

Indiana Department of Environmental Management  
Office of Air Quality  
U.S. Environmental Protection Agency, Region 5

**JOINT PROTOCOL FOR PROCESSING  
STATE IMPLEMENTATION PLAN (SIP) SUBMITTALS  
"SIP PROTOCOL"**

**PURPOSE**

This protocol focuses on Indiana's state rulemaking process and EPA's procedures for state implementation plan (SIP) approval. It provides a protocol for developing and approving rules, documents, and modeling required for a SIP. It also establishes goals and time frames for deliverables and responsibilities.

**BACKGROUND**

In developing and/or revising a SIP, time is often of the essence. From a state perspective, the failure to submit a SIP may result in the imposition of sanctions, including the possible loss of state highway funds. In addition, lack of timely submission of a SIP may result in EPA's promulgation of a federal implementation plan. As a legal matter, a source may be out of compliance with the SIP during the time after which a state rule has been promulgated or a commissioner's order issued and the time the state rule or commissioner's order is federally approved as part of the SIP.

From a state's perspective, there have been certain areas of concern associated with EPA review and approval, including:

1. "Late hits, i.e., EPA raises issues concerning a SIP submittal, necessitating additional state process. Examples include compliance issues that are identified after an emission limit has been adopted by the Air Pollution Control Board and inadequate modeling/lack of agreement on the modeling protocol.
2. Reviewing portions of rules that were previously SIP-approved and that have not changed in the subject rulemaking.
3. Lack of a guidance on such issues as "stringency."
4. Inconsistent guidance or approaches (region to region, state to state).

Possible solutions include:

1. Identify procedures that ensure timely review by all offices and set time targets for EPA responses. Tightly coordinate rule development schedule.
2. Provide criteria for approveability addressing general criteria applicable to all rules, specific criteria for each rule and definitions/guidance on issues such as "stringency."
3. Identify EPA procedures to ensure consistency within and across regions, as needed.

**APPLICABILITY**

This protocol applies to SIP staff in the Indiana Department of Environmental Management, Office of Air Quality, and U.S. EPA, Region 5.

## **OVERVIEW OF INDIANA'S RULEMAKING PROCESS**

- Month 1. Submit 1<sup>st</sup> Notice of Comment Period to the Legislative Services Agency (LSA) on the 10<sup>th</sup> of the month for publication on the following 1<sup>st</sup> of the month.
- Month 2. 1<sup>st</sup> Notice appears in the Indiana Register on the 1<sup>st</sup> of the month. 30-day comment period. Start drafting rule language.
- Month 3. Draft rule language for 2<sup>nd</sup> Notice and respond to comments from 1<sup>st</sup> Notice.
- Month 4. Submit 2<sup>nd</sup> Notice of Comment Period to LSA on the 10<sup>th</sup> of the month for publication on the following 1<sup>st</sup> of the month.
- Month 5. 2<sup>nd</sup> Notice appears in the Indiana Register on the 1<sup>st</sup> of the month. 30-day comment period.
- Month 6. Prepare response to comments from 2<sup>nd</sup> Notice. Modify draft rule language if necessary and prepare draft rule for preliminary adoption.
- Month 7. Prepare board packet documents and submit for review. Board packet mailout will occur around the 20<sup>th</sup> of the month.
- Month 8. Present rule to board to consider for preliminary adoption. Hold public hearing. If possible, prepare response to comments from 1<sup>st</sup> public hearing. If rule is preliminarily adopted, prepare rule for submittal to LSA.
- Month 9. Submit Proposed Rule to LSA on the 10<sup>th</sup> of the month for publication on the 1<sup>st</sup> of the following month.
- Month 10. Proposed rule appears in the Indiana Register and a 2<sup>nd</sup> public hearing is set.
- Month 11. Refine proposed rule language.
- Month 12. Prepare board packet documents, update as needed, submit for review. Board packet mailout will occur around the 20<sup>th</sup> of the month.
- Month 13. Present rule to board to consider for final adoption. Hold public hearing. If rule is final adopted, start preparation of promulgation packet.
- Month 14. Submit promulgation packet to Attorney General's Office for review (45 days), followed by 15-30 day review by Governor's Office, and 3 days for filing with the Secretary of State.
- Month 15.
- Month 16.
- Month 17. Following signing by Secretary of State, final rule is forwarded to LSA for publication in Indiana Register. Rule is final and effective 30 days after filing with the Secretary of State.

## **OVERVIEW OF CURRENT IDEM OAQ-EPA REGION V COORDINATION**

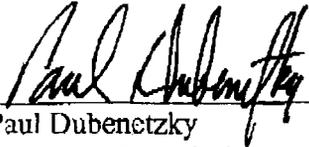
OAQ and Region 5 regulatory development staff hold regularly-scheduled conference calls. Agenda items include: rule issues/questions and program updates; status of SIP submittals; review of rules in development at the state level; identification of rules that will be submitted to Region 5 with a request for delegation of authority; identification of upcoming SIP submittals; identification of action items and staff person responsible for addressing them; and determination of the date and time for the next call. These monthly calls can be used to establish specific due dates for pending SIP actions.

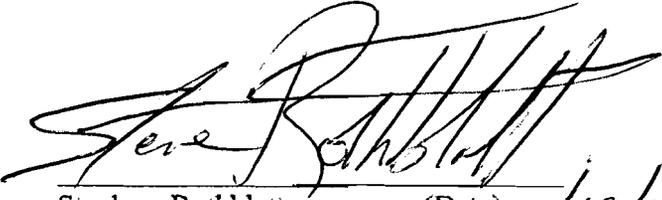
### DETAILED REVIEW SCHEDULE

The following table provides examples of State rulemakings to be submitted to EPA that contain different degrees of complexity, possibly requiring time beyond the minimum statutory requirements. Indiana's rulemaking process, internal reviews and constraints are described in detail.

The GPA SIP review times in the following table are the longest times that should be required for EPA to comment on a new or substantially revised draft or final SIP revision. These review times include the time required to consult with, and receive comments by, Region 5's Office of Regional Counsel and Enforcement staff as well as the Office of Air Quality Planning and Standards and Office of General Counsel as necessary. All EPA comments will be coordinated by Region 5 Air Programs Branch staff and will be conveyed to IDEM by email unless other arrangements are agreed to on a case-by-case basis. These review periods are intended to allow a comprehensive review of the draft rules and identification of any major approvability issues so that changes can be made by Indiana without causing significant delays in the process. These review times do not include the time during which EPA is waiting for additional documentation from IDEM. While EPA should be able to meet the following schedule in most cases, there could be some situations such as a controversial or extremely complex proposed SIP action, missing technical support needed to approve a SIP, or if EPA gets inundated with an inordinately large number of SIP requests a revised schedule may need to be worked out with IDEM. Also, the following is EPA's schedule after receiving a final action that has been published in the Indiana Register:

- Publish Proposal - 3 months if Headquarters review is not required 4 months if Headquarters review is required.
- Publish Final - 12 months after receipt of final SIP submittal.

 1-17-06  
 Paul Dubenetzky (Date)  
 Assistant Commissioner  
 Office of Air Quality  
 IN Department of Environmental  
 Management

 1/19/2006  
 Stephen Rothblatt (Date)  
 Director  
 Air and Radiation Division  
 United States Environmental Protection  
 Agency, Region V

<b>SIP CATEGORY</b>	<b>STATE TIMELINE</b>	<b>EPA REVIEW TIME</b>
<b>1. STATE RULEMAKING</b>		
A. Site-specific Rule <sup>1</sup>	17 months	2 Months
B. General Rules (e.g., PM or VOC rules resulting from designations) <sup>2</sup>	13 months	4 Months
C. NOx SIP Call, Phase 2 <sup>3</sup>	23 months	3 months
D. CAIR, CAMR <sup>4</sup>	23 months	6 months
<b>RULE DEVELOPMENT PROCESS</b>	<b>STATE TIMELINE</b>	<b>EPA REVIEW TIME</b>

<sup>1</sup> A non-controversial site-specific rule new rule or rule amendment that will not result in an increase in emissions will take, at minimum, 17 months from rule initiation to having a final and effective rule.

<sup>2</sup> A non-controversial new rule or rule amendment that is initiated with a section 7 notice will take approximately 13 months from rule initiation to having a final and effective rule. A rule that can be initiated with a section 8 notice will take approximately 1. months from rule initiation to having a final and effective rule.

<sup>3</sup> A new rule or rule amendment that will require modeling, possibly a 3<sup>rd</sup> comment period, and a detailed fiscal impact analysis that will be reviewed by LSA will take at a minimum 23 months from rule initiation to having a final and effective rule.

<sup>4</sup> A new rule or rule amendment(s) that will require modeling, possibly a 3<sup>rd</sup> comment period, and a detailed fiscal impact analysis that will be reviewed by LSA will take at a minimum 23 months from rule initiation to having a final and effective rule.

<p><b>Initiate rule development.</b></p> <ul style="list-style-type: none"> <li>- Rulewriter receives assignment and is assigned a team by the Branch Chief and Section Chief.</li> <li>- Identify issues: technical/legal/procedural.</li> <li>- Determine if modeling will be needed.</li> </ul> <p>.....</p> <p>I. Deliverable:</p> <ul style="list-style-type: none"> <li>- Request to initiate rulemaking;</li> <li>- First Notice, Section 7 Notice or Section 8 Notice to OAQ Section Chief for review following review by members of rule team.</li> </ul> <p>2. Responsible: OAQ rulewriter.</p> <p>3. OAQ Review (timeframe - minimum of 3 weeks prior to the 10<sup>th</sup> of a given month):</p> <ul style="list-style-type: none"> <li>- Section Chief</li> <li>- Office of Legal Counsel</li> <li>- Branch Chief</li> <li>- Assistant Commissioner</li> <li>- Commissioner approves request to initiate rulemaking.</li> </ul>	<p>30 days (minimum)</p>	
<p><b>1" Notice of 30 Day Public Comment Period/Section 7/Section 8 Notice.</b></p> <p>Forward the 1" notice of comment period/Section 7/Section 8 Notice to LSA on the 10<sup>th</sup> of the month for publication on the 1" day of the following month. The Section 7 and Section 8 processes provide for an abbreviated rulemaking schedule.</p> <p>Responsibility: Rule Section Chief.</p>	<p>Formal 30 day written comment period.</p>	

<p><i>Forward to EPA the 1<sup>st</sup>/Section 7/Section Notice that has been submitted to LSA on the 10<sup>th</sup> of a given month within 5 working days of the LSA submittal. Responsibility: OAQ Rules Section Administrative Assistant.</i></p>		<p>EPA staff is assigned, the subject matter of the proposed SIP revision is established and agreed upon. EPA provides (appropriate for the subject and level of specificity of the 1<sup>st</sup> Notice) criteria for approval of the SIP submittal as well as other appropriate policy/guidance to the IDEM Rules Section Chief in writing within 45 days from date the 1<sup>st</sup>/Section 7/Section 8 Notice is submitted to EPA.</p>
<p><i>Review/provide an update concerning LSA/SIP Submittals at monthly OAQ/Region V rules call. Responsibility: OAQ Rules Section Chief EPA: Assign EPA member of rule team. Jointly establish and commit to review criteria and timeframe.</i></p>		<p>At monthly call, establish specific review times for each pending rulemaking action. EPA provides an update on the review status of each rule under review. Schedules are adjusted as necessary.</p>
<p>Preparation of draft rule language for Second Notice Responsibility: OAQ rulewriter The OAQ rulewriter is responsible for providing to each member of the rule team a draft of the second notice that includes draft rule language. Issues are to be addressed, to the extent possible, prior to the Second Notice starting the review and approval process in OAQ. The rules team includes the assigned EPA reviewer.</p>		<p>EPA reviews the draft rule language in light of the of the guidance provided at the 1<sup>st</sup> Notice stage and provides, in writing, to the OAQ rulewriter updated guidance, if appropriate, prior to the 2nd Notice starting the review and approval process in OAQ. EPA and OAQ will specifically identify the portion(s) of the rule that is subject to review and approval by EPA.</p>

<p><b>2<sup>nd</sup> Notice of 30 Day Public Comment Period on draft rule.</b></p> <p>The 2<sup>nd</sup> notice contains:</p> <ul style="list-style-type: none"> <li>- Draft rule;</li> <li>- Response to comments received in response to the 1<sup>st</sup> notice of comment period;</li> <li>- Notice of a formal 30 day period in which to provide comment on the draft rule language;</li> <li>- Notice of 1<sup>st</sup> public hearing.</li> </ul> <p>.....</p> <ol style="list-style-type: none"> <li>1. Deliverable: Second Notice to OAQ Section Chief for review following review by members of rule team. The rules team includes the assigned EPA rule reviewer.</li> <li>2. Responsible: OAQ rulewriter.</li> <li>3. OAQ Review (timeframe - minimum of 3 weeks prior to the 10<sup>th</sup> of a given month): <ul style="list-style-type: none"> <li>- Section Chief</li> <li>- Office of Legal Counsel</li> <li>- Branch Chief</li> <li>- Assistant Commissioner</li> <li>- Commissioner approves 2<sup>nd</sup> notice for submittal to LSA.</li> </ul> </li> </ol>	<p>Formal 30 day written comment period following publication in the Indiana Register.</p>	
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<p><i>Forward the 2<sup>nd</sup> Notice that was submitted to LSA on the 10<sup>th</sup> of a given month for publication on the 1<sup>st</sup> of the following month to EPA within 5 working days of the LSA submittal.</i></p> <p><i>Responsibility: OAQ Rules Section Administrative Assistant.</i></p>		<p>EPA will comment on 2<sup>nd</sup> notice according to schedule at beginning of table (e.g., 2-months for site-specific rule, 4-months for general rule) and assure that draft rule language will be consistent with the agreed upon SIP approveability criteria and guidance if EPA's comments are incorporated. EPA review includes review by Office of Regional Counsel, other EPA Offices, and technical staff, as necessary. EPA comments will be made by e-mail unless other arrangements are made.</p>
<p><i>Review/provide an update on SIP Submittals at monthly OAQ/Region V rules call.</i></p> <p><i>Responsibility: OAQ Rules Section Chief.</i></p> <p><i>EPA: Update review status based on review criteria and timeframe commitments.</i></p>		<p>EPA provides review status of pending actions and issues are identified as review progresses. Schedules are adjusted as necessary</p>
<p><b>First Public Hearing Preparation.</b></p> <p>30 day advance notice of public hearing in newspaper (SIP requirement).</p> <p>Responsibility: OAQ Rules Section Chief</p> <p>.....</p>		

<p>Post/mail Board Packet not later than 2 weeks prior to the board meeting. This includes a mailing to EPA  Responsibility: Rules Section Administrative Assistant.  .....</p> <p>1. Deliverable:</p> <ul style="list-style-type: none"> <li>- Draft rule language;</li> <li>- Response to comments from 2<sup>nd</sup> comment period; or</li> <li>- Section 7 Notice; or</li> <li>- Section 8 Notice;</li> <li>- Fact sheet;</li> <li>- Any materials being incorporated by reference to section chief for review following review by members of rule team.</li> </ul> <p>2. Responsible: OAQ rulewriter.</p> <p>3. OAQ Review (timeframe - minimum of 3 weeks prior to board packet mailout):</p> <ul style="list-style-type: none"> <li>- Section Chief</li> <li>- Office of Legal Counsel</li> <li>- Branch Chief</li> <li>- Assistant Commissioner</li> <li>- Commissioner approves board packet documents.</li> </ul>		
<p><b>First Public Hearing followed by Air Board action (preliminary adoption).</b>  Preliminary Adoption of draft rule by the Air Board. Submit required documents to LSA following Air Board action (submittal on the 10<sup>th</sup> of the month for publication on the 1<sup>st</sup> of the following month).</p>		

<p><i>Forward to EPA the Proposed Rule that has been submitted to LSA on the 10<sup>th</sup> of a given month within 5 working days of the LSA submittal.</i></p> <p><i>1. Responsibility: OAQ Rules Section Administrative Assistant.</i></p>		<p>EPA comments on preliminary adopted rule according to schedule at beginning of table (e.g., 2-months for site-specific rule, 4-months for general rule) if preliminary adopted rule has been significantly revised (control requirements or enforceability provisions have been changed) since 2<sup>nd</sup> notice. EPA will comment within 21 day comment period for non-significant changes and, to the extent possible, for significant changes.</p>
<p><i>Review/provide an update on SIP Submittals at monthly OAQ/Region V rules call.</i></p> <p><i>Responsibility: OAQ Rules Section Chief.</i></p> <p><i>EPA: Update review status based on review criteria and timeframe commitments.</i></p>		<p>EPA provides review status of pending actions and issues are identified as review progresses. Schedules are adjusted as necessary.</p>
<p><b>Proposed Rule Publishes in Indiana Register</b></p> <p>Includes:</p> <ul style="list-style-type: none"> <li>- Proposed rule;</li> <li>- LSA fiscal impact analysis, if required;</li> <li>- Response to comments from second comment period;</li> <li>- Response to comments from 1<sup>st</sup> public hearing;</li> <li>- Notice of 3<sup>rd</sup> 21-day written comment period if rule that was preliminarily adopted is substantively different from draft rule;</li> <li>- Notice of 2<sup>nd</sup> public hearing.</li> </ul>		

<p><i>Review/provide an update on upcoming SIP Submittals at monthly OAQ/Region V rules call.</i>  <i>Responsibility: OAQ Rules Section Chief</i></p> <p><i>Review/provide an update on SIP Submittals at monthly OAQ/Region V rules call.</i>  <i>Responsibility: OAQ Rules Section Chief.</i></p> <p><i>EPA: Coordinate final review with rulewriter and, based on review criteria, assure that all SIP approveability issues have been addressed.</i></p>		<p>EPA provides review status of pending actions and issues are identified as review progresses. Schedules are adjusted as necessary. Also, confirm whether all SIP approveability issues have been addressed prior to final adoption.</p>
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<p><b>Second Public Hearing followed by Air Board action (final adoption) Preparation.</b>  <b>30</b> day advance notice of public hearing in newspaper (SIP requirement).  Responsibility: OAQ Rules Section Chief.  .....</p> <p>Posting/mailing of Board Packet not later than 2 weeks prior to the board meeting. This includes forwarding the Board Packet to EPA.  Responsibility: Rules Section Administrative Assistant.  .....</p> <p>1. Deliverable:  - Proposed rule as preliminarily adopted or preliminarily adopted with IDEM’s suggested changes included;  - Fact sheet;  - LSA fiscal impact analysis, if required;  - Any materials being incorporated by reference.</p> <p>2. Responsible: OAQ rulewriter.</p> <p>3. OAQ Review (timeframe - minimum of 3 weeks prior to board packet mailout):  - Section Chief  - Office of Legal Counsel  - Branch Chief  - Assistant Commissioner  - Commissioner approves board packet rules documents.</p>		
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<p><b>Seoond Public Hearing and Air Board action (final adoption).</b> Board final adopts amendments or new rules.</p>		
<p><b>Promulgation.</b> Prepare promulgation packet. Responsibility: Rules Section Administrative Assistant under the direction of the rule writer. ..... Review promulgation packet: - Office of Legal Counsel Forward promulgation packet to Attorney General's Office. - Review by Attorney General - Approval by the Governor - Filing with the Secretary of State.</p>	<p>45 days 15 days, may req add 15 days 3 days for review</p>	
<p>If a parallel processing request is to be forwarded to Region V, prepare SIP cover letter, prepare SIP submittal (the final rule and signature page will be lacking), mail SIP submittal. Responsibility: Rule writer working with the administrative assistant.</p>		
<p>Rule Effective: 30 days after filing with the Secretary of State.</p>		
<p><b>Final Rule Publication.</b></p>	<p>1" of the month.</p>	

<p><b>SIP Submittal</b> (rule as published in the Indiana Register is required part of SIP submittal).          Prepare SIP cover letter for Commissioner's signature and prepare SIP submittal. If a parallel processing request has been forwarded to EPA, prepare a supplemental submittal that includes the final rule as it prints in the Indiana Register and the signature page.          Responsibility: Rule writer</p>		
<b>Notice of Proposed Rulemaking</b>		1. NPR is published by EPA within 3-months, or 4-months if HQ review is required
<b>Notice of Final Rulemaking</b>		2. 12 months after receipt of final SIP submittal
<b>2. NON-RULE SIP SUBMITTALS</b>	<b>State Timeline</b>	<b>EPA Review Time</b>
<b>A. Commissioner's Order</b>		Same as 1. and 2. above.
<b>B. Redesignation</b>	6 months (approx)	
Quality assure monitoring data	30-45 days (from close of ozone season (Sept. 30))	
Preliminary draft of petition/maintenance plan	45-60 days (from initial assignment)	

EPA preliminary review and comment		45 - 60 days
Refined draft based on internal and external comment	30 days (from receipt of comment)	
Initiation of public comment period on draft (upon completion of refined draft)	45 days	
Public hearing regarding draft petition/maintenance plan	30 days (from initiation of public comment period)	EPA provides comments during comment period.
Submit final documents to EPA	30 days (from close of comment period)	
Notice of proposed action		90-120 days
Notice of final action		Within 18 months of submittal of final redesignation submittal.
<b>C. Attainment Demonstration</b>	3 years following designation	
Photochemical modeling (ongoing during process)	30 months	
Consideration of control options	18 months	
Select control strategy	3 months	
Rulemaking for required controls	18 months	
EPA preliminary review and comment		45 - 120 days

Refined draft based on internal and external comment	30 days (from receipt of comment)	
Initiation of public comment period on draft SIP submittal	45 days	
Public hearing regarding draft SIP submittal	30 days (from initiation of public comment period)	EPA provides comments during comment period.
Submittal of final documents to EPA	30 days (from close of comment period)	
Notice of proposed action		90-120 days
Notice of final action		Within one year of submittal of final plan.
<b>D. Rate of Further Progress Plans</b>	18 months	
Consideration of control options	18 months	
Select required controls	3 months	
Rulemaking for required controls	18 months	
EPA preliminary review and comment		45-120 days
Initiation of public comment period on draft	45 days	
Public hearing regarding draft	30 days (from initiation of public comment period)	

Submit final documents to EPA	30 days (from close of comment period)	
Notice of proposed action		90-120 days
Notice of final action		Within 1 year of submittal of plan