

Summary of Requirements for Clean Air Act Section 111(d) State Plans

**Crude Oil and Natural Gas Source Category:
Emissions Guidelines for Existing Sources
40 CFR Part 60, Subpart OOOOc**

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40 CFR Part 60 Subpart OOOOc

U.S. Environmental Protection Agency

Office of Air Quality Planning and Standards

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Introduction

The information in this document is primarily intended to help states and Tribes develop EPA-approvable plans under the emission guidelines (EG), codified in [40 CFR part 60, Subpart OOOOc](#) (EG OOOOc), for existing sources in the Crude Oil and Natural Gas source category. This document lists and explains the requirements for those plans as stipulated by EG OOOOc and [40 CFR part 60, Subpart Ba](#) (Subpart Ba), the revised implementing regulations for the adoption and submission of state plans under Clean Air Act (CAA or Act) section 111(d). The requirements in Subpart Ba apply to all CAA 111(d) plans unless specifically superseded by emission guidelines. As such, plans for existing sources in the Crude Oil and Natural Gas source category must comply with both EG OOOOc and Subpart Ba. Importantly, for some requirements, EG OOOOc defers to Subpart Ba; for others, EG OOOOc supersedes Subpart Ba. This document will clarify these requirements.

The issuance of EG OOOOc under CAA section 111(d) does not impose binding requirements directly on existing sources. Instead, EG OOOOc instructs states in the development, submission, and implementation of state plans to establish performance standards to reduce greenhouse gas (GHG) emissions from designated facilities that are existing sources (commenced construction, modification, or reconstruction on or before December 6, 2022) in the Crude Oil and Natural Gas source category. Each state with a designated facility must develop, adopt, and submit to the EPA its state plan by March 9, 2026. Tribes may seek authority to implement a plan under CAA section 111(d) in a manner similar to a state, but are not required to do so. This document uses the terms “state” and “state plan” but the requirements explained below apply equally to Tribal plans. If a state or Tribe chooses not to submit a plan (or if the EPA disapproves a submitted plan), the EPA will issue a federal plan. This document does not substitute for provisions or requirements of the CAA or EPA regulations, nor is it a rule or regulation itself. As a legal matter, this document does not impose binding, enforceable requirements on any party. Non-mandatory language such as “guidance,” “recommend,” and “may” in this document is intended to describe the EPA’s non-binding recommendations, while mandatory terminology such as “must,” “required,” and “may not” is intended to describe legal requirements under the CAA or EPA regulations. This is a living document and may be revised periodically without public notice. The EPA welcomes public input on this document at any time.

The EPA encourages states to discuss state plan development approaches with their EPA Regional office early in their planning process so that the EPA can support states in the development of approvable state plans. The EPA remains committed to working with states and Tribes as they develop and submit their plans to the EPA for review. The EPA strives to maintain national consistency in its collaboration with states to ensure appropriate implementation of EG OOOOc.

Background

On November 15, 2021, the EPA proposed standards of performance under CAA section 111(b) for new, modified, and reconstructed sources¹ for GHG emissions (in the form of methane limitations) and volatile organic compounds (VOC) as well as emission guidelines under CAA section 111(d) for GHG emissions (in the form of methane limitations) from existing sources (designated facilities) in the Crude Oil and Natural Gas source category.² On December 6, 2022, the EPA published a supplemental proposed rule.³ On March 8, 2024, the EPA published a final rule titled Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. This rule finalized multiple actions, including the new source performance standards (NSPS) in OOOOb as well as the emission guidelines in EG OOOOc. EG OOOOc includes presumptive standards to limit GHG emissions (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category, as well as requirements for states to follow in developing, submitting, and implementing state plans to establish performance standards for designated facilities.⁴

The EPA's implementing regulations for 111(d) state plans were first published in 1975 and have been updated twice since then. In 2019, the EPA published revised implementing regulations, codified at 40 CFR part 60, Subpart Ba, which apply to emission guidelines promulgated after July 8, 2019, including EG OOOOc. On November 17, 2023, the EPA revised Subpart Ba, including by finalizing new timelines for state plan processes and making additional updates.⁵ EG OOOOc are the first emission guidelines to which the recently revised implementing regulations in Subpart Ba apply.

Under CAA section 111(d), and the EPA's implementing regulations, a state must submit its plan to the EPA for approval. The EPA will evaluate the plan for completeness and then act on the plan via a rulemaking process to either approve or disapprove, in whole or in part. If a state does not submit a plan, or if the EPA disapproves a submitted plan, then the EPA will establish a federal plan for designated facilities in that state. If the EPA approves a state's plan, the provisions in the state plan become federally enforceable with respect to the designated facilities responsible for compliance in the same manner as the provisions of an approved state implementation plan (SIP) are federally enforceable under CAA section 110.

¹ New Source Performance Standards (NSPS) codified in 40 CFR part 60, Subpart OOOOb (NSPS OOOOb).

² "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." Proposed rule. 86 FR 63110, November 15, 2021.

³ "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." Supplemental notice of proposed rulemaking. 87 FR 74702, December 6, 2022.

⁴ "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." Final Rule. 89 FR 16820, March 8, 2024.

⁵ 88 FR 80480.

If no designated facility is located within a state, the state must submit a negative declaration to the EPA in a letter certifying to that effect, in lieu of submitting a state plan. State plan approvals are codified at 40 CFR part 62.

For EG OOOOc, the EPA has translated the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) into presumptive standards that states may use in the development of state plans for specific designated facilities. CAA section 111(d) and 40 CFR § 60.24a(c) require that a state's standards of performance in its state plan be no less stringent than the degree of emission limitation achievable through application of the BSER as determined by the EPA. A state may, however, apply a less stringent standard of performance to a particular source, or class of sources, by taking into account remaining useful life and other factors (RULOF) consistent with the CAA, Subpart Ba, and EG OOOOc.

The EPA recognizes that several states currently regulate emissions from the oil and natural gas industry. These state-level efforts have been important in spurring the deployment of emission control technologies and practices, and developing a broad base of experience that informed the presumptive standards in EG OOOOc. At the same time, the EPA recognizes that state agencies regulate in accordance with their own priorities and based on the various emissions sources located within their own state. As a result, there is considerable variation in the scope and stringency of current state-level programs. The EPA is committed to working with states to provide opportunities to leverage their existing state programs for the purpose of state plan submissions in order to reduce regulatory redundancy where appropriate.

Further Information

Additional information about the EPA's oil and gas rules and related efforts can be found at the following website: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/epas-final-rule-oil-and-natural-gas>.

The EPA encourages states and Tribes to reach out to the relevant regional EPA office early in their plan development process and to work with the EPA throughout to develop an approvable plan.

Specific questions can also be emailed to the EPA at: *O&GMethaneRule@epa.gov*

EG 0000c Designated Facilities

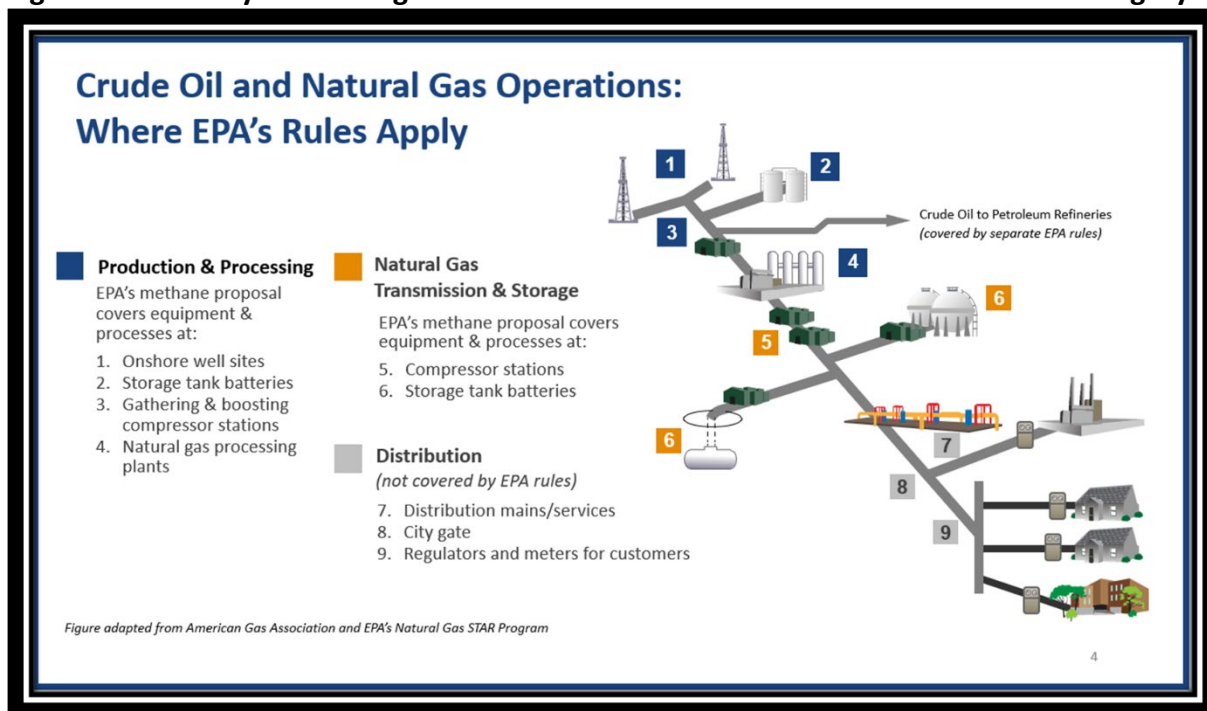
40 CFR §§ 60.5375c and 60.21a; 89 FR 16869.

A *Designated Facility* is any existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility in the corresponding NSPS 0000b. For purposes of EG 0000c, the designated pollutant is GHGs in the form of limitations on methane. For purposes of the crude oil and natural gas source category, the use of “facility” in the term “designated facility” can mean a piece of equipment, a collection of equipment or components, or a system or process. This usage is different than with other source categories where the term “facility” usually refers to a unit or building.

The EPA characterizes the oil and natural gas industry's operations as being generally composed of four segments: (1) extraction and production of crude oil and natural gas, (2) natural gas processing, (3) natural gas transmission and storage, and (4) natural gas distribution. The EPA regulates oil refineries as a separate source category. Accordingly, for purposes of NSPS 0000b and EG 0000c, the EPA's focus for crude oil is on operations from the well to the point of custody transfer at a petroleum refinery, and the focus for natural gas is on all operations from the well to the local distribution company custody transfer station, commonly referred to as the “city-gate.”⁶

⁶ For regulatory purposes, the EPA defines the Crude Oil and Natural Gas source category to mean (1) crude oil production, which includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation; and (2) natural gas production, processing, transmission, and storage, which include the well and extend to, but do not include, the local distribution company custody transfer station. 40 CFR § 60.5430c. The distribution segment is not part of the defined source category.

Figure 1. Summary of EPA-Regulated Facilities in the Oil and Natural Gas Source Category



State plans implementing EG 0000c must address the designated facilities in the state that commenced construction, modification, or reconstruction on or before December 6, 2022 and that are listed in [Table 1 to EG 0000c](#). The Applicability Section of the model rule in EG 0000c (at 40 CFR § 60.5386c) identifies and explains each designated facility type. The Definitions Section of EG 0000c (at 40 CFR § 60.5430c) contains further detail defining the terms used to describe each designated facility.

Table 1. EG 0000c Designated Facilities

Designated Facility	EG 0000c Applicability Section
Wells	Each well designated facility, which is a single well drilled for the purpose of producing oil or natural gas.
Centrifugal Compressors	Each centrifugal compressor designated facility, which is a single centrifugal compressor. A centrifugal compressor located at a well site is not a designated facility. A centrifugal compressor located at a centralized production facility is a designated facility.
Reciprocating Compressors	Each reciprocating compressor designated facility, which is a single reciprocating compressor. A reciprocating compressor located at a well site is not a designated

	<p>facility. A reciprocating compressor located at a centralized production facility is a designated facility.</p>
<p>Process Controller</p>	<p>Each process controller designated facility, which is the collection of natural gas-driven process controllers at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station. Natural gas-driven process controllers that function as emergency shutdown devices and process controllers that are not driven by natural gas are exempt from the designated facility.</p>
<p>Pumps</p>	<p>Each pump designated facility, which is the collection of natural gas-driven diaphragm and piston pumps at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station. Pumps that are not driven by natural gas and that are not in operation 90 days or more per calendar year are not included in the pump designated facility.</p>
<p>Storage Vessels</p>	<p>See 40 CFR § 60.5386c(e)</p>
<p>Fugitive Emissions Components</p>	<p>Each fugitive emissions components designated facility, which is the collection of fugitive emissions components at a well site, centralized production facility, or a compressor station.</p>
<p>Process Unit Equipment</p>	<p>Each process unit equipment designated facility, which is the group of all equipment within a process unit at an onshore natural gas processing plant is a designated facility. Equipment associated with a compressor station, dehydration unit, sweetening unit, underground storage vessel, field gas gathering system, or liquefied natural gas unit is covered by 40 CFR §§ 60.5400c, 60.5401c, 60.5402c, 60.5421c, and 60.5422c if it is located at an onshore natural gas processing plant.</p>

State Plan Requirements

40 CFR §§ 60.5363c and 60.27a(g)(2)–(3); 89 FR 16992.

Subpart Ba establishes the generally applicable requirements for all state plan submissions under emission guidelines published after July 8, 2019. When a specific EG is finalized by the EPA, like EG OOOOc, Subpart Ba governs state plan submission and the EPA’s subsequent review of and action on state plans, unless the specific EG explicitly supersedes one or more provisions of Subpart Ba.

Subpart Ba contains a list of administrative and technical criteria that state plan submissions must meet in order to be deemed complete. Other provisions of Subpart Ba provide further detail on certain of these completeness criteria and what requirements the plan must satisfy in order to be satisfactory.⁷ EG OOOOc lists ten individual requirements for each state plan submission. These ten requirements are drawn from Subpart Ba. However, not all of Subpart Ba’s completeness criteria are mirrored in EG OOOOc. Tables 2 and 3 detail the relationship between the EG OOOOc requirements for state plans and the corresponding completeness criteria in Subpart Ba. Note that the requirements of Subpart Ba apply to state plan submissions under EG OOOOc (even if the requirement is not specifically listed in EG OOOOc), except where EG OOOOc explicitly supersedes Subpart Ba.

In this case, EG OOOOc supersedes provisions of Subpart Ba such that the first two items on the list in Table 2 are not required for a state plan under EG OOOOc. However, a state may still choose to submit those items. The other items (numbered 3–10) must be submitted components of a state plan under EG OOOOc.

Table 2. EG OOOOc State Plan Components Compared to Subpart Ba Requirements

EG OOOOc Requirement	Corresponding Requirement in Subpart Ba
(1) No inventory of designated facilities required for purposes of EG OOOOc. ⁸	40 CFR § 60.25a(a)
(2) No inventory of emissions from designated facilities required for purposes of EG OOOOc. ⁹	40 CFR § 60.25a(a)
(3) Compliance schedules for each designated facility or logical grouping of designated facilities with legally	40 CFR § 60.27a(g)(3)(iii)

⁷ For example, 40 CFR 60.27a(g)(3)(ii) requires that plans include standards of performance for designated facilities and 40 CFR 60.24a provides more specific requirements for standards of performance consistent with CAA section 111(d).

⁸ EG OOOOc superseded Subpart Ba. A state may voluntarily choose to develop an inventory of designated facilities for their own purposes, but it is not a required component of the state plan submission.

⁹ EG OOOOc superseded Subpart Ba. A state may voluntarily choose to develop an inventory of designated emissions for their own purposes, but it is not a required component of the state plan submission.

enforceable increments of progress if applicable.	
(4) Standards of performance for designated facilities that are at least as protective as the emission guidelines contained in OOOOc, unless otherwise provided for under 40 CFR § 60.5365c. Standards for performance for designated facilities must apply at all times, including periods of startup, shutdown, and malfunction.	40 CFR §§ 60.27a(g)(3)(ii) and 40 CFR §60.24a(c)
(5) Performance testing, monitoring, recordkeeping, and reporting requirements.	40 CFR § 60.27a(g)(3)(ii)
(6) Documentation of meaningful engagement on such plan or plan revisions as specified in 40 CFR § 60.23a(i).	40 CFR § 60.27a(g)(2)(ix)
(7) Certification that the required hearing on the state or Tribal plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission as specified in 40 CFR § 60.23a(c) through (e).	40 CFR § 60.27a(g)(2)(vii)
(8) Provision for state progress reports to the EPA.	40 CFR § 60.27a(g)(3)(v)
(9) Identification of enforceable state mechanisms that you selected for implementing EG OOOOc.	40 CFR § 60.27a(g)(2)(iv) and (g)(3)(vi)
(10) Demonstration of your state or Tribe's legal authority to carry out the CAA section 111(d) state or Tribal plan.	40 CFR § 60.27a(g)(2)(iii)

Table 3. Subpart Ba Completeness Criteria Compared to EG OOOOc Requirements

Administrative Criteria § 60.27a(g)(2)	Corresponding EG OOOOc Requirement
(i) A formal letter of submittal from the Governor or her designee requesting EPA approval of the plan or revision thereof	None; Subpart Ba requirement applies

<p>(ii) Evidence that the State has adopted the plan in the state code or body of regulations; or issued the permit, order, consent agreement (hereafter “document”) in final form. That evidence must include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date</p>	<p>None; Subpart Ba requirement applies</p>
<p>(iii) Evidence that the state has the necessary legal authority under state law to adopt and implement the plan</p>	<p>40 CFR § 60.5363c(a)(10)</p>
<p>(iv) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (such as redline/strikethrough) to the existing approved plan, where applicable. The submittal must be a copy of the official state regulation or document signed, stamped, and dated by the appropriate state official indicating that it is fully enforceable by the state. The effective date of the regulation or document must, whenever possible, be indicated in the document itself. The state's electronic copy must be an exact duplicate of the hard copy. If the regulation/document provided by the state for approval and incorporation by reference into the plan is a copy of an existing publication, the state submission should, whenever possible, include a copy of the publication cover page and table of contents</p>	<p>40 CFR § 60.5363c(a)(9)</p>
<p>(v) Evidence that the state followed all of the procedural requirements of the state's laws and constitution in</p>	<p>None; Subpart Ba requirement applies</p>

	conducting and completing the adoption and issuance of the plan	
(vi)	Evidence that public notice was given of the proposed change with procedures consistent with the requirements of 40 CFR § 60.23a, including the date of publication of such notice	None; Subpart Ba requirement applies
(vii)	Certification that public hearing(s) were held in accordance with the information provided in the public notice and the state's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR § 60.23a	40 CFR § 60.5363c(a)(7)
(viii)	Compilation of public comments and the state's response thereto	None; Subpart Ba requirement applies
(ix)	Documentation of meaningful engagement, including a list of pertinent stakeholders or their representatives, a summary of the engagement conducted, and a summary of stakeholder input received, and a description of how stakeholder input was considered in the development of the plan or plan revisions	40 CFR § 60.5363c(a)(6)
(x)	Such other criteria for completeness as may be specified by the Administrator under the applicable emission guidelines	None; Subpart Ba requirement applies
Technical Criteria § 60.27a(g)(3)		Corresponding EG OOOOc Requirement
(i)	Description of the plan approach and geographic scope	None; Subpart Ba requirement applies
(ii)	Identification of each designated facility, identification of standards of performance for the designated facilities, and monitoring, recordkeeping and reporting requirements that will determine compliance by each designated facility	40 CFR § 60.5363c(a)(4) and (5)

(iii)	Identification of compliance schedules and/or increments of progress	40 CFR § 60.5363c(a)(3)
(iv)	Demonstration that the State plan submittal is projected to achieve emissions performance under the applicable emission guidelines	None; Subpart Ba requirement applies
(v)	Documentation of state recordkeeping and reporting requirements to determine the performance of the plan as a whole	40 CFR § 60.5363c(a)(8)
(vi)	Demonstration that each emission standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable	40 CFR § 60.5363c(a)(9)

The Model Rule

40 CFR §§ 60.5376c–60.5378c.

The model rule is a portion of EG OOOOc (40 CFR sections 60.5385c through 60.5430c), organized in regulation format, that includes the presumptive standards for designated facilities as well as associated measures to assure compliance including monitoring, recordkeeping, and reporting. Specifically, the model rule includes the following nine major components: (1) increments of progress toward compliance, (2) operator training and qualification, (3) emission limits, emission standards, and operating limits, (4) initial compliance requirements, (5) continuous compliance requirements, (6) performance testing, monitoring, and calibration requirements, (7) recordkeeping and reporting, (8) definitions, and (9) tables.

States may use the model rule as part of their state plans to satisfy the requirements for compliance schedules, standards of performance, and performance testing, monitoring, recordkeeping, and reporting requirements for designated facilities (specified in 40 CFR 60.5363c(a)(3) through (a)(5)).

The EPA anticipates that providing a model rule will create a streamlined approach for states in developing state plans and for the EPA in evaluating state plans. If a state chooses to adopt the model rule in a state plan, the EPA could likely approve such a plan as meeting the requirements of CAA section 111(d) and EG OOOOc, if the plan meets all other applicable requirements. However, the EPA’s action on each state plan submission is carried out via rulemaking, which includes public notice and comment.

(1)–(2) Inventories

40 CFR 60.5363c(a)(1)–(2); 89 FR 17006.

As discussed in the requirements for state plans section of this document, EG OOOOc supersedes the requirement in Subpart Ba¹⁰ to submit inventories of designated facilities and emissions from designated facilities as part of the state plan. States are not required to submit these inventories for purposes of EG OOOOc, but may compile this information if they so choose.

Due to the very large number of existing oil and natural gas sources and the frequent change of configuration and/or ownership of those sources, it is not practical to require states to compile this information in the same way that states are typically expected to under other EG. In the U.S., the EPA has identified over 15,000 oil and gas owners and operators, around 1 million producing onshore oil and gas wells, about 5,000 gathering and boosting facilities, over 650 natural gas processing facilities, and about 1,400 transmission compression facilities.

The EPA also does not believe that the inventory and detailed emissions data required under Subpart Ba is necessary for states to develop standards of performance for state plans under EG OOOOc. However, EG OOOOc does not prohibit states from compiling and submitting this information, and there may be good reasons to do so depending on specific circumstances.

(3) Compliance schedules

40 CFR §§ 60.5370c and 60.24a(a); 89 FR 17010.

Subpart Ba defines “compliance schedule” as a legally enforceable schedule specifying a date or dates by which a source or category of sources must comply with specific standards of performance contained in a plan.¹¹

EG OOOOc requires that state plans include compliance schedules that require designated facilities to achieve final compliance as expeditiously as practicable after approval of the plan but not later than 36 months from the deadline for state plan submissions. When this schedule is considered in conjunction with the state plan submission deadline of 24 months from the publication of EG OOOOc, sources could have up to approximately five years between publication of EG OOOOc and when they are required to fully comply with the applicable standards of performance.

The EPA highlights that the 36-month deadline represents the furthest date into the future that the EPA finds appropriate for a state to allow as its final compliance deadline. This is the most time that the EPA believes a state will need to allow for its designated facilities to come into compliance. The EPA is not suggesting that it is necessarily appropriate for all compliance

¹⁰ 40 CFR § 60.25a(a).

¹¹ 40 CFR § 60.21a(g). Subpart Ba does not contain a generally applicable compliance schedule, but rather defers the determination of the appropriate compliance schedule to individual EGs.

schedules in all state plans to be set at 36 months. States are free to establish compliance schedules within their state plans for certain designated facilities that are shorter than 36 months, and indeed, states should be examining shorter schedules. States must require designated facilities to come into final compliance with their standards of performance “as expeditiously as practicable.”¹²

The time needed for various types of designated facilities to come into full compliance with a state’s standards depends on many factors including the specifics of the state’s standard as well as the preexisting regulatory framework, if any. States that demonstrate a particular designated facility, or class of facilities, cannot reasonably comply with its standard of performance within 36 months, as specified in EG OOOOc, may invoke RULOF to justify an extended compliance schedule (see the RULOF section of this document for more details).¹³

Increments of Progress

40 CFR §§ 60.5370c(b), 60.5379c, 60.21a(h), and 60.24a(d); 89 FR 17008.

Subpart Ba requires state plans to include increments of progress when the compliance schedule extends more than 20 months after the state plan submittal date. Since the compliance schedule for EG OOOOc is 36 months, the EPA has considered the need for and ultimately required increments of progress to be included in state plans. Increments of progress are steps to achieve compliance which must be taken by an owner or operator of a designated facility. Subpart Ba provides that, unless otherwise specified in the applicable emission guideline, increments of progress must include, where practicable: (1) submission of a final control plan for the designated facility to the appropriate air pollution control agency; (2) awarding of contracts for emission control systems or for process modifications, or issuance of orders for purchase of component parts to accomplish emission control or process modification; (3) initiation of on-site construction or installation of emission control equipment or process change; (4) completion of on-site construction or installation of emission control equipment or process change; and (5) final compliance.

The model rule in EG OOOOc includes two increments of progress; these are the two required increments for state plans under this emission guideline. The first increment of progress is the submission of a final control plan by owners and operators within two years of the deadline for state plan submission. The second increment of process is a notification of final compliance report for each designated facility on or before 60 days after the compliance date of the state plan. For the notification of final compliance report, a company would be allowed to submit one notification that covers all of the company’s designated facilities in a state in lieu of submitting a notification for each designated facility. States that invoke RULOF and justify a compliance schedule longer than 36 months should also consider whether additional increments of progress, beyond those included in EG OOOOc, are necessary.

¹² 40 CFR 60.24a(c)

¹³ 40 CFR 60.24a(e)–(h).

(4) Standards of Performance

40 §§ CFR 60.5388c–60.5402c, and 60.24a(a)–(c); 89 FR 16993.

EG OOOOc includes information on the degree of emissions limitation achievable through application of the BSER in the form of presumptive standards for designated facilities. There is a fundamental requirement under CAA section 111(d) and 111(a)(1) that a state’s standards of performance in its state plan are no less stringent than the degree of emissions limitation achievable through application of the BSER as determined by the EPA, unless a state applies a less stringent standard of performance based on consideration of RULOF according to the provisions of 40 CFR 60.24a(e)–(h).

As with other parts of the model rule in EG OOOOc, if a state chooses to adopt the presumptive standards as the standards of performance in a state plan, the EPA could likely approve such a plan as meeting the requirements of CAA section 111(d) and EG OOOOc, if the plan meets all other applicable requirements. In this way, the presumptive standards included in EG OOOOc can assist states in developing their plan submissions by providing states with a starting point for standards. However, the EPA’s action on each state plan submission is carried out via rulemaking, which includes public notice and comment, and inclusion of presumptive standards in a state plan does not predetermine the outcome of the EPA’s action on that state plan submission.

Further, in EG OOOOc, the EPA identified certain types of designated facilities where the Agency determined that it is not feasible to prescribe or enforce a standard based on an allowable rate, quantity, or concentration of emissions (numeric limit). For these designated facilities, EG OOOOc includes non-numerical presumptive standards. These standards are sometimes referred to in shorthand as presumptive “work practice standards” but they can also be design, equipment, or operational standards, or a combination thereof. When states include non-numerical emission limits in their plan, “the plan shall, to the degree possible, set forth the emission reductions achievable by implementation of such standards, and may permit compliance by the use of equipment determined by the State to be equivalent to that prescribed.”¹⁴

Table 4. Summary of EG OOOOc Presumptive Numerical Standards

Designated Facility	Presumptive Numerical Standards in the Emissions Guidelines for GHGs
Storage Vessels: Tank Battery with PTE of 20 tons per year (tpy) or more of methane.	95 percent reduction of methane
Process Controllers: Natural gas-driven.	Methane emissions rate of zero
Pumps: Natural gas-driven.	Methane emissions rate of zero

¹⁴ 40 CFR 60.24a(b).

Table 5. Summary of EG OOOOc Presumptive Non-Numerical Standards

Designated Facility	Presumptive Non-Numerical Standards in the Emissions Guidelines for GHGs
<p>Fugitive Emissions: Single Wellhead Only Well Sites and Small Well Sites.¹</p>	<p>Quarterly audible, visual and olfactory (AVO) monitoring surveys. First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt.</p> <p>Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.</p>
<p>Fugitive Emissions: Multi-wellhead only Well Sites (2 or more wellheads).¹</p>	<p>Quarterly AVO monitoring surveys. First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt.</p> <p>Semiannual optical gas imaging (OGI) monitoring (Optional semiannual EPA Method 21 monitoring with 500 parts per million (ppm) defined as a leak).</p> <p>First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt.</p> <p>Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.</p>
<p>Fugitive Emissions: Well Sites and Centralized Production Facilities.¹</p>	<p>Bimonthly AVO monitoring surveys. First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt.</p> <p>Quarterly OGI monitoring. (Optional quarterly EPA Method 21 monitoring with 500 ppm defined as a leak).</p> <p>First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt.</p>

	Fugitive monitoring continues for all well sites until the site has been closed, including plugging the wells at the site and submitting a well closure report.
Fugitive Emissions: Compressor Stations. ¹	<p>Monthly AVO monitoring surveys. First attempt at repair within 15 days after detecting fugitive emissions. Final repair within 15 days after first attempt.</p> <p>AND</p> <p>Quarterly OGI monitoring. (Optional quarterly EPA Method 21 monitoring with 500 ppm defined as a leak).</p> <p>First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt.</p>
Fugitive Emissions: Well Sites and Compressor Stations on Alaska North Slope. ¹	<p>Annual OGI monitoring. (Optional annual EPA Method 21 monitoring with 500 ppm defined as a leak).</p> <p>First attempt at repair within 30 days after detecting fugitive emissions. Final repair within 30 days after first attempt.</p>
Process Controllers: Alaska (at sites where onsite power is not available -continuous bleed natural gas-driven).	Natural gas bleed rate no greater than 6 standard cubic feet per hour (scfh).
Process Controllers: Alaska (at sites where onsite power is not available -intermittent natural gas-driven).	OGI monitoring and repair of emissions from controller malfunctions.
Pumps: Natural gas-driven (at sites where onsite power is not available and there are fewer than 3 diaphragm pumps).	Route pump emissions to a process if vapor recovery unit (VRU) is onsite, or to control device if onsite.
Gas Well Liquids Unloading.	Employ best management practices to minimize or eliminate venting of emissions to the maximum extent possible.

Equipment Leaks at Natural Gas Processing Plants.	Leak detection and repair (LDAR) with OGI following procedures in appendix K.
Oil Wells with greater than 40 tpy of Associated Methane Gas.	Route associated gas to a sales line. Alternatively, the gas can be used as an onsite fuel source or used for another useful purpose that a purchased fuel or raw material would serve or be injected into the well or another well. If demonstrated, and annually documented, that a sales line and alternatives are not technically feasible, the gas can be routed to a flare or other control device that achieves at least 95 percent reduction in methane emissions.
Oil Wells with 40 tpy or less of Associated Methane Gas.	Route associated gas to a sales line. Alternatively, the gas can be used as an onsite fuel source or used for another useful purpose that a purchased fuel or raw material would serve, or be injected into the well or another well. Alternatively, the gas can be routed to a flare or other control device that achieves at least 95 percent reduction in methane emissions.
Wet Seal Centrifugal Compressors (except for those located at well sites): Includes self-contained wet seal centrifugal compressors and centrifugal compressors equipped with mechanical seals.	Monitoring and repair to maintain volumetric flow rate at or below 3 scfm per compressor seal.
Wet Seal Centrifugal Compressors (except for those located at well sites): Alaska North Slope centrifugal compressors equipped with a seal oil recovery system.	Monitoring and repair to maintain volumetric flow rate at or below 9 scfm per seal.
Dry Seal Centrifugal Compressors (except for those located at well sites).	Monitoring and repair to maintain volumetric flow rate at or below 10 scfm per compressor seal.
Reciprocating Compressors (except for those located at well sites).	Monitoring and repair to maintain volumetric flow rate at or below 2 scfm per compressor cylinder.

¹ For fugitive emissions at well sites, centralized production facilities, and compressor stations, EG OOOOc includes an advanced measurement technology compliance option to use alternative periodic screening and alternative continuous monitoring instead of OGI and AVO monitoring.

(5) Performance Testing, Monitoring, Recordkeeping, and Reporting Requirements

40 CFR §§ 60.5405c–60.5406c, 60.5410c–60.5413c, 60.5415c–60.5417c, 60.5420c–60.5425c, and 60.25a(b)–(d); 89 FR 17005.

States must include appropriate monitoring, recordkeeping, and reporting requirements to ensure that state plans adequately provide for the implementation and enforcement of standards of performance. These must also include provisions for periodic inspection.

The model rule included within EG 0000c includes many monitoring, recordkeeping, and reporting provisions necessary to implement and enforce the associated presumptive standards. If a state chooses to include a presumptive standard in its state plan, then it must also incorporate the associated monitoring, recordkeeping, and reporting requirements contained in the model rule, or equivalent requirements, to ensure that the state plan adequately provides for the implementation and enforcement of the standard of performance. The EPA may approve monitoring, recordkeeping, and reporting provisions that depart from those in the model rule only if they are demonstrated to be equivalent to the presumptive monitoring, recordkeeping, and reporting provisions in terms of assuring compliance with the presumptive standards.

Where a state plan includes standards of performance that differ from the presumptive standards, the plan may accordingly include different monitoring, recordkeeping, and reporting requirements than those in the model rule. Still, in such cases, the monitoring, recordkeeping, and reporting requirements must be appropriate for the implementation and enforcement of the associated standards. In those situations, states may find the provisions included in the model rule helpful and informative for development of their state plan.

The EPA reviews all state plan submissions for approvability through notice and comment rulemaking. As such, components of a state plan that differ from any presumptively approvable aspects of EG 0000c, including monitoring, recordkeeping, and reporting provisions included in a state plan, will be reviewed by the EPA and will be subject to review and comment by the public.

(6) Meaningful Engagement

40 CFR §§ 60.5363c(a)(6) and 60.23a(i); 89 FR 17006–7 and 88 FR 80498–80502.

A fundamental purpose of the Act's notice and public hearing requirements is to ensure that all affected members of the public are able to participate in pollution control planning processes that impact their health and welfare. In order to effectuate this purpose, the notice of the proposed plan and of the public hearings should adequately reach affected members of the public. In addition to internet notice, examples of prominent advertisement for engagement and public hearing may include notice through newspapers, libraries, schools, hospitals, travel centers, community centers, places of worship, gas stations, convenience stores, casinos,

smoke shops, Tribal Assistance for Needy Families offices, Indian Health Services, clinics, and/or other community health and social services as appropriate.

States often rely primarily on public hearings as the foundation of the public engagement in their state plan development process because a public hearing has always been explicitly required pursuant to the applicable regulations. However, robust and meaningful public involvement in the development of a plan should sometimes go beyond the minimum requirement to hold a public hearing depending on who may be most affected by and vulnerable to the impacts being addressed by the plan. Because EG 0000c addresses existing facilities, some of which may be decades old, it is possible that impacted communities may not have had a voice in the process when the sources were originally constructed, or previous outreach may have focused largely on engaging the industry.

With all of the above in mind, the EPA has recently promulgated regulations outlining the requirements for meaningful engagement in state plan development. The requirements for meaningful engagement in state plan development are provided by Subpart Ba. EG 0000c defers to Subpart Ba for meaningful engagement. The EPA is providing some further discussion and resources here which states may find useful in developing their meaningful engagement programs.

State plans submitted under EG 0000c must contain documentation on how the state conducted meaningful engagement with pertinent stakeholders. Specifically, Subpart Ba requires that states must submit, with the plan or revision, documentation of meaningful engagement including (1) a list of identified pertinent stakeholders and/or their representatives, (2) a summary of the engagement conducted, (3) a summary of stakeholder input received, and (4) a description of how stakeholder input was considered in the development of the plan or plan revisions.

Meaningful engagement means the timely engagement with pertinent stakeholders and/or their representatives in the plan development or plan revision process. Such engagement should not be disproportionate in favor of certain stakeholders and should be informed by available best practices.

Pertinent stakeholders include, but are not limited to, industry, small businesses, and communities most affected by and/or vulnerable to the impacts of the plan or plan revision.

Meaningful engagement can provide states with valuable information regarding health and welfare impacts from the regulated source category experienced by the public (e.g., recurring respiratory illness, missed work or school days due to illness associated with pollution, and other impacts) and allow regulatory authorities to explore additional options to improve public health and welfare.

The vulnerability of communities that are pertinent stakeholders may be attributable to, among other reasons, an accumulation of negative environmental, health, economic, or social conditions within these populations or communities, and a lack of positive conditions. Examples of such communities have historically included communities of color (often referred to as “minority” communities), low-income communities, Tribal and indigenous populations, and communities in the United States that potentially experience disproportionate health or environmental harms and risks as a result of greater exposure to environmental hazards. For example, populations lacking the resources and representation to combat the effects of climate change—which could include populations exposed to greater drought or flooding, or damaged crops, food, and water supplies—experience greater vulnerability to environmental hazards. Sensitive populations (*e.g.*, infants and children, pregnant women, the elderly, and individuals with disabilities exacerbated by environmental hazards) may also be most affected by and vulnerable to the impacts of the plan.

The EPA recognizes that states will generally be in the best position to understand how to meaningfully engage pertinent stakeholders as they develop state plans. The EPA also believes that states and the Federal Government may learn from each other's efforts to meaningfully engage pertinent stakeholders. States are also highly diverse as to their local conditions, resources, and established practices of engagement. Additionally, vulnerable communities are highly diverse as to their technical capacities, access to resources for meaningful participation (*e.g.*, geographic distribution, transportation, childcare), languages, and available representation). The EPA recognizes that states need flexibility to address specific and unique issues and to appropriately communicate with and respond to their stakeholders during the notice and comment process. The meaningful engagement requirements are therefore intended to promote equitable opportunities to participate in the planning process for all stakeholders, as opposed to dictating a specific approach or set of practices that constitute meaningful engagement.

The EPA has described some current best practices for meaningful engagement that states may consider in the preamble to the final 2023 rulemaking revising Subpart Ba, and lists some of these practices below. The EPA expects that such practices will continue to develop as states experiment with different types of meaningful engagement and share their experiences through state plans.

In considering approaches for meaningful engagement, states should consider the identification of pertinent stakeholders, developing a strategy for engagement with the identified pertinent stakeholders, making information available in a transparent manner, and providing adequate and accessible notice. Moreover, in developing a strategy for engagement, it would be reasonable for states to share information and solicit input on plan development and on any accompanying assessments. Finally, in providing transparent and adequate notice of plan development, states should consider that internet notice alone may not be adequate for all stakeholders, given lack of access to broadband infrastructure in many communities.

Some resources that states may find helpful in developing their own best practices include: “Public Involvement Policy of the US Environmental Protection Agency”¹⁵ and the “Capacity Building Through Effective Meaningful Engagement” booklet.¹⁶ Additionally, most states have opted into the EPA Climate Pollution Reduction Grant Program (CPRG), developed under the Inflation Reduction Act. To assist states that are participating in the CPRG, the EPA is conducting training for states on meaningful engagement, sharing case studies, best practices, and lessons learned through ongoing EPA-led CPRG forums. The EPA expects that, with experience and shared access to information on best practices, approaches to address challenges and barriers, and other resources and collaborative opportunities, meaningful engagement practices at the state and federal level will continue to improve.

States may also choose to consult various environmental justices in conducting their meaningful engagement. One such resource, available in the docket for this rule, is titled “Summary of State, Tribal and Local Environmental Justice (EJ) Programs and Analyses.”¹⁷ The memorandum specifically describes a summary of existing EJ programs and other EJ activities conducted by state, Tribal, and local governments compiled from an in-depth assessment of government websites and publicly available documents. The EPA identifies state and Tribal EJ programs and procedures, including community identification criteria and mapping tools utilized.

As an additional resource to states, the EPA compiled information that may assist states identify best practices for conducting meaningful engagement. “Summary of Strategies for Meaningful Engagement on Environmental Justice (EJ) Topics.”¹⁸ This memorandum reviews over fifty EJ reports, policies, plans, and publications that have been produced by various state and local jurisdictions in the U.S. and the memorandum includes numerous referenced documents that pertinent stakeholders and other interested parties may find helpful.

(7) Required Hearing

40 CFR §§ 60.5363c(a)(7), and 60.23a(c)–(h); 89 FR 17008.

Prior to the adoption of any plan or revision, states must conduct one or more public hearings within the state on the plan. States must give notice of the public hearing(s) at least 30 days prior to the date of the hearing(s), and the proposed plan must be available to the public at this time. States must also provide notification of the hearing(s) to the EPA Administrator and to each local air pollution control agency in each region to which the plan or revision will apply.

¹⁵ Available at <https://archive.epa.gov/publicinvolvement/web/pdf/policy2003.pdf>.

¹⁶ Available at https://www.epa.gov/system/files/documents/2023-09/epa-capacity-building-through-effective-meaningful-engagement-booklet_0.pdf.

¹⁷ Docket ID No. EPA-HQ-OAR-2017-0317-3914 (March 8, 2024), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3914>.

¹⁸ Docket ID No. EPA-HQ-OAR-2017-031-3915 (March 8, 2024), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3915>.

(8) State Progress Reports

40 CFR §§ 60.5363c(a)(8) and 60.25a(e)–(f).

The state plan must include provisions for annual reports on progress in plan enforcement to the EPA. The first progress report is due one year after approval of the state plan or promulgation of a federal plan.

Each progress report must include:

- All enforcement actions initiated against designated facilities during the reporting period, under any standard of performance or compliance schedule of the plan.
- All increments of progress towards compliance achieved during the reporting period.
- Identification of designated facilities that have ceased operation during the reporting period.
- Copies of technical reports on all performance testing on designated facilities conducted during the reporting period.

The progress report requirements in Subpart Ba for submitting updated emissions data on designated facilities as part of these progress reports in 40 CFR 60.25a(f)(4)–(5), do not apply to EG OOOOc because those provisions cross-reference the inventory requirement in 60.25a(a) that does not apply for purposes of EG OOOOc.¹⁹

(9) Enforceable State Mechanisms

40 CFR §§ 60.5363c(a)(9), 40 CFR 60.25a(b); 89 FR 17005.

State plans must also include, adequately document, and demonstrate the methods employed to implement and enforce the standards of performance such that the EPA can review and identify measures that assure transparent and verifiable implementation.

The EPA recognizes that some states may choose to regulate designated facilities under EG OOOOc through a general permit program. For example, general permits often include standardized terms and conditions related to emissions control, compliance certification, notification, recordkeeping, reporting, and testing requirements. Subpart Ba and EG OOOOc allow standards of performance and other state plan requirements to be established as enforceable state permits and administrative orders, which are then incorporated into the state plan.²⁰

¹⁹ See 60.5363c(a)(1)–(2).

²⁰ See 40 CFR 60.27a(g)(2)(ii).

However, the EPA notes that the permit or administrative order alone may not be sufficient to meet the requirements of EG OOOOc and Subpart Ba. For example, a plan submission must include supporting material demonstrating the state's legal authority to implement and enforce each component of its plan, including the standards of performance (see the next section). To the extent that these and other requirements are not met by the terms of the incorporated permits and administrative orders, states will need to include additional materials in a state plan submission demonstrating how the plan otherwise meets those requirements.

(10) Legal Authority

40 CFR §§ 60.5363c(a)(10) and 60.26a; 89 FR 17007–17008.

As part of the plan submission, states must include a demonstration that the state has the legal authority to carry out the plan. States must be able to show that they have the authority to adopt and enforce the regulations, standards of performance, and compliance schedules that are included within the plan. This necessarily includes a showing that the state has authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules through recordkeeping, inspections, and tests of designated facilities.

States must also demonstrate the authority to require owners or operators of designated facilities to install, maintain, and use any necessary emission monitoring devices and to periodically report to the state on the nature and amounts of emissions. The state must have the authority to make these reports publicly available.

The demonstration in the plan submission must specifically identify the laws and regulations that establish the state's authority, and the state must submit copies of those specific laws and regulations with the plan (unless they are part of an EPA-approved implementation plan submitted under CAA section 110 and the state demonstrates that they are applicable to the designated pollutant). These legal authorities must be available to the state at the time of plan submission. EG OOOOc and Subpart Ba do not themselves provide states with any independent or additional authority to issue permits or administrative orders under states' EPA-approved title I and title V permitting programs.

A local air pollution control agency or agency other than the state air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates that the other agency has the legal authority necessary to carry out that portion of the plan.

Super Emitter Program

40 CFR §§ 60.5371b and 60.5388c; 89 FR 16877–16881.

The super emitter program is a federal program administered by the EPA under CAA section 114(a). The program is designed to provide a transparent, reliable, and efficient mechanism by which the EPA will provide owners and operators with timely notifications of super emitter emissions detected via data collected by EPA-certified third parties using EPA-approved remote sensing technologies. A super-emitter event is one that has a quantified emission rate of 100 kg/hr of methane or greater. The program is described in full in the regulatory text for the NSPS in OOOOb (§ 60.5371b).

The program requires, among other things, owners and operators of “all sources, regardless of whether they are regulated under CAA section 111, to investigate potential super-emitter events and report back to the EPA.”²¹ Some aspects of the super emitter program found at 40 CFR § 60.5371b, including certification of third parties, receiving third party reports, and sending out notifications, are administered by the EPA and, as such, are not included in the model rule in EG OOOOc (40 CFR § 60.5388c). Notably, states will not receive notifications from certified third parties, and states are not required to send any notifications or requests for information to owners or operators.

Super Emitter Program in State Plans

The investigation and reporting elements of the super emitter program included in the model rule (in 40 CFR § 60.5388c except for subsection 60.5388c(a)(3)²²) serve to assure compliance with the presumptive standards in EG OOOOc, other than those for fugitive emissions components at a well site, centralized production facility, or compressor station, in addition to the compliance assurance measures elsewhere in the model rule. Subsection 60.5388c(a)(3) is part of the presumptive standards for the fugitive emissions components designated facilities; it requires repair of any such fugitive emissions component found to be the source of the super emitter event.

Whether a state’s plan should include the model rule in EG OOOOc for the super emitter program (40 CFR § 60.5388c) depends on certain choices made by the state.

If the state chooses to adopt the model rule’s presumptive standards for fugitive emissions components, specifically 40 CFR § 60.5397c, then it must also include the super emitter model rule provision § 60.5388c(a)(3) (which requires repair in accordance with § 60.5397c), because subsection 60.5388c(a)(3) is part of the presumptive standards for fugitive emissions components.²³

²¹ 89 FR 16877.

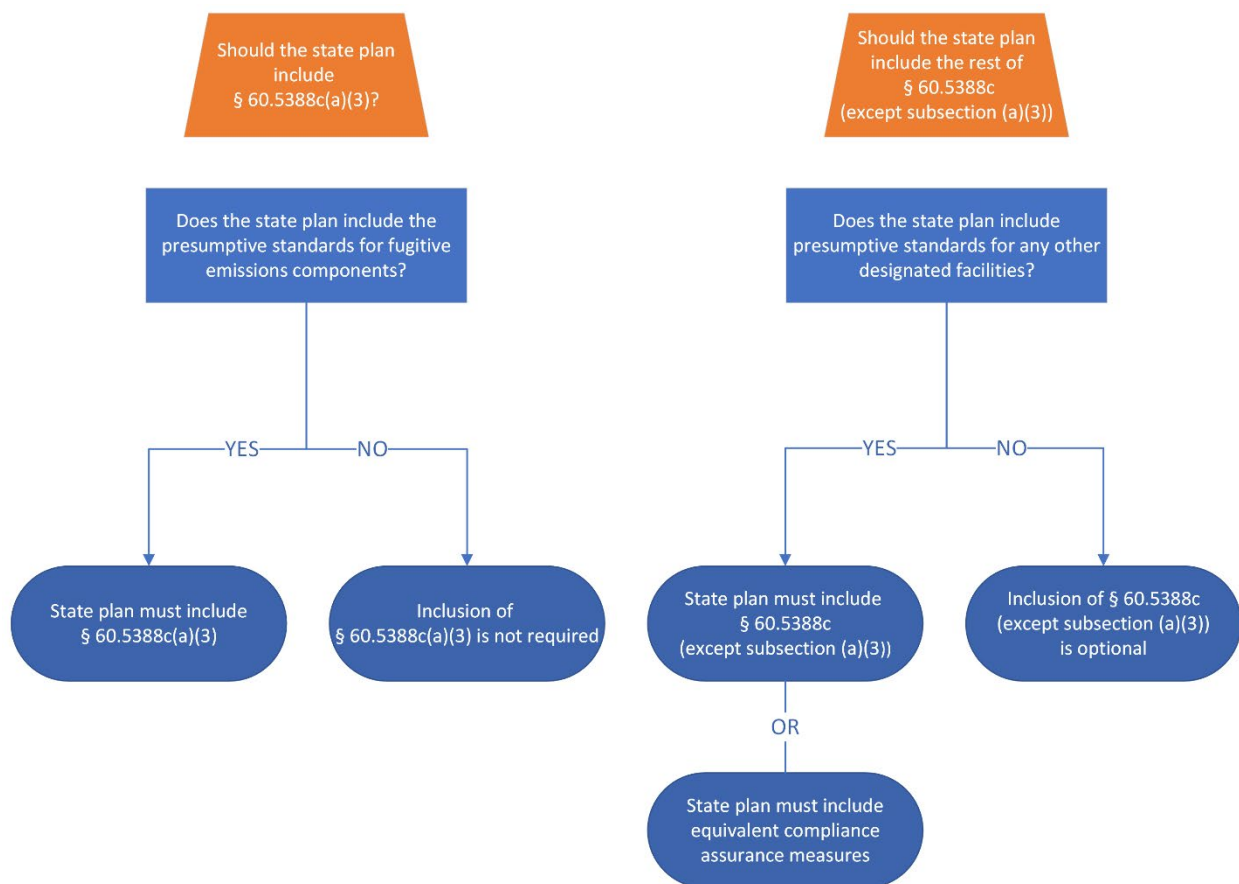
²² This subsection was originally 60.5388c(a)(4) but was changed to 60.5388c(a)(3) in technical corrections. 89 FR 62872, 62881 (August 1, 2024).

²³ See 89 FR 16878.

If the state chooses to adopt *any* of the model rule’s presumptive standards for other designated facilities, then, **either** it must include the associated compliance assurance measures in the model rule, including those in super emitter model rule provisions (40 CFR § 60.5388c except subsection (a)(3)),²⁴ **or** it must include alternative compliance assurance measures that the state can demonstrate are equivalent for the relevant designated facilities.²⁵

If the state chooses to adopt *none* of the model rule’s presumptive standards (and instead adopts standards of performance for *all* designated facilities that are not the presumptive standards), then the state would not be required to include any of the super emitter model rule provisions in its plan, but still must include sufficient standards as well as sufficient compliance assurance measures, including sufficient monitoring, reporting, and recordkeeping requirements to assure compliance with those standards. In this scenario, the state could still choose to voluntarily include the super emitter model rule provisions.

Figure 2. Decision Tree for Including Super Emitter Model Rule Provisions in State Plans



²⁴ 89 FR 16878. See also 40 CFR § 60.5420c(b)(13) (model rule requirement to report super emitter events).

²⁵ 89 FR 17005.

Remaining Useful Life and Other Factors—RULOF

40 CFR §§ 60.5365c and 60.24a(e)–(h); 89 FR 17002–17005 and 88 FR 80508–80528.

States may apply a standard of performance to a particular designated facility (or a class of designated facilities) that is less stringent than required by EG OOOOc based on consideration of that facility’s remaining useful life and other factors. State plans submitted in accordance with EG OOOOc that include standards less stringent than the presumptive standards (which correspond to the degree of emission limitation achievable through the application of the BSER) must comply with the Subpart Ba RULOF provisions in 40 CFR § 60.24a(e)–(h). EG OOOOc does not supersede any requirement within Subpart Ba related to RULOF.

Application of the RULOF provisions in the context of EG OOOOc is distinct from source-by-source equivalency evaluations (that can account for a type of averaging) for leveraging a state program for purposes of the state plan submission (discussed further in this document). RULOF applies where a state intends to depart from the presumptive standards in EG OOOOc and apply a *less stringent* standard for a designated facility or class of facilities. RULOF provisions are relevant to the process of applying a standard of performance in the first instance. In contrast, averaging in the context of EG OOOOc is a mechanism that states may use to demonstrate *equivalency* between the presumptive standards and the standards of performance that are included in a state’s plan (for example from pre-existing state regulations or from standards developed during the state plan process). States are not required to use RULOF provisions in order to implement averaging mechanisms to demonstrate equivalency with the presumptive standards. Put another way, the RULOF provisions in subpart Ba are not relevant to state plans under EG OOOOc that successfully demonstrate equivalency in accordance with distinct strategies discussed in the state flexibilities section of this document, such as averaging.

A state may also apply a compliance schedule to a particular designated facility (or class of such facilities) that is longer than the outermost date provided in EG OOOOc (36 months from the state plan submission deadline) based on consideration of that facility’s remaining useful life and other factors. To do so, the state must demonstrate that the facility cannot reasonably achieve compliance in 36 months based on fundamental differences between the information specific to the facility and the information the EPA considered in determining the compliance schedule.

Invoking RULOF

40 CFR § 60.24a(e); 89 FR 17002–17004 and 88 FR 80513–80521.

There are two basic steps to applying a less stringent standard of performance to a particular facility (or class of facilities) based on consideration of remaining useful life and other factors. The first step is for a state to demonstrate that a particular designated facility (or class of facilities) qualifies for a less stringent standard. This is sometimes referred to as “invoking RULOF.” A state does so by demonstrating that a facility cannot reasonably achieve the

applicable presumptive standard in EG OOOOc based on: (1) unreasonable cost of control resulting from plan age, location, or basic process design; (2) physical impossibility or technical infeasibility of installing necessary control equipment; or (3) other circumstances specific to the facility. In doing so, the state must demonstrate that there are fundamental differences between the information specific to a facility or class of such facilities and the information the EPA considered in determining the presumptive standard in EG OOOOc.

The fact that a particular facility cannot implement the specific BSER on which the presumptive standard in EG OOOOc is based may be, but is not always relevant to invoking RULOF, as there is no requirement that facilities actually implement the BSER. Rather, in order to be eligible for a less stringent standard the state must demonstrate that the facility, or class of facilities, cannot reasonably achieve the presumptive standard using any system of emission reduction.

Invoking RULOF and providing a less stringent standard of performance or longer compliance schedule for a *class* of facilities is only appropriate where all the facilities in that class are similarly situated in all meaningful ways. The facilities must not only share the circumstance that is the basis for invoking RULOF, they must also share all other characteristics that are relevant to determining whether they can reasonably achieve the degree of emission limitation in EG OOOOc. For example, it would not be reasonable to create a class of facilities for the purpose of RULOF on the basis that the facilities do not have space to install the EPA's BSER control technology if some of them are able to install a different control technology to achieve the degree of emission limitation identified in EG OOOOc.

Invoking RULOF Based on Unreasonable Cost of Control

40 CFR § 60.24a(e)(1)(i); 89 FR 17003–17004.

Consideration of the cost to a particular designated facility (or class of facilities) resulting from its age generally takes the form of considering that facility's remaining useful life. In the context of EG OOOOc, the EPA believes that the ability to demonstrate unreasonable cost based on a source's remaining useful life would likely depend on whether the facility will be required to make a capital investment to achieve the identified degree of emission limitation (such as significant capital investment required to design, purchase, and install equipment). This is based on how the EPA conducted the relevant BSER analyses that resulted in the presumptive standards included in EG OOOOc.

In many instances, the EPA specifically considered annualized costs associated with payment of the total capital investment of the technology associated with the BSER. In the estimation of this annualized cost, the EPA assumed an interest rate and a capital recovery period, sometimes referred to as the payback period.

Example: In the estimation of the annual costs for the installation of an instrument air system to power process controllers with compressed air at a medium-sized transmission and storage site, the EPA estimated that the total capital investment (equipment and installation) of the system would be \$76,481. For the BSER analysis, the EPA assumed an interest rate of 7 percent and a capital recovery period of 15 years. This means that the annual cost of recovering the initial capital investment including interest, was \$8,397 per year for 15 years. The total annual cost includes this capital recovery cost plus the additional operation and maintenance cost of the equipment (additional beyond what would be required for a natural gas-driven controller system). For this example, the additional operation and maintenance cost was estimated to be \$2,816 per year, resulting in a total annual cost of \$11,213 and a cost effectiveness of \$1,250 per ton of methane removed, which is a value within the range considered reasonable by the EPA.

Therefore, for this illustrative example, the cost effectiveness is reasonable considering a capital recovery period, or payback period, of 15 years. If the remaining useful life of a particular facility were to be less than 15 years, the result could be a cost effectiveness value for that facility that is outside of the range considered reasonable by the EPA, i.e., fundamentally different from the cost of control the EPA considered in EG 0000c. For example, consider a remaining useful life of 6 years. The resulting capital recovery cost would be \$26,742 per year and total annual cost would be \$29,196. This would yield a cost effectiveness of \$1,834 per ton of methane removed, which would still be in the range considered reasonable by the EPA. Therefore, the state would not be able to claim that the costs were unreasonable for a remaining useful life of 6 years. However, if the remaining useful life were only 2 years, the capital recovery cost would be \$70,502 per year and the total annual cost would be \$72,956. The cost effectiveness of this would be almost \$4,600 per ton of methane removed, which is outside of the range considered reasonable by the EPA. In this situation, this could potentially be used as part of a RULOF demonstration to justify applying a less stringent standard. While the example examines one potential control option to achieve the identified degree of emission limitation for process controllers (zero methane emissions), there are other equivalent control options (e.g., electric controllers) that are considerably less expensive than the installation of an instrument air system. The EPA still finds this example helpful because all zero-emissions control options for process controllers entail capital investment.

While EG 0000c does not prohibit states from attempting to demonstrate cost unreasonableness based on remaining useful life for certain designated facility types that do not entail large capital expenditures (such as fugitive emissions), the EPA believes that it would be difficult for states to reasonably determine that such situations meet the criteria of 40 CFR 60.24a(e). The BSER determinations in EG 0000c that are based on systems of emission reduction that do not require upfront capital expenditures were not based on the assumption

that the compliance costs would need to be amortized over a payback period in order to be considered cost reasonable, and therefore are most likely reasonable for designated facilities that operate for any period of time into the future. Accordingly, a cost unreasonableness showing based on remaining useful life would likely only be appropriate for the following types of designated facilities in EG OOOOc: oil wells with associated gas, storage vessels, process controllers, and pumps. While states are not precluded from attempting to demonstrate cost unreasonableness based on remaining useful life for other designated facility types in EG OOOOc, the EPA does not believe that such a demonstration would likely satisfy the requirements of Subpart Ba.

Calculating a Less Stringent Standard

40 CFR § 60.24a(f); 89 FR 17003 and 88 FR 80517–80524.

If a state has made the demonstration that a particular designated facility (or class of facilities) satisfies the criteria of 40 CFR 60.24a(e), it can proceed to calculating a less stringent standard according to 60.24a(f). Such a standard must be no less stringent (or have a compliance schedule no longer) than is necessary to address the fundamental difference(s) identified as the basis for the less stringent standard (or longer compliance schedule). That is, it must deviate as little as possible from the degree of emission limitation and compliance schedule in the emission guidelines. The standard must also be in the form as required by the EG—so, it must, for example, limit methane and it must be numerical if the corresponding EG OOOOc presumptive standard is numerical.

To determine a less stringent standard of performance under the requirements of Subpart Ba, a state must, to the extent necessary to determine the standard that is no less stringent than necessary, evaluate the systems of emission reduction identified in EG OOOOc. In doing so, states must use the factors and evaluation metrics the EPA considered in assessing those systems. These include technical feasibility, the amount of emission reductions, the cost of achieving such reductions, any nonair quality health and environmental impacts, and energy requirements. States may also consider other factors specific to the facility, or class of facilities, that were the basis of the identified fundamental differences, as well as other systems of emission reduction in addition to those the EPA considered in EG OOOOc.

As discussed in the following section, in certain circumstances under EG OOOOc states may consider a facility's remaining useful life and apply a less stringent standard of performance on that basis. In some cases, a facility may plan on retiring relatively soon after the compliance date. Regardless, the obligation to include a standard of performance in a state plan applies to all designated facilities as defined in EG OOOOc. Therefore, state plans must include standards of performance for designated facilities that are retiring on or after the compliance date, even if the facility has an enforceable commitment to retire imminently following that date.

Implementation and Enforcement Measures

40 CFR § 60.24a(g); 89 FR 17004–17005 and 88 FR 80524–80525.

Where a facility's operating conditions, such as remaining useful life, are the basis for invoking RULOF to apply a less stringent standard, applying such a standard is warranted only so long as the operating condition remains a fundamental difference between that facility's circumstances and the information the EPA considered. Accordingly, if a state applies a less stringent standard by accounting for remaining useful life, the state must include in the state plan the retirement date for the designated facility as an enforceable commitment and include measures that provide for the implementation and enforcement of such commitment. For example, the state could adopt a regulation or enter into an agreed order specifying that the designated facility will not operate beyond a certain date (the facility's planned retirement date), and that regulation or agreed order would then be incorporated into the state plan. The state could also choose to incorporate the retirement date into a permit and incorporate that permit into the state plan.

There may be circumstances under which a designated facility's operating conditions change after a state has applied a less stringent standard such that the facility may be in violation of commitments in the state plan. For example, a source with a retirement date in the state plan may choose to stay in operation past that date. To address this situation, a state may submit a plan revision to reflect the change in operating conditions. Such a plan revision must include a new standard of performance that accounts for the change in operating conditions. The plan revision would need to include a standard of performance that reflects the degree of emission limitation required by EG OOOOc and meets all applicable requirements, or if a less stringent standard is still warranted for other reasons, the plan revision would need to meet all of the applicable requirements for considering RULOF. The new standard of performance would replace the existing standard of performance only upon the EPA's approval of the revised plan.

State Flexibilities

40 CFR § 60.5364c; 89 FR 16996–17002.

Leveraging State Programs

40 CFR 60.5364c; 89 FR 16996.

Under CAA section 111(d) and EG 0000c, states have the prerogative to develop state plans and have flexibility to adopt standards that diverge from the presumptive standards so long as they are consistent with 40 CFR 60.24a(c)'s requirement that standards of performance must be no less stringent than the corresponding emission guideline, unless a state has applied a less stringent standard according to the RULOF provisions. The EPA recognizes that some states already have programs they may want to leverage for purposes of satisfying their state plan obligations. To aid states in successfully leveraging their existing programs, the EPA has identified criteria to follow in determining whether a state plan includes standards that meet the level of stringency required under 40 CFR 60.24a(c). The EPA also provided a framework for how such equivalency demonstrations can be made. The EPA's intention for providing these criteria is to offer states flexibility while establishing guideposts for states and the EPA to follow to ensure that all state plans meet the degree of emission limitation required under EG 0000c. The criteria also enable the EPA to make reasoned, consistent decisions with respect to whether state plans are satisfactory and approvable.

Criteria for Equivalency Demonstrations

40 CFR § 60.5364c(a); 89 FR 16996–1700.

The EPA's framework for equivalency demonstrations outlined below consists of a source-by-source (or designated facility-by-designated facility) evaluation methodology based on the following basic criteria:

- Designated facility
- Designated Pollutant
- Standard Type/Format of Standard (*e.g.*, numeric, work practice)
- Emissions Reductions (with consideration of applicability thresholds and exemptions, and unless invoking RULOF to set a less stringent standard)
- Compliance Determination Method
- Ongoing Compliance Assurance Requirements (*i.e.*, monitoring, recordkeeping, and reporting)

Each of these criteria must be evaluated with respect to each standard in a state plan that diverges from the presumptive standard in EG OOOOc. The state must also provide supporting documentation for these criteria.²⁶

Step-by-Step Evaluation Methodology

40 CFR § 60.5364c; 89 FR 16996–17002.

The following step-by-step evaluation methodology is intended to address all equivalency criteria and is intended to be applied on a source-by-source (or designated facility-by-designated facility) basis.²⁷

- l) Step One: Are the state rule designated facility definition, pollutant, and format the same?

The first question that a state needs to answer is whether its existing program that it wishes to leverage as part of its state plan (or standard that diverges from EG OOOOc's presumptive standard that it wishes to adopt) defines the regulated emissions sources substantially similar to how the EPA defines a designated facility.

There may be situations where a state's existing program covers part or a subset of EG OOOOc's designated facility definition. For example, the definition of process controllers in EG OOOOc may cover a broader group of facilities than does a specific state program's definition of similar facilities. Such subsets, or more narrow designated facility definitions, would not alone fulfill the state's obligation to address all designated facilities.²⁸

The state should also evaluate whether the standard regulates the same pollutant as EG OOOOc (GHGs with standards expressed as limitations on methane), and whether the format of the standard is the same (*e.g.*, work practice or performance-based numerical standard).

If the answer is "no" to any of these three questions (*e.g.*, if the state program regulates VOC and not methane), then the unaltered existing state program could not be deemed equivalent

²⁶ See 60.5364c(b).

²⁷ For a discussion of why the EPA does not permit state plans for OOOOc to demonstrate equivalency for emissions reductions based on a total program comparison, see 89 FR 16998.

²⁸ In a related scenario, the EPA recognizes states may have broader thresholds or definitions for regulatory coverage that may differ from EG OOOOc's definitions of designated facilities. The EPA acknowledges that states may choose to regulate non-designated facilities under state law for purposes other than satisfying their CAA section 111(d) state plan submission requirement. However, it would not be appropriate for a state to account for non-designated facilities for purposes of demonstrating program equivalency in terms of emission reductions. Put another way, for purposes of EG OOOOc, a state cannot "bank credit" for portions of a state plan that rely on state laws that regulate sources that are not designated facilities. The emission reductions relied upon for purposes of demonstrating equivalency when leveraging a state program should come from designated facilities.

with the EG OOOOc presumptive standard for the designated facility in question.²⁹ The existing state program would have to be altered to address the inconsistency to be included in the state plan. If the answer is “yes” to all of these questions, a state could proceed to Step Two.

II) Step Two: Are the emissions reductions the same?

If a state wishes to rely on an existing state program for purposes of its state plan, then the state plan must include a demonstration that the existing state standards for designated facilities achieve the same or greater emissions reductions as the presumptive standards in EG OOOOc. States have several options to make this demonstration.

- One option is to make the equivalency demonstration based on the EPA model plant/representative facility.
- Another option to make the demonstration is to compare the emissions reductions achieved by the state standard applied to an actual facility in the state, to the EPA model plant/representative facility emissions reductions in the EPA’s BSER analysis.
- A third option is to conduct a state-wide emissions comparison. Using this approach, the state would apply the EG OOOOc presumptive standard to data reflecting the population of sources in the state (*i.e.*, using data on the number of sources and actual emissions) and calculate the state-wide emissions reductions that would be achieved by applying the presumptive standard. The state would then demonstrate that the existing state standards for the designated facility achieve the same or greater emissions reductions.

If, for any designated facility type, emissions reductions from the implementation of the existing state standards are less than would be achieved from the implementation of the EG OOOOc presumptive standards then the state cannot make an approvable equivalency determination. In this situation, it may be possible for the state to leverage parts of its existing state standards in conjunction with new and/or revised state standards to demonstrate equivalence. It may be appropriate to apply a less stringent standard of performance to a particular facility (or class of facilities) based on consideration of RULOF provided the prerequisites and criteria for invoking RULOF are met. Conversely, if emissions reductions from the implementation of the state rule are the same or greater than would be achieved from the implementation of the presumptive standards, a state can proceed to Step Three.

²⁹ CAA section 111(d) does not allow the EPA to approve state plan requirements for pollutants different than those designated in an emission guideline. The EPA is aware that while numerous states have programs in place that regulate emissions from the designated facilities in EG OOOOc, many of those programs do not regulate GHGs in the form of limitations on methane. Some state programs regulate VOC, for example, but those programs cannot be leveraged to fulfill the requirements of EG OOOOc unless amended to regulate GHGs in the form of limitations on methane.

III) Step Three: Are the compliance measures under the state program adequate?

State plans leveraging existing state programs must include a demonstration that the associated compliance measures (*i.e.*, monitoring, recordkeeping, and reporting requirements) are sufficient to ensure continued compliance with the standards and projected emissions reductions. The EPA's presumptive standards included in EG OOOOc are accompanied by compliance measures that may be helpful as a benchmark, though they may not be appropriate for all state standards that diverge from the presumptive standards.³⁰

³⁰ For a discussion of how the use of alternative technologies for monitoring fugitive emissions could affect the evaluation methodology, see 89 FR 17001–2.

Figure 3. Steps in Equivalency Methodology for Leveraging Existing State Programs



Below are some examples of hypothetical state rules illustrating how a state could implement the evaluation methodology when conducting a state rule equivalency determination.

Table 6. Presumptive Standards Equivalency Evaluation Examples

Designated Facility Requirements	Step One Applicability and Format of Standard	Step Two Emission Reduction	Step Three Compliance Assurance Measures
<p><i>Designated Facility:</i> Single Reciprocating Compressor at Gathering and Boosting. <i>Designated Pollutant:</i> Total hydrocarbon as Surrogate for Methane. Format of Standard: Numerical (Collect and route to control to achieve 95 percent reduction). <i>Estimated Emissions Reduction (Basis):</i> 95 percent (model compressor basis). <i>Compliance Assurance Requirements:</i> Performance test of control device, continuous parameter monitoring, recordkeeping and reporting.</p>	Pass	Pass	Pass
<p><i>Designated Facility:</i> Single Reciprocating Compressor at Gathering and Boosting. <i>Designated Pollutant:</i> Methane. Format of Standard: Work Practice (Change out rod packing every 3 years). <i>Estimated Emissions Reduction (Basis):</i> 56 percent (model compressor basis). <i>Compliance Assurance Requirements:</i> Records of changeout.</p>	Fail—format of standard not equivalent		
<p><i>Designated Facility:</i> Single Reciprocating Compressor at Gathering and Boosting. <i>Designated Pollutant:</i> Total gas flow rate as surrogate for methane. Format of Standard: Numerical: 4 scfm. <i>Estimated Emissions Reduction (Basis):</i> 88 percent (analysis of statewide emissions from actual reciprocating compressors). <i>Compliance Assurance Requirements:</i> Measure volumetric flow rate once every 6 months, record results.</p>	Pass	FAIL—did not demonstrate that the BSER presumptive standard model facility reduction was met.	

Averaging Emissions Reductions

89 FR 17002.

States may average emissions reductions to demonstrate equivalency within the confines of each type of designated facility (*e.g.*, storage vessel designated facilities to storage vessel designated facilities, pump designated facilities to pump designated facilities, etc.). In the context of non-numerical standards, the EPA would expect the averaging associated with the equivalency determination to be qualitative.³¹

This type of averaging may be used regardless of whether a state chooses to leverage an existing state program that predated EG OOOOc for purposes of their state plan submission. In other words, states may average within the confines of each type of designated facility even if a state does not choose to leverage an existing program. This type of averaging is allowed even if the state is developing new regulations in response to EG OOOOc for its state plan.

³¹ For an example of a qualitative averaging methodology, see “Equivalency of State Fugitive Emissions Programs for Well Sites and Compressor Stations to Final Standards at 40 CFR part 60, Subpart OOOOa,” located at Docket ID No. EPA-HQ-OAR-2017-0483 (January 17, 2020), available at https://19january2021snapshot.epa.gov/sites/static/files/2018-09/documents/equivalency_of_state_fugitive_emissions_programs_for_well_sites_and_compressor_stations.pdf.

Process for Submission

40 CFR §§ 60.5362c and 60.23a; 89 FR 17007–17010.

Letters of Negative Declaration

40 CFR §§ 60.5362c(b)–(c) and 60.23a(b); 89 FR 17007.

No plan is required for states that do not have any designated facilities. In such a case, the state must submit a letter certifying that no designated facility is located within the state to the EPA by the March 9, 2026, deadline for state plan submissions. The letter must be submitted via the State Planning Electronic Collaboration System (SPeCS).

Once the negative declaration letter has been received, the EPA will place a copy in the public docket and publish a notice in the Federal Register. If, at a later date, a designated facility is found in the state, that designated facility must be subject to a state, Tribal, or federal plan in accordance with the requirements of EG OOOOc, Subpart Ba, and the CAA.³² If a state with designated facilities mistakenly submit a letter of negative declaration, this error must be remedied by putting a plan for those facilities in place. This could be either a state plan or a federal plan, depending on the timing of whether the state submits and EPA approves a state plan before the EPA promulgates a federal plan.

Deadline for Submission

40 CFR § 60.5362c(c); 89 FR 17008–17010.

EG OOOOc supersedes the deadline for state plan submission in Subpart Ba (18 months after publication of the emission guidelines) and extends the deadline to 24 months after publication of EG OOOOc. The state plan submission deadline in EG OOOOc is March 9, 2026.

If a state does not submit a plan by the deadline, the plan is incomplete, or if the EPA disapproves the plan, then the EPA will establish a federal plan for designated facilities in that state.

The federal plan would apply to the designated facilities in that state until the EPA approves a state plan that regulates the designated facilities, and that state plan becomes effective.³³

³² See 40 CFR § 60.5369c.

³³ A state plan is effective on the date specified in the notice published in the *Federal Register* announcing the EPA's approval of the plan. See also 40 CFR § 60.27a(c)-(d).

Submitting Electronically through SPeCS

40 CFR § 60.23a(a)(3); 89 FR 17008 and 88 FR 80531–80532.

States must submit their plans (and any plan revisions) using SPeCS, the State Planning Electronic Collaboration System, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>).

States are familiar with SPeCS because they use the system for SIPs under CAA section 110. SPeCS is a user-friendly, web-based system that enables state air agencies to officially submit plans and associated information electronically for review and approval to meet their CAA obligations. While the EPA previously required states to submit paper copies of their plans, this is no longer the requirement.

Do not use SPeCS to submit confidential business information (CBI). Anything submitted using SPeCS cannot later be claimed to be CBI. The state must confer with the Regional office for the procedures to submit CBI information.

For help using SPeCS, see the online job aides available at <https://www.epa.gov/air-quality-implementation-plans/specs-sips-job-aides>, or contact a SPeCS Regional Manager (list available at <https://www.epa.gov/air-quality-implementation-plans/specs-regional-managers>).

Parallel Processing

40 CFR § 60.27a(h); 88 FR 80505–80506.

Prior to completing public outreach and engagement and officially adopting a plan, a state may request parallel processing. Parallel processing is a streamlined process that allows the EPA to propose approval of the plan in parallel with the state completing its process to fully adopt the plan in accordance with the applicable administrative completeness criteria. The EPA can then finalize approval once those criteria have been fully satisfied and a final plan has been submitted.

To elect parallel processing, the state's letter of submission accompanying the plan must request parallel processing. The state must submit a schedule for final adoption or issuance of the plan in place of evidence of adoption. The plan must include a copy of the proposed/draft regulation or document (in place of the actual regulation). The plan must include documentation of the engagement conducted prior to the parallel processing submission and of any planned additional engagement to be conducted prior to adoption of the final plan. Procedural requirements (*e.g.*, notice, hearings, comment/response) do not apply to the initial submission of a plan under parallel processing (but see the next paragraph with regard to meaningful engagement). A proposed plan submitted for parallel processing must still meet all the technical criteria for completeness. If these conditions are met, the submitted plan may be considered for purposes of the EPA's initial plan evaluation and proposed rulemaking action.

Note that meaningful engagement is defined as “*timely* engagement with pertinent stakeholders and/or their representatives in the plan development or plan revision . . .” (emphasis added).³⁴ Therefore, meaningful engagement should occur well in advance of a state being ready to submit a plan to the EPA for parallel processing. Meaningful engagement is integral in early state plan development and should be included as part of the completeness criteria for parallel processing.

The exceptions to the administrative criteria described here (the procedural requirements of notice, hearings, and comment/response) only apply to the EPA proposing action on the state plan, not final approval. If the EPA has proposed approval through parallel processing, the state must submit a fully adopted and final plan that meets all of the completeness criteria before the EPA can finalize its approval.

If the state finalizes and submits a plan that includes changes to the plan that the EPA proposed to approve via parallel processing, the EPA will evaluate those changes for significance. If any such changes are found by the EPA to be significant (*e.g.*, changes to the stringency or applicability of a particular standard of performance), then the submission would be treated as an initial submission and the EPA would be required to re-propose its action on the final plan and to provide an opportunity for public comment on the significant changes.

Once the state plan submission deadline passes, the EPA has the authority to promulgate a federal plan at any time for a state that has not submitted a complete plan, even if a state has requested parallel processing and the EPA has proposed an action.

The EPA intends to continue working collaboratively with states that are in the process of adopting and submitting state plans, but states must remain mindful of regulatory deadlines for plan submissions even when using the parallel processing mechanism.

³⁴ 40 CFR § 60.21a(k).

Post-Submission Actions

40 CFR §§ 60.5367c–60.5369c and § 60.27a; 88 FR 80503–80507.

Completeness Determination

40 CFR §§ 60.5367c and 60.27a(g); 89 FR 17007–17008 and 88 FR 80490–80491.

Within 60 days of submission of a state plan, the EPA determines whether the state plan is complete. If the EPA does not deem the submission incomplete within 60 days, then it is deemed complete by operation of law.³⁵ If the EPA determines that the submission is incomplete, the state will be treated as not having made the submission, and the EPA will issue a federal plan.

The criteria by which the EPA determines whether a state plan is complete include the previously discussed administrative and technical criteria (see the State Plan Requirements section of this document).

State Plan Evaluation

40 CFR §§ 60.5367c–60.5378c and 60.27a(b)–(d); 88 FR 80491–80492.

After a state plan has been determined to be complete, within 12 months, the EPA will evaluate whether the plan is “satisfactory”; that is, whether the components of the plan meet all the requirements of the CAA, Subpart Ba, and EG OOOOc. The EPA does so by evaluating a plan (or plan revision) to determine whether the plan is approvable, in part or in whole, through a notice-and-comment rulemaking process. After evaluating the submitted plan, the EPA will propose an action on a state plan submission (*e.g.*, approval, partial approval/partial disapproval, disapproval) and take public comment on the proposal. After the EPA reviews public comments on the proposed action, the EPA will make any appropriate revisions to its proposal and finalize its action on the plan.

If the EPA approves a state plan in a final action, the standards of performance and other components of that state plan become federally enforceable.

If the EPA disapproves the state plan, in whole or in part, then the EPA will promulgate a federal plan. In the case of a disapproval, the scope of the disapproval – of the entire plan or just in part - defines the scope of the EPA's federal plan. That is, the EPA's federal plan will cover only the designated facilities to which the disapproval applies (see next section). The EPA will also promulgate a federal plan if a state fails to submit a plan by the submission deadline or if a submission is determined to be incomplete.

³⁵ 40 CFR § 60.27a(g)(1).

Partial Approval and Disapproval

40 CFR §§ 60.5367c–60.5378c and 40 CFR 60.27a(b)(1); 88 FR 80503–80504.

The EPA reviews each provision of a state plan to determine whether it meets the applicable statutory and regulatory requirements. If it meets the applicable requirements, the EPA must approve it. It is entirely possible for some state plan provisions to comport with the applicable requirements and others not to. The EPA may partially approve or partially disapprove a state plan when portions of the plan are approvable, but other discrete and severable portions are not. In such cases, the state can move forward with implementing those portions of the plan that are approvable.

In the situation of a partial approval and partial disapproval, the portions of a state plan that the EPA may partially approve must be “severable” from the disapproved portions. A portion is severable when: (1) the approvable portion of the plan does not depend on or affect the portion of the plan that cannot be approved, and (2) approving a portion of the plan without approving the remainder does not alter the approved portion of a state plan in any way that renders it more stringent than the state's intent.

The EPA's decision to partially approve and partially disapprove a plan must go through notice and comment rulemaking. As a result, the public will have an opportunity to submit comments on EPA's proposed action including the appropriateness of partial approval/partial disapproval for a particular state plan submission.

If the EPA does promulgate a federal plan for a partially disapproved portion, the state may, at any time, submit a revised plan to replace that portion. If the state does so, and the EPA approves the revised plan, then the EPA would withdraw the federal plan for that state. State plan revisions to address partial disapprovals must meet all completeness criteria.

Conditional Approval

40 CFR §§ 60.5367c–60.5378c and 40 CFR 60.27a(b)(2); 88 FR 80504–80505.

Subpart Ba authorizes the EPA to conditionally approve a plan submission that substantially meets requirements but that requires some additional, specified revisions to be fully approvable. For the EPA to conditionally approve a submission, the state must commit to adopting and submitting specific enforceable provisions to remedy the stipulated plan deficiency by a date that is within 12 months of the conditional approval. The resulting required submission would be treated as a plan revision and be subject to the same processes and timeframes for EPA action as other plan revisions (*e.g.*, completeness determination, approval and/or disapproval).³⁶

³⁶ See 40 CFR 60.28a.

The conditional approval mechanism provides beneficial flexibility for states in cases where partial disapproval may be appropriate because a discrete portion of a state plan does not meet the applicable requirements, but that deficiency is not so significant that it affects the substantial adequacy of the plan.

A conditional approval is not a disapproval, meaning there has been no failure on the part of the state. A conditional approval thus does not trigger a corresponding federal plan. Conditional approvals will be evaluated and designed on a case-by-case basis, with consideration of public health and welfare.

If the state fails to meet its commitment to submit the necessary plan revision within 12 months, the conditional approval automatically converts to a disapproval. If a conditionally approved state plan converts to a disapproval due to either the failure of the state to timely submit the required measures or if the EPA finds the submitted measures to be unsatisfactory, such disapproval would be grounds for implementation of a federal plan.

Calls for Revisions

40 CFR § 60.27a(i); 88 FR 80506–80507.

If the EPA finds that a previously approved state plan is substantially inadequately to meet the applicable requirements of the CAA, subpart Ba, or of EG OOOOc, it may call for a plan revision. This mechanism is a useful tool for ensuring that approved state plans continue to meet all requirements over time. The EPA must notify the state of the inadequacies, and the required plan revisions must be submitted within twelve months, or as determined by the EPA. Such findings and notice must be public.

A state plan call would be generally appropriate under two circumstances: when legal or technical conditions arise after the EPA approves a state plan that undermine the basis for the approval, or when a state fails to adequately implement an approved state plan.

In the first circumstance, a change in conditions or circumstances could render an approved plan inconsistent with EG OOOOc, Subpart Ba, and/or the CAA, necessitating a plan revision to realign it with the applicable requirements. For example, a court decision subsequent to the approval of a plan may render that plan substantially inadequate to meet applicable CAA requirements resulting from the change in law.³⁷ Or, the EPA may determine that technical conditions, such as design assumptions, about control measures that were the basis for a state plan approval later prove to be inaccurate, meaning that the plan would be substantially

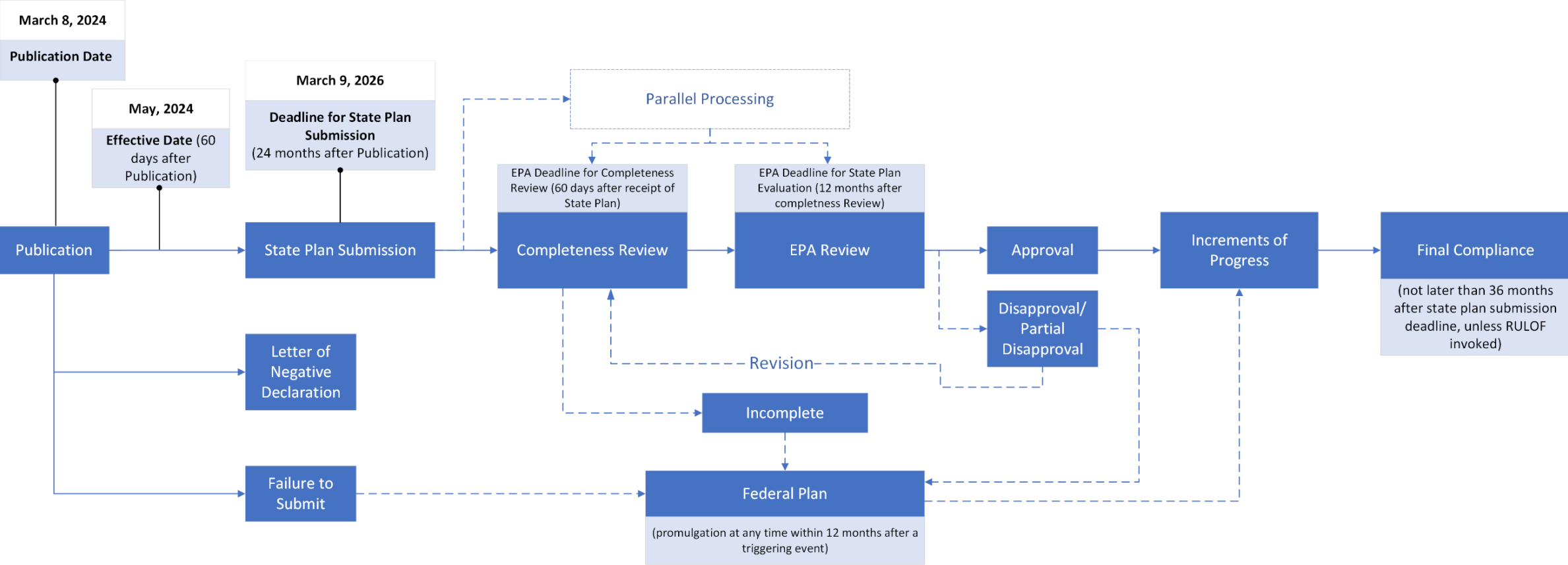
³⁷ An example of this circumstance in the context of CAA section 110 is the 2015 “SSM SIP Call”, which required states to correct previously approved SIP provisions based on subsequent court decisions regarding startup, shutdown, and malfunctions (SSM) operations. 80 FR 33840, June 12, 2015.

inadequate to achieve the emission reductions required by EG 0000c and therefore the plan should be revised.³⁸

The second circumstance in which a state plan call may be appropriate is when a state fails to adequately implement an approved state plan. In this case, the approved state plan may facially meet all applicable requirements, but a failure in implementation (*e.g.*, due to changes in available funding, resources, or legal authority at the state level) renders the plan substantially inadequate to meet the requirements of EG 0000c and CAA section 111(d). In this circumstance, a state, in response to a plan call, would either be required to submit a plan revision that provides for implementation given the state's actual circumstances, or to provide demonstration that the plan is being adequately implemented as approved.

³⁸ For example, the 1998 “NO_x SIP call” required states to submit SIP revisions addressing NO_x emissions found, after SIP approvals, to significantly impact the attainment of air quality standards in other states due to atmospheric transport. 63 FR 57356, October 27, 1998.

Figure 4. Hypothetical Timeline of Post-Submission Actions



Federal Plans

40 CFR §§ 60.5368c, 60.5374c(b), and 60.27a(c)–(d); 89 FR 17012–17013 and 88 FR 80492–80495.

If the EPA's obligation to promulgate a federal plan is triggered, the EPA will develop a rulemaking action to address that obligation. Any federal plan for EG OOOOc must meet the requirements of CAA section 111(d) and therefore contain the same components as a state plan, namely standards of performance for designated facilities and measures that provide for the implementation and enforcement of such standards. The model rule included within EG OOOOc will likely form the basis of any such federal plan.

Upon request by the owner or operator of a designated facility, the EPA must take into consideration the remaining useful life and other factors of that facility as part of developing a federal plan, CAA section 111(d)(2), in accordance with the provisions of 60.24a(e)–(h). This requires the EPA to conduct the same RULOF analysis as required in state plans, including identifying whether the remaining useful lives of relevant designated facilities, among other appropriate factors, merit different standards of performance for those facilities. The EPA will also need to consider associated compliance times and increments of progress for designated facilities.

The development of a federal plan, or significant revision to a federal plan, will include meaningful engagement.³⁹ Federal plans are also subject to the procedural requirements of CAA section 307(d), such as the requirements for proposed rulemaking and opportunity for public hearing.

The final rule promulgating a federal plan will directly regulate the relevant designated facilities.

A state may submit a plan to replace a federal plan, even after the state plan submission deadline. However, once the EPA's authority and obligation to promulgate a federal plan has been triggered, the act of a state submitting a plan does not cancel the EPA's authority or obligatory timeline. 40 CFR 60.27a(d). Only an approved state plan can supplant an already promulgated federal plan or relieve the EPA's responsibility to timely promulgate a federal plan.

If a state submits a late plan, there may be concurrent timelines for promulgation of the federal plan and the EPA's action on the late state plan. The EPA is not obligated to act on a late state plan prior to promulgating a federal plan.

³⁹ 40 CFR § 60.27a(f).

Delegation Request

40 CFR § 60.5372c.

A state may meet its CAA 111(d) obligations by submitting an acceptable written request for delegation of an applicable federal plan. The delegation request must include:

- A demonstration of adequate resources and legal authority to administer and enforce the federal plan.
- Provision for state progress reports to the EPA.
- Certification that the hearing on the state delegation request, similar to the hearing for a state or Tribal plan submission, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.
- A commitment to enter into a Memorandum of Agreement with the Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority.

Additional resources related to delegations of authority can be found on EPA's public website at <https://www.epa.gov/caa-permitting/delegation-clean-air-act-authority>.