

Proposed
State of California
Air Resources Board

2023 Eastern Kern Ozone Plan for the 75 and 70 Parts Per Billion 8-Hour Ozone Standards

Resolution 23-17

June 22, 2023

Agenda Item No.: 23-6-1

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 or standards) as required by the federal Clean Air Act (the Act) (42 U.S.C. section 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, 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, 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, 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 NAAQS within their boundaries, pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

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, Health and Safety Code section 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, on March 27, 2008, the U.S. Environmental Protection Agency (U.S. EPA) promulgated an 8-hour NAAQS for ozone of 75 parts per billion (ppb) (75 ppb standard);

Whereas, effective July 20, 2012, U.S. EPA designated the eastern portion of Kern County (Eastern Kern) as nonattainment for the 75 ppb standard with a Marginal classification and attainment date of July 20, 2015;

Whereas, the Eastern Kern Air Pollution Control District (District) is the local district responsible for the control of air pollution from all sources, other than emissions from motor vehicles, in the Eastern Kern under Health and Safety Code sections 40000, et seq.;

Whereas, effective July 5, 2021, after a request from the District and CARB, U.S. EPA classified Eastern Kern as a Severe nonattainment area for the 75 ppb standard with an attainment date of July 15, 2027;

Whereas, because the ozone season in Eastern Kern consists of the summer months, the area needs to meet the 75 ppb standard in the 2026 ozone season to meet the Severe attainment deadline of July 15, 2027;

Whereas, on October 26, 2015, the U.S. EPA promulgated an 8-hour NAAQS for ozone of 70 ppb (70 ppb standard);

Whereas, effective November 29, 2021, U.S. EPA classified Eastern Kern as a Serious nonattainment area for the 70 ppb standard with an attainment date of August 3, 2027;

Whereas, the District is requesting that Eastern Kern be classified as a Severe nonattainment area for the 70 ppb standard with an attainment date of August 3, 2033 with attainment required in the 2032 ozone season;

Whereas, effective April 6, 2015, U.S. EPA published the Implementation of the 2008 NAAQS for Ozone: Nonattainment Area State Implementation Plan Requirements;

Whereas, effective February 4, 2019, U.S. EPA published the Implementation of the 2015 NAAQS for Ozone: Nonattainment Area SIP Requirements;

Whereas, the 2008 NAAQS for Ozone: Nonattainment Area SIP Requirements and the 2015 NAAQS for Ozone: Nonattainment Area SIP Requirements (Ozone Rules) established the planning requirements for the 75 and 70 ppb standards;

Whereas, the Act and the Ozone Rules require that a Severe SIP include an emissions inventory for ozone precursors, specifically oxides of nitrogen (NO_x) and reactive organic gases (ROG); an attainment demonstration; reasonably available control measures (RACM) demonstration; a reasonable further progress (RFP) demonstration and corresponding motor vehicle emission budgets (MVEBs); a vehicle-miles-traveled (VMT) offset demonstration; and contingency measures;

Whereas, in March 2017, CARB adopted the 2016 State Strategy for the State Implementation Plan (2016 State SIP Strategy), which commits to the measures and aggregate emission reductions needed to attain federal ozone and fine particulate matter (PM2.5) ambient air quality standards across California;

Whereas, in September 2022, CARB adopted the 2022 State Strategy for the State Implementation Plan (2022 State SIP Strategy), which builds on existing programs and the previous 2016 State SIP Strategy;

Whereas, the 2022 State SIP Strategy describes the control measures for State-regulated sources that CARB will pursue to reduce emissions to the levels needed for the attainment of the 70 ppb standard across California;

Whereas, when the Board adopted the 2022 State SIP Strategy on September 27, 2022, the Board directed the Executive Officer to calculate and commit to appropriate emission reductions from implementation of the 2022 State SIP Strategy in specific nonattainment areas, as attainment plan SIP revisions are developed or revised for these areas;

Whereas, the District developed the 2023 Eastern Kern Ozone Plan for the 75 and 70 ppb 8-Hour Ozone Standards (2023 Plan), to meet the Severe ozone nonattainment area planning requirements for the 75 and 70 ppb standards;

Whereas, consistent with sections 181(a) and 182(c)(2) of the Act, the 2023 Plan includes an attainment demonstration that shows attainment as expeditiously as practicable, and by the Severe area deadline of July 15, 2027 for the 75 ppb standard and the Severe area deadline of August 3, 2033 for the 70 ppb standard;

Whereas, the attainment demonstration modeling includes the benefits of CARB's existing mobile source control program of measures adopted through December 2021 and District rules submitted through March 2022;

Whereas, the attainment demonstration further includes emissions reductions from new measures committed to as a part of the 2022 State SIP Strategy which provides the necessary control strategy, demonstrating that Eastern Kern will meet the 70 ppb standard by 2032;

Whereas, the emissions reductions CARB committed through the 2022 State SIP Strategy include 1.8 tons per day (tpd) of NOx and 0.1 tpd of ROG in Eastern Kern by 2032, with a subset to come specifically from on-road mobile source measures of 0.2 tpd NOx and 0.03 tpd ROG to be used for transportation conformity purposes;

Whereas, consistent with section 172(c)(1) of the Act, the 2023 Plan demonstrates RACM for ozone in Eastern Kern;

Whereas, consistent with sections 172(c)(2) and 182(c)(2) of the Act, the 2023 Plan demonstrates that Eastern Kern meets RFP targets in the 2023 milestone year and the 2026 attainment year for the 75 ppb standard, but fails to meet the RFP targets in the 2029 milestone year and the 2032 attainment year (2032) for the 70 ppb standard;

Whereas, as allowed under section 182(c)(2)(B)(ii) of the Act, the District provides an alternative analysis for RFP that demonstrates that measures that can feasibly be implemented in the area are achieved in practice by sources in the same categories in nonattainment areas of the next higher classification, Extreme;

Whereas; the District revised Rules 410 (Organic Solvents)¹, 410.8 (Aerospace Coating Operations)², and 432 (Polyester Resin Operations)³ to address the alternative RFP process as allowed under the Act;

Whereas, the District's alternative analysis for RFP also identified two source category rules that can be amended to match those in place in Extreme nonattainment areas, but determined that the emission reductions through such amendments are negligible;

Whereas, consistent with section 176 of the Act, the 2023 Plan establishes MVEBs, developed in consultation between the District and Kern Council of Governments that conform to the attainment and RFP emission levels;

Whereas, consistent with section 182(d)(1)(A) of the Act, the 2023 Plan includes a VMT offset analysis that demonstrates that the identified transportation control strategies and measures are sufficient to offset the growth in emissions in Eastern Kern;

Whereas, in anticipation of forthcoming guidance from U.S. EPA, the 2023 Plan includes a contingency measure commitment for RFP and attainment consistent with sections 172(c)(9) and 182(c)(9) of the Act and existing guidance that require contingency measures that go into effect without further regulatory action if an area fails to meet an RFP milestone or attain by the required deadline;

Whereas, besides the SIP requirements addressed in the 2023 Plan, there are many other requirements under the 75 and 70 ppb standards that have been or will be addressed through separate submittals;

Whereas, CARB has already submitted to U.S. EPA the emissions statement rule, new source review rule, Reasonably Available Control Technology (RACT), the Clean Fuels for Fleets Program and vehicle inspection and maintenance as required by the Act and the Ozone Rules;

Whereas CARB staff has concluded that the 2023 Plan meets the requirements of the Act and Ozone Rules for the 75 and 70 ppb standards for Eastern Kern;

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

Whereas, as required by the Act, the 2023 Plan was made available for public review at least 30 days prior to the May 4, 2023 public hearing where the District approved the 2023 Plan;

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 (California Environmental Quality Act (CEQA)); see also the CEQA Guidelines found in California Code of Regulations,

¹ http://www.kernair.org/Rule%20Book/4%20Prohibitions/410_Organic_Solvents.pdf

² http://www.kernair.org/Rule%20Book/4%20Prohibitions/410-8_Aerospace_Assembly_And_Coating_Operations.pdf

³ http://www.kernair.org/Rule%20Book/4%20Prohibitions/432_Polyester_Resin_Operations.pdf

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 prepared an environmental analysis for the 2022 State SIP Strategy under its certified regulatory program to comply with the requirements of CEQA, which determined the 2022 State SIP Strategy could result in beneficial, less-than-significant, and potentially significant and unavoidable adverse impacts;

Whereas, CARB staff determined that CARB can rely on the environmental analysis prepared under its certified regulatory program for the 2022 State SIP Strategy, and no additional environmental review is required because the record evidence shows that CARB's aggregate commitment will not result in new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts, as described in Chapter VII of the Staff Report;

Whereas, to meet its obligations under CEQA, the District determined, under CEQA Guidelines sections 15002(k) and 15061, the 2023 Plan is exempt from CEQA under CEQA Guidelines section 15300.4; and

Whereas, the Board finds that:

The 2023 Plan and aggregate emission reduction commitment meet the requirements of the Act for Eastern Kern as a Severe ozone nonattainment area for the 75 and 70 ppb standards;

Implementation of the 2023 Plan provides the emission reductions needed in Eastern Kern for meeting the 75 and 70 ppb standards by the attainment deadlines;

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

CARB's aggregate commitment is covered by the prior environmental analysis for the 2022 State SIP Strategy prepared to comply with CEQA, and no additional environmental review, or revisions to the prior environmental analysis, are required because substantial evidence in the records shows there are no changes that will result in new significant adverse environmental impacts or a substantial increase in severity of previously identified significant adverse impacts.

Now, therefore, be it resolved that the Board hereby adopts the 2023 Plan and aggregate commitment to obtain emissions reductions of 1.8 tpd of NO_x and 0.1 tpd of ROG in Eastern Kern by 2032, with a subset to come specifically from on-road mobile source measures of 0.2 tpd NO_x and 0.03 tpd ROG to be used for transportation conformity purposes in the CARB Staff Report.

Be it further resolved that the Board hereby directs the Executive Officer to submit the 2023 Plan as adopted by the District and the aggregate emission reduction commitment contained in the CARB Staff Report to U.S. EPA for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

Be it further resolved that the Board hereby certifies that the 2023 Plan was adopted after notice and public hearing as required by Section 110(1) of the Act and 40 CFR section 51.102.

Be it further resolved that the Board directs the Executive Officer to work with the District and 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.