



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Office of Air Quality Planning and Standards  
Research Triangle Park, North Carolina 27711

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Air Programs Branch

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MEMORANDUM

EPA, REGION III

SUBJECT: State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines

FROM: John Calcagni, Director  
Air Quality Management Division, OAQPS (MD-15)

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

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The purpose of this memorandum is to clarify issues related to redesignation requests and SIP actions submitted in response to Act deadlines, and specifically address SIP elements that are due November 15, 1992. The following topics are addressed below: completeness determinations on commitment submittals; requests for parallel processing to meet Act deadlines; effect of redesignation requests on mandatory Act submittals; completeness determinations on emission inventory submittals; and issuing letters to the States making a finding of failure to submit a required SIP, or SIP element.

Completeness Determinations on Commitment Submittals

In anticipation of commitment SIP's being submitted to the Environmental Protection Agency (EPA) as authorized by section 110(k)(4) of the Act, my staff are working with the Office of General Counsel (OGC) to revise the completeness criteria in Appendix V of 40 CFR Part 51.<sup>1</sup> Specifically, it is our intent to include specific completeness criteria for committal SIP's.

<sup>1</sup> A July 22, 1992 memorandum from Michael Shapiro identified a number of statutory requirements for which EPA is inclined to accept committal SIP's. (A clarification of that memorandum was issued by Michael Shapiro on September 16, 1992.)

The current completeness criteria do not address commitments submitted under section 110(k)(4) of the Act. However, we are interpreting section 110(k)(4) as allowing EPA to accept commitments from a State as complete submittals even though commitments will lack some of the substantive elements required under the current completeness criteria. Consequently, committal SIP's submitted to EPA should be reviewed against only those elements of the completeness criteria that are directly applicable to commitments in order to be determined complete. The elements of the completeness criteria that are applicable to commitments are:

1. A formal letter of submittal from the Governor or his designee requesting EPA approval of the commitment.
2. The commitment was subject to a public hearing pursuant to 40 CFR 51.102.
3. The submittal contains a schedule for the adoption of the statutorily required measures.

Additionally, States should be encouraged to submit documentation and a justification explaining the need for a commitment.

If a Regional Office receives a submittal that contains one or more commitments in association with other rules or control measures, the Region should consult with the responsible Headquarters program office to determine if a commitment is acceptable in that specific circumstance. (Please refer to my July 9, 1992 memorandum entitled "Processing of State Implementation Plan Submittals," specifically the part on conditional approvals.) If EPA determines that it will consider the commitment under the conditional approval process, the commitment should be reviewed only as to the criteria that would be applicable for commitments. However, if EPA determines that a commitment cannot be used to meet the statutory requirement, the submittal should be reviewed against all elements of the completeness criteria.

#### Requests for Parallel Processing to Meet Act Deadlines

The EPA expects a number of States to request parallel processing of draft rules as a way to meet Act deadlines. A State request for parallel processing is not an official submittal satisfying a statutory deadline since it is a draft rule (i.e., the State has yet to adopt the regulation).

When the completeness criteria were promulgated with an exception for parallel processing, EPA was not anticipating submittals subject to statutory deadlines. The intent was to continue the timesaving concept of parallel processing State-initiated actions. However, the exceptions in the completeness criteria could be interpreted as requiring EPA to accept draft

rules in order to meet statutory deadlines. As noted above, draft submittals are not considered plan submittals under the Act because they have not been adopted by the State. Consequently, EPA is not precluded from making a finding of failure to submit a required SIP element when a State submits a draft rule.

If a request for parallel processing is submitted to EPA before the statutory deadline, EPA may agree to parallel process the action. However, EPA will not make a completeness finding under section 110(k)(1) since that section applies to official plan submittals and not draft rules. However, if the statutory deadline passes and a State has not submitted the fully-adopted regulation, the Regions should make a finding of failure to submit under section 179(a)(1). This will initiate the sanctions time clock.

Subsequently, if a State submits a fully-adopted rule or maintenance plan, EPA will review the submittal against the completeness criteria. The EPA will commence rulemaking action if the submittal is complete. If the completeness criteria are met, a finding of completeness will stop the time clock for sanctions. If the completeness criteria are not met, EPA should make a finding of incompleteness, thereby maintaining the previous time clock for sanctions.

Because the parallel processing exception could be interpreted to require EPA to accept draft rules as meeting a statutory deadline, we are presently revising the completeness criteria to remove the parallel processing exception. It should be noted, however, that although parallel processing submittals are not official plan submittals, EPA will continue to use parallel processing as an effective avenue for approving State rules expeditiously.

#### Effect of Redesignation Requests on Mandatory Act Submittals

It has come to our attention that some States plan to submit redesignation requests prior to November 15, 1992 with the understanding that this will exempt them from implementing mandatory Act programs due to start in November (e.g., oxygenated fuels program, stage II vapor recovery rules, etc.). The approvability of a redesignation request is based on the requirements applicable as of the date of submittal of a complete redesignation request.<sup>2</sup> States, however, are statutorily

<sup>2</sup> For a redesignation request to be complete, any portions of the redesignation request that are SIP revisions (e.g., maintenance plans and any additional control measures) must meet the completeness criteria for SIP revisions. Redesignation requests submitted for parallel processing will not be considered official submittals; therefore, they will not be treated as complete submittals.

obligated to meet SIP requirements that become due any time before an area is actually redesignated to attainment. Such redesignation occurs when EPA has taken final rulemaking action to approve a redesignation request.

Hence, if there is a failure by the State to meet a statutory deadline for an area (before EPA has redesignated the area as attainment), a finding of failure to submit should be made. This, in turn, begins the sanctions process under section 179(a) (see September 4, 1992 memorandum, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment"). The findings letter should recognize any pending redesignation request, note the State's statutory obligation to implement any mandatory requirements that are due, and indicate that one of the sanctions will be imposed after 18 months unless EPA approves the redesignation request before the 18-month period has ended. Thus, the Regions should make all reasonable attempts to ensure that the redesignation approval process does not take over 18 months.

#### Completeness Determinations on Emission Inventory Submittals

In a September 29, 1992 memorandum from William Laxton and myself addressing public hearing requirements for emission inventory submittals, it was stated that EPA was providing a "de minimis" deferral of the public hearing requirement for emission inventory submittals. In that memorandum, it was also stated that if emission inventory submittals do not meet the completeness criteria (except for the deferred public hearing requirement), EPA should make a finding of incompleteness. However, that memorandum did not specify the process for making completeness determinations on emission inventory submittals that only lack the public hearing element.

After discussion with OGC, we have determined that for the emission inventory submittals that are only lacking evidence of a public hearing, EPA should make a finding of completeness contingent upon the State fulfilling the public hearing requirement. The completeness letter to the State should indicate that the completeness determination is contingent upon the State's fulfilling the public hearing requirement by the time identified in the September 29 memorandum. If the public hearing requirement is not met by the time specified, then EPA will make a finding of incompleteness on the original emission inventory submittal. The completeness letter should further state that the public hearing requirement must be met before or at the time of submittal of a rate-of-progress or maintenance plan, or at the time the inventory takes on regulatory significance such as providing a basis for banking or trading.

As noted in the September 29 memorandum, EPA also is providing a "de minimis" deferral of the requirement for EPA to take action on the emission inventory submittals. The 12-month statutory timeframe for approving or disapproving the emission inventory submittal will start at the time the public hearing requirement is met. If EPA has found the submittal incomplete, EPA will not be required to take approval action on the submittal.

Issuing Letters to the States Making a Finding of Failure to Submit a Required SIP or SIP Element

The Regional Offices should be planning to issue findings of failure to submit to States not meeting the November 1992 (and other) statutory deadlines. The Agency has taken a strong stance that such findings should be made soon after a due date has passed. Notice that a State has failed to submit a SIP, or SIP element, is made in the form of a letter from the Regional Administrator to the Governor of a State. Please refer to the July 22, 1992 Shapiro memorandum, entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992," for further information. Further guidance will be made available on the schedule and format of the findings.

If you have any questions on this memorandum, please contact Denise Gerth at (919) 541-5550.

cc: Chief, Air Programs Branch, Regions I-X  
John Cabaniss  
Jeff Clark  
Denise Devoe  
Tom Helms  
Steve Hitte  
Steve Hoover  
Ed Lillis  
David Mobley  
Rich Ossias  
Joe Paisie  
Lydia Wegman