

Proposed

State of California
Air Resources Board

California Smog Check Contingency Measure for the State Implementation Plan

Resolution 23-20

October 26, 2023

Agenda Item No.: 23-9-2

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 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 sections 39002, 39500, and 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, CARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to Health and Safety Code sections 39002, 39500, 39602, and 41650;

Whereas, CARB is authorized by Health and Safety Code section 39600 to perform such acts as may be necessary for the proper execution of its powers and duties;

Whereas, Health and Safety Code section 39516 provides that any power, duty, purpose, function, or jurisdiction of the Board that may lawfully be delegated shall be conclusively presumed to have been delegated to CARB's Executive Officer unless such are specifically reserved to the Board by its affirmative vote;

Whereas, the Board has not reserved the power to implement SIP contingency measures to itself;

Whereas, in 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated a 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) annual fine particulate matter (PM_{2.5}) standard (15 $\mu\text{g}/\text{m}^3$ annual standard) and revised it in 2012, to 12 $\mu\text{g}/\text{m}^3$ (12 $\mu\text{g}/\text{m}^3$ annual standard);

Whereas, in 1997, U.S. EPA promulgated a 65 $\mu\text{g}/\text{m}^3$ 24-hour PM_{2.5} standard (65 $\mu\text{g}/\text{m}^3$ 24-hour standard) and revised it in 2006 to 35 $\mu\text{g}/\text{m}^3$ (35 $\mu\text{g}/\text{m}^3$ 24-hour standard);

Whereas, in August 2016, U.S. EPA finalized the PM_{2.5} SIP implementation rule (PM_{2.5} Rule) which established the framework and requirements that states must meet in developing PM_{2.5} SIPs based on provisions of Subpart 4 of the Act;

Whereas, section 172(c)(9) of the Act requires that SIPs provide for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress (RFP), or to attain the standard by the applicable attainment date;

Whereas, U.S. EPA designated the San Joaquin Valley as nonattainment for the 15 $\mu\text{g}/\text{m}^3$ annual standard, and 35 $\mu\text{g}/\text{m}^3$ 24-hour standard;

Whereas, U.S. EPA has designated the San Joaquin Valley, and the South Coast Air Basin as nonattainment for the 12 $\mu\text{g}/\text{m}^3$ annual standard,

Whereas, in 1997, U.S. EPA promulgated an 8-hour ozone standard of 80 parts per billion (ppb);

Whereas, effective June 15, 2004, U.S. EPA designated the San Joaquin Valley as nonattainment for the 80 ppb 8-hour ozone standard;

Whereas, on March 27, 2008, U.S. EPA promulgated an 8-hour ozone standard of 75 ppb (75 ppb ozone standard);

Whereas, effective July 20, 2012, U.S. EPA designated the Coachella Valley, Eastern Kern County, Sacramento Metro, San Diego County, San Joaquin Valley, South Coast Air Basin, and Western Mojave Desert as nonattainment for the 75 ppb 8-hour ozone standard;

Whereas, effective April 6, 2015, U.S. EPA finalized the *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements* rule (75 ppb Ozone Rule) which outlined the SIP requirements for the 75 ppb 8-hour ozone standard;

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

Whereas, effective August 3, 2018, U.S. EPA designated Coachella Valley, Eastern Kern County, Mariposa County, Sacramento Metro, San Diego County, San Joaquin Valley, South Coast Air Basin, Ventura County, Western Mojave Desert, and Western Nevada County as nonattainment for the 70 ppb ozone standard;

Whereas, effective February 4, 2019, U.S. EPA finalized the *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements* (70 ppb Ozone Rule), which outlined the planning requirements for the 70 ppb ozone standard;

Whereas, in addition to the requirements of section 172(c)(9) of the Act, section 182(c)(9) of the Act further requires that plans for ozone nonattainment areas classified as Serious or above provide for the implementation of contingency measures to be undertaken if the area fails to meet any applicable milestone;

Whereas, U.S. EPA convened an internal task force in early 2021 to develop updated guidance on contingency measures, a draft of which was released in March 2023 (U.S. EPA's draft guidance);

Whereas, on August 8, 2023, U.S. EPA proposed a federal implementation plan (FIP) for Contingency Measures for the Fine Particulate Matter Standards for the San Joaquin Valley for the 12 $\mu\text{g}/\text{m}^3$ annual, 15 $\mu\text{g}/\text{m}^3$ annual and 35 $\mu\text{g}/\text{m}^3$ 24-hour $\text{PM}_{2.5}$ standards (Valley $\text{PM}_{2.5}$ Contingency FIP) which followed U.S. EPA's draft guidance;

Whereas, CARB and the San Joaquin Valley Air Pollution Control District are working with U.S. EPA to develop approvable contingency measures to replace the Valley $\text{PM}_{2.5}$ Contingency FIP;

Whereas, on June 23, 2023, CARB sent a letter to U.S. EPA committing to bring to the Board for consideration a triggered contingency measure for the San Joaquin Valley to implement a change to the exemptions for motor vehicles in the California Smog Check Program in the case of an applicable triggering event as defined in 40 CFR 51.1014(a) and submit the contingency measure to U.S. EPA as part of the contingency measures to replace the Valley $\text{PM}_{2.5}$ Contingency FIP;

Whereas, CARB developed the *California Smog Check Contingency Measure State Implementation Plan Revision* (Smog Check Contingency Measure) to support local air districts in meeting contingency measure requirements of the Act for nonattainment areas across the State listed in Attachment A (Attachment A) in a way that is consistent with U.S. EPA's draft guidance;

Whereas, the Smog Check Program is a biennial vehicle inspection and maintenance program aimed at reducing air pollution in the state by identifying vehicles with harmful excess emissions for repair or retirement and is required concurrently with vehicle registration (Smog Check Program);

Whereas, under Health and Safety Code section 44001.5, et seq., the Bureau of Automotive Repair (BAR) is responsible for developing and implementing the Smog Check Program;

Whereas, under Health and Safety Code section 44005, the Department of Motor Vehicles (DMV) is responsible for cooperating with BAR in implementing any changes to the Smog Check Program;

Whereas, vehicles subject to the Smog Check Program must obtain a Smog Check certificate of compliance in order to complete their vehicle registration from DMV;

Whereas, under Health and Safety Code section 44011(a)(4)(B)(ii) (Assembly Bill 1274, O'Donnell, Chapter 633, Statutes of 2017), all motor vehicles 8 or less model-years old are exempted from biennial Smog Check Program inspection, unless CARB finds that providing an exception for these vehicles will prohibit the State from meeting the State commitments with respect to the SIP;

Whereas, if triggered, the Smog Check Contingency Measure will effectuate a change to the vehicle exemptions within the Smog Check Program in the relevant nonattainment area from the current 8 model-years old and newer to 7 model-years old and newer (or 6 model-years old and newer in the case of a second trigger);

Whereas, under the Smog Check Contingency Measure, within 30 days of the effective date of a U.S. EPA finding that an area in Attachment A has failed to attain by the applicable attainment date, to meet an RFP milestone, to meet a quantitative milestone, or to submit a required quantitative milestone report or milestone compliance demonstration, the CARB Executive Officer must transmit a letter to BAR and DMV making the finding, as necessary under Health and Safety Code section 44011(a)(4)(B)(ii), that providing an exception from Smog Check for certain vehicles will prohibit the state from meeting the state's commitments with respect to the SIP as required by the Act, and thus effectuating a change to the Smog Check inspection exemption for motor vehicles from 8 or less model-years old to 7 or less model-years old throughout the applicable nonattainment area;

Whereas, for each area and standard in Attachment A, the Smog Check Contingency Measure estimates the potential emissions reductions from the measure being triggered;

Whereas, the Smog Check Contingency Measure will fulfill the commitment by CARB staff to submit to U.S. EPA a triggered contingency measure to implement a change to exemptions for vehicles in the Smog Check Program as part of the contingency measures to replace the Valley PM2.5 Contingency FIP;

Whereas, section 110(l) of the Act and Title 40 CFR section 51.102, require that one or more public hearings, preceded by at least 30 days of notice and opportunity for public review, must be conducted before adopting and submitting any SIP revision to U.S. EPA;

Whereas, CARB staff prepared the Smog Check Contingency Measure and released it to the public on September 15, 2023, for a 30-day public review prior to the Board hearing;

Whereas, Title VI of the U.S. Civil Rights Act of 1964 (Title VI) provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance;

Whereas, other relevant federal laws including Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the

Federal Water Pollution Control Act Amendments of 1972 prohibit discrimination in the use of federal funds based on disability, sex, and age;

Whereas, as a recipient of federal funds, CARB must ensure it complies with Title VI and U.S. EPA's Title VI implementation regulations in its relevant programs and policies;

Whereas, state law¹ requires CARB in its programs and activities to not discriminate or cause disparate impacts based on protected characteristics, which include race, color, national origin, sex, and age, among others;

Whereas, in developing the Smog Check Contingency Measure, staff engaged in a thorough public process to address the requirements of Title VI and other relevant laws;

Whereas, this public process included early release of a concept document for this measure and workshop in August 2023 to solicit input from the public, hosting of a virtual workshop through the Zoom platform to allow more community members to participate without needing to travel, provision of workshop concept documents in English and Spanish, provision of English and Spanish translation services at the workshop, and public posting on CARB's website of a recording of the workshop for community members;

Whereas this public process sought to facilitate discussion of this contingency measure in a public setting and provide additional opportunity for public feedback, input, and ideas;

Whereas, in developing the Smog Check Contingency Measure, staff analyzed whether there would be a disproportionate number of vehicles being impacted in disadvantaged communities within the affected nonattainment areas if the Smog Check Contingency Measure is triggered;

Whereas, CARB staff concluded that the percentage of vehicles that would be impacted by this measure that are registered in disadvantaged communities is proportional or lower than the general population of vehicles registered in disadvantaged communities for all nonattainment areas;

Whereas, the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

Whereas, to meet its obligations under CEQA, it was determined, that the Smog Check Contingency Measure is exempt from CEQA under California Code of Regulations, title 14, section 15308 (actions taken by a regulatory agency for protection of the environment) and will not result in any potentially significant adverse effects on the environment;

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 CEQA and its implementing regulations at CCR, title 14, section 15251(d), and CARB conducts its CEQA review according to this certified program (CCR, title 17, sections 60000-60007); and

¹ Gov. Code §§ 11135 et seq.

Whereas the Board finds that:

1. The Smog Check Contingency Measure is necessary to resolve SIP approvability issues in response to recent court decisions;
2. The Smog Check Contingency Measure, along with Health and Safety Code sections 44011(a)(4)(A) and (B), address the contingency measure requirements of the Act and is aligned with U.S. EPA draft guidance related to contingency measures for RFP and attainment;
3. This Smog Check Contingency Measure meets CARB's applicable obligations under Title VI of the Civil Rights Act of 1964;
4. This Smog Check Contingency Measure is consistent with CARB's environmental justice policies and does not disproportionately impact people of any race, culture, income, or national origin; and
5. The proposed Smog Check Contingency Measure is exempt from CEQA, and no additional environmental review, or revisions to the prior environmental analysis, are required because substantial evidence in the record 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 Smog Check Contingency Measure as a revision to the California SIP, conditioned upon EPA's final approval of the Smog Check Contingency Measure as a contingency measure under the federal Clean Air Act;

Be it further resolved that the Board hereby approves for submittal into the California SIP Health and Safety Code sections 44011(a)(4)(A) and (B);

Be it further resolved that the Board hereby directs the Executive Officer to submit the Smog Check Contingency Measure and Health and Safety Code sections 44011(a)(4)(B) and (B) 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 Smog Check Contingency Measure and submittal into the California SIP of Health and Safety Code sections 44011(a)(4)(A) and (B) 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 California's air pollution control districts 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.

Attachment A

Nonattainment Areas and Applicable Standards

Area	Applicable Standard
Coachella Valley	70 ppb Ozone, 75 ppb Ozone
Eastern Kern County	70 ppb Ozone, 75 ppb Ozone
Mariposa County	70 ppb Ozone
Sacramento Metro Area	70 ppb Ozone, 75 ppb Ozone
San Diego County	70 ppb Ozone, 75 ppb Ozone
San Joaquin Valley	70 ppb Ozone, 75 ppb Ozone, 80 ppb Ozone, 15 µg/m ³ PM2.5, 35 µg/m ³ PM2.5, 12 µg/m ³ PM2.5
South Coast Air Basin	12 µg/m ³ PM2.5, 70 ppb Ozone*, 75 ppb Ozone*
Ventura County	70 ppb Ozone
Western Mojave Desert	70 ppb Ozone, 75 ppb Ozone
Western Nevada	70 ppb Ozone

*Applicable to milestone requirements only