

**State Plans to Address Emissions During
Startup, Shutdown and Malfunction:
Final Action on Response to Petition for Rulemaking, Restatement of Policy,
Findings of Inadequacy and Call for Revisions**

Fact Sheet

Action

- On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act and recent court decisions concerning startup, shutdown and malfunction (SSM) operations. Air pollution emitted during these periods may adversely affect the health of people in neighboring and downwind communities.
- This action responds to a petition for rulemaking filed by the Sierra Club by addressing outdated provisions in State Implementation Plans (SIPs), improving national consistency and providing clarity for the treatment of emissions that occur during startup, shutdown and malfunction (SSM).
- This final action specifically:
 1. responds to the Sierra Club Petition;
 2. clarifies the EPA's SSM Policy to assure consistency with the Clean Air Act and recent court decisions; and
 3. finalizes the Administrator's findings that the SSM provisions in the SIPs of 36 states (applicable in 45 statewide and local jurisdictions and no tribal areas) do not meet the requirements of the Clean Air Act (CAA) and accordingly issues a "SIP call" for each of those states.
- In issuing the SIP call action, the EPA directs the affected states to correct specific SSM provisions in their SIPs. The Clean Air Act allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016.
- A list at the end of this fact sheet shows the EPA's final action for each of the 41 states whose SIPs were reviewed by the EPA as part of this action—39 states identified in the Petition and 2 states identified by the EPA independently.

Background

- The CAA (section 110(k)(5)) provides a mechanism commonly called a "SIP call" for correcting state implementation plans that the Administrator finds to be substantially inadequate to meet CAA requirements.
- Exemptions from emission limits during periods of startup, shutdown and malfunction exist in a number of state rules, some of which were adopted and approved into SIPs by the EPA many years ago.

- Recent court decisions have held that under the CAA, such exemptions are not allowed in SIPs. Other court decisions have remanded similar exemptions in National Emissions Standards for Hazardous Air Pollutants (NESHAP), which the EPA is also correcting in separate actions.
- On February 12, 2013, the EPA proposed to:
 - deny the request in the Petition that EPA prohibit affirmative defenses in SIPs.
 - grant the Petitioner’s claim for 36 of the 39 states identified in the Petition, by proposing to determine that these 36 states have approved SIPs that include one or more SSM provision that is inconsistent with the CAA. EPA proposed a “SIP Call” for each of those 36 states.
 - deny the request in the Petition that EPA discontinue reliance on interpretive letters from states to clarify any potential ambiguity in the state’s SIP submission.
- Subsequent to the February 2013 proposal, on April 18, 2014, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014). The court evaluated the legal validity of an affirmative defense provision in the EPA’s NESHAP for the manufacturers of Portland cement. In the court’s opinion, affirmative defense provisions in the EPA’s own regulations cannot be applicable to violations of CAA requirements. The EPA extended the logic of the court’s decision to SIP provisions and revised its SSM policy on approvability of affirmative defense provisions in SIPs.
- The EPA issued a supplemental proposal in September 2014 to reflect the court’s opinion that affirmative defense provisions cannot be applicable to violations of CAA requirements. In the supplemental proposal, the EPA revised what it proposed in February 2013 with respect to affirmative defense provisions and it proposed SIP calls for affirmative defense provisions in additional states.

For More Information

- To download a copy of this notice, go to the EPA's website at: <http://www.epa.gov/airquality/urbanair/sipstatus/>
- Today's final action and other background information are also available either electronically at <http://www.regulations.gov>, which is the EPA’s electronic public docket and comment system, or in hardcopy at the EPA Docket Center’s Public Reading Room.
- The Public Reading Room is located at EPA Headquarters, room number 3334 in the William Jefferson Clinton West Building, 1301 Constitution Avenue, NW, Washington, D.C. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding federal holidays.
- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.

- Materials for this final action can be accessed using Docket ID No. EPA-HQ-OAR-2012-0322.
- For more information on the final action, contact either Lisa Sutton at (919) 541-3450 or email at sutton.lisa@epa.gov or Geoffrey L. Wilcox at (202) 564-5601 or email at wilcox.geoffrey@epa.gov.

List of EPA's Final Actions for All Affected States

State	EPA's Final Action on Petition, to Grant or Deny, in Whole or in Part	Does EPA's final action include a SIP call for SSM provisions?
Alabama	Grant	Yes
Alaska	Grant	Yes
Arizona	Partially grant, partially deny	Yes (for State and Maricopa County, not for Pima County)
Arkansas	Grant	Yes
California	<i>Not applicable</i>	Yes (for Eastern Kern APCD, Imperial APCD and San Joaquin Valley Unified APCD)
Colorado	Grant	Yes
Delaware	Grant	Yes
District of Columbia	Partially grant, partially deny	Yes
Florida	Grant	Yes
Georgia	Grant	Yes
Idaho	Deny	No
Illinois	Grant	Yes
Indiana	Grant	Yes
Iowa	Partially grant, partially deny	Yes
Kansas	Grant	Yes
Kentucky	Partially grant, partially deny	Yes (for State, not for Jefferson County)
Louisiana	Grant	Yes
Maine	Grant	Yes
Michigan	Grant	Yes
Minnesota	Grant	Yes
Mississippi	Grant	Yes
Missouri	Partially grant, partially deny	Yes
Montana	Grant	Yes
Nebraska	Deny	No (for State and Lincoln- Lancaster)
New Hampshire	Deny	No
New Jersey	Partially grant, partially deny	Yes
New Mexico	Grant	Yes (for State and Albuquerque- Bernalillo County)
North Carolina	Grant	Yes (for State and Forsyth County)
North Dakota	Partially grant, partially deny	Yes
Ohio	Partially grant, partially deny	Yes
Oklahoma	Grant	Yes
Oregon	Deny	No
Rhode Island	Grant	Yes
South Carolina	Partially grant, partially deny	Yes
South Dakota	Grant	Yes

State	EPA's Final Action on Petition, to Grant or Deny, in Whole or in Part	Does EPA's final action include a SIP call for SSM provisions?
Tennessee	Grant	Yes (for State, Knox County and Shelby County)
Texas	<i>Not applicable</i>	Yes
Virginia	Grant	Yes
Washington	Grant	Yes (for State, Energy Facility Site Evaluation Council and Southwest Clean Air Agency)
West Virginia	Grant	Yes
Wyoming	Deny	No
41 states	Grant or partially grant: 34 states	SIP call: 36 states