



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF AIR POLLUTION CONTROL
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APC-SIP-P-01-Rule and SIP SOP-082718

Rulemaking and Regulatory SIP Revisions Standard Operating Procedures

DISCLAIMER: This document is policy only and does not create legal rights or obligations. It is intended to provide division staff guidance on how to apply decisions, procedures and practices pertaining to the internal operation or actions of the division. Decisions affecting the public, including the regulated community, in any particular case will be made applying applicable laws and regulations to the specific facts. Mention of trade names or commercial products does not constitute an endorsement or recommendation for use.

EFFECTIVE DATE:

August 27, 2018

SIGNATURES:

Division Director (required)

Drafter / Preparer (required)

Section 1: INTRODUCTION

The purpose of this Standard Operating Procedure (SOP) guide is to provide a consolidated reference document for use in training and orientation of employees. This guide will also be a useful reference tool for more experienced employees. The SOP identifies the technical information and procedural requirements for rulemaking adoption per the requirements of Uniform Administrative Procedures Act, T.C.A., § 4-5-204. This SOP also identifies regulatory requirements for submitting revisions to Tennessee's State Implementation Plan (SIP) in accordance with 40 CFR 51 Subpart F and the Tennessee Air Quality Act, T.C.A., § 68-201-104 through 106. Furthermore, this SOP includes procedures for submitting revisions to Tennessee's Title V program and section 111, 112, and 129 plans.

This SOP will delineate the steps in the process, including responsible personnel, from the conceptual planning stages through the formal drafting and rulemaking adoption, the final effective date of rulemaking, submissions of the effective rule for incorporation into Tennessee's SIP, Title V program, and section 111, 112, and 129 programs, and finally reviewed by the Joint Government Operations Committee for recommendation in rules omnibus bill. Additional information includes statute and authorization for rulemaking and supporting documentation (when necessary). This SOP is only intended to describe routine conditions normally encountered in the rulemaking process. Additional processes and/or irregular conditions that could be involved with rulemaking will be considered independently of this SOP.

All rulemaking functions of the Tennessee Department of Environment and Conservation (TDEC) Division of Air Pollution Control (APC) are governed by the Uniform Administrative Procedures Act (UAPA), Title 4, Chapter 5, Part 2, Tenn. Code Ann., and the Tennessee Air Quality Act (TAQA), Title 68, Chapter 201. The Tennessee Air Quality Act (TAQA) provides the Air Pollution Control Board (APC Board) with the power and duty to promulgate rules and regulations to effect the intent of the TAQA. Hence, the rulemaking process for APC requires review and adoption of proposed rules by the APC board, review and approval of the office and attorney general, and filing of the rule by the Secretary of State. Finally, the Joint Senate and House Government Operations Committee has responsibility for review of administrative rules and regulations before they become effective.

Most air quality rules adopted by the Air Pollution Control Board must be submitted to U.S. EPA for incorporation into Tennessee's State Implementation Plan (SIP), Title V Program, Section 111 Plan, Section 112 Plan, or Section 129 Plan. Revisions of Tennessee's SIP are governed by the Clean Air Act (CAA) and 40 CFR 51 Subpart F. Rules and plans that involve implementation of federal New Source Performance Standards (NSPS), emissions guidelines for existing sources, and Solid Waste Combustion standards and guidelines under section 129 of the CAA are governed by sections 111(c) and (d) of the CAA and 40 CFR 60 Subpart B¹. Rules that involve state regulations that implement or incorporate federal Part 61 or Part 63 NESHAPS (including MACT and GACT standards) are governed by Section 112(l) of the CAA and 40 CFR 63 Subpart E². Rules that involve Title V regulations (including fees) are governed by 40 CFR 70.4(i).

A separate SOP is available for non-regulatory SIP, Title V, Section 111, and Section 112 revisions that do not include new or revised air quality rules.

Plans that involve Motor Vehicle Emission Budgets require additional steps that are not specified in this SOP. Please see the Regulatory Development Manager or Deputy Director for instructions.

Rulemaking or SIP revisions that are directly related or could have implications to regulatory matters in local jurisdictions that have been given authority to enact provisions for the control of air pollution will require submittal of draft documents for review by the appropriate local authority. The requirement, timing and other factors associated with draft submittal to local agencies may vary based on the regulatory matter in question. Please see the Regulatory Development Manager, Deputy Director, or Local Air Program Coordinator for instructions.

¹ Subpart B only addresses plans for existing facilities. State procedures for implementing NSPS are addressed only in §111(c).

² This SOP only includes procedures regarding state rules that are identical to or incorporate federal NESHAPSs by reference. Rules that adjust federal section 112 standards or are adopted to substitute for section 112 standards are governed by the procedures of 40 CFR 63 Subpart E, but are not discussed in this SOP.

Section 2 - STATUTORY AND REGULATORY AUTHORITY FOR PROCESS

Tennessee Code : TITLE 4 STATE GOVERNMENT :

Chapter 5, Uniform Administrative Procedures Act :

Part 2, Rulemaking and Publications.

Tennessee Code : TITLE 68 HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION :

Chapter 201, Tennessee Air Quality Act :

Part 1, Tennessee Air Quality Act.

68-201-104. Creation of air pollution control board – Members – Meetings - Organization.

68-201-105. Powers and duties of board - Notification of vacancy - Termination due to vacancy - Conflict of interest policy.

68-201-106. Matters to be considered in exercising powers.

Code of Federal Regulations : TITLE 40 PROTECTION OF ENVIRONMENT

Part 51, **Requirements for Preparation, Adoption, and Submittal of Implementation Plans**

Subpart F, **Procedural Requirements**

Part 60, **Standards of Performance for New Stationary Sources**

Subpart B, **Adoption and Submittal of State Plans for Designated Facilities**

Part 63, **National Emission Standards for Hazardous Air Pollutants for Source Categories**

Subpart E, **Approval of State Programs and Delegation of Federal Authorities**

§63.91 Criteria for straight delegation and criteria common to all approval options

Part 70, **State Operating Permit Programs**

§70.4, **State program submittals and transition.**

§70.4(i) Program Revisions.

Section 3: PROCEDURES

The following steps should be followed in the order prescribed, unless otherwise specified. The individual responsible for completing each step is identified by their position within the Division or Department. No deviations from these procedures are allowed without specific permission from the Regulatory Development Manager and/or Deputy Director.

Responsible persons are abbreviated as follows:

EC-Author – APC staff who drafts rule revision and supporting documentation

Reg Dev-RC - Regulatory Development Program Rule Coordinator

EM-Reg Dev – Manager of Regulatory Development Program

External Affairs – External Affairs Regional Directors

DD – Deputy Director over Regulatory Development Program

ASA2 - Web Contact – Admin staff who manages APC web page

APC Board ASA-2 – Admin staff assigned duties related to Air Pollution Control Board

Admin Manager – Manager of Admin staff

OGC-RC – Office of General Counsel Rule Coordinator

OGC-Attorney – Office of General Counsel Attorney, usually in Environmental Law Section

OGC-Gov’t Relations – Office of General Counsel Government Relations Attorneys (Legislative Liaisons)

Permitting/Reg Dev EC4 – Environmental Consultant 4 who reports to Deputy Director over Regulatory Development Program

JGOC – Joint Government Operations Committee

Responsible Person	Steps
	1. Identify rule need. Driven by regulatory changes or internal updates/improvements. (Discuss with EM – Reg Dev and/or DD)
EM-Reg Dev, DD	a) Review necessity/priority of rule. (Discuss in Reg. Dev. Monthly meeting, including need for stakeholder/board involvement in early stages of rulemaking)
EM-Reg Dev	b) Determine if the rule can be grouped with other rules
EM-Reg Dev	c) Assign rulemaking staff. This will usually be Regulatory Development Program staff but may be staff from other programs as agreed upon by respective Program Managers and Deputy Directors.
EM-Reg Dev	d) Track progress of rule (done throughout process)

	2. Initiate rulemaking. Clearly define intent of new rule.
EC-Author	a) Review rule and evaluate impact of cross references to other rules
EC-Author	b) Draft new rule (redline/strikeout or delete/replace)
EM-Reg Dev	c) Determine if OGC attorney review is needed at this point in the process. Attorney involvement based on complexity and controversial nature of rule change. Open APC Case Number through enforcement, if needed.
EM - Reg Dev	d) Inform OGC Rulemaking Coordinator that APC is ready to formally proceed with rule
	3. Consult with EC-Author and EM- Reg Dev
OGC-RC, OGC-Attorney	<ul style="list-style-type: none"> • Review rulemaking to ensure no conflicts with other rules • Assist in editing of rule, as needed • Consult and facilitate on rulemaking process through coordination with APC • Open OGC case number, close APC case number
	4. Finalize Draft Rulemaking for Review
EC-Author	a) Complete rule revisions (redline strike out or delete/replace)
EC-Author EC-Reg. Dev.	b) Complete required forms with assistance from EC- Reg. Dev. (SS-7037 – Rulemaking Notice Filing Form and Rulemaking Justification Questions, and Rulemaking Memorandum)
EC-Author	c) Prepare rulemaking package for Director/Deputy Commissioner review
Reg Dev-RC	d) Final format check
	5. Review draft rules and forms for both content and structure. Director review.
EM - Reg Dev	a) Complete review prior to submittal DD for review
DD	b) Review and edit. Return to EM-Reg Dev if necessary.
DD	c) Completed draft EPF Review Checklist (Division sections) for Fee Rules and send to OGC-RC
EC-Author	d) Make edits/revisions as necessary
EM - Reg Dev	e) Following DD approval, e-mail forms and Rulemaking Memorandum to APC Director for approval
EM - Reg Dev	f) Following APC Director approval, e-mail forms and Rulemaking memorandum to Deputy Commissioner for review and approval

	<p>6. Submittal of Pre-Draft SIP Revisions, Title V revision, or Section 111/112/129 program revision. All rule revisions are to be submitted to EPA for pre-draft review, unless otherwise determined by the DD or Director.</p>
DD	<p>a) Consult with EC-Author and EM-Reg Dev as to the timing of EPA Pre-Draft Submittal. Determine if Pre Draft submittal should wait until Deputy Commissioner approval. Since EPA pre-draft review is not a statutory or regulatory requirement, DD may authorize special circumstances when a rule may move forward without EPA pre-draft review.</p>
EM-Reg Dev	<p>b) Complete final review and coordinate with Reg Dev-RC to send pre-draft email to EPA Region 4</p>
Reg Dev-RC	<p>c) Use letter template or sample email text to create pre-draft to required EPA personnel. Pre-draft SIP submissions should be submitted using EPA's Central Data Exchange (CDX) SPeCS system and include a letter signed by the DD. Pre-draft Title V and 111/112/129 rules should be sent via email using the appropriate sample email text. Standard practice is to allow 30 days for EPA to review a pre-draft. A template SIP letter and sample email text can be found on the Regulatory Development Sharepoint Site, Rulemaking folder.</p>
Reg Dev-RC	<p>d) Confirm EPA's receipt of pre-draft and inform EM-Reg Dev and DD</p>
EC-Author	<p>e) Make edits based on comments from EPA, if necessary. Revised documents should be reviewed and approved by EM-Reg Dev and DD. DD will determine if Director approval is needed as well.</p>
	<p>7. Deputy Commissioner review and provide comments prior to OGC review. Submittal to Governor's Office for approval.</p>
EM-Reg Dev	<p>a) Schedule meeting with Deputy Commissioner by emailing rule package to Deputy Commissioner and copy Executive Assistant with request for meeting with APC to discuss rule.</p>
EC-Author	<p>b) Make edits based on comments received from Deputy Commissioner. Revised documents should be reviewed and approved by EM-Reg Dev and DD. DD will determine if Director approval is needed as well.</p>
EM- Reg Dev	<p>c) e-mail OGC-RC with Deputy Commissioner's approval which facilitates initiation of Governor's office approval process.</p>

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EC-Author	d) Make edits based on comments received from OGC. Revised documents should be reviewed and approved by EM-Reg Dev and DD . DD will determine if Director approval is needed as well.
OGC-RC	e) Sends rule package to Governor's office for approval. Inform EM-Reg Dev when submitted and approved.
EC-Author	f) Make edits based on comments received from OGC. Revised documents should be reviewed and approved by EM-Reg Dev and DD . DD will determine if Director approval is needed as well.
EM-Reg Dev	g) Coordinate with OGC-RC to ensure that Governor's office comments are addressed
	8. Prepare Public Notice/Hearing Notice and EPA Pre-Hearing Submittal. All rule revisions are to be submitted to EPA for pre-hearing review.
EC-Author	a) Prepare rulemaking proposal to Air Board. This is a briefing and not a Board Order approval. Send draft of briefing presentation to EM-Reg Dev for approval.
EM-Reg Dev	b) Approve draft rule for public notice. Submit to DD for approval. Send draft of briefing presentation to DD for approval.
DD	c) Reviews and approves public notice publication and briefing presentation
EM-Reg Dev	d) Following request by APC Board ASA-2 inform APC Board ASA-2 of pending board agenda items.
EC-Author	e) Briefs the Air Board during General Business portion of regularly scheduled board meeting
Reg Dev-RC	f) Sends an electronic copy of the public notice and request posting to the ASA2 - Web Contact and copy the Admin Manager and Reg Dev-RC
ASA2-Web Contact	g) Post public notice under Public Notice section of Air Notices & Hearing section of TDEC Public Participation web site
Reg Dev-RC	h) Confirm posting of public notice on Air Notices & Hearing section of TDEC web site
OGC-RC	i) Notice of Rulemaking Hearing Form (SS-7037) filed with Secretary of State (at least 52 days prior to public hearing)

	9. Schedule Public Hearing
Reg Dev - RC	a) Reserve location for Public Hearing for the posted date and time. Most hearings will be in an APC conference room. If more space is needed in Central Office reserve appropriate room on 3rd Floor or other location. Reserve appropriate location/room for public hearing. If hearing is not in Central Office coordinate with External Affairs Regional Director in appropriate field office.
Reg Dev -RC, External Affairs	b) If Public Hearing is not in Central Office ensure that proper TDEC/APC representatives are scheduled for the Public Hearing. Coordinate with regional External Affairs Regional Director to schedule and complete Public Hearings outside of Central Office.
	10. Complete EPA Pre-Hearing Submittal
EC-Author	a) Prepare pre-hearing submittal email to be sent to the EPA Regional Administrator and copy other required EPA personnel. Pre-hearing SIP submittals should be submitted using EPA’s Central Data Exchange (CDX) SPeCS system along with a pre-hearing submittal letter signed by DD . Pre-hearing Title V and 111/112/129 submittals should be sent via email. Separate submittals are needed for SIP revisions, Title V program revisions, and section 111/112/129 revisions. Send draft pre-hearing submittal email and SS-7037 form to EM-Reg.Dev for approval. A template pre-hearing submittal letter and sample email text can be found on the Regulatory Development Sharepoint Site, Rulemaking folder.
EM-Reg Dev	b) Send approved cover letter and SS-7037 to Reg Dev-RC
Reg Dev-RC	c) Pre-Hearing submittal with form SS-7037 will be submitted in SPeCS or attached to email to EPA at least 30 days prior to public hearing. Copy EM-Reg Dev and DD . Confirm receipt by EPA. Emails are to be sent to local agencies notifying of pre-hearing SIP submittals on SPeCS. Local agencies are copied on the email for Title V and section 111/112/129 pre-hearing submittals.
	11. Complete Public Hearing
Reg Dev-RC or External Affairs	a) On day of hearing, have appropriate recording device and check on operation before the start of the hearing.
Reg Dev-RC or External Affairs	b) Open Public Hearing with prepared statement. A sample opening and closing statement document can be found on Sharepoint.

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Reg Dev-RC or External Affairs	c) Document commenters and record comments from participating parties. If no commenters attend the meeting, call a meeting recess for 30 minutes to allow adequate time for commenters to arrive.
Reg Dev-RC or External Affairs	d) Read prepared statement to close hearing when appropriate. A sample opening and closing statement can be found on Sharepoint.
External Affairs	e) For meeting outside of Central Office, External Affairs Regional Director is to send audio files and any written comments received to Reg Dev-RC .
Reg Dev-RC	f) Check APC email address and post office mailings for written comments for 5 business days after public hearing date. Comments postmarked on the public hearing date are considered to be within the comment period.
Reg Dev-RC	g) Document completion of Public Hearing. Place public hearing audio in Smoglog file (Rulemaking File – 98457 or SIP File 97679). Written comments are scanned and uploaded in Smoglog to same sites.
	12. Prepare response to comments/Edit Rule/Present to Board for Approval
EC-Author	a) Make revisions to rule based on comments and prepare response to comments document. Send to OGC for review.
OGC-RC	b) Sends final Rulemaking Hearing Rule Filing Form (SS-7039) to APC (EM-Reg Dev, EC-Author, Reg Dev-RC) for review and inclusion in Board Package
EC-Author	c) Prepare APC Board Package and presentation. For rulemaking the Board package includes SS-7039 form and presentation materials. For non-regulatory matters the board package will include the SIP revision document to be submitted to the EPA, and presentation materials. Send to EM-Reg Dev and DD for review prior to presentation to Board for approval.
EM-Reg Dev	d) Review and approve Board Package and presentation. Notify DD .
DD	e) Review and approve Board Package and presentation. Notify EM-Reg Dev .
EM-Reg Dev	f) Inform EC-Author of DD approval and projected board date.
DD	g) Completed final EPF Review Checklist (Division Sections) for Fee Rules and send to OGC-RC
EM-Reg Dev	h) Following request by APC Board ASA-2 inform APC Board ASA-2 of pending board agenda items.

EM-Reg Dev	i) Send final SS-7039 and board presentation to APC Board ASA-2 at least 10 business days prior to board meeting. Copy EC-Author and DD .
EC-Author	j) Present rule change for formal Board approval
Reg Dev-RC	k) Upon Board approval, gets notarized signature from APC Director and sends to OGC-RC .
	13. OGC Review
OGC-RC	a) Oversee final OGC review prior to submittal to AG.
OGC-RC	b) Coordinate with EC-Author and EM-Reg Dev on any necessary changes.
OGC-RC	c) Submit final version to AG's Office
	14. Attorney General's (AG's) Office Review
OGC-RC	a) If approved by AG, file rule with Secretary of State (SOS). Effective date is 90 days after filing with SOS with the exception of fee related rules. (Consult with OGC Rules Coordinator for effective date requirements for fee rules.)
OGC-RC	b) Inform EM-Reg Dev of effective date of rule revision.
OGC-RC	c) If not approved, rule is sent back to OGC with questions/comments. Extensive revisions may require repeating the public notice process.
OGC-RC	d) If approved, signed copy is sent to OGC by SOS with effective dates noted. Send copy to EM-Reg Dev .
EM-Reg Dev	e) Inform EC-Author of AG Approval and effective date. Copy DD .
	15. Send SIP Changes to EPA after effective date of Rule
EC-Author	a) Once effective data has passed, complete Central Data Exchange (CDX) SPeCS submittal process. Attach required documents ³ on

³ The required documents for a SIP submittal may vary depending on the type of SIP submittal. The required documents are specified in SPeCS once the user identified the type of SIP submittal. However, the minimum required documents for a SIP revision, as specified in 40 CFR 51, Appendix V, that contains rule changes are: a submittal letter signed by the Director, a copy of the final rule (on form SS-7039 with record of board vote, certificate of public hearing, Attorney General, and Secretary of State signatures), a redline/strikeout version of the rule(s) when the SIP submittal consists of changes to an existing rule(s), the public notice (on form SS-7037 with Technical Secretary and Secretary of State signatures), and a copy of all public comments received and DAPCs responses to these comments. The requirements for Title V program revisions specified in 40 CFR 70.4(i), 40 CFR 60 Subpart B, and 40 CFR 63 Subpart E do not specify the documents required for program revisions that contain a rule change and EPA does not have a submission portals similar to SPeCS for these programs. Thus, DAPC should submit the same documents that would be required for a SIP revisions when submitting Title V, Section 111, Section 112, or Section 129 program revisions. Additional requirements for submitting Section 111(d) and 129 plans for existing sources are specified in 40 CFR 60 Subpart B.

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	<p>SPECS submittal page and populate required fields. Title V and 111/112/129 submittals should be sent via email with documents converted to PDF. Section 111/112/129 submittals should also be sent via regular mail.</p>
EC-Author	<p>b) Prepare cover letter for SIP. Sample letters are found in the Regulatory Development Sharepoint site, Rulemaking folder</p>
EC-Author	<p>c) Inform EM-Reg Dev of complete SPECS form for review and email cover letter to EM-Reg Dev</p>
EM-Reg Dev	<p>d) Review SPECS submittal notify DD who is the certifier of SIP submittals to EPA. Send cover letter to DD for signature.</p>
DD	<p>e) Sign cover letter and upload to SPECS. Review submittal, certify, and submit to EPA or send back for revisions to CDX package.</p>
EM-Reg Dev	<p>f) Confirm receipt with EPA Region 4 SIP contact.</p>
EC-Author, EM-Reg Dev, and DD	<p>g) Title V, section 111, section 112, and section 129 rule changes cannot be submitted using SPECS. Therefore the following steps should be followed in lieu of steps 15 a) through e):</p> <ol style="list-style-type: none"> 1. The cover letter and all required documents emailed EM-Reg Dev for review. If the rule revision package includes revisions to more than one plan or program (SIP, Title V, or 111/112/129) a single combined letter can be created. Sample letters are found in the Sharepoint folder. 2. The EM-Reg Dev should review the package and submit to DD for review. 3. The DD will convert the cover letter and all required documents to PDF and email them to all EPA individuals specified in the cover letter and copy the EC-Author and EM-Reg Dev. For, section 111, 112, and/or 129 rule changes, the DD will email the PDF documents to the Admin Manager who will print out the PDF documents and mail them as specified in the cover letter.
	<p>16. Joint Government Operations Committee (JGOC) review</p>
	<p>a) Each rule will be presented to JGOC for review and recommendation for joint omnibus bill prior to the effective date of the rule. This can occur any time during the 90 days between submittal to SOS and the effective date, but it is usually the JGOC meeting nearest the rule's effective date. JGOC meetings are held every month, usually towards the latter half of the month. If JGOC makes a negative recommendation on a rule, they generally also stay the effective date of the rule. OGC and APC will then need to revise the rule to address JGOC concerns. This may require withdrawal of the rule and repeating the rulemaking process.</p>

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OGC-Gov't Relations	b) Notify DD of date of JGOC meeting in which rule(s) are to be presented.
DD	c) Prepare a <u>brief</u> summary of the new rule or rule change and send it to OGC-Gov't Relations at least two weeks prior to JGOC meeting to the JGOC meeting. Assistance may be obtained from EC-Author if necessary.
OGC-Gov't Relations	d) Schedule meeting with key GJOC members prior to GJOC meeting. These generally occur the day of and/or day prior to GJOC meeting.
DD	e) Accompany OGC-Gov't Relations at meetings with GJOC members. In certain instances OGC-Gov't Relations may excuse DD from these meetings, particularly in the case of simple, non-controversial rules. DD may request assistance from EC-Author or Permitting-Reg Dev EC4. Director is backup DD when DD is unavailable.
DD	f) Accompany OGC-Gov't Relations to GJPC members and provide assistance to OGC-Gov't Relations during presentation of rule to GJOC. DD may request assistance from EC-Author or Permitting-Reg Dev EC4. Director is backup to DD when DD is unavailable.

Revision Number	Date	Brief Summary of Change
0	08/27/2018	Initial document