

Proposed
State of California
Air Resources Board

Proposed California Smog Check Performance Standard Modeling and Program Certification for the 70 Parts Per Billion 8-Hour Ozone Standard

Resolution 23-9

March 23, 2023

Agenda Item No.: 23-3-2

Whereas, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

Whereas, the California Legislature in Health and Safety Code section 39602 has designated CARB as the air pollution control agency for all purposes set forth in federal law;

Whereas, CARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (NAAQS) as required by the federal Clean Air Act (the Act) (42 U.S.C. § 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) necessary to comply with the Act;

Whereas, CARB has primary responsibility for the control of air pollution from vehicular sources, including motor vehicle fuels, as specified in Health and Safety Code section 39002, section 39500, and Division 26, Part 5 (commencing with § 43000), and for ensuring that the districts meet their responsibilities under the Act pursuant to Health and Safety Code sections 39002, 39500, 39602, 40469, and 41650;

Whereas, the local districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standard within their boundaries, pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

Whereas, Health and Safety Code section 39602 also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

Whereas, Health and Safety Code sections 39515 and 39516 provide that any power, duty, purpose, function, or jurisdiction of the Board may be delegated to the CARB Executive

Officer as the Board deems appropriate, and is presumed delegated unless it has been specifically reserved;

Whereas, on March 27, 2008, the U.S. Environmental Protection Agency (U.S. EPA) promulgated an 8-hour ozone standard of 75 parts per billion (ppb) (75 ppb ozone standard) (73 Fed. Reg. 16436);

Whereas, effective July 20, 2012, U.S. EPA designated San Diego County and Eastern portion of Kern County as nonattainment for the 75 ppb 8-hour ozone standard with a Marginal classification and an attainment date of July 20, 2015 (77 Fed. Reg. 30088);

Whereas, section 182, subdivisions (a)(2)(B) and (b)(4) of the Act (42 U.S.C. § 7511a) requires nonattainment areas to meet the vehicle emission control inspection and maintenance (I/M) program requirements by submitting a revision to the applicable SIP to include a specific schedule for implementation of the I/M program under part D of title II of the Federal Clean Air Act;

Whereas, section 182, subdivisions (c)(3) of the Act (42 U.S.C. § 7511a) requires nonattainment areas with a 1980 population of 200,000 or more, that are classified as Serious or higher, to submit a revision to the applicable SIP for an enhanced I/M program;

Whereas, section 182 of the Act requires both basic and enhanced I/M programs to comply with guidance published in the Federal Register by the Administrator of the U.S. EPA;

Whereas, section 182 of the Act requires the Administrator to review, revise, update, and republish in the Federal Register the guidance for the State's motor vehicle I/M programs, and further requires that the guidance shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer;

Whereas, on November 5, 1992, U.S. EPA published a Final Rule on Inspection and Maintenance Program Requirements (the "Final I/M Rule"; 57 Fed. Reg. 52950; 40 CFR Part 51, Subpart S) to fulfill its responsibilities to issue guidance under section 182 of the Act and to establish performance standards and other requirements for both basic and enhanced I/M programs;

Whereas, on January 22, 1996, CARB submitted to U.S. EPA a SIP revision for the basic and enhanced I/M program;

Whereas, on January 8, 1997, U.S. EPA issued final approval of the basic program and interim approval of the enhanced program (62 Fed. Reg. 1150);

Whereas, under California law (Health and Safety Code section 44001.5 et. seq.), the Bureau of Automotive Repair (BAR) is responsible for developing and implementing California's I/M program;

Whereas, BAR has continued to adopt improvements to the I/M program since the January 1996 I/M SIP submittal to U.S. EPA;

Whereas, on June 5, 2009, CARB submitted to U.S. EPA a SIP revision including the most recent versions of BAR's I/M regulations and the California statutes relevant to California's I/M program;

Whereas, on March 6, 2015, U.S. EPA finalized the Implementation of the 2008 NAAQS for Ozone: SIP Requirements (75 ppb Implementation Rule), which outlined the SIP requirements for the 75 ppb ozone standard, including requirements for I/M programs (80 Fed. Reg. 12264);

Whereas, CARB initially satisfied applicable I/M requirements for the 75 ppb ozone standard alongside attainment plan SIP revisions submitted from 2016 to 2018;

Whereas, additional I/M requirements for the 75 ppb ozone standard were triggered for San Diego County and Eastern Kern County after CARB's initial I/M certification for the 75 ppb standard;

Whereas, San Diego County and Eastern Kern did not attain the standard by the Marginal attainment deadline, and, effective June 3, 2016, U.S. EPA reclassified San Diego County and Eastern Kern County as Moderate nonattainment areas for the 75 ppb ozone standard with an attainment date of July 20, 2018 (81 Fed. Reg. 26697);

Whereas, effective September 23, 2019, U.S. EPA determined the areas did not meet the 75 ppb 8-hour ozone standard by the July 20, 2018, deadline and reclassified San Diego County and Eastern Kern County as Serious nonattainment areas with an attainment date of July 20, 2021 (84 Fed. Reg. 44238);

Whereas, on October 26, 2015, the U.S. EPA promulgated a more health-protective 8-hour ozone standard of 70 ppb (70 ppb ozone standard) (80 Fed. Reg. 65292);

Whereas, effective August 3, 2018, U.S. EPA designated nineteen areas in California including the South Coast Air Basin, San Joaquin Valley, Coachella Valley, West Mojave Desert, San Diego County, Sacramento Metropolitan Area, Eastern Kern, Ventura County, Western Nevada, and Mariposa County as nonattainment for the 70 ppb ozone standard (83 Fed. Reg. 25776);

Whereas, effective August 3, 2018, U.S. EPA classified Sacramento Metropolitan Area, San Diego County, Eastern Kern and Western Nevada as Moderate, Ventura County as Serious, Coachella Valley and West Mojave Desert as Severe, and San Joaquin Valley and South Coast Air Basin as Extreme nonattainment areas for the 70 ppb ozone standard (83 Fed. Reg. 25776);

Whereas, effective November 29, 2021, U.S. EPA reclassified the Sacramento Metropolitan Area, Eastern Kern, and Western Nevada as Serious nonattainment areas for the 70 ppb ozone standard per the request from the districts and CARB's letter to U.S. EPA dated August 3, 2020 (86 Fed. Reg. 59648);

Whereas, effective November 7, 2022, U.S. EPA determined that Mariposa County did not meet the 70 ppb 8-hour ozone standard by the August 3, 2021, Marginal deadline and reclassified Mariposa County as a Moderate nonattainment area (87 Fed. Reg. 60897);

Whereas, on December 6, 2018, U.S. EPA finalized the Implementation of the 2015 NAAQS for Ozone: Nonattainment Area SIP Requirements (70 ppb Implementation Rule), which outlined the SIP requirements for the 70 ppb ozone standard, including requirements for I/M programs (83 Fed. Reg. 62998);

Whereas, federal I/M performance standards were last revised on April 7, 2006, to address I/M programs required under 80 ppb 8-hour ozone NAAQS (71 Fed. Reg. 17705);

Whereas, federal I/M requirements are codified in 40 CFR Part 51 Subpart S;

Whereas, performance standard modeling is one of the required elements of an I/M SIP, as listed in 40 CFR 51.372. The required performance standard modeling analysis element is “an analysis of emission level targets for the program using the most current U.S. EPA mobile source emission model or an alternative approved by the Administrator showing that the program meets the performance standard, as applicable. Areas must either demonstrate and certify that their existing program meets the I/M program requirements, or amend their Smog Check Program requirements;”

Whereas, CARB staff prepared the California Smog Check Performance Standard Modeling and Program Certification for the 70 ppb 8-hour Ozone Standard (Smog Check Certification) following the 70 ppb and 75 ppb Implementation Rules and all applicable U.S. EPA guidance;

Whereas, performance modeling and certification is not required for the Mariposa County and Western Nevada County nonattainment areas since their population is below the applicable population thresholds;

Whereas, CARB staff proposes the Smog Check Certification to certify that California’s Smog Check Program continues to meet I/M program requirements and satisfies 40 CFR Part 51, subpart S and sections 182(a)(2)(B), 182(b)(4), and 182(c)(3) of the Act for the South Coast Air Basin, San Joaquin Valley, Coachella Valley, Western Mojave Desert, San Diego County, Sacramento Metro, Eastern Kern, and Ventura County nonattainment areas for the 70 ppb ozone standard, and San Diego County and Eastern Kern nonattainment areas for the 75 ppb ozone standard, as set forth in the Staff Report released to the public on February 10, 2023, which set forth the rationale and basis as well as data, reports, and information relied upon;

Whereas, CARB’s regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

Whereas, CARB staff has determined that the proposed Smog Check Certification is exempt from CEQA under California Code of Regulations, title 14, section 15061, subdivision (b)(3) (“common sense” exemption) because the record evidence shows with certainty that there is no possibility that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter V of the Staff Report;

Whereas, CARB staff has determined the proposed Smog Check Certification is exempt from CEQA under California Code of Regulations, title 14, section 15308 (“Class 8” exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the Smog Check Certification will enhance the environment by better protecting the public from health impacts associated with exposure to oxides of nitrogen, hydrocarbons, carbon monoxide, and particular matter, the regulatory process involves procedures for protection of the environment, and the Smog Check Certification will not

result in any significant adverse environmental impacts as described in Chapter V of the Staff Report;

Whereas, CARB staff made the proposed Smog Check Certification available to the public with a 30-day public comment period that began when notice was released on February 10, 2023;

Whereas, CARB staff has determined that the proposed Smog Check Certification meets the requirements of the Act and is necessary for inclusion in the SIP;

Whereas, the Board finds that:

The proposed Smog Check Certification meets the statutory requirements for nonattainment areas classified as Moderate, Serious, Severe, or Extreme that are required to submit a SIP revision with the associated performance standard modeling and a written statement certifying their determination as identified in subpart S, 40 CFR Part 51 and sections 182 of the Act;

The proposed Smog Check Certification meets the statutory requirements in Health and Safety Code sections 39002, 39500, 39600, 39601, 39602, 40000, 40001, 40400 et seq., 40469, 40701, 40702, 40950, 41200, 41300, 41650; and CCR, title 17, section 60110;

The proposed Smog Check Certification were developed in an open public process, in consultation with affected parties, through a public comment period;

The proposal is consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, income, or national origin;

The proposed Smog Check Certification is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment; and

The proposed Smog Check Certification is exempt from CEQA under California Code of Regulations, title 14, section 15308 because substantial evidence in the record shows that it will enhance the environment by better protecting the public from health impacts associated with exposure to oxides of nitrogen, hydrocarbons, carbon monoxide, and particular matter, the regulatory process involves procedures for protection of the environment, and the proposal will not result in any significant adverse environmental impacts.

Now, therefore, be it resolved that the Board hereby approves the Smog Check Certification to certify that California's existing Smog Check program meets the federal I/M program requirements and satisfies federal I/M regulation 40 CFR Part 51, subpart S and sections 182(a)(2)(B), 182(b)(4), and 182(c)(3) of the Act for South Coast Air Basin, San Joaquin Valley, Coachella Valley, Western Mojave Desert, San Diego County, Sacramento Metro, Eastern Kern, and Ventura County nonattainment areas for the 70 ppb 8-hour ozone standard, and San Diego County and Eastern Kern nonattainment areas for the 75 ppb 8-hour ozone standard, as set forth in the Staff Report released to the public on February 10, 2023.

Be it further resolved that the Board hereby adopts the Smog Check Certification, as revisions to the California SIP for South Coast Air Basin, San Joaquin Valley, Coachella Valley, Western Mojave Desert, San Diego County, Sacramento Metro, Eastern Kern, and Ventura County nonattainment areas for the 70 ppb 8-hour ozone standard, and San Diego County and Eastern Kern nonattainment areas for the 75 ppb 8-hour ozone standard.

Be it further resolved that the Board hereby directs the Executive Officer to submit the Smog Check Certification, together with the appropriate supporting documentation, to the U.S. EPA for approval as a revision to the California SIP, to be effective, for purposes of federal law, upon approval by U.S. EPA.

Be it further resolved that the Board directs the Executive Officer to work with U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

Be it further resolved that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

Be it further resolved that the Board certifies that the proposed SIP revision was adopted after notice and public hearing as required by section 110(l) of the Act and 40 CFR Section 51.102.