Overview of California's Legal Authority to Regulate Air Pollution

Legal authority to regulate sources of air pollution in California is found in both federal and state law. At the federal level, the Clean Air Act ("the Act" or "CAA") calls for a two or three partner endeavor involving federal, state and, where permitted by state law, local authorities. The Act directs the U.S. Environmental Protection Agency (U.S. EPA) to undertake a national effort to improve air quality. To carry out this directive, U.S. EPA is directed to establish national ambient air quality standards to protect the public health and welfare (CAA §109).

The primary tool to be used in the effort to attain national standards is a State Implementation Plan (SIP) to be developed by each state that has one or more nonattainment areas. The SIP must provide for implementation, maintenance, and enforcement of the national standards (CAA §110(a)(1)). CAA § 110(a)(2)(A) broadly authorizes and directs states to include in their SIPs:

> "...enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act."

While the Act requires states to develop SIPs, and clearly intends that they bear primary responsibility for attaining the national standards (CAA §101(a)(3)), it also provides U.S. EPA with two significant roles in this process. As a partner in the effort to attain and maintain the standards, U.S. EPA is authorized and directed to adopt measures to control emissions from various sources, such as consumer products, motor vehicles, nonroad engines and vehicles, and aircraft (CAA §§183(e)(3), 202, 213 and 231). Additionally, U.S. EPA has ultimate authority and responsibility to intervene with direct federal action if the SIP is inadequate, incomplete or not properly implemented by the state (CAA §§ 110(c)(1) and 113).

Similarly, California law generally divides responsibility for meeting the requirements of the Clean Air Act (as well as separate, comprehensive state requirements related to air quality) between the Air Resources Board (ARB) and local air pollution control or air quality management districts (districts). However, other state or local agencies also have the authority under state law to regulate certain pollutant-emitting sources or activities. For example, the State's motor vehicle inspection and maintenance program is primarily the responsibility of the Bureau of Automotive Repair in the Department of Consumer Affairs, and the Department of Pesticide Regulation has primary authority to regulate the use of pesticides. Legal authority for state, district, and local efforts to improve air quality is contained primarily in Division 25.5 and Division 26 of the California Health and

Safety Code, although authority for some programs is located elsewhere in the State codes.[1]

Pursuant to these codes, ARB is charged with coordinating, regional and local efforts to attain and maintain both state and national ambient air quality standards. The direct statutory link between ARB and the mandates of the CAA is found in §39602 of the Health and Safety Code, which states:

> "The state board is designated the air pollution control agency for all purposes set forth in federal law.
>
> The state board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C., Sec. 7401, et seq.) and, to this end, shall coordinate the activities of all districts necessary to comply with that act.
>
> Notwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act."

In directing the California approach to improving air quality, State law divides control activities into vehicular and nonvehicular sectors (§§39002 and 40000). The control of vehicular sources is the responsibility of ARB, while primary responsibility for nonvehicular controls falls to the local air districts (§§ 39002, 40000-40002, 40702, 40717; see also §§ 40400-40540 for provisions specific to the South Coast Air Quality Management District). These authorities have been used by the local districts to adopt and enforce numerous rules to control air pollution. In addition, ARB has comprehensive oversight authority over the districts to undertake nonvehicular source control activities if any districts fails to perform satisfactorily (§§39002, 41500, 41502, 41503, 41504, 41505 and 41652).

The Clean Air Act requires that SIP provisions be legally enforceable. Under State law, a tiered system of authority for enforcement exists which parallels the authority to develop and implement the SIP. ARB has authority to enforce vehicular controls. (See, e.g., §§41510, 41511 and 41513, 43012, 43016 and 43017, 43100, 43105, 43106, 43204-43212 and Vehicle Code §§27156, 38390 and 38391.) Primary responsibility for nonvehicular enforcement is vested in the local air districts. (See, e.g., §§41510, 41511 and 41513, and 42300 et seq.) However, if ARB finds that a district is not taking reasonable action to enforce applicable air pollution control statutes, rules and regulations, ARB may, after a public hearing, assume the district's enforcement powers and enforce these laws (§41505). U.S. EPA has similar authority to assume enforcement jurisdiction if a state fails to enforce SIP provisions (CAA §113).

[1]All section references in this discussion are to the Health and Safety Code unless otherwise specified.

Within the framework of state and local shared responsibility for air pollution control, with ultimate air district accountability to ARB, ARB has the necessary statutory authority to assure compliance with the requirements of the Clean Air Act relating to the attainment of national standards and the rate-of-progress demonstrations.

Legal Authority to Adopt State and Federal SIP Measures

State components of the 2007 SIP are designed to reduce emissions from on-road mobile sources (passenger vehicles and trucks), off-road mobile sources (agricultural equipment, construction equipment, and other off-road sources), goods movement sources, and areawide sources (consumer products and pesticides). The legal authority for implementing the measures in each of these categories is described below.

Mobile Sources

Mobile source measures are a central component of the 2007 SIP. The measures include reductions to be realized from actions taken or to be taken at both the federal and state level.

Federal Responsibility for National Mobile Source Measures

If all areas of the State are to demonstrate attainment by the specified deadlines, a critical part of the overall strategy to reduce mobile source emissions in California must be U.S. EPA's regulation of national sources pursuant to §§202(a)(2)(B), 213 and 231 of the Clean Air Ac (CAA). Projected emissions from sources under federal jurisdiction are very significant, and these emission categories are expected to grow dramatically through 2024 without new strategies. Under these circumstances, U.S. EPA has an obligation under the CAA to promulgate standards for these unregulated or underregulated national sources. Such measures should be fully creditable in the SIP.

Certainly, U.S. EPA has the authority to adopt standards for national sources in order to assist states in achieving the national ambient air quality standards (NAAQS). U.S. EPA's authority derives from a number of provisions of the Clean Air Act which authorize or require the promulgation of various types of control measures. The scope of U.S. EPA's authority under many of these provisions is broadly defined. For example, CAA §202 directs the Administrator of the U.S. EPA to establish emission standards for new motor vehicles and CAA §231 directs the Administrator to establish aircraft emission standards. Both of these sections direct the Administrator to promulgate regulations in order to control emissions:

> "which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare ..." (CAA §§202(a) and 231(a)(2)).

CAA §213 provides U.S. EPA with the authority to adopt emission standards for nonroad engines and vehicles (such as marine vessels, construction equipment, and farm equipment). Under §213, the Administrator is required to determine whether ozone precursor or carbon monoxide emissions from nonroad engines or vehicles (other than locomotives) "cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" and to regulate the sources that in his judgment "cause, or contribute to, such air pollution." CAA §213 also directs the Administrator to adopt emission standards for new locomotives that:

> "achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy and safety factors associated with the application of such technology." (CAA §213(a)(5).)

Federal law preempts individual states from adopting emission standards for most of these sources (see CAA §§209 and 233). As explained in the next section, however, California has concurrent authority to regulate some nonroad engines or vehicles including marine vessels, and California can obtain a waiver of federal preemption to adopt emission standards for other national source categories.

If California is to adequately protect public health, the essential emission reductions necessary from these sources must be fully realized through timely promulgation of all feasible standards for national sources by U.S. EPA under the authorities provided in the Act. Without such federal control of preempted and national transportation sources, California simply cannot adequately protect public health because it is not possible to obtain sufficient emission reductions solely from sources under local and jurisdiction to offset uncontrolled or undercontrolled emissions contributed by national sources subject to federal control.

The very broad language of the Clean Air Act authorizes and directs the Administrator to establish appropriate standards for national sources in order to effectively address emissions from these sources in California and other states. Such standards are necessary and technologically feasible; therefore, U.S. EPA has an obligation to promulgate these standards without delay.

General State Authority for Mobile Source Measures

ARB has broad authority under State law to regulate mobile sources. Health and Safety Code §§ 43000, 43000.5, 43013(b) and 43018 provide authority for ARB to adopt emission standards and other regulations to reduce emissions from new and in-use motor vehicles and other mobile sources. These authorities empower the Board to adopt the mobile source regulations and other control measures identified in this SIP. Health and Safety Code §43013(a) provides that:

> "The state board may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air [pollutants] and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible to carry out the purposes of this division, unless preempted by federal law."

In addition, Health and Safety Code §43018 provides:

> "The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practical date."

To carry out these directives, the Board is directed to:

> "... adopt and implement emission standards for new motor vehicles [or new motor vehicle engines] for the control of emissions therefrom, which standards the state board has found to be necessary and technologically feasible to carry out the purposes of this division. Prior to adopting such standards, the state board shall consider the impact of such standards on the economy of the state, including, but not limited to, their effect on motor vehicle fuel efficiency." (§43101)

The Board is also directed by §43013(b) to regulate other categories of mobile sources:

> "The state board shall … adopt standards and regulations for … off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, locomotives, and, to the extent permitted by federal law, marine vessels."

ARB is further authorized by State law to adopt Air Toxic Control Measures (ATCMs) to control identified toxic air contaminants (TACs). ARB has identified a number of substances as TACs, including "particulate emissions from diesel-fueled engines" (see title 17, California Code of Regulations, sections 93000 and 93001). The authority to identify TACs and adopt ATCMs is provided by the Tanner Act (Health and Safety Code §39650 et seq.). Under the Tanner Act, ARB may adopt ATCMs to control TAC emissions from both nonvehicular sources (such as off-road diesel engines and equipment, marine vessels, etc.) and from vehicular sources such as on-road diesel trucks (see §§36658, 39666, and 39667). ATCMs may specify both new and in-use emission standards for all of these sources.

Each of the sections cited above must be read in the context of Health and Safety Code 39600, which provides that: "The state board shall do such acts as may be

necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law."

Pursuant to these authorities ARB has adopted the world's most stringent standards for passenger cars, light-duty trucks and medium-duty vehicles. ARB has also adopted regulations establishing standards for heavy-duty vehicles, off-road vehicles and engines, including small off-road engines and equipment (e.g., lawn and garden, small utility engines), off-road recreational vehicles (e.g., dirt bikes, all-terrain vehicles, golf carts), off-road diesel engines and equipment (e.g., certain farm and construction equipment, portable generators), off-road gasoline and LPG engines and equipment (e.g., forklifts, airport ground support equipment), and marine pleasure craft (e.g., jet skies and recreational boats).

Federal Preemption and Waivers

The CAA preempts states, including California, from adopting requirements for new off-road engines smaller than 175 horsepower used in farm or construction equipment. (CAA §209(e)). However, the CAA does not preempt California from adopting requirements for new off-road engines greater than 175 horsepower used in farm or construction equipment. California may also adopt in-use emission standards for off-road engines. However, California must obtain authorization from the Administrator of the U.S. EPA (i.e., a waiver) under CAA §209(e) before any new or in-use standards for off-road vehicles can be enforced, unless such standards are within the scope of a previously granted authorization.

In-use standards for on-road vehicles and engines (such as diesel trucks) are not covered by CAA §209. California is not preempted from adopting in-use, on-road standards and does not need to obtain a waiver for such standards.

State Authority to Regulate Marine Vessels

State law authorizes ARB to regulate marine vessels to the extent such regulation is not preempted by federal law. This authority is provided by Health and Safety Code §§43013 and 43018 and by the Tanner Act, which authorizes the adoption of ATCMs to regulate diesel particulate emissions from marine vessels.

The CAA places certain constraints on ARB's legal authority to regulate emissions from marine vessels in California Coastal Waters. The key issue is whether ARB measures are engine emission standards or in-use operational requirements. The CAA preempts California from implementing engine emission standards (e.g., new or retrofit engine standards or requirements) unless California has received authorization from the U.S. EPA to enforce such standards under CAA §209(e)(2). However, the CAA does not preempt states from implementing in-use operational standards, which include but are not limited to restrictions on hours of operation, sulfur limits on fuel, and daily mass emission

limits (see Appendix A to 40 CFR Part 89, Subpart A, as discussed at 62 FR 67733, 67735 (December 30, 1997)).

The 2007 SIP includes measures to require the use of cleaner, low-sulfur fuel in ship auxiliary and main engines. These requirements are best characterized as in-use operation requirements that are not preempted under the CAA. However, to the extent that these fuel requirements could be characterized as engine emission standards, California would need to get U.S. EPA authorization under CAA section 209(e). Authorization from U.S. EPA under CAA section 209(e) will also be needed for the proposed SIP measures on harborcraft that would impose new engine and in-use retrofit/repower standards.

The 2007 SIP also includes a cold-ironing measure for ships. This measure will likely not require U.S. EPA authorization since the measure can be drafted as an in-use operational requirement. Similarly, the vessel speed reduction measure in the SIP would clearly be an in-use operational requirement that does not require U.S. EPA authorization. However, to the extent these two measures mandate the installation and use of specific equipment on board vessels, those mandates would likely require U.S. EPA authorization under CAA §209(e).

Case law supports California authority to regulate marine vessel emissions while the ships are at the ports and in California Coastal Waters, provided a reasonable "nexus" is established between the regulation and the state's legitimate interest in protecting the health and safety of its citizens or its natural resources (see Gillis v. State of Louisiana, 294 F.3d 755, 761 (5th Cir. 2002)). Properly drafted to avoid impacting the internal affairs of a vessel, California regulations on marine vessels could also be extended to foreign-flagged vessels as well as U.S.-flagged ones (see Spector v. Norwegian Cruise Line, Ltd., 545 U.S. 119, 130-131).

Smog Check Program

California's vehicle inspection and maintenance program (commonly referred to as the "smog check program") is administered by the Bureau of Automotive Repair, which has the authority under state law for developing and implementing the program (§ 44002). The overall structure of California's current smog check program was established by legislation enacted in 1994 in response to the requirements of the federal Clean Air Act and U.S. EPA regulations. The laws governing the implementation and enforcement of the program are set forth in Health and Safety Code §44000 et seq.

Fuels

ARB has the authority to regulate the content of motor vehicle fuels. This was recognized by the California Supreme Court in a 1975 decision, *Western Oil & Gas Assn. v. Orange County Air Pollution Control District* (1975), 14 Cal. 3d 411, 418-

420, which held that the authority of ARB to adopt and implement motor vehicle emission standards includes the authority to set standards for motor vehicle fuels.

ARB's authority over fuels was reaffirmed and clarified in the California Clean Air Act of 1988, which added §43018 to the Health and Safety Code and substantially amended §43013. These sections provide that ARB has the authority to establish motor vehicle fuel regulations, and that before adopting and amending such regulations ARB must take certain specified actions and make specified determinations.

Consumer Products

ARB has broad authority under California law to regulate consumer products. Specifically, Health and Safety Code §41712(b) provides that:

> "The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds [VOC] emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:
>
> (1) The regulations are necessary to attain state and federal ambient air quality standards.
>
> (2) The regulations are commercially and technologically feasible and necessary."
>
> (See also §39600.)

Pursuant to this authority ARB has already adopted standards for numerous categories of consumer products and has achieved significant emission reductions from these products. ARB will continue to develop and adopt measures that limit the VOC emissions from consumer products.

Vapor Recovery

Health and Safety Code §41954 requires ARB to adopt procedures and performance standards for controlling gasoline vapor emissions from gasoline marketing operations, including transfer and storage operations, to achieve and maintain ambient air quality standards. This section also authorizes ARB, in cooperation with districts, to certify vapor recovery systems that meet the performance standards. Health and Safety Code §39607(d) requires ARB to adopt test procedures to determine compliance with ARB and districts' non-vehicular standards. State law (§41954) further requires districts to use ARB test procedures for determining compliance with performance standards and specifications established by ARB.

To comply with these provisions of state law, ARB has adopted the gasoline vapor recovery certification and test procedures found in 17 California Code of Regulations §§94010 to 94015 and 94101 to 94165. These regulations reference procedures for certifying vapor recovery systems and test procedures for verifying compliance with performance standards and specifications.

Pesticides

DPR has broad authority under state law to control the use of pesticides for the purposes of protecting human health and the environment, including improving air quality. This authority is set forth in Divisions 6 and 7 of the California Food and Agricultural Code (FAC); (FAC §§14082, 14102, also §§12781, 12824-12828, 12976-12977, 12991-12995, 12996-12999, 13101 and 13102). Following are more specific descriptions of DPR's authority in particular areas.

DPR has the power to adopt regulations to carry out the provisions of the FAC that it is authorized to administer or enforce (FAC §§11456, 11502.5, 12781, 12976, 12981). No pesticide may be manufactured, sold or offered for sale in California unless it has been registered by the DPR (§12811). DPR may place appropriate restrictions on a pesticide's use, including limitations on the quantity, area, and manner of application (§12824).

Use of pesticides classified as "restricted materials" often requires a permit (see §§14006.5; title 3, California Code of Regulations (CCR), §6412). All agricultural and commercial structural use fumigants are restricted materials. Permits to use restricted materials are issued by the appropriate County Agricultural Commissioner, or by DPR in counties that have no County Agricultural Commissioner. DPR can and does recommend permit conditions to be included in restricted material permits. DPR can also enact use restrictions or permit conditions by regulation (FAC §14007(a)). DPR must adopt regulations governing the use of any restricted material that the Director determines is injurious to the environment (FAC §14005). It is unlawful to apply any restricted material for which regulations have been adopted except as provided in such regulations (FAC §4011).

All agricultural and commercial structural use of pesticides must be reported (title 3, CCR §6624 and FAC §12979). Among other information, the Pesticide Use Reports must identify the date of application; location of property treated; total acres or units treated; and the pesticide and amount used (title 3, CCR §6624).

New Technology Measures for ARB's Long-Term Strategy

Like the 1994 and 1999 SIPs for the South Coast Air Basin, this SIP contains a special class of new technology measures necessary to contribute to attainment in the South Coast and San Joaquin Valley. CAA §182 sets out requirements for marginal, moderate, serious, severe and extreme ozone nonattainment areas, with the requirements for each level building on the preceding requirements. The South Coast and San Joaquin Valley have or intend to request to "bump-up" to an extreme classification in order to show attainment of the federal 8-hour ozone standard by 2024. As extreme areas, the South Coast and San Joaquin Valley will be required to meet the most strenuous requirements applicable to areas with lesser ozone problems, plus all of the requirements of CAA §182(e)(1) through (3).

The following discussion applies to any California nonattainment area classified as extreme.

To address attainment planning for extreme ozone nonattainment areas, Congress enacted CAA §182(e)(5) as part of the 1990 CAA amendments. Specifically, CAA §182(e)(5) provides:

> "The Administrator may, in accordance with section 110, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that--
>
> (A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after the date of the enactment of the Clean Air Act Amendments of 1990; and
>
> (B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.
>
> Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 110. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) and (c)(2) and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2), and that failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2)."

U.S. EPA approved the new technology measures set forth in the 1994 and 1999 Ozone SIPS (60 FR 43379, 4381 (August 21, 1995); 65 FR 6091, 6093 (February 8, 2000), and further explained its interpretation of §182(e)(5):

> “The 1990 Amendments to the Act added section 182(e)(5), which applies exclusively to “Extreme” ozone areas. This provision authorizes the State to use conceptual, as yet unadopted measures for its ozone attainment demonstration and rate-of-progress after the year 2000, if these measures anticipate new or improved technology or control techniques and are not needed to meet the progress requirements of the first 10 years . . . These measures necessarily are preliminary, and as such lack both regulations and technical support or even decisions regarding specific directions and approaches. Complete SIP rule elements are dependent upon future years

of research projects, analyses of technologies and associated commercial feasibility, public workshops, and public decisionmaking." (60 FR 43381)

The 2007 SIP for the South Coast and San Joaquin Valley will rely on §182(e)(5) measures for a significant quantity of emission reductions. This reliance was intended by the Act, and long-term measures that rely on new or evolving technology (including measures requiring complex analyses and decision-making and coordination among numerous government agencies) fall within the coverage of §182(e)(5) and are approvable as SIP revisions although not yet fully developed or adopted.

Use of Secured Incentive Funding

The emission reductions from adopted SIP measures include reductions achieved through incentive programs (such as the Carl Moyer program) that help finance the clean-up of the in-use or legacy fleet of heavy-duty diesel trucks, buses, and other diesel equipment. California is currently investing up to $140 million per year through the Carl Moyer Program. In the adopted measure emission reduction calculations, ARB included the benefit of emission reductions that will occur in future years from funds that have been directed to ARB and through legislation.

ARB is able to include the benefit of these incentive programs because the funds have been secured for ARB through state legislation. The Carl Moyer Memorial Air Quality Standards program was established in 1988 and in its first six years, the program provided over $140 million in funding to clean up more than 6,300 heavy-duty engines. State legislation (AB 923, 2004 and SB 1107, 2004) provided increased and continued funding for the program and other incentive programs – up to $141 million annually through 2015. The sources of this new funding secured in this legislation are listed below.

1. Increased and expanded Smog Check program fee revenues directed to the program provide approximately $61 million per year. It is emission reductions from these revenues that have been included in the adopted measures in this SIP.

2. An increase in the fee assessed for new tire purchases from $1 to $1.75 provides approximately $25 million per year through 2015. The resulting revenues are directed to the air districts.

3. A $2 increase in the amount of air district-imposed motor vehicle registration fees will provide up to $55 million per year to local air districts for clean air incentive programs.

Reasonably Available Control Measures (RACM) Discussion

U.S. EPA's guidance requires each nonattainment area to submit a demonstration that it has adopted all RACM necessary to demonstrate

attainment as expeditiously as possible. However, U.S. EPA has already determined that the California (i.e., ARB) control programs for mobile sources and fuels constitute BACM.[2] Moreover, whereas U.S. EPA deems its federal mobile source program to establish best available control measures for the nation, the California program generally goes beyond federal mobile source requirements (where not otherwise prescribed by federal law). Therefore, ARB believes that the State mobile source program exceeds federal RACM requirements.

Analyses of measures and adoption commitments for sources under air district responsibility subject to RACM and Reasonable Available Control Technology (RACT) requirements are included in the local air district plans.

Conformity Budgets

Section 176(c) of the CAA requires that any action by the Federal government be consistent with, or "conform" to the purpose and intent of the SIP. This section of the Clean Air Act also requires that transportation planning agencies in areas that do not meet federal air quality standards demonstrate that their long range plans, funding programs and projects are consistent with and conform to the SIP before any part of the federal government grants approval, funding, or takes any other action on those plans, programs or projects.

In turn, the local air quality attainment plans are required by the Clean Air Act to set out emissions budgets for transportation agencies to use when demonstrating conformity to the SIP. These emission budgets are linked to the attainment demonstration, and represent an upper bound, or ceiling that cannot be exceeded without undermining the SIP in its efforts to attain the federal air quality standards. Because the development of an area's emission budget takes place at the local level, each local plan will contain that area's transportation conformity emissions budgets and supporting material concerning the basis and development of those budgets.

[2]See page 5419 of the February 4, 2004 proposed rulemaking for the San Joaquin Valley PM10 plan, and page 30035 of the May 26, 2004 final rule.