



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2023-0524; FRL-11525-01-R9]

#### **Air Plan Revisions; California; Vehicle Inspection and Maintenance Contingency Measure**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is proposing to approve revisions to the California State Implementation Plan (SIP). These revisions concern an amendment to the California motor vehicle inspection and maintenance (I/M) program (also referred to as “Smog Check”) to include a contingency measure that, if triggered, would narrow the Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas. The EPA is proposing to approve, as part of the California SIP, the contingency measure and a related statutory provision that authorizes the contingency measure because they meet all the applicable requirements. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [**Insert date 30 days after date of publication in the *Federal Register***].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0524 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. 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.

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

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### **I. The State’s Submittal**

- A. *What measure did the State submit?*

Table 1 lists the measure and the related statutory provision addressed by this proposal with the dates they were adopted and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED MEASURE AND STATUTORY PROVISION

Agency	Statute #	Measure/Statutory Provision Title	Adopted/Amended/ Revised	Submitted
CARB	Not Applicable	California Smog Check Contingency Measure State Implementation Plan Revision	October 26, 2023	November 13, 2023
CARB	CA Health & Safety Code (H&SC) section 44011(a)(4)(A) and (B)	Certificate of compliance or noncompliance; biennial requirement; exceptions; inspections; exemption from testing for collector motor vehicle	Effective on October 10, 2017	November 13, 2023

CARB’s November 13, 2023 SIP submission includes the “California Smog Check Contingency Measure State Implementation Plan Revision” (Released: September 15, 2023) (“Smog Check Contingency Measure SIP”). The Smog Check Contingency Measure itself is presented in Section 4 of the Smog Check Contingency Measure SIP. Other sections address the contingency measure requirements, discuss the opportunities for CARB to adopt contingency measures, provide the background on the California Smog Check program, and present the emission reductions estimates for the ten California nonattainment areas for which the Smog Check Contingency Measure was developed. The appendices included with the Smog Check Contingency Measure SIP include an infeasibility analysis, documentation of emissions estimates, and California H&SC section 44011(a)(4)(A) and (B), effective October 10, 2017. The SIP submission also includes the Notice of Public Hearing, dated September 15, 2023, and CARB Resolution 23-20 (October 26, 2023) adopting the Smog Check Contingency Measure SIP as a revision to the California SIP.

The EPA has reviewed the November 13, 2023 SIP submission of the Smog Check Contingency Measure SIP and finds it to be administratively complete for the purposes of CAA section 110(k)(1), effective upon publication of this proposed rule.<sup>1</sup>

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<sup>1</sup> EPA Region 9 SIP Completeness Checklist, November 20, 2023.

B. *Are there other versions of this measure?*

There is no previously approved version of the submitted contingency measure. We approved an earlier version of California H&SC section 44011 in our most recent final action approving the regulatory and statutory foundation for the California Smog Check program.<sup>2</sup>

C. *What is the purpose of the submitted measure?*

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. The EPA has established national ambient air quality standards (NAAQS) to protect public health and welfare for certain pervasive air pollutants, including ozone and fine PM (PM<sub>2.5</sub>). Section 110 of the CAA requires states to adopt and submit plans (“State Implementation Plans,” or “SIPs”) that provide for implementation, maintenance, and enforcement of the NAAQS within such state. Section 110(a) of the CAA requires SIPs to include enforceable emission limitations and other control measures, means or techniques to meet CAA SIP requirements, such as regulations that control VOC, NO<sub>x</sub>, and PM emissions.

Additionally, section 182(b)(4) of the CAA requires states with ozone nonattainment areas classified under subpart 2 as Moderate to submit SIP revisions that provide for the implementation of a “Basic” vehicle inspection and maintenance (I/M) program in those areas. Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified under subpart 2 as Serious or above to submit SIP revisions that provide for the implementation of an “Enhanced” I/M program in certain urbanized portions of those areas.<sup>3</sup>

As a general matter, Basic and Enhanced I/M programs both achieve their objective by

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<sup>2</sup> 75 FR 38023 (July 1, 2010). See 40 CFR 52.220(c)(372)(ii)(A)(3). California H&SC section 44011 is found in Division 26, Part 5, Chapter 5, Article 2 of the California H&SC. The existing SIP version of California H&SC section 44011 is the version that was operative on April 1, 2005.

<sup>3</sup> The CAA I/M SIP requirements apply to Moderate and above nonattainment areas for the 2008 and 2015 ozone NAAQS pursuant to 40 CFR 51.1102 (for the 2008 ozone NAAQS) and 40 CFR 51.1302 (for the 2015 ozone NAAQS).

identifying vehicles that have high emissions due to one or more malfunctions and requiring them to be repaired. An Enhanced program covers more of the vehicles in operation and has additional features to better assure that all vehicles are tested properly and effectively repaired. The EPA has established specific requirements for Basic and Enhanced I/M programs in 40 CFR part 51, subpart S (“The EPA’s I/M regulation”). The EPA’s I/M regulation establishes minimum performance standards for Basic and Enhanced I/M programs as well as requirements for certain elements of the programs, including, among other elements, test frequency, vehicle coverage, test procedures and standards, stations and inspectors, and data collection, analysis, and reporting.<sup>4</sup>

The EPA most recently approved California’s Smog Check program into its SIP in 2010, and in that action, the EPA approved the program as meeting the applicable I/M requirements for the various nonattainment areas in the State.<sup>5</sup> The California Bureau of Automotive Repair (BAR) implements the SIP-approved Smog Check program in California, including oversight of the automotive repair industry and administration of the State’s vehicle emissions reduction and safety programs. The California Department of Motor Vehicles (DMV) administers motor vehicle registration and licensing and supports BAR in administering the Smog Check program.<sup>6</sup>

Section 172(c)(9) of the CAA requires states with nonattainment areas to submit SIP revisions that provide for the implementation of specific measures, referred to as contingency measures, to be undertaken if the area fails to make reasonable further progress (RFP) or fails to attain the NAAQS by the applicable attainment date. Section 172(c)(9) of the CAA further specifies that contingency measures must be structured so as to take effect without further action by the state or the EPA. For ozone nonattainment areas classified as Serious and above, CAA section 182(c)(9) requires the SIP to include contingency measures to be undertaken if the area fails to meet any applicable RFP milestone. For PM<sub>2.5</sub> nonattainment areas, the EPA’s PM<sub>2.5</sub> SIP

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<sup>4</sup> 40 CFR part 51, subpart S, sections 350-373.

<sup>5</sup> 75 FR 38023 (July 1, 2010).

<sup>6</sup> Smog Check Contingency Measure SIP, at page 15.

Requirements Rule<sup>7</sup> requires the SIP to include contingency measures to be undertaken following a determination by the EPA that the area has failed: (1) to meet any RFP requirement in an attainment plan approved in accordance with 40 CFR 51.1012; (2) to meet any quantitative milestone in an attainment plan approved in accordance with 40 CFR 51.1013; (3) to submit a quantitative milestone report required under 40 CFR 51.1013(b); or, (4) to attain the applicable PM<sub>2.5</sub> NAAQS by the applicable attainment date.<sup>8</sup>

Contingency measures must be designed so as to be implemented prospectively and conditionally upon a triggering event; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.<sup>9</sup> Contingency measures must also consist of control measures that are not otherwise included in the control strategy or that achieve emissions reductions not otherwise relied upon in the control strategy for the area to meet RFP or to demonstrate attainment; and must specify the timeframe within which its requirements become effective following a determination by the EPA that triggers the contingency measure.<sup>10</sup> Also, SIPs addressing the contingency measure requirement must contain a description of the specific trigger mechanisms for the contingency measure(s) and specify a schedule for implementation.<sup>11</sup> Generally, the EPA expects contingency measures to be implemented within approximately 60 days of a triggering event, and that the implemented contingency measures achieve the additional emissions reductions within a year of the triggering event.

The purpose of this SIP revision is to include the Smog Check Contingency Measure into the California SIP to address, in part, the contingency measure requirements for certain nonattainment areas with respect to certain ozone and PM<sub>2.5</sub> NAAQS.<sup>12</sup> The applicable

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<sup>7</sup> 81 FR 58010 (August 24, 2016).

<sup>8</sup> 40 CFR 51.1014(a).

<sup>9</sup> See *Bahr v. EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

<sup>10</sup> 40 CFR 51.1014(b).

<sup>11</sup> 40 CFR 51.1014(c).

<sup>12</sup> Smog Check Contingency Measure SIP, pages 11-12: “The Measure consists of a triggered contingency measure that, if triggered, would change the exemptions for motor vehicles in the California Smog Check Program for the

nonattainment areas and NAAQS are Coachella Valley (2008 and 2015 ozone NAAQS), Eastern Kern County (2008 and 2015 ozone NAAQS), Mariposa County (2015 ozone NAAQS), Sacramento Metro Area (2008 and 2015 ozone NAAQS), San Diego County (2008 and 2015 ozone NAAQS), San Joaquin Valley (1997, 2008, and 2015 ozone NAAQS; 1997 annual, 2006 24-hour, and 2012 annual PM<sub>2.5</sub> NAAQS), South Coast Air Basin (2008 and 2015 ozone NAAQS; 2012 annual PM<sub>2.5</sub> NAAQS), Ventura County (2015 ozone NAAQS), Western Mojave Desert (2008 and 2015 ozone NAAQS), and Western Nevada County (2015 ozone NAAQS).<sup>13</sup>

Under the current California Smog Check program, certain vehicles are exempt from the biennial inspection requirement, including vehicles eight or fewer model years old. The Smog Check Contingency Measure, if triggered, will reduce this exemption<sup>14</sup> to seven model years in the nonattainment area at issue upon the first triggering event and to six model years in the nonattainment area at issue upon a second triggering event. Reducing the inspection exemption will increase the number of inspected vehicles and therefore result in additional emission reductions. CARB is authorized under California H&SC section 44011(a)(4)(B)(ii) to narrow the newer model year vehicle inspection exemption from eight or fewer model years old, to seven or fewer model years old, and then to six or less model years old if CARB makes certain findings.

Pursuant to the Smog Check Contingency Measure, within 30 days of the EPA's determination that a nonattainment area covered by the measure has failed to meet a reasonable further progress (RFP) milestone, meet an qualitative milestone, submit a required quantitative milestone report or milestone compliance demonstration, or attain the relevant NAAQS by the applicable attainment date, CARB will be obligated to transmit a letter to BAR and the DMV finding that providing an exemption from Smog Check for certain vehicles in the area at issue

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relevant local air district and applicable standard as specified in Table 1 that, together with the local air districts' contingency measures, addresses the contingency measure requirements of the Act."

<sup>13</sup> Smog Check Contingency Measure SIP, Table 1, at page 3.

<sup>14</sup> The statutory provision included with the Smog Check Contingency Measure SIP (California H&SC section 44011(a)(4)(A) and (B)) refers to the deferral in applicability of the biennial Smog Check inspection requirement based on the age of the vehicle (in model years) as an "exception" rather than as an "exemption." Our I/M regulations use the term "exemption" for such provisions, and we do so as well in this document.

will prohibit the State from meeting the State's commitments with respect to the SIP required by the CAA, effectuating a reduction in the Smog Check vehicle inspection exemption to begin with the new calendar year.<sup>15</sup>

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the measure?*

The EPA has evaluated the Smog Check Contingency Measure SIP against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and is proposing to conclude that the Smog Check Contingency Measure SIP meets all of the applicable requirements. A SIP must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act (see CAA section 110(a)(2)(A)); provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIP (and is not prohibited by any provision of federal or state law from carrying out such SIP) (see CAA section 110(a)(2)(E)); be adopted by a state after reasonable notice and public hearing (see CAA section 110(l)); and not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act (see CAA section 110(l)).<sup>16</sup> We are also evaluating whether the measure meets the requirements for contingency measures for ozone and PM<sub>2.5</sub> nonattainment areas as specified in CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014.

### *B. Does the measure meet the evaluation criteria?*

#### 1. Did the State provide for reasonable public notice and hearing prior to adoption?

Under CAA sections 110(a)(1), 110(a)(2), and 110(l), states must adopt and submit SIP revisions after reasonable notice and public hearing. In 40 CFR 51.102(d), the EPA specifies that

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<sup>15</sup> Smog Check Contingency Measure SIP, at page 16-17.

<sup>16</sup> The Smog Check Contingency Measure SIP is also not prohibited under CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, because, by narrowing an exemption to testing, the Smog Check Contingency Measure (if triggered) would increase emissions reductions from the Smog Check program.

reasonable public notice in this context is at least 30 days.

CARB adopted the Smog Check Contingency Measure SIP on October 26, 2023, through Resolution 23-20 following a public hearing held on that same day. Prior to adoption, CARB published notice on September 15, 2023 of an October 26, 2023, public hearing, and provided a 30-day written comment period. CARB submitted the Smog Check Contingency Measure SIP to the EPA on November 13, 2023, along with various other materials comprising the SIP submission package, including copies of public comments received during the comment period and CARB's responses to the comments.

Based on the materials provided in the November 13, 2023 SIP submission and summarized above, we are proposing to find that CARB has met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a)(1), 110(a)(2) and 110(l) and 40 CFR 51.102 with respect to the Smog Check Contingency Measure SIP.

2. Does the State have adequate legal authority to implement the measure?

CAA section 110(a)(2)(E)(i) requires states to provide with their SIPs necessary assurances that the state or relevant local or regional agency will have adequate legal authority to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out such SIP).

California H&SC section 44011(a)(4)(B) provides CARB with adequate legal authority to implement the Smog Check Contingency Measure. California H&SC section 44011 requires all motor vehicles powered by internal combustion engines that are registered within an area designated for Smog Check program coverage to be subject to biennial emissions inspection requirements, with certain exceptions. Under California H&SC section 44011(a)(4)(A), motor vehicles four or fewer model years old are exempted. Beginning January 1, 2005, California H&SC section 44011(a)(4)(B)(i) extends the exemption to motor vehicles six or fewer model years old "unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42

U.S.C. Sec. 7401 *et seq.*) or the state’s commitments with respect to the state implementation plan required by the federal Clean Air Act.”

Beginning January 1, 2019, California H&SC section 44011(a)(4)(B)(ii) further extends the exemption to motor vehicles eight or fewer model years old, once again, “unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the federal Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*) or the state’s commitments with respect to the state implementation plan required by the federal Clean Air Act.” Instead of the biennial Smog Check inspection, registered owners of motor vehicles seven or eight model years old are required to pay an annual \$25 Smog Abatement Fee, \$21 of which of which goes to the Air Pollution Control Fund for use to incentivize the purchase of cleaner vehicles and equipment through the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program).<sup>17</sup>

The Smog Check Contingency Measure SIP provides the framework for CARB to make the finding that is the prerequisite to the narrowing of the exemption from eight or fewer model years old to seven or fewer model years old, and then from seven model years old to six model years old (if triggered a second time in a given nonattainment area) and to set in motion the sequence of actions necessary to effectuate that change in the Smog Check program. Under the terms of the Smog Check Contingency Measure SIP, CARB’s finding (and the subsequent narrowing of the newer model year exemption) is based on the EPA’s determination that a given nonattainment area failed to attain the relevant NAAQS by the applicable attainment date, meet a reasonable further progress (RFP) milestone, meet a quantitative milestone; or submit a required quantitative milestone report or milestone compliance demonstration. Moreover, CARB’s finding and subsequent narrowing of the newer model year exemption will allow the relevant State agencies to fulfill their “commitments with respect to the state implementation plan required by the federal Clean Air Act.” In this instance, the commitments are the obligations

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<sup>17</sup> Smog Check Contingency Measure SIP, at page 1.

placed on CARB, BAR and the DMV that are set forth in the Smog Check Contingency Measure SIP to effectuate this change in the Smog Check program (if triggered) once the Smog Check Contingency Measure SIP is approved as part of the California SIP.

In addition, as a recipient of federal funds, CARB acknowledges that it must ensure that it complies with Title VI and the EPA's Title VI implementation regulations in its relevant programs and policies and concludes that, in developing the Smog Check Contingency Measure SIP, CARB staff engaged in a thorough public process to address the requirements of Title VI and other relevant laws.<sup>18</sup> CARB describes its process for developing and adopting the Smog Check Contingency Measure in Section IV.B ("Title VI and Environmental Justice") of the Smog Check Contingency Measure SIP. In addition, the State included a description of its written Civil Rights Policy and Discrimination Complaint process.<sup>19</sup>

In light of the authority vested in CARB through California H&SC section 44011(a)(4)(B) and CARB's Title VI evaluation, the EPA is proposing to find that CARB has provided adequate necessary assurances for purposes of CAA section 110(a)(2)(E)(i) for the Smog Check Contingency Measure SIP. The EPA's proposed SIP approval does not constitute a formal finding of compliance with Title VI or 40 CFR part 7.

3. Is the measure enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the Smog Check Contingency Measure with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,<sup>20</sup> and are proposing to conclude for the reasons below that the regulation is enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we are proposing to find that the Smog Check

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<sup>18</sup> CARB Resolution 23-20, October 26, 2023, pages 4 and 5. The EPA's Title VI implementation regulations are set forth in 40 CFR part 7.

<sup>19</sup> Smog Check Contingency Measure SIP, Section IV.B., pages 20-22.

<sup>20</sup> These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, et al., titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

Contingency Measure is sufficiently clear as to which nonattainment areas are covered by the measure and how the measure would be implemented by CARB, BAR and the DMV. Table 1 of the Smog Check Contingency Measure SIP lists the specific ozone and PM<sub>2.5</sub> nonattainment areas covered by the Smog Check Contingency Measure and the specific NAAQS that are covered in these areas. The Smog Check Contingency Measure would be triggered if the EPA makes one of the following determinations for an applicable nonattainment area and relevant NAAQS (referred to as “triggering events”): (1) failure to attain by the applicable attainment date; (2) failure to meet a reasonable further progress (RFP) milestone; (3) failure to meet a quantitative milestone; or (4) failure to submit a required quantitative milestone report or milestone compliance demonstration.<sup>21</sup> Once triggered, BAR and the DMV will change the Smog Check program to remove the exemption for vehicles eight model years old in the nonattainment area at issue and to require such vehicles in the area at issue to be subject to biennial Smog Check inspections. This change will be effectuated through the annual vehicle registration process that is relied upon to implement the Smog Check program.

Second, we are proposing to find that the Smog Check Contingency Measure is sufficiently specific such that the applicable State agencies, including CARB, BAR and the DMV, know what they must do to implement the measure and the timeline for taking the necessary actions. The specific agencies, their responsibilities, and their respective timelines for implementation of the contingency measure are described in Section 4 of the Smog Check Contingency Measure SIP. With respect to compliance dates, we note that CARB is obligated to initiate the change in the Smog Check program for vehicles eight model years old within 30 days of the effective date of one of the EPA’s determinations that constitute a triggering event.

Third, the Smog Check Contingency Measure does not include sunset provisions. Fourth, we note that the Smog Check Contingency Measure does not contain provisions that allow for discretion on the part of CARB’s Executive Officer. Fifth, with respect to test methods, and

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<sup>21</sup> Smog Check Contingency Measure SIP, page 15.

recordkeeping and reporting requirements, we note that the Smog Check Contingency Measure does not affect the existing Smog Check inspection or emissions testing methods or procedures and that 40 CFR 51.366 requires all states with I/M programs to submit an annual report to the EPA. This report includes sufficient test statistics, by model year, to verify that the Smog Check Contingency Measure, if triggered, is being implemented in a given area.

4. Does the measure meet the requirements for contingency measures?

Based on our review of the Smog Check Contingency Measure in light of the requirements for contingency measures described in Section I.C of this document, we are proposing to find that the Smog Check Contingency Measure meets the applicable requirements for such measures under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. First, we note that the Smog Check Contingency Measure is designed to be both prospective and conditional. The narrowing of the exemption for certain newer vehicles from Smog Check inspections would take effect in the future in a given nonattainment area only if the EPA makes certain determinations for that area that constitute a triggering event for the purposes of contingency measures.

Second, the Smog Check Contingency Measure includes an appropriate triggering mechanism (*i.e.*, EPA's final determination of failure to attain the NAAQS 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) and addresses all the types of contingencies listed in CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014(a).

Third, the narrowing of the exemption for newer vehicles from Smog Check inspections is not required for any other CAA purpose, and the emissions reductions from the Smog Check Contingency Measure are not included in any RFP or attainment demonstration in any of the applicable nonattainment areas. We recognize that the existing exemption under the California Smog Check program for motor vehicles eight model years old or less is reflected in the State's

certification (and performance standard modeling) of the existing Smog Check program as meeting the requirements for I/M programs under the CAA and the EPA's I/M regulations for the 2015 ozone NAAQS.<sup>22</sup> However, narrowing the exemption under the Smog Check Contingency Measure would provide emissions reductions that are surplus to those that are needed for other CAA purposes or that are relied upon for RFP or attainment.

Fourth, the Smog Check Contingency Measure is structured so as to be implemented in a timely manner without significant further action by the State or EPA. Within 30 days of the effective date of a triggering event, CARB has committed to transmit a letter to BAR and the DMV conveying its finding under California H&SC section 44011(a)(4)(B)(ii) that providing the exemption for certain motor vehicles from Smog Check inspection in specific nonattainment areas (defined by specified ZIP Codes) will prohibit the State from meeting commitments with respect to the SIP required by the Clean Air Act.<sup>23</sup> CARB indicates that the letter to BAR and the DMV will explain that the Smog Check contingency measure is being triggered to meet contingency measure requirements under CAA sections 172(c)(9) or 182(c)(9) thereby effectuating the change to the Smog Check exemptions for motor vehicles from eight or fewer model years old to seven or fewer model years old throughout the applicable nonattainment area (or six or fewer model years old in cases of the second trigger).<sup>24</sup>

Lastly, the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within roughly a year of the triggering event. In this case, upon receipt of the CARB letter and the applicable ZIP Codes, CARB, BAR and the DMV staff will initiate the process to narrow the Smog Check exemption. Under the Smog Check Contingency Measure, the DMV will update their Smog Check renewal programming to require a Smog Check inspection for the eight model years old vehicles (or seven model years old vehicles in the case of a

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<sup>22</sup> CARB submitted "California Smog Check Performance Standard Modeling and Program Certification for the 70 Parts Per Billion (ppb) 8-Hour Ozone Standard (release date: February 10, 2023)" to the EPA as a SIP revision on April 26, 2023.

<sup>23</sup> Smog Check Contingency Measure SIP, page 16.

<sup>24</sup> Id.

subsequent second triggering event) in the ZIP Codes provided by CARB staff, and the eight to seven model years old (or seven to six model years old) exemption change will begin for registrations expiring beginning January 1<sup>st</sup> of the applicable year. The corresponding emissions reductions would begin to accrue on a rolling basis in the year following the triggering event in tandem with the vehicle registration renewals that are due with each passing month of the year.

5. Would the measure interfere with reasonable further progress (RFP) and attainment or any other applicable requirement of the Act?

The Smog Check program continues to provide emissions reductions in nonattainment areas in California, and the emissions reduction benefits are included in the RFP and attainment plans developed for these areas. The current Smog Check program provides an exemption from biennial Smog Check inspections for motor vehicles eight model years or less. The Smog Check Contingency Measure, if triggered, would narrow the exemption to motor vehicles seven model years or less, or further narrow it to motor vehicles six model years or less, if triggered again by a second triggering event, and would result in additional emissions reductions beyond those included in the RFP and attainment demonstration for the applicable nonattainment area. Thus, we are proposing to find that the approval of the Smog Check Contingency Measure is consistent with CAA section 110(l) and would not interfere with RFP, attainment or any other applicable requirement of the Act.

6. Will the State have adequate personnel and funding for the measure?

CAA section 110(a)(2)(E)(i) requires states to provide with their SIPs necessary assurances that the state or relevant local or regional agency will have adequate personnel and funding to carry out the SIP.

The California Smog Check program is a mature program that has been in existence for several decades. The program is decentralized, and, thus, relies upon a network of licensed privately-owned Smog Check testing or repair stations. There are approximately 7,000 such

stations throughout the State.<sup>25</sup> The Smog Check Contingency Measure, if triggered, would result in less funding for the Air Pollution Control Fund of the Moyer Program, but an increase in funding from certification fees to BAR.<sup>26</sup>

In addition, the Smog Check Contingency Measure would require CARB to coordinate with BAR and the DMV to update their Smog Check renewal program to require a Smog Check inspection for the eight model year old vehicles (or seven model years old in the case of a second triggering event in a given nonattainment area) in the applicable nonattainment area(s), as identified by ZIP codes provided by CARB staff.<sup>27</sup> The Smog Check Contingency Measure SIP does not explicitly indicate whether any additional personnel or funding for any of the relevant State agencies would be needed to implement the Smog Check Contingency Measure. However, given the maturity of the existing Smog Check program, the limited action required to implement the contingency measure, and the slight increase in funding for BAR (through an increase in number of vehicles paying certification fees), we expect that CARB, BAR and the DMV will be able to implement the Smog Check Contingency Measure without the need for additional personnel or funding. The costs for the additional Smog Check inspections resulting from implementation of the Smog Check Contingency Measure would be borne by vehicle owners.

#### 7. What emissions reductions would the contingency measure achieve?

Additionally, we have reviewed CARB's estimate of the emissions reductions that can be expected if the Smog Check Contingency Measure is triggered and find the estimates to be reasonable and adequately documented.<sup>28</sup> CARB provides the documentation for the area-specific emissions estimates in Appendix B ("Smog Check Contingency Measure Emissions Benefits Methodology") and Appendix C ("Carl Moyer Program Emission Impacts Analysis Methodology") of the Smog Check Contingency Measure SIP.

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<sup>25</sup> BAR, "California Smog Check Program," brochure, revised January 2019.

<sup>26</sup> Smog Check Contingency Measure SIP, page 22.

<sup>27</sup> Smog Check Contingency Measure SIP, page 16.

<sup>28</sup> Our review of CARB's emissions estimates is included in a Memorandum to Docket EPA-R09-OAR-2023-0524, titled "Evaluation of CARB's Emissions Estimates from the Smog Check Contingency Measure," dated November 7, 2023.

Table 2 presents CARB’s estimated emissions reductions from the Smog Check Contingency Measures for each of the applicable nonattainment areas and NAAQS, taking into account the estimated emissions reductions that would not be achieved by the Moyer Program (due to decreased funding from the smog check abatement fee). The estimates in Table 2 represent the emissions reductions expected to be achieved after the first triggering event (which will narrow the exemption from eight or fewer model years old to seven or fewer model years old).<sup>29</sup> The EPA will consider the estimated emissions reductions associated with the Smog Check Contingency Measure when determining whether CARB and the relevant air district have fully met the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 for the relevant NAAQS and nonattainment areas. For example, the emission reductions from the Smog Check Contingency Measure combined with the emission reduction from one or more other contingency measures may be sufficient in a given nonattainment area for a given NAAQS. The EPA expects to make these determinations in separate rulemakings.

TABLE 2 – ESTIMATED EMISSIONS REDUCTIONS FROM SMOG CHECK CONTINGENCY MEASURE

Nonattainment Area	Applicable NAAQS	Analysis Year	Emissions Reductions (tons per day) <sup>a</sup>	
			NO <sub>x</sub>	VOC
Coachella Valley	2008 Ozone NAAQS	2031	0.0078	0.003
	2015 Ozone NAAQS	2037	0.0078	0.003
Eastern Kern County	2008 Ozone NAAQS	2026	0.002997	0.001
	2015 Ozone NAAQS	2032	0.002997	0.001
Mariposa County	2015 Ozone NAAQS	2026	0.0003	0.0001
Sacramento Metro	2008 Ozone NAAQS	2024	0.0761	0.037
	2015 Ozone NAAQS	2032	0.0463	0.015
San Diego County	2008 Ozone NAAQS	2026	0.064	0.027
	2015 Ozone NAAQS	2032	0.055	0.016

<sup>29</sup> Smog Check Contingency Measure SIP, page 61.

San Joaquin Valley	1997 Ozone NAAQS	2023	0.108	0.056
	2008 Ozone NAAQS	2031	0.076	0.025
	2015 Ozone NAAQS	2037	0.073	0.024
	1997 Annual PM <sub>2.5</sub> NAAQS	2023	0.113	0.052
	2006 24-Hour PM <sub>2.5</sub> NAAQS	2024	0.116	0.052
	2012 Annual PM <sub>2.5</sub> NAAQS	2030	0.083	0.027
South Coast Air Basin	2008 Ozone NAAQS	2029	0.271	0.096
	2015 Ozone NAAQS	2035	0.230	0.077
	2012 Annual PM <sub>2.5</sub> NAAQS	2030	0.276	0.093
Ventura County	2015 Ozone NAAQS	2026	0.01292	0.005
West Mojave Desert	2008 Ozone NAAQS	2026	0.02094	0.009
	2015 Ozone NAAQS	2032	0.01794	0.006
Western Nevada County	2015 Ozone NAAQS	2026	0.002	0.001

<sup>a</sup> Emissions estimates shown in this table are summarized from information presented in section 5 of the Smog Check Contingency Measure SIP. The emissions estimates represent the net change in emissions taking into account the emissions benefit from implementation of the Smog Check Contingency Measure and the foregone emissions reductions from corresponding reductions in funds paid into the Moyer Program. For ozone nonattainment areas, the estimates represent summer planning season values. For PM<sub>2.5</sub> nonattainment areas, the estimates represent annual average values.

C. *Did the State consider environmental justice in developing this measure?*

Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. As explained in the EJ Legal Tools to Advance Environmental Justice 2022 document,<sup>30</sup> the CAA provides states with the discretion to consider environmental justice in developing rules and measures related to nonattainment area SIP requirements, including contingency measures.

In this instance, CARB exercised this discretion and evaluated environmental justice considerations as part of its SIP submission.<sup>31</sup> CARB analyzed whether there would be disproportionate impact on disadvantaged communities within the affected nonattainment areas if the contingency measure were triggered and analyzed the impacts of the contingency measure

<sup>30</sup> EPA, EPA Legal Tools to Advance Environmental Justice, May 2022.

<sup>31</sup> Smog Check Contingency Measure SIP, Section 4.B (“Title VI and Environmental Justice”).

on vehicle owners in disadvantaged communities.<sup>32</sup> Based on the results of these analyses, CARB concluded that the Smog Check Contingency Measure is consistent with CARB's environmental justice policies and would not disproportionately impact people of any race, culture, income, or national origin.<sup>33</sup>

In reviewing CARB's analysis, the EPA defers to CARB's reasonable exercise of its discretion in considering EJ in this way. The EPA is taking proposed action to approve the Smog Check Contingency Measure SIP because it meets minimum requirements pursuant to the CAA and relevant implementing regulations. The EPA also finds that consideration of EJ analyses in this context is reasonable. The EPA encourages air agencies generally to evaluate environmental justice considerations of their actions and carefully consider impacts to communities. The EJ analyses submitted by CARB were considered but were not the basis for the EPA's decision to propose approval of the Smog Check Contingency Measure SIP as meeting the minimum applicable requirements.

D. *Proposed action and public comment*

Pursuant to section 110(k)(3) of the Act, and for the reasons given above, the EPA is proposing to approve the Smog Check Contingency Measure SIP and a related statutory provision (i.e., California H&SC section 44011(a)(4)(A) and (B), operative October 10, 2017). Our proposed action is based on our finding that the Smog Check Contingency Measure SIP meets the applicable procedural and substantive CAA requirements for SIP revisions; that the Smog Check Contingency Measure itself meets applicable requirements for a valid contingency measure under the CAA and the EPA's implementation regulations; and that the Smog Check Contingency Measure would achieve additional emissions reductions of NO<sub>x</sub> and VOC, if triggered by certain EPA determinations, in Coachella Valley, Eastern Kern County, Mariposa County, Sacramento Metro, San Diego County, San Joaquin Valley, South Coast Air Basin,

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<sup>32</sup> Id, at pages 18-20.

<sup>33</sup> CARB Resolution 23-20, October 26, 2023, page 5.

Ventura County, West Mojave Desert, and Western Nevada County.

We are not making any determination presently as to whether this individual contingency measure is sufficient by itself for CARB and the relevant air district to fully comply with the contingency measure requirements in any specific nonattainment area or specific NAAQS under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. We will be acting on the contingency measure SIP plan elements in the relevant nonattainment plan SIP submissions for the respective areas and NAAQS in separate rulemakings, and will consider the emissions reductions associated with the Smog Check Contingency Measure at that time. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***].

If finalized as proposed, this action would add the Smog Check Contingency Measure and the related statutory provision to the federally-enforceable California SIP.

### **III. Incorporation by Reference**

In this action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference California Health & Safety Code section 44011(a)(4)(A) and (B), which authorizes CARB to narrow the newer model vehicle Smog Check inspection exemption. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the relevant provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

proposes to approve a state measure as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- 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);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule 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 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

CARB evaluated environmental justice considerations as part of its SIP submission given that the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA reviewed and considered the air agency’s evaluation of environmental justice considerations of this action, as is described above in the section titled, “Environmental Justice Considerations” as part of the EPA’s review. Due to the nature of the action being taken here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected areas. In addition, there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 12, 2023.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

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