

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of this final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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**Glenna Wright-Gallo,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2023-0524; FRL-11525-02-R9]

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

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

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is taking final action 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 taking final action 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.

**DATES:** This rule is effective August 8, 2024.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2023-0524. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 947-4152; email: [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us” and “our” refer to the EPA.

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**I. Summary of Proposed Action**

On December 20, 2023 (88 FR 87981) (“proposed rule”), the EPA proposed to approve a SIP revision concerning an amendment to the California Smog Check program to include a contingency measure to address in part the requirements of CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 for certain nonattainment areas in California. This contingency measure, if triggered, would narrow the existing Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas. The SIP revision is titled “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 of the submission address the contingency measure requirements, discuss the opportunities for the California Air Resources Board (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 Health & Safety Code (H&SC) section 44011(a)(4)(A) and (B), effective October 10, 2017.

In Table 1, we list the Smog Check Contingency Measure SIP and the related statutory provision with the dates they were adopted and submitted by CARB.

TABLE 1—SUBMITTED MEASURE AND STATUTORY PROVISION

Agency	Statute No.	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 ....	California 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.

In our December 20, 2023 proposed rule, we provided a discussion of the regulatory background leading to CARB’s adoption and submission of the Smog Check Contingency Measure SIP. In short, CARB submitted the Smog Check Contingency Measure SIP to address, in part, the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 for certain nonattainment areas with respect to certain ozone and fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS).

The applicable 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>1</sup>

In our proposed rule, we explained that, 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 to vehicles seven or fewer model years old in the nonattainment area(s) at issue upon the first triggering event and to vehicles six or fewer model years old in the nonattainment area(s) at issue upon a

second triggering event. Reducing the inspection exemption will increase the number of inspected and repaired vehicles and therefore result in additional emission reductions.<sup>2</sup>

Under 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 a 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 the California Bureau of Automotive Repair (BAR) and the California Department of Motor Vehicles (DMV). CARB’s letter will include the necessary finding that providing an exemption from Smog Check for certain vehicles in the area(s) (defined by specified ZIP Codes) at issue 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>3</sup>

Upon receipt of the CARB letter and the applicable ZIP Codes, CARB, BAR and DMV staff will begin implementation of the change in exemption length to Smog Check and take the following actions:<sup>4</sup>

- DMV will update their Smog Check renewal programing to require a Smog Check inspection for the eight model years old vehicles (or seven model years old vehicles in the case of a second trigger) in the ZIP Codes provided by CARB staff;
- The eight to seven model years old (or seven to six model years old) exemption change will begin for registrations expiring beginning January 1st of the applicable year, considering the time it takes for DMV to program this change and their registration renewal process;
- 60 days before the expiration date of the vehicle registration, DMV will

send out registration renewals that include these newly impacted vehicles along with those already subject to Smog Check inspection;

- The notice will include information on the change in exemptions, reason for change, and resources for obtaining a Smog Check inspection from a certified station;
- CARB staff will work with DMV to develop and include an informational paper that will accompany the registration renewal with the information as included in the notice; and
- BAR and DMV will administer and enforce the new changes to the Smog Check Program.

In our December 20, 2023 proposed rule, we provided our evaluation of the Smog Check Contingency Measure SIP and our rationale for proposing approval.<sup>5</sup> In short, we found that CARB had met the procedural requirements for SIPs and SIP revisions, found that CARB had adequate legal authority to implement the Smog Check Contingency Measure, and found that the applicable State agencies would have adequate personnel and funding for carrying out the Smog Check Contingency Measure. We also explained how the Smog Check Contingency Measure would be enforceable as required under CAA section 110(a)(2), how the Smog Check Contingency Measure would meet the requirements for an individual contingency measure under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014, and how approval of the Smog Check Contingency Measure would not interfere with RFP, attainment, or any other applicable requirement of the Act consistent with the requirements under CAA section 110(l). In addition, we presented CARB’s estimates of the expected emissions reductions from implementation of the Smog Check Contingency Measure in the various nonattainment areas for the relevant NAAQS for which the measure was developed. We indicated that, based on

<sup>1</sup> Smog Check Contingency Measure SIP, Table 1, at page 3. The Smog Check Contingency Measure SIP lists the various NAAQS by their associated concentration level rather than by the year the EPA promulgated the standard. The various ozone NAAQS addressed by the Smog Check Contingency Measure SIP include the 70 parts per billion (ppb) ozone NAAQS (2015 ozone NAAQS), the 75 ppb ozone NAAQS (2008 ozone NAAQS), the 80 ppb ozone NAAQS (1997 ozone NAAQS), the 15 micrograms per cubic meter (µg/m<sup>3</sup>) PM<sub>2.5</sub> NAAQS (the 1997 annual PM<sub>2.5</sub> NAAQS), the 35 µg/m<sup>3</sup> PM<sub>2.5</sub> NAAQS (the 2006 24-hour PM<sub>2.5</sub> NAAQS), and the 12 µg/m<sup>3</sup> PM<sub>2.5</sub> NAAQS (the 2012 annual PM<sub>2.5</sub> NAAQS).

<sup>2</sup> 88 FR 87981, page 87983.

<sup>3</sup> Smog Check Contingency Measure SIP, at pages 16–17.

<sup>4</sup> Id.

<sup>5</sup> 88 FR 87981, pages 87983–87987.

our review, we found the estimates to be reasonable and adequately documented.

Last, we explained that we were proposing to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure for the various applicable nonattainment areas and NAAQS, but we were not proposing to make any determination as to whether the Smog Check Contingency Measure SIP would be sufficient by itself for CARB and the relevant air districts to fully comply with the contingency measure SIP requirements in any specific nonattainment area for any specific NAAQS under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. We indicated in our proposed rule that we will be evaluating the contingency measure SIP plan elements for compliance with the full SIP requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 in the relevant future actions on nonattainment plan SIP submissions for each respective nonattainment area. In these separate actions, we will evaluate the estimated emissions reductions from the Smog Check Contingency Measure, in conjunction with the estimated emission reductions from any other submitted contingency measures for each area and each NAAQS at issue, to determine whether the contingency measures, taken together, provide the requisite emissions reductions or otherwise meet the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014, as applicable.

Our December 20, 2023 proposed rule contains more information on the Smog Check Contingency Measure SIP and our rationale for proposing approval.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received comments from CARB,<sup>6</sup> comments from a group comprised of the Central California Environmental Justice Network, Committee for a Better Arvin, Medical Advocates for Healthy Air, and Healthy Environment for All Lives (collectively referred to in this document as "Valley EJ Organizations")<sup>7</sup> and comments from a group comprised of the Central Valley

<sup>6</sup> Letter from Steven S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated January 12, 2024.

<sup>7</sup> Letter from Brent Newell, Attorney for Central California Environmental Justice Network, Committee for a Better Arvin, Medical Advocates for Healthy Air, and Healthy Environment for All Lives, to Jeffrey Buss and Rory Mays, EPA Region IX, dated January 19, 2024. The letter includes 16 exhibits as attachments.

Air Quality Coalition, National Park Conservation Association, Little Manila Rising and Valley Improvement Projects (collectively referred to in this document as "CVAQ").<sup>8</sup> All the comment letters and exhibits can be found in the docket for this rulemaking. In the following paragraphs, we summarize the comments and provide our responses.

**CARB Comment #1:** CARB indicates that, in the proposed rule, the EPA erroneously indicates that the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within roughly a year of the triggering event. CARB clarifies that instead, the Smog Check Contingency Measure is designed to achieve emissions reductions as soon as possible within a two-year time frame after the triggering event, recognizing that changes in Smog Check exemptions would begin at the start of a calendar year, that the California DMV will require time to update their systems and notify vehicle owners impacted by the measure, and that triggering events are dependent on the effective date of the EPA action. The California DMV's vehicle registration renewal program cycles annually beginning on January 1st of each year. Thus, CARB explains that, depending upon when the Smog Check Contingency Measure is triggered, when the DMV completes the related systems' update and provides notification to affected vehicle owners, and the length of time left until the beginning of the next calendar year, it could take more than one year to achieve the associated emissions reductions, but that these reductions should occur within two years from an applicable triggering event. CARB believes that this timeline for achieving reductions from the Smog Check Contingency Measure is consistent with the EPA's draft contingency measure guidance concerning the timing of emissions reductions from contingency measures.

**EPA Response to CARB Comment #1:** The EPA appreciates CARB's clarification of the timeline for when emissions reductions from the measure would be achieved (once triggered). While the timeline for achieving emissions reductions is potentially longer than we described in our proposed rule, we do not find the more extended timeline to present an obstacle to approval of the contingency measure because the reductions occur within two years and CARB's explanation is

<sup>8</sup> Letter from Dr. Catherine Garoupa, Executive Director, CVAQ, et al., to Jeffrey Buss, EPA Region IX, dated January 19, 2024.

reasonable as to why the reductions cannot occur within the first year.

Based on CARB's explanation, we now more fully understand that the California DMV's vehicle registration renewal program cycles annually beginning on January 1st of each year, and thus, if the contingency measure triggering event (e.g., finding of failure to attain the NAAQS by the applicable attainment date) occurs late in the calendar year, DMV will not have time to update its Smog Check renewal programming in the ZIP Codes provided by CARB in time for the registration renewals to be available for mailing to vehicle owners who must renew their registrations in January. If there is insufficient time, then DMV's update to the Smog Check renewal programming will not be reflected in vehicle registration renewal notices until the following January 1st. The EPA understands that as a result of the existing vehicle registration cycle, the full anticipated emission reductions would take longer to achieve, but this is reasonable given the nature of the measure.

In March 2023, the EPA published notice of availability of a new draft guidance addressing the contingency measure SIP requirements in section 172(c)(9) for nonattainment areas generally and in CAA section 182(c)(9) for ozone nonattainment areas classified Serious and higher. This document is entitled "Draft: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT— 3/17/23— Public Review Version)" (referred to in this document as the "Draft Revised Contingency Measure Guidance"). The EPA provided an opportunity for public comment.<sup>9</sup> The principal differences between the Draft Revised Contingency Measure Guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve and the timing for when the emissions reductions from the contingency measures should occur.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of a triggering event, and that the resulting emission reductions generally occur within one year of the triggering event. Under the Draft

<sup>9</sup> 88 FR 17571 (March 23, 2023).

Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA believes that contingency measures that provide reductions within two years of the triggering event would be appropriate to consider toward achieving the recommended amount of emissions reductions. We think that contingency measures that result in additional emissions reductions during the second year following the triggering event, as contemplated by the Draft Revised Contingency Measure Guidance, would still serve the important purpose of contingency measures to continue progress towards attainment, as the State develops and submits, and the EPA acts on, a SIP submission to address the underlying deficiency.<sup>10</sup>

As discussed in our Draft Revised Contingency Measure Guidance document, we believe that reductions from contingency measures should be achieved as soon as possible. If an air agency elects to adopt contingency measures that will require more than one year from the triggering event to achieve the full amount of necessary reductions, then it should provide an adequate explanation of why the reductions could not be achieved within the first year and how much additional time is needed (up to one additional year).<sup>11</sup> We find that CARB’s clarification of the timeline for achieving full emissions reductions from the Smog Check Contingency Measure (summarized in CARB Comment #1) adequately explains why the reductions may not be fully achieved until the second year after the triggering event.

*CARB Comment #2:* CARB disagrees with the EPA’s presentation in Table 2 of the proposed rule of the emissions reductions estimates for the Smog Check Contingency Measure in the applicable nonattainment areas for the relevant NAAQS. Specifically, CARB contends that the EPA should not have discounted the emissions reductions calculated for implementation of the Smog Check Contingency Measure by the potentially foregone emissions reductions calculated from the reduction in Carl Moyer Memorial Air Quality Standards Attainment Program (“Carl Moyer Program”) <sup>12</sup> funding due to decreased funding from the Smog Check abatement fee that would result from the narrowing of the Smog Check inspection exemption for newer model year vehicles.<sup>13</sup> CARB asserts that the estimated potential loss in reductions from the foregone Carl Moyer Program funding should not be factored into the estimated reductions from the Smog Check Contingency Measure.

CARB explains that the estimated emissions reductions from the Smog Check Contingency Measure are calculated from CARB’s current baseline SIP emissions inventory, while potential reductions from anticipated future projects funded through the Carl Moyer Program are not accounted for in baseline SIP inventories. Although the Smog Check Contingency Measure’s impact on funding for the Carl Moyer Program is described as a potential emissions disbenefit, CARB indicates that the information was included only to better inform the public of potential impacts and should not be accounted for in the calculated emissions reductions for the Smog Check Contingency Measure. CARB contends that the emissions reductions listed in the table titled “Potential Reductions

from Measure” for each nonattainment area in Section 5 of the Smog Check Contingency Measure SIP are the correct estimates for the Smog Check Contingency Measure.

*EPA Response to CARB Comment #2:* We do not agree that the overall estimate of emissions reductions from the Smog Check Contingency Measure should not take into account reasonably foreseeable emissions consequences. However, upon reconsideration, we agree with CARB that the foregone emissions reductions calculated by CARB resulting from reduced Carl Moyer Program funding should not be taken into account when evaluating the emissions reductions from the Smog Check Contingency Measure because the timing of the reduced funding and its impact on emissions reductions would not occur during the two-year implementation period for the Smog Check Contingency Measure.<sup>14</sup>

The reduced funding that would follow the triggering of the contingency measure would potentially affect emissions-reducing projects three or more years following the triggering event, based on the typical timeline for issuing grants and implementing emissions-reducing projects using Carl Moyer Program funding. This conclusion is based on information on implementation of the Carl Moyer Program provided by CARB.<sup>15</sup>

We, therefore, have re-published Table 2 from the proposed rule without accounting for the predicted emissions impacts from corresponding reductions in funds paid into the Carl Moyer Program, and find the amounts in Table 2 to be reasonable estimates of the emissions reductions from the Smog Check Contingency Measure for the applicable nonattainment areas and relevant NAAQS.

TABLE 2—REVISED 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	0.008	0.003
	2015 Ozone NAAQS .....	2037	0.008	0.003
Eastern Kern County .....	2008 Ozone NAAQS .....	2026	0.003	0.001

<sup>10</sup> Draft Revised Contingency Measure Guidance, page 41.

<sup>11</sup> Id.

<sup>12</sup> The Carl Moyer Program provides grant funding for cleaner-than-required engines, equipment, and other sources of air pollution. The Carl Moyer Program is implemented as a partnership between CARB and California’s 35 local air districts.

<sup>13</sup> As explained on page 1 of the Smog Check Contingency Measure SIP, the California Smog Check program allows vehicles eight or less model-

years old to be exempt from requirements for Smog Check inspections. In lieu of an inspection, this law requires seven and eight model-year old vehicles owners to pay an annual Smog Abatement Fee of \$25, \$21 of which goes to the Air Pollution Control Fund for use to incentivize clean vehicles and equipment through the Carl Moyer Program. Narrowing of the inspection exemption for such vehicles would reduce Smog Abatement fee funds collected.

<sup>14</sup> For perspective, we note, based on CARB’s estimated emissions reductions from the Smog

Check Contingency Measure and foregone emissions reductions from reduced Carl Moyer Program funding presented in Section 5 of the Smog Check Contingency Measure SIP, that the foregone emissions reductions are about one, to more than two, orders of magnitude lower than the emissions reductions from implementation of the Smog Check Contingency Measure.

<sup>15</sup> See email from Ariel Fideldy, Manager, CARB, dated February 16, 2024.

TABLE 2—REVISED ESTIMATED EMISSIONS REDUCTIONS FROM SMOG CHECK CONTINGENCY MEASURE—Continued

Nonattainment area	Applicable NAAQS	Analysis year	Emissions reductions (tons per day) <sup>a</sup>	
			NO <sub>x</sub>	VOC
Mariposa County	2015 Ozone NAAQS	2032	0.003	0.001
	2015 Ozone NAAQS	2026	0.0003	0.0001
Sacramento Metro	2008 Ozone NAAQS	2024	0.077	0.037
	2015 Ozone NAAQS	2032	0.047	0.015
San Diego County	2008 Ozone NAAQS	2026	0.065	0.027
	2015 Ozone NAAQS	2032	0.056	0.016
San Joaquin Valley	1997 Ozone NAAQS	2023	0.112	0.056
	2008 Ozone NAAQS	2031	0.079	0.025
	2015 Ozone NAAQS	2037	0.076	0.024
	1997 Annual PM <sub>2.5</sub> NAAQS	2023	0.117	0.052
	2006 24-Hour PM <sub>2.5</sub> NAAQS	2024	0.120	0.052
South Coast Air Basin	2012 Annual PM <sub>2.5</sub> NAAQS	2030	0.086	0.027
	2008 Ozone NAAQS	2029	0.295	0.096
	2015 Ozone NAAQS	2035	0.254	0.077
	2012 Annual PM <sub>2.5</sub> NAAQS	2030	0.300	0.093
Ventura County	2015 Ozone NAAQS	2026	0.013	0.005
West Mojave Desert	2008 Ozone NAAQS	2026	0.021	0.009
	2015 Ozone NAAQS	2032	0.018	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. 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.

*Valley EJ Organizations Comment #1:* Citing 40 CFR 52.220(c)(396)(ii)(A)(2)(i), Valley EJ Organizations assert that CARB submitted the Smog Check Contingency Measure SIP to comply with a Court order and the approved SIP, which require CARB to adopt and submit contingency measures for the 1997 8-hour ozone NAAQS meeting the requirements of section 172(c)(9) of the Act.<sup>16</sup> Valley EJ Organizations contend, however, that the EPA has proposed approval of the Smog Check Revision without deciding whether the emissions reductions the Smog Check Contingency Measure achieves comply with either the EPA’s current interpretation of the Act with respect to contingency measures or the EPA’s proposed Draft Revised Contingency Measure Guidance. Valley EJ Organizations further assert that the EPA fails to acknowledge or explain why it proposes to defer action for contingency measures for the 1997 8-hour ozone NAAQS in the San Joaquin Valley when the EPA has already approved the 2007 Ozone Plan, including contingency measures, and has approved the commitment by CARB to adopt and submit the contingency measures.<sup>17</sup>

<sup>16</sup> The approved SIP in this instance refers to the San Joaquin Valley 2007 Ozone Plan and related documents and includes a commitment that CARB made to submit attainment contingency measures for San Joaquin Valley for the 1997 ozone NAAQS.

<sup>17</sup> Valley EJ Organizations refer to the EPA’s final action on the San Joaquin Valley attainment plan for the 1997 ozone NAAQS (2007 Ozone Plan) at 77 FR 12652, 12670 (March 1, 2012) and 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

*EPA Response to Valley EJ Organizations Comment #1:* The EPA agrees that CARB submitted the Smog Check Contingency Measure SIP for several purposes. First, CARB submitted the Smog Check Contingency Measure SIP to address, in part, the contingency measure SIP requirements for certain nonattainment areas for certain NAAQS. The relevant areas and NAAQS that CARB addressed in the Smog Check Contingency Measure SIP include 10 nonattainment areas for the 2015 ozone NAAQS, seven areas for the 2008 ozone NAAQS, two areas for the 2012 PM<sub>2.5</sub> NAAQS, one area for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and one area for the 1997 ozone NAAQS.<sup>18</sup> The San Joaquin Valley is the one nonattainment area for the 1997 ozone NAAQS to which the Smog Check Contingency Measure SIP applies.

Second, CARB submitted the Smog Check Contingency Measure SIP to respond to recent court actions to meet statutory deadlines related to contingency measures.<sup>19</sup> In connection with one of the recent court actions, CARB submitted the Smog Check Contingency Measure SIP to respond to a Court order<sup>20</sup> compelling CARB to fulfill CARB’s commitment to develop, adopt and submit attainment

<sup>18</sup> Smog Check Contingency Measure SIP, page 3.  
<sup>19</sup> Smog Check Contingency Measure SIP, page 1.  
<sup>20</sup> *Central California Environmental Justice Center v. Randolph*, E.D. Cal., 22–cv–01714, ECF Nos. #41 and #52.

contingency measures<sup>21</sup> meeting the requirements of CAA section 172(c)(9) that the EPA approved in connection with the approval of the San Joaquin Valley ozone attainment plan for the 1997 ozone NAAQS.<sup>22</sup> In this final action, we are not determining whether the Smog Check Contingency Measure SIP fulfills CARB’s commitment, but we are approving the Smog Check Contingency Measure SIP as providing an individual contingency measure for San Joaquin Valley for the 1997 ozone NAAQS, among other areas and other NAAQS.

In our proposed rule, we acknowledged that we are not, in this action, making a determination as to whether the State and relevant District have fully met the contingency measure SIP requirements under CAA sections 172(c)(9) or 182(c)(9) in any given area, but rather, we explained that we are taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure for the various nonattainment areas and NAAQS to which the SIP applies.<sup>23</sup> We indicated that we will be

<sup>21</sup> Under CAA sections 172(c)(9), States required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP (“RFP contingency measures”) or fails to attain the NAAQS by the applicable attainment date (“attainment contingency measures”). Unless otherwise indicated, references to “contingency measures” in this document do not distinguish between the two types of contingency measures.

<sup>22</sup> 77 FR 12652 (March 1, 2012); 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

<sup>23</sup> 88 FR 87981, page 87987.

acting on the full 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 in conjunction with the reductions from other submitted contingency measures, at that time.<sup>24</sup> An example of such a separate rulemaking is our recent proposed approval of the San Joaquin Valley PM<sub>2.5</sub> contingency measure SIP element in which we are proposing to approve the components that comprise the contingency measure plan, collectively, as meeting the requirements for contingency measures for the San Joaquin Valley for the various PM<sub>2.5</sub> NAAQS under CAA section 172(c)(9) and 40 CFR 51.1014.<sup>25</sup> As part of our evaluation and proposed approval, we are taking into account the emissions reductions presented in the Smog Check Contingency Measure SIP for the San Joaquin Valley for the 1997, 2006 and 2012 PM<sub>2.5</sub> NAAQS.<sup>26</sup>

We have taken this approach of acting on the Smog Check Contingency Measure as an individual contingency measure separately from acting on the contingency measure element for each given nonattainment area, consistent with CARB's conceptual design for the Smog Check Contingency Measure SIP, which anticipates that the Smog Check Contingency Measure would, if triggered, change the exemptions for motor vehicles under the California Smog Check Program for the relevant local nonattainment area and NAAQS, and that, together with the local air districts' contingency measures, address the contingency measure requirements of the Act.<sup>27</sup> In future actions, we will evaluate whether CARB and the relevant District have addressed the full contingency measure SIP element requirements of the CAA by considering the emissions reductions attributed to the Smog Check Contingency Measure taken together with each local air districts' additional submitted contingency measures, along with any infeasibility justifications that may also be submitted.

Our evaluation of the Smog Check Contingency Measure SIP as an individual contingency measure included a review of the Smog Check Contingency Measure itself for

compliance with the requirements for individual contingency measures as set forth in CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014. In short, we found that that the Smog Check Contingency Measure is designed to be both prospective and conditional, that the Smog Check Contingency Measure includes an appropriate triggering mechanism, that the narrowing of the exemption for newer vehicles from Smog Check inspections is not required for any other CAA purpose, that 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, that 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 and that the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within roughly a year of the triggering event.<sup>28</sup>

As summarized in CARB Comment #1, CARB has explained why the Smog Check Contingency Measure is designed to achieve the estimated emissions reductions within two years of the triggering event, but not necessarily within a year of the triggering event. As discussed in EPA Response to CARB Comment #1, we find CARB's explanation to be adequate and that the timeline for achieving the emissions reductions from the Smog Check Contingency Measure to be acceptable for the purposes of CAA section 172(c)(9). For these reasons, we find that the Smog Check Contingency Measure meets the requirements for individual contingency measures.

With one exception, we expect the Smog Check Contingency Measure SIP to be supplemented by additional SIP revisions that, considered together, will be evaluated for compliance with the contingency measure SIP element requirement for each nonattainment area and NAAQS to which the Smog Check Contingency Measure applies. The one exception is the San Joaquin Valley for the 1997 ozone NAAQS.

We acknowledge that, in the proposed rule, we did not include a specific discussion of the implications of our proposed action with respect to the contingency measure SIP planning requirements for the 1997 ozone NAAQS for the San Joaquin Valley. Unlike the other nonattainment areas, we also acknowledge that, as the EJ Valley Organizations assert, the EPA has already taken action on the contingency measure element for San Joaquin Valley

for the 1997 ozone NAAQS.<sup>29</sup> We approved the contingency measure element, in part, in reliance on CARB's commitment to adopt and submit contingency measures to comply with the contingency measure SIP requirements under CAA section 172(c)(9) as those requirements relate to a potential failure to attain the 1997 ozone NAAQS by the applicable attainment date.<sup>30</sup> CARB submitted the Smog Check Contingency Measure SIP to, among other reasons, fulfill the commitment made by CARB in connection with the EPA's approval of the San Joaquin Valley plan for the 1997 ozone NAAQS.

In this action, we are approving the Smog Check Contingency Measure as a contingency measure for the San Joaquin Valley for the 1997 ozone NAAQS, along with the other areas and NAAQS. But, we will be taking separate action on the Smog Check Contingency Measure SIP to evaluate whether the Smog Check Contingency Measure SIP fulfills the attainment-related contingency measure requirements under CAA section 172(c)(9) for the San Joaquin Valley for the 1997 ozone NAAQS. The CAA establishes a deadline for EPA action on SIP submissions of 12 months from the determination of completeness.<sup>31</sup> We issued our completeness determination for the Smog Check Contingency Measure SIP in our December 20, 2023 proposed rule.<sup>32</sup>

*Valley EJ Organizations Comment #2:* Valley EJ Organizations assert that the EPA fails to decide whether the Smog Check Contingency Measure SIP complies with the existing SIP and the CAA with respect to the amount of emissions reductions achieved for the 1997 ozone NAAQS. Citing CAA section 172(c)(9), the Valley EJ Organizations contend that this violates the plain meaning of the Act's contingency measures provision and is arbitrary and capricious because contingency measures must be fully adopted, ready for implementation, and included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator. The Valley EJ Organizations also contend that the EPA must act on the Smog Check Contingency Measure SIP so that the Smog Check Contingency Measure is part of the plan, no further action by the EPA is pending, and the measure is

<sup>24</sup> *Id.*, pages 87987 and 87988.

<sup>25</sup> 88 FR 87988 (December 20, 2023).

<sup>26</sup> 88 FR 87988, 88003–88005 (December 20, 2023).

<sup>27</sup> Smog Check Contingency Measure SIP, pages 11 and 12.

<sup>28</sup> 88 FR 87981, pages 87985 and 87986.

<sup>29</sup> 77 FR 12652 (March 1, 2012).

<sup>30</sup> 77 FR 12652, 12670 (March 1, 2012); 40 CFR 52.220(c)(396)(ii)(A)(2)(i).

<sup>31</sup> CAA section 110(k)(2).

<sup>32</sup> 88 FR 87981, page 87982.

ready for implementation upon a failure to attain the standard by the applicable attainment date for San Joaquin Valley for the 1997 ozone NAAQS, *i.e.*, June 15, 2024. The Valley EJ Organizations assert that, without EPA action to determine that the Smog Check Contingency Measure SIP meets the requirements for contingency measures for San Joaquin Valley for the 1997 ozone NAAQS, the Smog Check Contingency Measure will not be part of the SIP, not ready to take effect without further action by the EPA, and not federally enforceable.

*EPA Response to Valley EJ Organizations Comment #2:* As discussed in more detail in EPA Response to Valley EJ Organizations Comment #1, the EPA is taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure that meets the applicable requirements for a contingency measure. As noted by the Valley EJ Organizations, the EPA is not, in this action, determining whether the San Joaquin Valley has met the contingency measure requirements for the 1997 ozone NAAQS. However, this does not mean that the Smog Check Contingency Measure itself will not be approved as part of the California SIP or federally enforceable.

Upon the effective date of our final action to approve the Smog Check Contingency Measure SIP, the Smog Check Contingency Measure will be federally enforceable as a part of the approved California SIP. This means that the Smog Check Contingency Measure will be triggered in San Joaquin Valley if the EPA determines that the San Joaquin Valley failed to attain the 1997 ozone NAAQS by the June 15, 2024, applicable attainment date.

Our finding in this regard is based on the language in CARB Resolution 23–20, adopting the Smog Check Contingency Measure as a revision to the California SIP, conditioned upon the EPA's final approval of the Smog Check Contingency Measure as a contingency measure under the CAA.<sup>33</sup> In our action today, we are approving the Smog Check Contingency Measure as a contingency measure under the CAA for the various nonattainment areas and NAAQS addressed by the Smog Check Contingency Measure SIP.

*Valley EJ Organizations Comment #3:* Valley EJ Organizations object to the EPA's proposed approval of the Smog Check Contingency Measure SIP as arbitrary, capricious and an abuse of discretion because the emissions

reductions associated with the Smog Check Contingency Measure for the San Joaquin Valley for the 1997 ozone NAAQS are far below the magnitude of emissions reductions that Valley EJ Organizations assert are required for San Joaquin Valley to meet the contingency measures SIP requirement under the CAA. Valley EJ Organizations also object to the proposed approval of the Smog Check Contingency Measure SIP on the grounds that approval of the contingency measure with respect to the 1997 ozone NAAQS would violate the anti-backsliding bar in CAA section 110(l) by weakening the amount of reductions required by the commitment CARB made, and EPA approved, as part of the San Joaquin Valley SIP for the 1997 ozone NAAQS. According to Valley EJ Organizations, the commitment that CARB made in connection with the EPA's approval of the San Joaquin Valley ozone SIP can only be achieved through contingency measures that would achieve collectively one year's worth of RFP, the EPA's interpretation (at the time of the EPA's approval of the commitment) of the amount of emissions reductions contingency measures should achieve to meet the CAA requirements for contingency measures for a given nonattainment area. Under this premise, Valley EJ Organizations contend that approval of the Smog Check Contingency Measure, which would reduce emissions (if triggered) by far less than one year's worth of RFP would be prohibited under CAA section 110(l). In the alternative, Valley EJ Organizations assert that the EPA has unlawfully and arbitrarily failed to consider and make a finding with respect to whether the approval of the Smog Check Contingency Measure SIP with respect to the 1997 8-hour ozone standard constitutes illegal backsliding.

*EPA Response to Valley EJ Organizations Comment #3:* As discussed in more detail in EPA Response to Valley EJ Organizations Comment #1, the EPA is taking action to approve the Smog Check Contingency Measure SIP as providing an individual contingency measure that meets the applicable requirements for individual contingency measures. The EPA is not, in this action, determining whether the San Joaquin Valley has fully met the contingency measure requirements for the 1997 ozone NAAQS. Thus, the EPA has not yet determined whether the emissions reductions from the Smog Check Contingency Measure suffice, on its own, to meet the contingency measure requirements for the San Joaquin Valley for the 1997 ozone

NAAQS. We will be taking another separate action on the Smog Check Contingency Measure SIP and will evaluate the emissions reductions associated with the Smog Check Contingency Measure, as well as CARB's infeasibility justification for adopting the Smog Check Contingency Measure as the sole contingency measure for San Joaquin Valley for the 1997 ozone NAAQS, at that time.

Lastly, in our proposed rule, we did review the Smog Check Contingency Measure SIP for compliance with CAA section 110(l).<sup>34</sup> In short, and in light of the scope of this rulemaking, *i.e.*, to evaluate the Smog Check Contingency Measure SIP as providing an individual contingency measure, we found that the Smog Check Contingency Measure, if triggered, would result in additional emissions reductions beyond those included in the RFP and attainment demonstration for the applicable nonattainment areas. Thus, we proposed to find that the approval of the Smog Check Contingency Measure SIP itself is consistent with CAA section 110(l) and would not interfere with RFP, attainment or any other applicable requirement of the Act.<sup>35</sup> We are finalizing that finding in this final action.

*CVAQ Comment #1:* CVAQ asserts that the EPA has no authority to approve contingency measures that provide less than one year's worth of RFP and has no authority to adopt a feasibility-based exemption that conditions contingency measures on their technological or economic infeasibility for polluters. CVAQ states that San Joaquin Valley residents need measures that will result in significant reductions that put health at the forefront, and the Smog Check Contingency Measure would only reduce around 0.1 tpd of NO<sub>x</sub> or less in the San Joaquin Valley. This is, according to CVAQ, especially problematic for the 1997 8-hour ozone NAAQS, which the San Joaquin Valley will fail to attain in six months, and the Smog Check Contingency Measure is the only contingency measure California has adopted for that NAAQS. CVAQ asserts that the EPA's interpretation of the contingency measure requirements only benefits industry to the detriment of some of the nation's most impacted communities, and that the EPA's actions run counter to the Biden Administration's commitment to environmental justice and Civil Rights.

*EPA Response to CVAQ Comment #1:* In this rulemaking, the EPA is

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

<sup>34</sup> 88 FR 87981, page 87986.

<sup>35</sup> *Id.*

approving the Smog Check Contingency Measure as an individual contingency measure because the measure has the necessary attributes of a CAA contingency measure,<sup>36</sup> but the EPA is not making any determination in this action as to whether the Smog Check Contingency Measure alone is sufficient to meet fully the contingency measure SIP requirements of CAA sections 172(c)(9) and 182(c)(9) and 40 CFR 51.1014 in any particular nonattainment area for any particular NAAQS. As noted in our proposed rule, 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.<sup>37</sup> In future actions on area-specific contingency measure elements, the EPA will take into account the amount of emissions reductions from the contingency measures for a given area and evaluate the approvability of the contingency measure element as a whole, including any relevant justifications for a contingency measure or measures that does not, or do not, provide for the recommended amount of emissions reductions.

*CVAQ Comment #2:* CVAQ contends that the Smog Check Contingency Measure would impose the burden of compliance costs on San Joaquin Valley residents who fall under the highest socioeconomic disadvantages in the State, further contradicting the Biden Administration's commitment to environmental justice and Civil Rights. CVAQ also contends that adopting the proposed weak contingency measure goes against this commitment by refusing to hold the region's largest polluters accountable, discounting community priorities and continuing racist polluting practices.

*EPA Response to CVAQ Comment #2:* The burden for compliance with the Smog Check Contingency Measure would fall on owners of motor vehicles seven or eight model years old. Using DMV vehicle registration data, CARB staff found that, in all the subject nonattainment areas, the proportion of vehicle owners potentially impacted in

Disadvantaged Communities (DACs)<sup>38</sup> by the Smog Check Contingency Measure, if triggered, is about equal to the proportion of vehicle owners potentially impacted in the nonattainment area as a whole.<sup>39</sup> According to CARB's findings, the burden of compliance and the environmental benefits of the Smog Check Contingency Measure will not disproportionately impact DACs in the nonattainment areas.

As part of CARB's evaluation of the impacts of the Smog Check Contingency Measure, CARB noted that repair costs under the Smog Check program vary, but generally cost \$750 on average, which could be a significant cost burden.<sup>40</sup> However, CARB also noted that financial assistance for repairs is available for income-eligible vehicle owners through BAR's Consumer Assistance Program, which provides up to \$1,200 for repair costs.<sup>41</sup> To be eligible for financial assistance, a vehicle owner must have a gross household income less than or equal to 225% of the Federal poverty level. This financial assistance program should help to address CVAQ's concern about the burden of compliance costs for those eligible households.

### III. Environmental Justice Considerations

This document takes final action to approve the Smog Check Contingency Measure SIP that CARB submitted to address, in part, contingency measure SIP requirements for certain nonattainment areas in California for the ozone and PM<sub>2.5</sub> NAAQS. Information on ozone and PM<sub>2.5</sub> and their relationship to negative health impacts can be found on the EPA's website.

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>42</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>43</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 on vehicle owners in disadvantaged communities.<sup>44</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>45</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 final 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 approve the Smog Check Contingency Measure SIP as meeting the minimum applicable requirements.

### IV. EPA Action

Pursuant to section 110(k)(3) of the CAA, and for the reasons provided in our December 20, 2023 proposed rule and in the responses to comments provided in this document, the EPA is taking final action 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 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

<sup>36</sup> As discussed on pages 87985 and 87986 of our proposed rule, the necessary attributes for individual contingency measures include being designed to be prospective and conditional, to include appropriate triggering mechanisms, to not be required for any other CAA purpose, to be designed to be implemented in a timely manner without significant further action by the State or the EPA, and to achieve emissions reductions within a year or two of the triggering event.

<sup>37</sup> 88 FR 87981, pages 87987 and 87988.

<sup>38</sup> DAC is defined under State law, namely Senate Bill 535, as census tracts receiving the highest 25 percent of overall scores in CalEnviroScreen 4.0. See Smog Check Contingency Measure SIP, page 18.

<sup>39</sup> Smog Check Contingency Measure SIP, page 19.

<sup>40</sup> *Id.*

<sup>41</sup> For more information, visit <https://www.bar.ca.gov/consumer/consumer-assistance-program>. In addition, the SJVUAPCD operates its own "Drive Clean in the San Joaquin" program that helps pay for Smog Check tests and repairs: <https://ww2.valleyair.org/grants/drive-clean-in-the-san-joaquin/>.

<sup>42</sup> EPA, EPA Legal Tools to Advance Environmental Justice, May 2022.

<sup>43</sup> Smog Check Contingency Measure SIP, Section 4.B ("Title VI and Environmental Justice").

<sup>44</sup> *Id.*, at pages 18–20.

<sup>45</sup> CARB Resolution 23–20, October 26, 2023, page 5.



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, 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. This final action adds the Smog Check Contingency Measure and the related statutory provision to the federally enforceable California SIP.

## V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of 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). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>46</sup>

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the 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 Clean Air Act. Accordingly, this action merely approves a State measure as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this 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 Clean Air Act.

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, this action 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).

Furthermore, Executive Order 12898, "Federal Actions To Address

Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629, February 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 in Section III ("Environmental Justice Considerations") of this document, as part of the EPA's review. Due to the nature of the action being taken here, this 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 E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

<sup>46</sup> 62 FR 27968 (May 22, 1997).

challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**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.

Dated: June 25, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraph (c)(613) to read as follows:

**§ 52.220 Identification of plan—in part.**

\* \* \* \* \*

(c) \* \* \*

(613) The following plan was submitted electronically on November 13, 2023 by the Governor’s designee as an attachment to a letter of the same date.

(i) [Reserved]

(ii) *Additional Materials.*

(A) California Air Resources Board.

(1) “California Smog Check Contingency Measure State Implementation Plan Revision,” adopted on October 26, 2023.

(2) [Reserved]

(B) [Reserved]

\* \* \* \* \*

■ 3. In Section 52.220a, amend paragraph (c), Table 1 by adding a heading for “Division 26 (Air Resources), Part 5 (Vehicular Air Pollution Control), Chapter 5 (Motor Vehicle Inspection Program), Article 2 (Program Requirements)” after the entry for “41962”; and under the new heading, adding an entry for “44011(a)(4)(A) and (B)” to read as follows:

**§ 52.220a Identification of plan—in part.**

\* \* \* \* \*

(c) \* \* \*

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS <sup>1</sup>

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
<b>Division 26 (Air Resources), Part 5 (Vehicular Air Pollution Control), Chapter 5 (Motor Vehicle Inspection Program), Article 2 (Program Requirements)</b>				
44011(a)(4)(A) and (B)	Certificate of compliance or noncompliance; biennial requirement; exceptions; inspections; exemption from testing for collector motor vehicle.	10/10/2017	7/9/2024, [Insert <b>Federal Register</b> CITATION].	Submitted on November 13, 2023 as an attachment to a letter of the same date.
* * * * *				

<sup>1</sup> Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

\* \* \* \* \*  
[FR Doc. 2024–14355 Filed 7–8–24; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R05–OAR–2022–0369; FRL–11761–02–R5]

**Air Plan Approval; Wisconsin; Milwaukee Second 10-Year 2006 24-Hour PM<sub>2.5</sub> Limited Maintenance Plan**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the limited maintenance plan (LMP) submitted by the Wisconsin Department of Natural Resources (WDNR) for the Milwaukee-

Racine maintenance area including Milwaukee, Waukesha, and Racine counties. The plan addresses the second 10-year maintenance period for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>). EPA is approving Wisconsin’s LMP submission for the Milwaukee-Racine maintenance area because it provides for the maintenance of the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) through the end of the second 10-year portion of the maintenance period. Additionally, EPA finds adequate and is approving the LMP as meeting the appropriate transportation conformity requirements. EPA proposed to approve this action on March 19, 2024, and received no comments.

**DATES:** This final rule is effective on August 8, 2024.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

No. EPA–R05–OAR–2022–0369. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Cecilia Magos, at (312) 886–7336 before visiting the Region 5 office.