



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[EPA-R09-OAR-2021-0340; FRL-10024-58-Region 9]**

**Designation of Areas for Air Quality Planning Purposes; California; Eastern Kern Ozone Nonattainment Area; Reclassification to Severe**

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

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is granting a request by the California Air Resources Board (CARB) to reclassify the Eastern Kern, California (“Eastern Kern”) ozone nonattainment area from “Serious” to “Severe” for the 2008 ozone national ambient air quality standard (NAAQS).

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0340. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ben Leers, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4279, [Leers.Benjamin@epa.gov](mailto:Leers.Benjamin@epa.gov).

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

## **I. Reclassification of Eastern Kern to Severe Ozone Nonattainment**

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”).<sup>1</sup> 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,”<sup>2</sup> or “Extreme,” depending upon the ozone design value for an area.<sup>3</sup> 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, CAA planning requirements than lower classified areas but are allowed more time to attain the ozone NAAQS. See, generally, subpart 2 of part D of title I of the CAA.

Effective July 20, 2012, the EPA designated and classified the Eastern Kern<sup>4</sup> area under the CAA as Marginal nonattainment for the 2008 ozone NAAQS.<sup>5</sup> The EPA’s classification of the Eastern Kern area as a Marginal ozone nonattainment area established a requirement that the area attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than three years from the date of designation as nonattainment, i.e., July 20, 2015. Under CAA section 181(b)(2), the EPA is required to determine whether an area attained the ozone NAAQS by the applicable

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<sup>1</sup> 73 FR 16436 (March 27, 2008).

<sup>2</sup> Throughout this document and in our final rule, we use the term “Severe” to refer to Severe areas that have up to 15 years to attain the ozone standards. The ozone area designation tables in 40 CFR part 81 specify “Severe-15” to distinguish such areas from “Severe-17” areas, which are Severe areas that have up to 17 years to attain the ozone standards.

<sup>3</sup> 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.

<sup>4</sup> Kern County is located in the southern-most portion of California’s Central Valley. The western portion 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 portion of Kern County is part of the Mojave Desert air basin. The Eastern Kern ozone nonattainment area covers the eastern portion 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.

<sup>5</sup> 77 FR 30088 (May 21, 2012).

attainment date. In May 2016, the EPA found that Eastern Kern failed to attain the 2008 ozone NAAQS by the July 20, 2015 Marginal attainment date and reclassified the area as Moderate for the 2008 ozone NAAQS with a new maximum attainment date of July 20, 2018.<sup>6</sup>

On October 25, 2017, CARB submitted the “Eastern Kern Air Pollution Control District 2017 Ozone Attainment Plan for the Federal 75 ppb 8-Hour Ozone Standard” (“the Eastern Kern 2017 Ozone Plan”). The Eastern Kern 2017 Ozone Plan includes a request for voluntary reclassification of the Eastern Kern ozone nonattainment area from Moderate to Serious. Effective August 6, 2018, the EPA granted CARB’s request and reclassified the Eastern Kern ozone nonattainment area as Serious for the 2008 ozone NAAQS with a new maximum attainment date of July 20, 2021.<sup>7</sup> By letter dated May 15, 2021, CARB submitted a request from the Eastern Kern Air Pollution Control District to the EPA to voluntarily reclassify the Eastern Kern ozone nonattainment area from Serious to Severe for the 2008 ozone NAAQS.<sup>8</sup>

Consistent with CAA section 181(b)(3), we are granting California’s request and reclassifying the Eastern Kern area from Serious to Severe nonattainment for the 2008 ozone NAAQS. CAA section 181(b)(3) provides for “voluntary reclassification” and states: “The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.” Under 40 CFR 51.1103(b), a state “may request, and the Administrator must approve, a higher classification for any reason in accordance with CAA section 181(b)(3)” and 40 CFR 51.1103(a), Table 1. The EPA is therefore granting CARB’s request for voluntary reclassification under section 181(b)(3) for the Eastern Kern ozone

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<sup>6</sup> 81 FR 26697 (May 4, 2016).

<sup>7</sup> 83 FR 31334 (July 5, 2018).

<sup>8</sup> Letter dated May 15, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. In the letter, CARB also requests reclassification of Eastern Kern to Serious for the 2015 ozone NAAQS. The EPA will take action on the reclassification request with respect to the 2015 ozone NAAQS in a separate rulemaking.

nonattainment area, and the EPA is reclassifying the area from Serious to Severe for the 2008 ozone NAAQS. In the Proposed Rules section of this **Federal Register**, the EPA is proposing a schedule for CARB to submit the plan elements for a Severe ozone nonattainment area.

As a result of this action, the Eastern Kern ozone nonattainment area must attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than fifteen years from the effective date of designation as nonattainment, i.e., no later than July 20, 2027.

The EPA has determined this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are “impracticable, unnecessary or contrary to the public interest.” The EPA has determined that public notice and comment for today’s action is unnecessary because our action to approve voluntary reclassification requests under CAA section 181(b)(3) is nondiscretionary both in its issuance and in its content. As such, notice and comment rulemaking procedures would serve no useful purpose.

## **II. Statutory and Executive Order Reviews**

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this final action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA 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. These actions do not, in and of themselves, impose any new requirements on any sectors 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 reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For these reasons, this final 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).

In addition, I certify that this final 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.) and that this final rule 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, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

This rule also 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). 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 reclassification action 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.

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 reclassification action does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898.

This final 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, nor 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 final action 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 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 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 (CRA), 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. The EPA will submit a rule report to each House of the Congress and to 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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE ***FEDERAL REGISTER***].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: May 27, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

For the reasons stated in the preamble, the EPA amends part 81, chapter I, title 40 of the Code of Federal Regulations as follows:

**PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

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

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

**Subpart C – Section 107 Attainment Status Designations**

2. In § 81.305, the table entitled “California—2008 8-Hour Ozone NAAQS [Primary and Secondary]” is amended by revising the entry for “Kern County (Eastern Kern), CA” to read as follows:



§ 81.305 California.

\* \* \* \* \*

CALIFORNIA-2008 8-HOUR OZONE NAAQS  
[Primary and Secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Kern County (Eastern Kern), CA: <sup>2</sup>		Nonattainment	<b>[Insert date 30 days after date of publication in the <i>Federal Register</i>]</b>	Severe-15.
Kern County (part):				
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest				

corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern- Tulare County boundary.						
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<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.