

**PROPOSED**

State of California  
AIR RESOURCES BOARD

**2017 OZONE ATTAINMENT PLAN FOR THE EASTERN KERN  
NONATTAINMENT AREA**

Resolution 17-25

**September 28, 2017**

Agenda Item No.: 17-9-1

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

WHEREAS, CARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (the Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) necessary to comply with the Act;

WHEREAS, section 39602 of the Health and Safety Code also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

WHEREAS, section 41650 of the Health and Safety Code requires CARB to approve the nonattainment plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

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

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

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any power, duty, purpose, function or jurisdiction of the Board may be delegated to the CARB Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standard within their boundaries, pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, on March 27, 2008, the United States Environmental Protection Agency (U.S. EPA) promulgated an 8-hour ozone standard of 75 parts per billion (ppb);

WHEREAS, effective July 20, 2012, U.S. EPA designated the Eastern portion of Kern County within the Mojave Desert Air Basin excluding the Indian Wells Valley area (Eastern Kern) as nonattainment for the 75 ppb 8-hour ozone standard with a Marginal classification and attainment date of July 20, 2015;

WHEREAS, effective June 3, 2016, U.S. EPA classified Eastern Kern as a Moderate nonattainment area with an attainment date of July 20, 2018 since they did not meet the 75 ppb 8-hour ozone standard by July 20, 2015;

WHEREAS, the Eastern Kern Air Pollution Control District (District) is the local air district and planning agency for Eastern Kern;

WHEREAS, Eastern Kern is a rural area impacted by pollution transport from an upwind nonattainment area;

WHEREAS, consistent with timing of the upwind emission reductions, the District is requesting that Eastern Kern be classified as a Serious nonattainment area for ozone;

WHEREAS, the Act requires that a Serious nonattainment area ozone SIP include an emissions inventory, attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), contingency measures for RFP and attainment, and transportation conformity budgets;

WHEREAS, the District developed the 2017 Ozone Attainment Plan for 2008 Federal 75 ppb 8-hour Ozone Standard (2017 Plan) to meet the Serious ozone nonattainment area planning requirements for the 75 ppb 8-hour ozone standard;

WHEREAS, CARB staff has conducted a review of the 2017 Plan and concluded it meets the requirements of the Act;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2017 Plan includes a comprehensive, accurate, current inventory of emissions data of oxides of nitrogen (NOx), and reactive organic gases;

WHEREAS, consistent with sections 181(a) and 182(c)(2) of the Act, the 2017 Plan includes an attainment demonstration that shows attainment as expeditiously as practicable by the Serious area deadline of July 20, 2021;

WHEREAS, consistent with section 172(c)(1) of the Act, the 2017 Plan demonstrates RACM;

WHEREAS, consistent with sections 172(c)(2) and 182(c)(2) of the Act, the 2017 Plan identifies emission levels that demonstrate RFP through the attainment year;

WHEREAS, consistent with section 176 of the Act, the 2017 Plan establishes transportation conformity emission budgets, developed in consultation between the District and the regional transportation agency, that conform to the attainment emission levels;

WHEREAS, a recent decision by the U.S. Court of Appeals for the Ninth Circuit, in *Bahr v. U.S. Environmental Protection Agency* (9th Cir. 2016) 836 F.3d 1218, addressed the U.S. EPA's previous interpretation of contingency measure requirements under the Act;

WHEREAS, the 2017 Plan identifies sufficient contingency measures for RFP and attainment consistent with sections 172(c)(9) and 182(c)(9) of the Act, as interpreted by previous U.S. EPA guidance;

WHEREAS, CARB will work with the U.S. EPA and the District to resolve any issues with the contingency measures identified in the 2017 Plan in light of *Bahr* and any revised guidance, and to submit a plan revision to U.S. EPA as appropriate;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days of notice and opportunity for public review, must be conducted before adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by the Act, the 2017 Plan was made available for public review at least 30 days prior to the July 27, 2017, public hearing where the District Board of Directors approved the 2017 Plan along with the request to be classified as a Serious ozone nonattainment area;

WHEREAS, the California Environmental Quality Act (CEQA) requires that a project that may have significant adverse environmental impacts cannot be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, to meet its obligations under CEQA, the District determined that the 2017 Plan is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment) and under California Code of Regulations, title 14, section 15308 (actions taken by a regulatory agency for protection of the environment) and the 2017 Plan will not result in any potentially significant adverse effects on the environment; and

WHEREAS, CARB has determined that its subsequent adoption of the District's 2017 Plan is "ministerial" for purposes of CEQA (California Code of Regulations, title 14, §15268) because CARB's review is limited to determining if the Plan meets the requirements of the Act, and CARB lacks authority to modify or not adopt the Plan in response to environmental concerns, as described in the CARB Staff Report.

NOW, THEREFORE, BASED ON THE FOREGOING, the Board finds that:

1. The Serious classification is appropriate for Eastern Kern due to the impact of transport from upwind nonattainment areas.
2. The 2017 Plan meets the requirements of the Act for a Serious ozone nonattainment area;
3. The 2017 Plan includes the required air quality and emissions data, modeled attainment demonstration, RACM demonstration, RFP demonstration, contingency measures for RFP and attainment, and transportation conformity budgets;
4. Ongoing implementation of CARB and District control programs provides the emission reductions needed for meeting the 75 ppb 8-hour ozone standard by the attainment deadline; and
5. CARB's review and adoption of the 2017 Plan submitted by the District for inclusion in the California SIP is a ministerial activity for purposes of CEQA.

BE IT FURTHER RESOLVED that the Board hereby adopts the 2017 Ozone Attainment Plan for the 2008 Federal 75 ppb 8-hour Ozone Standard for Eastern Kern as a revision to the California SIP.

BE IT FURTHER RESOLVED that the Board hereby adopts the District's request that Eastern Kern be classified as a Serious ozone nonattainment area.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to submit the 2017 Plan as adopted by the District to U.S. EPA for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies that the 2017 Ozone Attainment Plan for 2008 Federal 75 ppb 8-hour Ozone was adopted after notice and public hearing as required by Section 110(I) of the Act and 40 CFR section 51.102.