dispersion modeling) that would trigger a processing fee due by the applicant from $150.00 to $325.00 (33–15–23–02.2); and (3) remove the option for an applicant to withdraw an application without paying any processing fees (33–15–23–02.2.b). CAA Section 110(a)(2)(E) requires that a state implementation plan provide assurances that the state will have, among other items, adequate funding to carry out the implementation plan. As explained in a memo to interested parties, increasing the application fee and the processing fee threshold as well as removing the option for an applicant to withdraw an application without paying processing fees reflect both inflation and the increased complexity of permit to construct applications, thereby ensuring the State has adequate funding to carry out the implementation plan.[25] [26] Therefore, we propose to approve these revisions.

III. The EPA's Proposed Action

In this action, the EPA is proposing to approve SIP amendments to North Dakota Air Pollution Control Rules, shown in Table 1, submitted by the State of North Dakota on January 28, 2013 and November 11, 2016.

TABLE 1—LIST OF NORTH DAKOTA AMENDMENTS THAT THE EPA IS PROPOSING TO APPROVE

Amended Section in the January 28, 2013 Submittal Proposed for Approval
33–15–14–02.1.c.
Amended Sections in the November 11, 2016 Submittal Proposed for Approval
33–15–01–04.52, 33–15–14–02.1.c, 33–15–14–02.6.b(2), 33–15–14–03.5.a(1)(b), 33–15–14–03.5.a(1)(d), 33–15–14–03.9.a, 33–15–14–03.9.b, 33–15–15–01.2, 33–15–20–01.1, 33–15–20–01.2, 33–15–20–02.1, 33–15–20–02.2, 33–15–20–03.1, 33–15–20–03.2, 33–15–23–02.1, 33–15–23–02.2.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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; and
- Does not provide the 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).

In addition, the SIP is not proposed to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: May 9, 2018.

Douglas Benevento,

Regional Administrator, Region 8.

[FR Doc. 2018–10208 Filed 5–11–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2018–0223; FRL–9978–01–Region 9]

Air Plan Approval; California; Eastern Kern Air Pollution Control District; Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, the Environmental Protection Agency (EPA) is proposing to grant a request by the State of California to reclassify the Eastern Kern County (''Eastern Kern'') nonattainment area from ''Moderate'' to ''Serious'' for the 2008 ozone national ambient air quality standards (NAAQS). In connection with the reclassification, the EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Eastern Kern portion of the California State Implementation Plan (SIP) to meet certain additional requirements for Serious ozone nonattainment areas. The EPA has already received SIP revision submittals addressing most of the additional SIP requirements.

DATES: Any comments must arrive by June 13, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0223 at *http://www.regulations.gov*, or via email to Nancy Levin, at *levin.nancy@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Background

The Clean Air Act (CAA) requires the EPA to establish a NAAQS for certain pervasive pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect public health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants, including ozone. The NAAQS represents the air quality levels an area must meet to comply with the CAA.

Ozone is a gas composed of three oxygen atoms and is created by a chemical reaction between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the atmosphere in the presence of sunlight. Ground-level ozone can harm human health and the environment. Ozone exposure has been associated with increased susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease.

In March 2008, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm (''2008 ozone NAAQS''). 73 FR 16436 (March 27, 2008).[1] In accordance with section 107(d) of the CAA, the EPA must designate an area ''nonattainment'' if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe,'' or ''Extreme,'' depending upon the ozone design value for an area.[2] *See* CAA section 181(a)(1). As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, SIP requirements than lower classified areas but are allowed more time to demonstrate attainment of the ozone NAAQS. *See, generally,* subpart 2 of part D of title I of the CAA. Depending upon the classification, states with ozone nonattainment areas are required under the CAA to develop and submit SIP revisions providing for, among other elements, a base year emissions inventory, new source review (NSR), implementation of reasonably available control technology (RACT), reasonable further progress (RFP), a demonstration of attainment, and contingency measures.

Effective July 20, 2012, the EPA established initial air quality designations for the 2008 ozone NAAQS. The EPA designated and initially classified Eastern Kern [3] as a Marginal nonattainment area for the 2008 ozone NAAQS. 77 FR 30088 (May 21, 2012). For Marginal ozone nonattainment areas, the attainment date for the 2008 ozone NAAQS is as expeditious as practicable but not later than three years from the effective date of designation, *i.e.,* no later than July 20, 2015. *See* 40 CFR 51.1103(a).

Under CAA section 181(b)(2), the EPA is required to determine whether an area attained the ozone NAAQS by the applicable attainment date, and in May 2016, the EPA found that Eastern Kern had failed to attain the 2008 ozone NAAQS by the applicable Marginal attainment date (*i.e.,* by July 20, 2015) and reclassified the area as Moderate. 81 FR 26697 (May 4, 2016). For Moderate ozone nonattainment areas, the attainment date is as expeditious as practicable but not later than July 20, 2018. *See* 40 CFR 51.1103(a). States with newly-reclassified Moderate ozone areas were required to submit SIP revisions meeting the applicable Moderate area requirements by January 1, 2017. 81 FR 26697 (May 4, 2016).

II. State Request for Reclassification

As described above, in 2016, the EPA reclassified the Eastern Kern 2008 ozone nonattainment area to Moderate, and, in response to the reclassification, the Eastern Kern Air Pollution Control District (EKAPCD) began to develop an ozone plan meeting the applicable ozone nonattainment area requirements, such as an attainment demonstration. However, in light of the attainment demonstration needs for the area, the EKAPCD developed the ozone plan, titled *Eastern Kern Air Pollution Control District 2017 Ozone Attainment Plan for the Federal 75 ppb 8-Hour Ozone Standard* (''Eastern Kern 2017 Ozone Plan''), to meet Serious, rather than Moderate, ozone nonattainment requirements. The Eastern Kern 2017 Ozone Plan includes a request to the California Air Resources Board (CARB) to formally submit a request to the EPA asking for voluntary reclassification of the Eastern Kern ozone nonattainment area from Moderate to Serious for the 2008 ozone NAAQS.[4] On July 27, 2017, the EKAPCD adopted the Eastern Kern 2017 Ozone Plan and transmitted the plan to CARB for approval and submittal to the EPA. Through Resolution 17–25 (dated September 28, 2017), CARB adopted the plan and the EKAPCD's request for voluntary

[1] Today's proposed rule relates to classifications and SIP submittal obligations associated with the 2008 ozone NAAQS. In 2015, the EPA further tightened the 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm (''2015 ozone NAAQS''). 80 FR 65292 (October 26, 2015). Designations, classifications and SIP obligations for the 2015 ozone NAAQS are being addressed separately from this action.

[2] For the 2008 ozone NAAQS, the design value at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three years. The design value for an area is the highest design value among the monitoring sites.

[3] Kern County is located in the southern-most portion of California's Central Valley. The western half of Kern County is part of the San Joaquin Valley air basin and is included within the San Joaquin Valley ozone nonattainment area. The eastern half of Kern County is part of the Mojave Desert air basin. The Eastern Kern ozone nonattainment area covers the eastern half of the county excluding Indian Wells Valley. For more detail on the boundaries of the Eastern Kern ozone nonattainment area, see the 2008 ozone table in 40 CFR 81.305.

[4] *See* page vi of the Eastern Kern 2017 Ozone Plan.

reclassification. Subsequently, on October 25, 2017, CARB submitted the Eastern Kern 2017 Ozone Plan to the EPA as a revision to the California SIP. CARB's October 25, 2017 SIP revision submittal constitutes a request for reclassification of the Eastern Kern ozone nonattainment area.

III. Evaluation of Voluntary Reclassification Request

Under the EPA's ozone implementation rule at 40 CFR 51.1103(b), a state may request, and the EPA must approve, a higher classification for any reason in accordance with CAA section 181(b)(3).[5] We find that the plain language of CAA section 181(b)(3) and 40 CFR 51.1103(b) mandates that we approve voluntary reclassification requests, and thus, the EPA proposes in this action to grant CARB's request to reclassify the Eastern Kern nonattainment area from Moderate to Serious for the 2008 ozone NAAQS. Upon the effective date of a final action granting the reclassification, the area will be required to attain the 2008 ozone NAAQS as expeditiously as practicable, but not later than July 20, 2021.

By granting a state's request to reclassify an ozone nonattainment area to a higher classification, the EPA must address submittal deadlines for SIP requirements that have become applicable to an area as a result of its higher classification. Such SIP requirements include submittals that include provisions to require implementation of RACT for existing stationary sources and permits for new or modified stationary sources (*i.e.,* NSR), and to provide for RFP, attainment and contingency measures. For areas reclassified from Moderate to Serious, the ''major source'' threshold for RACT and NSR purposes falls from 100 tons per year of VOC or NO_X to 50 tons per year of VOC or NO_X.

As noted above, in October 2017, CARB submitted the Eastern Kern 2017 Ozone Plan to the EPA as a revision to the California SIP. We have reviewed the October 2017 submittal and find that it addresses the following Serious ozone area SIP requirements: Base year emissions inventory, emission statements, reasonably available control measure (RACM) demonstration, RFP, attainment demonstration and contingency measures.

In addition, on August 9, 2017, CARB submitted the EKAPCD's *Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)* (''Eastern Kern 2017 RACT SIP'') to the EPA as a revision to the California SIP. The Eastern Kern 2017 RACT SIP was developed to meet the RACT requirements for Serious ozone nonattainment areas in anticipation of submittal by CARB to the EPA of the voluntary reclassification request contained in the Eastern Kern 2017 Ozone Plan.[6] We have reviewed the August 2017 SIP submittal and find that it addresses the following Serious ozone area RACT-related SIP requirements: VOC sources covered by a Control Technology Guidelines (CTG) document and non-CTG major sources of VOC. The Eastern Kern 2017 RACT SIP does not fully address RACT requirements for non-CTG major sources of NO_X.

Upon review of the two SIP revision submittals described above, we find that all the SIP elements that apply to Eastern Kern as a Serious ozone nonattainment area for the 2008 ozone NAAQS have been addressed except for NSR and RACT for major sources of NO_X. The EPA is proposing a schedule for additional SIP revisions for these two SIP elements of no later than 12 months from the effective date of reclassification.[7]

IV. Proposed Action and Public Comment

Pursuant to CAA section 181(b)(3) and 40 CFR 51.1103(b), the EPA is proposing to grant the reclassification request by the State of California for the Eastern Kern 2008 ozone nonattainment area from Moderate to Serious, and to change the ''California—2008 8-Hour Ozone NAAQS (Primary and secondary)'' table in 40 CFR 81.305 accordingly. In connection with the reclassification, the EPA is proposing to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the Eastern Kern portion of the SIP to meet the Serious area requirements for NSR and for RACT for major sources of NO_X. The EPA is not proposing a SIP revision schedule for any Serious area SIP requirements for which SIP submittals have already been received. We will accept comments from the public on this proposal until June 13, 2018.

V. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Voluntary reclassifications under section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. This proposed action does not, in and of itself, impose any new requirements on any sector of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this proposed 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). Furthermore, this proposed action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because actions such as reclassifications made at the request of a state are exempt under Executive Order 12866.

In addition, I certify 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.*). This proposed action 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), because the EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the

[5] CAA section 181(b)(3) provides that the EPA shall grant the request of any state to reclassify an ozone nonattainment area to a higher classification.

[6] *See* pages 9 and 10 of the Eastern Kern 2017 RACT SIP.

[7] Upon the effective date of reclassification, we note that certain regulatory changes would occur automatically and do not require a SIP revision. For example, upon reclassification from Moderate to Serious, the applicability (or ''de minimis'') thresholds under our General Conformity rule (see 40 CFR part 93) would drop from 100 tons per year to 50 tons per year for VOC or NO_X. *See* 40 CFR 93.153(b)(1). Under the General Conformity rule, federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require Federal permits, approvals, or funding.

relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Eastern Kern ozone nonattainment area, and thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This proposed 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 proposed action 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, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and 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 proposed 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.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs policies, and activities on minority populations and low-income populations in the United States. This proposed reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

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

Dated: May 1, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–10217 Filed 5–11–18; 8:45 am]

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