

Appendix 1

State Implementation Plan Submittals What goes in and what stays out

Region 10 – Updated August 13, 2013

This document discusses the types of regulations that are appropriate and not appropriate for inclusion into State Implementation Plans (SIPs) pursuant to section 110 and elsewhere in the Clean Air Act (CAA). The CAA has multiple obligations for the states to develop and submit programs to EPA for approval. A SIP submittal is one such obligation and is unique from other obligations (e.g., a Title V permit program). The purpose of this document is to help prevent unnecessary work in the submittal and review of rules not appropriate for inclusion into SIPs. It is not intended as an exhaustive list of all rule titles sufficient to comply with the CAA. In addition, since each SIP is unique, this document should not be used in lieu of case-by-case analysis of state/local rules and the specific requirements of the CAA. Nonetheless, we intend to update this document if we find ways to make it more useful in the future.

1. **Appropriate for SIPs.** SIPs are designed to achieve and maintain National Ambient Air Quality Standards (NAAQS) for the criteria pollutants as described in 40 CFR 50, and to meet certain other requirements of the Title I of the CAA, such as Prevention of Significant Deterioration (PSD) permit rules required by sections 160-171 and nonattainment permit rules required by section 173 (Part D NSR).¹ SIPs may include state measures that are not required by the CAA and relate to attainment and maintenance of the NAAQS if the state requests EPA approval. 40 CFR Part 51 addresses SIP requirements and submissions to EPA. EPA will review and, when appropriate, approve SIP submittals into 40 CFR Part 52 which includes the SIP elements for each state. Generally, SIPs should include:
 - a. All control measures relied on in attainment demonstrations developed for purposes of attaining or maintaining the NAAQS under sections 110(a)(1) or (a)(2)(A) (general SIP provisions); section 169A (Class I area visibility protection); section 172(c) (general nonattainment provisions); or in response to an attainment demonstration requirement in the pollutant-specific provisions of CAA Part D Subparts 2 through 5.
 - b. Any control measures relied upon to meet a specific rate of progress requirement (e.g., 15% requirement in section 182(b)(1)).
 - c. Any control measures relied on for purposes of a maintenance plan under section 175A, including any contingency measures that have been triggered.
 - d. Control measures or other rulemaking-related items otherwise required by the CAA. These include RACM or RACT, motor vehicle I/M, and any other specified

control measure (see, e.g., sections 182 for ozone, 187 for CO, or 190 for PM); or, negative declarations certifying that these elements are not needed in specific geographic areas.

- e. Preconstruction permit rules such as PSD, part D NSR, and minor preconstruction permit rules required by section 110(a)(2)(C) and 40 CFR 51.160 (minor NSR). These may include, for example, permits required, standards for approving permits, and emission banking rules.
 - f. Title, definition of terms,ⁱⁱ definition of geographic area, recordkeeping, and some other administrative rules relied on by SIP prohibitory and permit rules.
 - g. Air pollution emergency episode plan requirements pursuant to section 110(a)(2)(G), section 303, and 40 CFR 51 Subpart H and Appendix L.
 - h. Provisions relied on by other rules that have been submitted as part of the SIP that describe testing, monitoring, recordkeeping or reporting requirements or procedures such as many titled recordkeeping and reporting, source tests, stack monitoring, sampling and test facilities and analytical methods.
 - i. Emission statement rules and other measures requiring emission reports or inventories as necessary to fulfill sections 110(a)(2)(F), 40 CFR 51.1-50 and similar requirements.
 - j. Stack height and dispersion techniques provisions required by 40 CFR 51.118 and 51.119.
 - k. Credible evidence rules consistent with 40 CFR 51.212 (see 62 FR 8314, February 24, 1997).
 - l. Statutes and rules describing state agency investigative, information gathering, inspection, enforcement, and penalty authority. Such provisions should generally be submitted as part of a SIP (and resubmitted as a SIP revision when revised) to demonstrate adequate enforcement authority under section 110(a)(2) (general SIP provisions), although we do not generally incorporate such provisions by reference.ⁱⁱⁱ
 - m. Federal Implementation Plans (FIPs). Note that if a state fails to submit approvable rules for programs mandated by the CAA, appropriate federal rules implementing such programs will be incorporated as a FIP into the Part 52 implementation plan for that state.
2. **Inappropriate for SIPs.** These rules generally should not be submitted for incorporation into SIPs. It may be, however, appropriate and/or necessary to submit some of these rules to EPA for approval under other non-SIP CAA authorities as noted below.

- a. Regulations developed solely to control non-criteria or non-precursor pollutants such as some rules controlling asbestos, hydrogen sulfide, ozone depleting substances (e.g., Freon), nuisance, odors, pathogens, worker safety, noise, Hazardous Air Pollutants (HAPs), other toxic air pollutants or greenhouse gases, except as provided elsewhere in this document. This may include, for example, some state and local rules intended to substitute NESHAP standards pursuant to section 112(l) and reviewed and approved under 40 CFR Part 63.
- b. Control measures that are otherwise federally enforceable and do not also need to be made federally enforceable through approval into the SIP. This includes, for example:
 - i. **New Source Performance Standards (NSPS)** and other regulations implementing section 111, including state section 111(d) plans.
 - ii. **Regulations implementing section 129** (waste incinerators).
 - iii. **Acid Rain** and other regulations implementing Title IV.
 - iv. **NESHAP** standards implementing section 112.
 - v. **Outer Continental Shelf** rules adopting portions of 40 CFR 55 into state law pursuant to section 328.
- c. Title V (Federal operating permit) programs and rules as required by 40 CFR Part 70. Operating permit programs and rules are approved under 40 CFR Part 70, which is independent from the SIP approval process.
- d. Administrative procedures before state or local agency hearing boards, except as provided in #3d and except for statutes and regulations implementing CAA section 128.
- e. Fee provisions that are not SIP permit fees or SIP-related economic incentives programs.

3. Should be evaluated case-by-case. These types of regulations should be evaluated case by case.

- a. Prohibitory rules that control criteria pollutants or their precursors but are not otherwise required in SIPs (e.g., as described in #1 above). This might include, for example, rules that are designed to limit a source's potential to emit or those controlling reduction of animal matter and photochemically reactive organic solvents that are not needed to maintain attainment in an attainment area but do reduce levels of criteria pollutants or their precursors. If states want these rules in the SIP, they may request that EPA approve them into the SIP if they meet the requirements of section 110(a) (general SIP provisions) and section 172(c) (general nonattainment provisions). Note that once such rules are in the SIP, however, states must also comply with sections 110(l) (SIP revisions) and 193 (general savings clause) in order to remove such provisions from the SIP.^{iv}

- b. Rules to authorize issuance of non-Title V federally enforceable state operating permits (referred to as FESOPs) but approval of such programs under the SIP should be limited to those pollutants that are regulated under section 110 of the CAA and for purposes of Section 110 of the CAA (e.g., that relate to attainment or maintenance of the NAAQS or meet or avoid a specific requirement of Section 110). See 54 FR 27274 (June 28, 1989) regarding EPA criteria for approval of such rules. See also 68 FR 37973 (June 26, 2003) (approval of Allegheny, PA FESOP under CAA sections 111 and 112).
- c. Upset/breakdown, startup/shutdown, emergency, and other rules that allow (or excuse through affirmative defenses) excess emissions during certain operating conditions. See proposed action “State Implementation Plans: Response to Petition for rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” published on February 22, 2013 at 76 FR 12460.
- d. Variance and similar provisions that allow state/local agencies to waive SIP requirements can be approved into the SIP but only if they are consistent with sections 110(i) (SIP modification prohibition), 110(l) (SIP revisions), and 193 (general savings clause). It is unlikely that variance provisions will be consistent with these sections of the CAA.
- e. Regulations promulgated to control HAPs or other toxic air pollutants if the State is relying on such standards to reduce criteria pollutants under section 110.
- f. Permit fees that are required as a condition for obtaining one of the permits listed in #1e above. Region 10 will approve permit fees for permits covered under the SIP on a case-by-case basis if a state or local agency requests for them to be included in the SIP.

ⁱ Note that PSD rules must include all “regulated NSR pollutants” (e.g., non-criteria pollutants such as greenhouse gases, hydrogen sulfide and ozone depleting substances must be included in PSD), which term does not include hazardous air pollutants listed in section 112. PSD-avoidance mechanisms (e.g., minor NSR or FESOPs) that apply to all “regulated NSR pollutants” are appropriate for inclusion in the SIP as well.

ⁱⁱ Note that revisions to definitions for NESHAPs, Title V and NSPS provisions that are also used for the SIP must also be included as a SIP revision.

ⁱⁱⁱ Note that EPA approval of these State and local enforcement authorities in the SIP for purposes of demonstrating adequate enforcement authority does not affect EPA’s independent investigative, inspection, enforcement, and penalty authority in CAA section 113 (federal enforcement), section 114 (recordkeeping, inspections, monitoring, and entry), and elsewhere.

^{iv} Rules limiting potential to emit for HAPs are approved under Section 112. See “Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits,” dated January 25, 1995.