April 15, 2004, the Administrator of the EPA signed a final rule (69 FR 23858; April 30, 2004) announcing 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 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.

#### **What Are the Statutory Requirements for Designations and Redesignations and What Are EPA's Regulatory Requirements and Policy Regarding 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 include 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 About Kansas City's Air Quality in the Future?**

EPA's rule for implementing the 8-hour ozone standard calls for communities that were maintenance areas for the 1-hour ozone standard and are attainment areas for the 8-hour ozone standard to put in place a plan to maintain the 8-hour ozone standard for a ten-year period, no later than three years after designation. Thus both Kansas and Missouri are required to develop a plan to maintain the 8-hour ozone standard in the Kansas City area.

#### **What Action Is EPA Taking in Regard to the Designation of the Kansas City Area?**

Based upon 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 proposing to redesignate 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.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **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.*).

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

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

Dated: January 26, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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