

## Environmental Protection Agency

## § 51.491

guidance on discretionary EIP's submitted as implementation plan revisions for any purpose other than to comply with the statutory requirements specified in paragraph (a) of this section.

### § 51.491 Definitions.

*Act* means the Clean Air Act as amended November 15, 1990.

*Actual emissions* means the emissions of a pollutant from an affected source determined by taking into account actual emission rates associated with normal source operation and actual or representative production rates (i.e., capacity utilization and hours of operation).

*Affected source* means any stationary, area, or mobile source of a criteria pollutant(s) to which an EIP applies. This term applies to sources explicitly included at the start of a program, as well as sources that voluntarily enter (i.e., opt into) the program.

*Allowable emissions* means the emissions of a pollutant from an affected source determined by taking into account the most stringent of all applicable SIP emissions limits and the level of emissions consistent with source compliance with all Federal requirements related to attainment and maintenance of the NAAQS and the production rate associated with the maximum rated capacity and hours of operation (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both).

*Area sources* means stationary and nonroad sources that are too small and/or too numerous to be individually included in a stationary source emissions inventory.

*Attainment area* means any area of the country designated or redesignated by the EPA at 40 CFR part 81 in accordance with section 107(d) as having attained the relevant NAAQS for a given criteria pollutant. An area can be an attainment area for some pollutants and a nonattainment area for other pollutants.

*Attainment demonstration* means the requirement in section 182(b)(1)(A) of the Act to demonstrate that the specific annual emissions reductions included in a SIP are sufficient to attain

the primary NAAQS by the date applicable to the area.

*Directionally-sound strategies* are strategies for which adequate procedures to quantify emissions reductions or specify a program baseline are not defined as part of the EIP.

*Discretionary economic incentive program* means any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

*Economic incentive program (EIP)* means a program which may include State established emission fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to O<sub>3</sub> formation, or any combination of the foregoing or other similar measures, as well as incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 108(f). Such programs may be directed toward stationary, area, and/or mobile sources, to achieve emissions reductions milestones, to attain and maintain ambient air quality standards, and/or to provide more flexible, lower-cost approaches to meeting environmental goals. Such programs are categorized into the following three categories: Emission-limiting, market-response, and directionally-sound strategies.

*Emission-limiting strategies* are strategies that directly specify limits on total mass emissions, emission-related parameters (e.g., emission rates per unit of production, product content limits), or levels of emissions reductions relative to a program baseline that are required to be met by affected sources, while providing flexibility to sources to reduce the cost of meeting program requirements.

*Indian governing body* means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the U.S. and recognized by the U.S. as possessing power of self-government.

*Maintenance plan* means an implementation plan for an area for which

the State is currently seeking designation or has previously sought redesignation to attainment, under section 107(d) of the Act, which provides for the continued attainment of the NAAQS.

*Market-response strategies* are strategies that create one or more incentives for affected sources to reduce emissions, without directly specifying limits on emissions or emission-related parameters that individual sources or even all sources in the aggregate are required to meet.

*Milestones* means the reductions in emissions required to be achieved pursuant to section 182(b)(1) and the corresponding requirements in section 182(c)(2) (B) and (C), 182(d), and 182(e) of the Act for O<sub>3</sub> nonattainment areas, as well as the reduction in emissions of CO equivalent to the total of the specified annual emissions reductions required by December 31, 1995, pursuant to section 187(d)(1).

*Mobile sources* means on-road (highway) vehicles (e.g., automobiles, trucks and motorcycles) and nonroad vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).

*National ambient air quality standard (NAAQS)* means a standard set by the EPA at 40 CFR part 50 under section 109 of the Act.

*Nonattainment area* means any area of the country designated by the EPA at 40 CFR part 81 in accordance with section 107(d) of the Act as nonattainment for one or more criteria pollutants. An area could be a nonattainment area for some pollutants and an attainment area for other pollutants.

*Nondiscriminatory* means that a program in one State does not result in discriminatory effects on other States or sources outside the State with regard to interstate commerce.

*Program baseline* means the level of emissions, or emission-related parameter(s), for each affected source or group of affected sources, from which program results (e.g., quantifiable emissions reductions) shall be determined.

*Program uncertainty factor* means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to

account for any strategy-specific uncertainties in an EIP.

*Reasonable further progress (RFP) plan* means any incremental emissions reductions required by the CAA (e.g., section 182(b)) and approved by the EPA as meeting these requirements.

*Replicable* refers to methods which are sufficiently unambiguous such that the same or equivalent results would be obtained by the application of the methods by different users.

*RFP baseline* means the total of actual volatile organic compounds or nitrogen oxides emissions from all anthropogenic sources in an O<sub>3</sub> nonattainment area during the calendar year 1990 (net of growth and adjusted pursuant to section 182(b)(1)(B) of the Act), expressed as typical O<sub>3</sub> season, weekday emissions.

*Rule compliance factor* means a factor applied to discount the amount of emissions reductions credited in an implementation plan demonstration to account for less-than-complete compliance by the affected sources in an EIP.

*Shortfall* means the difference between the amount of emissions reductions credited in an implementation plan for a particular EIP and those that are actually achieved by that EIP, as determined through an approved reconciliation process.

*State* means State, local government, or Indian-governing body.

*State implementation plan (SIP)* means a plan developed by an authorized governing body, including States, local governments, and Indian-governing bodies, in a nonattainment area, as required under titles I & II of the Clean Air Act, and approved by the EPA as meeting these same requirements.

*Stationary source* means any building, structure, facility or installation, other than an area or mobile source, which emits or may emit any criteria air pollutant or precursor subject to regulation under the Act.

*Statutory economic incentive program* means any EIP submitted to the EPA as an implementation plan revision to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.

*Surplus* means, at a minimum, emissions reductions in excess of an established program baseline which are not required by SIP requirements or State

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regulations, relied upon in any applicable attainment plan or demonstration, or credited in any RFP or milestone demonstration, so as to prevent the double-counting of emissions reductions.

*Transportation control measure (TCM)* is any measure of the types listed in section 108(F) of the Act, or any measure in an applicable implementation plan directed toward reducing emissions of air pollutants from transportation sources by a reduction in vehicle use or changes in traffic conditions.

### § 51.492 State program election and submittal.

(a) *Extreme O<sub>3</sub> nonattainment areas.* (1) A State or authorized governing body for any extreme O<sub>3</sub> nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, pursuant to section 182(g)(5) of the Act, if:

(i) A required milestone compliance demonstration is not submitted within the required period.

(ii) The Administrator determines that the area has not met any applicable milestone.

(2) The plan revision in paragraph (a)(1) of this section shall be submitted within 9 months after such failure or determination, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(b) *Serious CO nonattainment areas.* (1) A State or authorized governing body for any serious CO nonattainment area shall submit a plan revision to implement an EIP, in accordance with the requirements of this part, if:

(i) A milestone demonstration is not submitted within the required period, pursuant to section 187(d) of the Act.

(ii) The Administrator notifies the State, pursuant to section 187(d) of the Act, that a milestone has not been met.

(iii) The Administrator determines, pursuant to section 186(b)(2) of the Act that the NAAQS for CO has not been attained by the applicable date for that area. Such revision shall be submitted within 9 months after such failure or determination.

(2) Submittals made pursuant to paragraphs (b)(1) (i) and (ii) of this section shall be sufficient, together with a

transportation control program, to achieve the specific annual reductions in CO emissions set forth in the implementation plan by the attainment date. Submittals made pursuant to paragraph (b)(1)(iii) of this section shall be adequate, in combination with other elements of the revised plan, to reduce the total tonnage of emissions of CO in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the NAAQS for CO.

(c) *Serious and severe O<sub>3</sub> nonattainment areas.* If a State, for any serious or severe O<sub>3</sub> nonattainment area, elects to implement an EIP in the circumstances set out in section 182(g)(3) of the Act, the State shall submit a plan revision to implement the program in accordance with the requirements of this part. If the option to implement an EIP is elected, a plan revision shall be submitted within 12 months after the date required for election, and shall be sufficient, in combination with other elements of the SIP, to achieve the next milestone.

(d) *Any nonattainment or attainment area.* Any State may at any time submit a plan or plan revision to implement a discretionary EIP, in accordance with the requirements of this part, pursuant to sections 110(a)(2)(A) and 172(c)(6) and other applicable provisions of the Act concerning SIP submittals. The plan revision shall not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirements of the Act.

### § 51.493 State program requirements.

Economic incentive programs shall be State and federally enforceable, nondiscriminatory, and consistent with the timely attainment of NAAQS, all applicable RFP and visibility requirements, applicable PSD increments, and all other applicable requirements of the Act. Programs in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable