

Environmental Protection Agency

§ 51.491

provisions apply equally to non-federal as well as Federal entities.

(b) The Federal conformity rules under part 93, subpart A, of this chapter, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, conformity determinations would be governed by the approved (or approved portion of the) State criteria and procedures. The Federal conformity regulations contained in part 93, subpart A, of this chapter would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the State submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(c) The implementation plan revision required by this section must meet all of the requirements of part 93, subpart A, of this chapter.

(d) In order for EPA to approve the implementation plan revision submitted to EPA and DOT under this subpart, the plan must address all requirements of part 93, subpart A, of this chapter in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of part 93, subpart A, of this chapter in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in the following sections of this chapter: §§ 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127.

[62 FR 43801, Aug. 15, 1997]

Subpart U—Economic Incentive Programs

SOURCE: 59 FR 16710, Apr. 7, 1994, unless otherwise noted.

§ 51.490 Applicability.

(a) The rules in this subpart apply to any statutory economic incentive program (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. Such programs may be submitted by any authorized governmental organization, including States, local governments, and Indian governing bodies.

(b) The provisions contained in these rules, except as explicitly exempted, shall also serve as the EPA's policy 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 O₃ 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 O₃ 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 O₃ 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 O₃ 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 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 O₃ nonattainment areas.* (1) A State or authorized governing body for any extreme O₃ 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.