

**State of California
Air Resources Board**

Executive Order S-23-013

**Submittal of the San Joaquin Valley Air Pollution Control District 2023 Maintenance Plan and Redesignation
Request for the Revoked 1-Hour Ozone Standard**

Whereas, the California Legislature in Health and Safety Code (H&SC) section (§) 39602 has designated the California Air Resources Board (CARB or Board) as the air pollution control agency for all purposes set forth in federal law;

Whereas, CARB is responsible for preparing a State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS or standards) as required by the federal Clean Air Act (the Act; 42 U.S.C. § 7401 et seq.), and to this end is directed by H&SC § 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as 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 H&SC §§ 39002, 39500, and 43000, et seq.), and for ensuring that the districts meet their responsibilities under the Act pursuant to H&SC §§ 39002, 39500, 39602, 41650, and 41652;

Whereas, the districts have primary responsibility for the control of air pollution from non-vehicular sources and for adopting control measures, rules and regulations to attain the NAAQS within their boundaries pursuant to H&SC §§ 39002, 40000, 40001, 40701, 40702, and 41650;

Whereas, H&SC § 39602 also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

Whereas, H&SC § 41650 requires CARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

Whereas, H&SC § 39515 provides that any power, duty, purpose, function or jurisdiction of the Board may be delegated to the CARB Executive Officer as the Board deems appropriate;

Whereas, H&SC § 39516 provides that any power, duty, purpose, function or jurisdiction of the Board is presumed delegated to the CARB Executive Officer unless it has been specifically reserved to the Board for its own action;

Whereas, the Board has not reserved the power to adopt and submit SIP revisions to itself;

Whereas, the San Joaquin Valley Air Basin (San Joaquin Valley or Valley) includes Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and western Kern Counties;

Whereas, the San Joaquin Valley Air Pollution Control District (District or SJVAPCD) was established under H&SC § 40600 as the unified air pollution control district responsible for carrying out air quality activities in the San Joaquin Valley;

Whereas, in 1979, the United States Environmental Protection Agency (U.S. EPA) promulgated a 1-hour ozone NAAQS at a level of 120 parts per billion (ppb) (1-hour ozone standard);¹

Whereas, in 1991, U.S. EPA classified the San Joaquin Valley as a Serious nonattainment area for the 1-hour ozone standard;²

Whereas, effective May 2004, U.S. EPA classified the San Joaquin Valley as an Extreme nonattainment area for the 1-hour ozone standard;³

Whereas, on April 30, 2004, U.S. EPA revoked the 1-hour ozone standard in full, including the associated designations and classifications, to be effective one year following the effective date of the designations for the 8-hour NAAQS;⁴

Whereas, when U.S. EPA revoked the 1-hour ozone standard, it identified the revoked requirements applicable to implementation of the 1-hour ozone standard and those that remained in effect, and adopted anti-backsliding provisions to preserve existing 1-hour ozone control measure and emission reduction obligations;

Whereas, in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018), the Court held that the appropriate basis for a redesignation is to satisfy the elements of Section 107(d)(3)(E) of the Act;

Whereas, under Section 107(d)(3)(E) of the Act, a nonattainment area can be redesignated to attainment if the following conditions are met:

1. U.S. EPA has determined that the NAAQS has been attained;
2. U.S. EPA has fully approved the applicable implementation plan under Section 110(k) of the Act;
3. U.S. EPA has determined that the improvement in air quality is due to permanent and enforceable emission reductions;
4. The state has met all applicable requirements for the area under Section 110 and Part D; and
5. U.S. EPA has fully approved a maintenance plan, including a contingency plan, for the area under Section 175(A) of the Act;

Whereas, in 2013, the Valley recorded zero exceedances of the 1-hour ozone standard;

Whereas, in May 2014, the District submitted a clean data finding to U.S. EPA for the 1-hour ozone standard based on 2011-2013 air quality data, with a request that U.S. EPA determine that the Valley attained the 1-hour ozone standard;

¹ 44 Fed. Reg. 8,202 (February 8, 1979)

² 56 Fed. Reg. 56,694 (November 6, 1991)

³ 69 Fed. Reg. 20,550 (May 17, 2004)

⁴ 69 Fed. Reg. 23,951 (June 15, 2004)

Whereas, in July 2015, the District submitted a second clean data finding to U.S. EPA for the 1-hour ozone standard based on 2012-2014 air quality data;

Whereas, in July 2016, U.S. EPA determined that the Valley had attained the 1-hour ozone standard based on 2012-2014 air quality data;⁵

Whereas, in September 2013, the District submitted the 2013 Plan for the Revoked 1-Hour Ozone Standard (2013 Ozone Plan);

Whereas, in April 2016, U.S. EPA approved the 2013 Ozone Plan, including the Reasonable Available Control Measures demonstration, Rate of Progress (ROP) demonstration, attainment demonstration, ROP contingency measures, provisions for clean fuels or advanced control technologies for boilers, and vehicle miles traveled emissions offset demonstrations;⁶

Whereas, U.S. EPA has approved the 2013 Ozone Plan as meeting Section 110 requirements and as meeting applicable requirements under Part D of Title I of the Act, and no outstanding 1-hour ozone SIP submittals exist for the Valley;

Whereas, the District has met all 1-hour ozone SIP requirements for the purposes of redesignation under Section 110 of the Act;

Whereas, the District and CARB have adopted and implemented a suite of control measures that provide permanent and enforceable emission reductions, enabling the Valley to remain in attainment of the 1-hour ozone standard since 2013;

Whereas, the District and CARB developed the Proposed 2023 Maintenance Plan and Redesignation Request for the Revoked 1-Hour Ozone Standard (1-Hour Ozone Maintenance Plan) to meet Act requirements to be officially redesignated as attainment for the revoked 1-hour ozone standard and terminate all anti-backsliding requirements;⁷

Whereas, the 1-Hour Ozone Maintenance Plan includes an emissions inventory, a maintenance demonstration, and a contingency plan;

Whereas, the Valley continues to meet the 1-hour ozone standard based on 2020-2022 data, as demonstrated in the 1-Hour Ozone Maintenance Plan;

Whereas, federal law set forth in §110(l) of the Act and title 40, Code of Federal Regulations (CFR), §51.102 requires that one or more public hearings, preceded by at least 30 days' notice and opportunity for review, must be conducted prior to the adoption and submittal to U.S. EPA of any SIP revision;

⁵ 81 Fed. Reg. 46,608 (July 18, 2016)

⁶ 81 Fed. Reg. 19,492 (April 5, 2016)

⁷ SJVAPCD. Proposed 2023 Maintenance Plan and Redesignation Request for the Revoked 1-Hour Ozone Standard. <https://www.valleyair.org/Workshops/postings/2023/06-15-23/maintenance-plan.pdf>

Whereas, following a duly noticed public hearing, the District Governing Board adopted the 1-Hour Ozone Maintenance Plan on June 15, 2023;

Whereas, the District submitted the 1-Hour Ozone Maintenance Plan to CARB for submission to U.S. EPA for inclusion in the California SIP to address requirements of the Act for the 1-hour ozone standard;

Whereas, CARB has determined that the 1-Hour Ozone Maintenance Plan meets the requirements of the Act and is necessary for inclusion in the SIP;

Whereas, CARB is directed by H&SC §41650 to adopt the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

Whereas, the District determined that, because the 1-Hour Ozone Maintenance Plan will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, the 1-Hour Ozone Maintenance Plan does not constitute a project under the provisions of the California Environmental Quality Act (CEQA) Guidelines §15378;

Whereas, furthermore, even if the 1-Hour Ozone Maintenance Plan were a project under CEQA it would be exempt for actions taken by regulatory agencies, as authorized by State or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (CEQA Guidelines §15308) (Actions by Regulatory Agencies for Protection of the Environment) and exempt from CEQA per the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (CEQA Guidelines §15061(b)(3));

Whereas, CARB determined that its review and subsequent approval of the Valley's 1-Hour Ozone Maintenance Plan is a "ministerial" approval for purposes of CEQA (Cal. Code Regs, tit. 14, §15268) because CARB's review is limited to determining if the 1-Hour Ozone Maintenance Plan meets the requirements of the Act, and CARB lacks authority to modify or not approve the 1-Hour Ozone Maintenance Plan in response to environmental concerns.

Therefore, it is ordered that CARB hereby adopts the 1-Hour Ozone Maintenance Plan as a revision to the California SIP.

Be it further ordered that CARB hereby submits to U.S. EPA the 1-Hour Ozone Maintenance Plan and requests that U.S. EPA approve it as a revision to the California SIP.

I certify, pursuant to 40 CFR §51.102(f), that the 1-Hour Ozone Maintenance Plan was adopted after notice and public hearings as required by 40 CFR §51.102(a) and §51.102(d).

Executed in Sacramento, California, this 19th day of July, 2023.



Steven S. Cliff, Ph.D., Executive Officer