

Draft Guidance on Infrastructure SIP Elements Under Clean Air Act Section 110(a)(2)

NACAA-EPA Call
December 11, 2012

Purpose of Briefing

- Provide overview of draft i-SIP guidance
- Provide opportunity for questions concerning draft guidance
- Obtain preliminary feedback on i-SIP guidance
- Discuss next steps for completing guidance
- Caveat: Guidance is in draft form and subject to further refinement.

Goals of i-SIP Guidance

- To provide information to states to develop infrastructure SIP (i-SIP) submissions that are complete and approvable and reflect recent i-SIP developments in SIP actions and litigation.
- To be responsive to states' recommendation that EPA provide i-SIP guidance that addresses multiple pollutants in one document and can serve as guidance for future new or revised NAAQS.
- To provide timely guidance for future new or revised NAAQS.

Scope of Guidance

- This is “multipollutant” guidance, for i-SIPs related to:
 - 2008 ozone NAAQS
 - 2010 nitrogen dioxide (NO₂) NAAQS
 - 2010 sulfur dioxide (SO₂) NAAQS
 - New or revised NAAQS promulgated in the future.
- Builds from the lead (Pb) guidance issued in 2011.
- Guidance contains three sections:
 - Section I: Introduction
 - Section II: Topics of general applicability to i-SIPs
 - Section III: Guidance on the individual elements (and sub-elements) that constitute an i-SIP, per CAA section 110(a)(2)(A) - (M).
- Does not address CAA section 110(a)(2)(D)(i)(I), which concerns interstate pollution transport affecting attainment and maintenance of the NAAQS. EPA may develop guidance in the future.
- Recommendations in guidance are not binding or enforceable.

Section II: Topics of General Applicability to i-SIPs

- Topics addressed:
 - Which CAA provisions affect i-SIPs
 - Developing and submitting an i-SIP submittal
 - Certifications
 - Determining completeness of an i-SIP submittal
 - Effect of a Federal Implementation Plan (FIP) on an i-SIP.

Section II: Topics of General Applicability to i-SIPs: Which CAA Provisions Affect i-SIPs

- Where an i-SIP submittal references or includes SIP provisions (*i.e.*, related to Element C or Element I) that address requirements for nonattainment areas, EPA's action on the submittal will be limited to i-SIP requirements and will not determine approvability with respect to requirements for nonattainment area SIPs.

Section II: Topics of General Applicability to i-SIPs: Developing and Submitting an i-SIP

- As required by the CAA, the SIP must provide for authority of the state or other responsible air agency to implement the new or revised NAAQS.

- Between its current and past i-SIP submissions, a state's regulations and rules must satisfy the requirements of CAA 110(a)(2).
 - For example, if some part of the pre-existing SIP listed specific NAAQS one-by-one, that SIP may need to be revised to recognize the 2008 Ozone NAAQS and the 2010 NAAQS for NO₂ and SO₂.

Section II: Topics of General Applicability to i-SIPs: Certifications

- In cases where provisions in an already-approved SIP also satisfy certain i-SIP requirements for purposes of a new or revised NAAQS, a state may choose to make an i-SIP submittal in the form of a certification letter from an appropriate official (e.g., the Governor or designee) provided there is public notice.
- Guidance refers to an April 2011 memo from Janet McCabe titled “Regional Consistency for the Administrative Requirements of State Implementation Plans and the Use of Letter Notices.”
 - That memo and a supplemental memo of November 2011 (weblinks below) identify certain streamlining approaches, such as to allow citations to already-approved provisions in lieu of providing a paper copy of them.
 - <http://www.epa.gov/glo/pdfs/20110406mccabetoRAs.pdf>
 - <http://www.epa.gov/airquality/urbanair/sipstatus/docs/FINALSIPGuidelinesSubLtrsPN.pdf>

Section II: Topics of General Applicability to i-SIPs: Determining Completeness of an i-SIP Submittal

- Guidance summarizes the procedural timeline in establishing the completeness of an i-SIP submittal.
- Completeness review is most efficient when the i-SIP submittal makes clear how provisions in the SIP match up with required elements under the CAA.
 - For a given i-SIP element, submittal should identify relevant state rule or law and include an explanation of how the identified rule or law satisfies the requirements of the element.

Section II: Topics of General Applicability to i-SIPs: Effect of a Federal Implementation Plan (FIP) on an i-SIP

- Guidance describes EPA's treatment of FIP obligations in greater detail than in prior guidance and includes examples how PSD FIPs and regional haze FIPs may affect the i-SIP process.
- EPA's action on an i-SIP submittal can vary to some extent depending on whether the submittal does or does not intend to satisfy requirements that are presently covered by a FIP.
- Bottom line: Where a state has a FIP, its i-SIP submittal should make clear whether the submittal is intended to replace the FIP or to otherwise meet an element related to the FIP.

Section III of Guidance: Specific i-SIP Elements

- The next several slides cover individual elements (and sub-elements) that constitute an i-SIP, per CAA section 110(a)(2).
 - Elements correspond to paragraphs of same letter/number under CAA 110(a)(2).
 - Treatment of elements in i-SIP guidance is generally consistent with our most recent i-SIP guidance (for the 2008 Pb NAAQS).
 - <http://www.epa.gov/air/lead/pdfs/20111014infrastructure.pdf>
 - For convenience, the CAA text for each element is included in the Appendix to this presentation.

Existing SIP Provisions and New Submittals

- EPA takes the same position for current and future NAAQS that we took specifically for the 1997 and 2006 NAAQS, in interpreting that the CAA does not require that new i-SIP submissions address certain existing SIP provisions.
 - Approval of an i-SIP does not imply reapproval of all provisions already approved into the SIP.
 - However, EPA will review and act on a newly submitted provision that contains provisions that are inconsistent with the CAA.

- The certain existing SIP provisions (covered again in later slides, under the relevant i-SIP elements) concern four issues:
 - Startup, shutdown, and malfunction
 - Director's variance or director's discretion
 - Minor NSR programs; and
 - NSR Reform rules.

Element A: Emission limits and other control measures

- Submittal should identify the existing or new provisions that limit emissions of pollutants for the NAAQS.
- For SIP provisions concerning startup, shutdown, and malfunction (“SSM”) and director’s discretion, EPA reiterates:
 - Existing provisions concerning SSM or director’s discretion may be dealt with separately, outside the context of acting on a state’s i-SIP submittal.
 - However, if a new i-SIP provision is submitted that contains SSM or director’s discretion provisions that are inconsistent with EPA’s longstanding SIP policy, we would disapprove it.
- Guidance refers to EPA’s policy concerning SSM and includes references to recent court decisions and i-SIP actions that concern SSM-related SIP provisions.

Element B: Ambient air quality monitoring/data system

- Submittal should provide for at least one of the following, to show how the state performs required actions:
 - Rule that requires state to perform actions
 - Commitment and legal authority for state to perform actions
 - Evidence that performing actions has been state's consistent practice.

- The required actions:
 - Monitor air quality for the relevant NAAQS pollutant(s) at appropriate locations in accordance with the EPA's ambient AQ monitoring network requirements.
 - Points to EPA's AMTIC website and to EPA's regulations at 40 CFR part 53 ("Ambient Air Monitoring Reference and Equivalent Methods") and 40 CFR part 58 ("Ambient Air Quality Surveillance").
 - Submit data to EPA's Air Quality System (AQS) in a timely manner in accordance with EPA's AQ data reporting regulations.

Element B: Ambient air quality monitoring/data system

- The required actions (cont'd):
 - Provide info regarding AQ monitoring activities, including description of how the air agency has complied with monitoring requirements and an explanation of any proposed changes to the network.
 - Submission of annual monitoring network plans that are consistent with EPA's regulations at 40 CFR part 58 is one way of providing this info.
 - Provide notification to EPA of any planned changes to monitoring sites or to the network plan.
 - Obtain EPA approval of these planned changes, consistent with EPA's regulations at 40 CFR part 58.

Element C: Programs for enforcement of control measures and for construction or modification of stationary sources

- Submittal should address three sub-elements:
 - Enforcement
 - State-wide permitting of minor sources
 - Permitting of major sources in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program).

Enforcement: An i-SIP submittal should include new regulations to be incorporated into the SIP, or references to the existing statutes and regulations in the existing SIP, that provide for enforcement of those emission limits and control measures that the air agency has identified in its submission for purposes of satisfying Element A.

Element C: Programs for enforcement of control measures and for construction or modification of stationary sources (cont'd)

State-Wide Permitting of Minor Sources: Generally, an i-SIP that identifies the EPA-approved state/local regulations in the SIP implementing minor source preconstruction review requirements for the relevant NAAQS should allow EPA to approve Element C with respect to minor sources.

- For SIP provisions concerning minor NSR program requirements, the draft guidance states EPA's position already taken in a number of recent i-SIP actions:
 - Existing provisions concerning minor NSR may be dealt with separately, outside the context of acting on a state's i-SIP submittal.
 - However, if a new i-SIP provision is submitted that contains minor NSR provisions, EPA will evaluate it as part of the current i-SIP submittal.

Element C: Programs for enforcement of control measures and for construction or modification of stationary sources (cont'd)

Preconstruction PSD permitting of major sources:

- An i-SIP submittal should demonstrate that one or more air agencies has the authority to implement a comprehensive PSD permit program under CAA title I part C, for all PSD-subject sources in areas that are designated attainment or unclassifiable for one or more NAAQS.
- Each i-SIP submission for a particular NAAQS should demonstrate that the state has a complete PSD program in place (covering requirements for all regulated NSR pollutants including GHG) in order to demonstrate that the SIP satisfies Element C requirements.
- In cases where a state is subject to a FIP for all or a portion of PSD permitting:
 - EPA cannot fully approve the i-SIP submission for Elements C and J.
 - EPA may still approve the i-SIP submission for “prong 3,” which concerns “PSD interference” under Element D(i)(II), if other SIP provisions satisfy the requirement.
- The i-SIP submittal for a state (or part of a state) with any PSD FIP should indicate that the submittal is not intended to be a submittal for the PSD-related portions of CAA 110(a)(2) (*i.e.*, portions of Elements C and J and maybe D).

Element C: Programs for enforcement of control measures and for construction or modification of stationary sources (cont'd)

Preconstruction PSD permitting of major sources (cont'd):

- Guidance addresses how EPA will proceed when timing of requirements for multiple, related SIP submissions (e.g., for mandatory PSD SIP revisions) impacts the ability of the air agency and EPA to address certain substantive issues in the i-SIP submission.
- Guidance explains that an i-SIP submittal should address any new or revised PSD program requirements, including:
 - Those PSD rules for which the deadline for SIP submissions has passed
 - More recent PSD rules that EPA may have to consider when taking i-SIP action.
- PSD rulemakings for which the PSD SIP revision submittal deadline has already passed include:
 - Phase 2 Implementation Rule for [the 1997] 8-Hour Ozone NAAQS (promulgated November 2005)
 - NSR Implementation Rule for PM_{2.5} (promulgated May 2008)
 - NSR Implementation Rule for PM_{2.5} Increments, SILs, and SMCs (promulgated October 2010).

Element C: Programs for enforcement of control measures and for construction or modification of stationary sources (cont'd)

Preconstruction PSD permitting of major sources (cont'd)

- Guidance states EPA's position already taken in recent i-SIP actions:
 - SIP provisions concerning PSD programs that do not implement the NSR Reform Rules (promulgated mainly in 2002) may be dealt with separately, outside the context of acting on a state's i-SIP submittal.

Element D: Section 110(a)(2)(D)(i)(I): Interference with attainment and maintenance of the NAAQS

Section 110(a)(2)(D)(i): Interstate pollution transport

Each such plan shall –

(D) contain adequate provisions –

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will –

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or....

- These requirements (sub-element (i)(I) under Element D) are often referred to as Prong 1 and Prong 2.
- The guidance document will not address this sub-element.

Element D: Section 110(a)(2)(D)(i)(II): Interference with PSD and visibility protection in other states

Section 110(a)(2)(D)(i): Interstate pollution transport

Each such plan shall –

(D) contain adequate provisions –

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will –

(I)

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility....

- These requirements (sub-element (i)(II) under Element D) are often referred to as Prong 3 and Prong 4.
- Prong 3 (PSD)
 - A fully approved PSD SIP satisfies this prong, but there may be other ways to do so also.
 - If EPA partially disapproves the infrastructure SIP for this element in a state with a PSD FIP, the FIP clock would be satisfied automatically by the existing PSD FIP.
- Prong 4 (Visibility Protection)
 - A fully approved SIP under 40 CFR part 51 subpart P (Visibility Protection) satisfies this prong, but there may be other ways to do so also.
 - If EPA partially disapproves the infrastructure SIP for this element in a state with a regional haze FIP, the FIP clock would be satisfied automatically by the existing RH FIP.

Element D: Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution

This element refers to two other CAA sections.

Section 126: Interstate

- Notification by new and modified sources – A PSD program for NAAQS pollutants satisfies this requirement.
- “126 petitions” – Only an issue if EPA has granted a CAA 126 petition regarding a source in your state.

Section 115: International

- The same two concepts apply.

Element E: Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies

- Under sub-element (i), i-SIPs should:
 - Assure that the air agency has adequate personnel and funding to implement the relevant NAAQS.
 - Identify the organizations that will participate in developing, implementing, and enforcing the SIP as a whole and thus require resources for doing so.
 - Assure that the state provides adequate authority to the responsible agencies under its laws and regulations to carry out SIP obligations with respect to the relevant NAAQS.

Element E: Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies (cont'd)

- Under sub-element (ii), i-SIPs should:
 - Include provisions that implement CAA section 128, “State Boards.”
 - CAA includes requirements for:
 - Constituting a board or body
 - Disclosing potential conflicts of interest.
 - Sub-element (ii) cannot be satisfied by narrative description of state statutes or rules, or of a state’s current or past practice, unless part of the SIP.

- Under sub-element (iii), i-SIPs should:
 - Assure that the state retains responsibility for ensuring adequate implementation of SIP obligations with respect to the relevant NAAQS.

Element F: Section 110(a)(2)(F): Stationary source monitoring and reporting

This element has three parts:

Each plan shall require, as prescribed by EPA,

- (i) Emissions monitoring by stationary sources.
- (ii) Emissions reporting.
- (iii) State reports that correlate emissions reports with emissions limitations and provide for public inspection of these reports.

Element G: Section 110(a)(2)(G): Emergency episodes

- Infrastructure SIP submittals should:
 - (1) Show air agency authority to deal with air pollution emergencies comparable to EPA's authority to order sources to reduce emissions.
 - (2) Meet the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS.

- If an area is classified as a Priority III region for a specified pollutant, an emergency episode plan is not required.

- For lower-priority areas and attainment and unclassifiable areas, the Administrator may give exemptions.
 - Air agencies interested in such an exemption should contact their EPA Regional Office.

Element H: Section 110(a)(2)(H): SIP revisions

Infrastructure SIPs should provide citations to the statutory or regulatory provisions requiring the air agency to:

- (1) Revise its section 110 plan from time to time as may be necessary to take into account revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standards; and
- (2) Revise its part D plan in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS.

Element J: Section 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection

This element contains four separable sub-elements:

- **Consultation with identified officials on certain state actions.**
 - With whom: Local governments, associations of governments, and FLMs.
 - On what: Transportation controls, maintenance plans, nonattainment plans, and PSD.

- **Public notification of NAAQS exceedances.**

- **Prevention of significant deterioration.** Requirements for Element J in relation to a comprehensive PSD program are the same as those for Element C.

- **Visibility protection.** The EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS.

Element K: Section 110(a)(2)(K): Air quality modeling and submission of modeling data

- Provide for the performance of EPA-prescribed air quality modeling.
- Provide for the submission of data from prescribed air quality modeling to EPA.

Elements L & M: Section 110(a)(2)(L) Permitting fees; Section 110(a)(2)(M) Consultation and participation by affected local entities

- To satisfy Element L, i-SIPs should:
 - Provide citations to the state or local regulations that require collection of permitting fees under the state's EPA-approved title V operating permits program.

- To satisfy Element M, i-SIPs should:
 - Provide for consultation of affected local political subdivisions. SIP may identify policies or procedures that allow and promote such consultation.

Next Steps

- By mid-January: Draft guidance to NACAA for review by a subgroup of NACAA states
- Three-week period for state review and feedback
- Incorporation of state comments
- February: Finalize guidance.

Appendix:

The Infrastructure SIP Elements

Section 110(a)(2)(A): Emission limits and other control measures

Each such plan shall –

- (A) include 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....

Section 110(a)(2)(B): Ambient air quality monitoring/data system

Each such plan shall –

- (B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to –
 - (i) monitor, compile, and analyze data on ambient air quality, and
 - (ii) upon request, make such data available to the Administrator....

Appendix (cont'd)

Section 110(a)(2)(C): Programs for enforcement of control measures and for construction or modification of stationary sources

Each such plan shall –

- (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D....

Appendix (cont'd)

Section 110(a)(2)(D)(i): Interstate pollution transport

Each such plan shall –

(D) contain adequate provisions –

- (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will –
- (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
- (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility....

Section 110(a)(2)(D)(ii): Interstate and international pollution abatement

Each such plan shall –

(D) contain adequate provisions –

- (ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)....

Appendix (cont'd)

Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies

Each such plan shall –

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision....

Appendix (cont'd)

Section 128: State boards

Not later than the date one year after the date of the enactment of this section, each applicable implementation plan shall contain requirements that –

- (1) any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act, and
- (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (paragraphs (1) and (2)), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

Appendix (cont'd)

Section 110(a)(2)(F): Stationary source monitoring and reporting

Each such plan shall –

- (F) require, as may be prescribed by the Administrator –
 - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,
 - (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and
 - (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection....

Appendix (cont'd)

Section 110(a)(2)(G): Emergency episodes

Each such plan shall –

- (G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority....

Section 110(a)(2)(H): SIP revisions

Each such plan shall –

- (H) provide for revision of such plan –
 - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and
 - (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act....

Appendix (cont'd)

Section 110(a)(2)(I): Plan revisions for nonattainment areas

Each such plan shall –

- (I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas)....

Section 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection

Each such plan shall –

- (J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection)....

Appendix (cont'd)

Section 110(a)(2)(K): Air quality modeling and submission of modeling data

“Each such plan shall –

(K) provide for –

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator....”

Appendix (cont'd)

Section 110(a)(2)(L): Permitting fees

Each such plan shall –

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover –

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V....

Appendix (cont'd)

Section 110(a)(2)(M): Consultation and participation by affected local entities

Each such plan shall –

- (M) provide for consultation and participation by local political subdivisions affected by the plan.