

MEMORANDUM

SUBJECT: November 1994 Submittal Policy

FROM: John S. Seitz, Director  
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics  
Management Division, Regions I and IV  
Director, Air and Waste Management Division,  
Region II  
Director, Air, Radiation and Toxics Division,  
Region III  
Director, Air and Radiation Division,  
Region V  
Director, Air, Pesticides and Toxics Division,  
Region VI  
Director, Air and Toxics Division, Regions VII, VIII,  
IX, and X

The purpose of this memorandum is to provide policy on how EPA intends to handle the SIP revisions that are due for serious and above ozone nonattainment areas and moderate interstate ozone nonattainment areas by November 15, 1994. This memorandum describes current policy and does not constitute final action. Final action will be taken in the context of findings of nonsubmittal or concerning completeness, as well as notice-and-comment rulemaking on the relevant SIP submissions.

The required submittals, pursuant to section 182 of the Act, consist of the following: (1) a modeled attainment demonstration, (2) a rate-of-progress plan that achieves an average of 3 percent per year reduction in VOC and/or NOx emissions over each 3-year period starting in 1996 until the attainment date, and (3) all fully-adopted rules needed to show attainment by the statutory deadline and implementation of the 3 percent rate-of-progress plan. Moderate nonattainment areas are not required to submit post-1996 rate-of-progress plans.

Based on requests from a number of Regional Offices and State and local air agencies, we have developed a policy that

addresses concerns they have expressed. The EPA recognizes that, in most cases, the modeling will not be complete by November 15, 1994 for a number of reasons (primarily delays in establishing final baseline and projected emission inventories). The attached policy should help a number of States as they proceed with developing complete SIP's and should keep the States on track with their SIP's so they can attain by the applicable attainment date and achieve the required interim progress.

For States that do not submit complete plans by November 15, 1994, EPA must issue a "findings" letter in early 1995, starting an 18-month sanctions clock. If a complete plan is not submitted to EPA within 18 months, a 2:1 emissions offset sanction for new sources will automatically be imposed. A second sanction, highway funds restrictions, will be imposed if the deficiency is still not corrected 6 months after the first sanction is imposed. The attached policy gives guidelines and examples of what EPA intends to regard as a complete submittal. The EPA intends to propose revisions to the completeness criteria in 40 CFR part 51, appendix V, to the extent necessary to implement this policy.

We hope that this guidance facilitates development of the SIP revisions required by 1994. Please contact Kimber Scavo (919-541-3354) or Laurel Schultz (919-541-5511) regarding any questions. Modeling questions should be directed to Ellen Baldrige (919-541-5684).

#### Attachment

cc: Air Branch Chief, Regions I-X  
Mary Nichols  
Rob Brenner  
Richard Wilson  
David Doniger  
Sally Shaver  
William Hunt  
Phil Lorang  
Lydia Wegman  
Alan Eckert  
Rich Ossias

bcc: Ellen Baldrige  
Gary Dolce  
Ned Meyer  
Kimber Scavo  
Laurel Schultz  
Howard Hoffman  
Kathryn Sargeant  
Joe Tikvart  
John Silvasi  
Tom Helms  
Jeff Clark  
Doug Grano  
David Cole  
Sharon Reinders  
John Bachmann

OAQPS:AQMD:OCMPB:LAUREL SCHULTZ:JKING:eXT. 5511:8/29/94

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This response was coordinated with OGC (R. Ossias, H. Hoffman)  
and the SIP control strategy work group.

## November 1994 Ozone SIP's--Rulemaking Policy

### Clean Air Act Requirement:

- Modeling available for all selected episodes and fully-adopted rules for the attainment demonstration and rate-of-progress are required by November 15, 1994.

### Policy:

- No submittal: If no submittal is made, EPA will make a finding of failure to submit.
- Completeness: Any submittal that is made will be determined to be either incomplete or complete.<sup>1</sup> A finding of completeness means that a submittal may be eligible to be considered for full or conditional approval. It does not mean that the submittal is necessarily approvable. A finding of incompleteness starts an 18-month sanctions clock that can only be stopped by EPA's finding that the State has made a complete submittal.
- Complete Submittals: In order for any submittal to be complete, it must include: (a) modeling for all selected episodes that meet EPA requirements; (b) a demonstration of how the area will achieve the post-1996 rate of progress reductions and, in most cases, fully-adopted rules for at least 80 percent of those reductions (exceptions are described below); and (c) an attainment demonstration with fully-adopted rules for at least 80 percent of the reductions needed for attainment, as described below. In order for any submittal which involves commitments to be complete, it must also include: (a) everything that was required to be submitted on or before November 15, 1993, including the fully-adopted rules for the 15 percent plans and NO<sub>x</sub> RACT (except where an exemption applies); and (b) an explanation for why more time is needed to fully adopt the remainder of the rules.
- Examples of Complete Submittals: Examples of the amount of adopted rules that could be determined to be complete include the following:

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<sup>1</sup>The EPA intends to propose revisions to the completeness criteria in 40 CFR part 51 appendix V, to the extent necessary to implement this policy.

1. Fully-adopted rules for all of the reductions needed from the nonattainment area to show attainment and rate-of-progress in the area.
2. Where the attainment demonstration is based on a regional strategy,<sup>2</sup> fully-adopted rules for all reductions needed within the nonattainment area, the rate-of-progress reductions, and any other reductions needed to implement the regional strategy over which the State has jurisdiction. In addition, the State should submit a petition to EPA to require a specified amount of additional reductions from locations outside its jurisdiction. In lieu of a petition to EPA, the States can develop a cooperative agreement between or among themselves.
3. Fully-adopted rules for a substantial portion<sup>3</sup> of the reductions needed for attainment (total amount of reductions between the base year inventory and attainment year inventory), fully-adopted rules for a substantial portion of the rate-of-progress reductions, and a commitment to adopt the remainder of the rules according to a schedule that includes a specified date<sup>4</sup> for submission of the remainder of rules. Moderate areas should be aware that any significant delays in adoption of rules may increase the difficulty of attaining the standard by the statutory attainment date.
4. Where the attainment demonstration is based on a regional strategy, fully-adopted rules for a substantial portion of the reductions in the modeling domain that includes the nonattainment area, fully-adopted rules for a substantial portion of the rate-of-progress reductions, and a commitment to adopt any additional rules needed according to a specified

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<sup>2</sup>The EPA intends to issue additional guidance related to regional strategies.

<sup>3</sup>The substantial portion can be based on the total amount of reductions needed for attainment using preliminary modeling results. The final modeling may yield different results.

<sup>4</sup>This date should be no later than 1 year after the date required for EPA action on the submittal. In addition, all rules must be implemented before the area's attainment date.

schedule (as described above). The State should also commit to take all reasonable steps to coordinate the revisions and implementation of the regional strategy. The EPA's subsequent guidance on regional strategies will address the extent to which measures required in a regional strategy under a State's jurisdiction must be fully adopted.

- Reductions Needed for Attainment: The EPA believes that 80 percent constitutes a substantial amount. This is based on the fact that all the necessary modeling may not be completed at the time the State begins its rulemaking process for this portion of the rules. Therefore, plans must include at least 80 percent of the required reductions in order to be determined to be complete.

In addition, to the extent the State seeks time beyond November 15, 1994 to submit required SIP elements, EPA's decision on whether to conditionally approve a commitment will rest in part on the State's explanation of why more time is needed to fully adopt the remainder of the rules. The EPA expects this explanation to include a timeline showing the State's past and future progress toward completion of modeling and rule adoption in order to justify delays. This timeline should show that there have been no significant gaps in the State's progress. Time needed for development of regional strategies, where modeling shows that such strategies are necessary or appropriate, may also be suitable explanations for certain delays.

- Rate-of-Progress Reductions: As a general rule, EPA believes that 80 percent constitutes a substantial amount. For serious areas, fully-adopted rules for all of the rate-of-progress reductions must be submitted in order for EPA to determine the plan to be complete.

If 80 percent of the rate-of-progress requirement is more than 80 percent of what is needed for attainment, a plan that contains less than 80 percent of the rate-of-progress reductions, but at least 80 percent of what is needed for attainment, may be considered complete. This exception does not apply to serious areas.

- EPA Action: Plans that include all of the required modeling and fully-adopted rules for all of the necessary reductions will be eligible for full approval. A SIP submittal that includes a commitment and passes the completeness criteria

would be eligible for consideration for conditional approval.<sup>5</sup>

- Federal Measures: Where EPA has indicated that States can take credit for future Federal measures (e.g., architectural industrial maintenance coatings, nonroad standards), a State may include the measures as part of its control strategy for the November 1994 submittal.
- Relation to Transportation Conformity: The Office of Mobile Sources is developing an approach for how to address the issue of transportation conformity in relation to completeness of the attainment plan and post-1996 rate-of-progress plan. This issue will have to be considered in relation to the policy on the November 15, 1994 submittals.
- Legal Rationale for Conditional Approval Policy: The EPA intends to rely on section 110(k)(4) of the Act, as amended, for authority to conditionally approve SIP's involving commitments to submit additional rules at a future date. This provision grants EPA broad authority for conditional approval. Recently, the Court of Appeals for the D.C. Circuit invalidated certain conditional approvals by EPA when the States provided commitments to submit the entire set of required rules at a specified time in the future [NRDC v. EPA, No. 92-1535, slip op. (D.C. Cir. May 6, 1994) (per curiam)]. The court interpreted section 110(k)(4) to authorize approval of "substantive, but not entirely satisfactory" SIP submittals. The court went on to hold that even though EPA was not justified in conditionally approving those SIP submittals, it was proper to extend the statutory timeframe for State submission of two of those submittals (enhanced I/M and NO<sub>x</sub> RACT) because factors beyond the States' control caused the delays.

The EPA believes that section 110(k)(4), as well as the principles of the NRDC case, justify its completeness and conditional approval policies for the November 1994 ozone nonattainment submittals. The SIP submittals that provide for a modeling demonstration, a high percentage of the required reductions, and an explanation for relying on commitments for the remainder of the reductions constitute a "substantive" submittal worthy of at least consideration for conditional approval. In addition, the types of State explanations, described above, needed to justify the gap in

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<sup>5</sup>The EPA intends to discuss, in separate guidance, the type of approval action it will take concerning regional strategies.

controls, as well as the delay in submissions, render this policy consistent with the NRDC court's approval of SIP submittal date extensions.