

**State Plans to Address Emissions During
Startup, Shutdown, and Malfunction:
Proposed Response to Petition for Rulemaking , Findings of Inadequacy, and Call
for Plan Revisions**

Fact Sheet

Action

- On February 12, 2013, the U.S. Environmental Protection Agency (EPA) proposed a rule that would ensure states have plans in place that require industrial facilities across the country to follow air pollution rules during times when the facility is starting up or shutting down, or when a malfunction occurs. Air pollution emitted during these periods may adversely impact the health of people nearby and contribute to smog and other problems in communities that are further downwind.
- This action responds to a petition for rulemaking filed by the Sierra Club. The Petition includes interrelated requests concerning the treatment of excess emissions when industrial facilities are starting up, shutting down, and when the plant is malfunctioning--specifically how those emissions are treated in state implementation plan (SIP) provisions that the EPA approved in the past. Many of these state plans are outdated and are not consistent with modern rules or recent court decisions.
- EPA's proposed actions would address outdated provision, improve national consistency and provide clarity for the treatment of emissions that occur during startup, shutdown, and malfunction (SSM). EPA is proposing to:
 1. deny the request in the petition that EPA prohibit affirmative defenses in SIPs. Rather, EPA is revising its previous policy to continue to allow affirmative defenses in SIPs (for states that choose to provide them) for excess emissions that occur when a facility is experiencing a malfunction (an unplanned event) but not for excess emissions that occur when a facility is operating in a planned startup or shutdown mode. An affirmative defense is allowable when well-managed facilities experience malfunctions due to circumstances beyond their control and would shield a facility from monetary penalties but not from the responsibility to take action to limit future problems.
 2. 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 Clean Air Act. EPA is proposing a "SIP Call" for each of those 36 states. Under the SIP Calls EPA would direct the affected states to correct specific SIP provisions related to SSM. A list at the end of this fact sheet shows EPA's proposed response for each of the 39 states identified in the Petition.
 3. 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.

- EPA is proposing findings that the SSM provisions in the SIPs of 36 states do not meet the requirements of the Clean Air Act. EPA must make an “inadequacy” finding before calling upon a state to revise and resubmit its plan.
- EPA is proposing to give the 36 affected states 18 months to correct and submit their state plans to the Agency. The 18-month clock would start when EPA makes its final findings of inadequacy. Eighteen months is the longest period of time allowed under the Clean Air Act for SIP revision and submittal. For example, if the EPA promulgates a finding of inadequacy and a SIP Call on August 27, 2013, then the SIP submission deadline for each of the states subject to the final SIP Calls would fall 18 months later, on February 27, 2015.
- EPA will accept comment on this proposal for 30 days after publication in the Federal Register. If a public hearing is requested, EPA will hold one in Washington, DC on March 12, 2013, and will extend the comment period to 30 days beyond the hearing date.

Background

- The Clean Air Act (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 Clean Air Act requirements.
- Exemptions from emission limits during periods of startup, shutdown, and malfunction ("SSM") exist in a number of state rules, some of which were adopted and approved into SIPs by EPA many years ago.
- Recent court decisions have held that under the Clean Air Act, such exemptions are not allowed in SIPs. Other court decisions have remanded similar exemptions in National Emissions Standards for Hazardous Air Pollutants (NESHAP), which EPA is also correcting in separate actions.
- EPA's 1999 SSM policy memorandum (available in the docket for this rulemaking) allows states the option to provide in their SIPs for an "affirmative defense" to enforcement actions brought for excess emissions that arise during certain conditions. In judicial proceedings, an affirmative defense serves to shield sources from monetary penalties for excess emissions, if specified conditions in the SIP were met. Whether or not a source is allowed an affirmative defense by the state, the source remains subject to the possibility of requirements to take specific actions to avoid excess emissions in the future.

How to Comment

- The EPA will accept comment on the proposal for 30 days after publication in the Federal Register. Comments, identified by Docket ID No. EPA-HQ- OAR-2012-0322, may be submitted by one of the following methods:
 - <http://www.regulations.gov>: Follow the online instructions for submitting comments.
 - Email: Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov.
 - Fax: Fax your comments to: (202) 566-9744.
 - Mail: Send your comments to: Attention Docket ID No. EPA-HQ-OAR-2012-0322, Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
 - Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For More Information

- To download a copy of this notice, go to EPA's World Wide Web site at: <http://www.epa.gov/airquality/urbanair/sipstatus/>
- Today's proposed action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket number for this action is Docket ID No. EPA-HQ-OAR-2012-0322.
- For more information on the proposed rule, contact Lisa Sutton at (919) 541-3450 or sutton.lisa@epa.gov.

List of States with SSM SIP Provisions for which EPA Proposes Either to Grant or to Deny the Petition, in Whole or in Part

EPA Region	State	Proposed action on petition
I	Maine	Grant
	New Hampshire	Partially grant, partially deny
	Rhode Island	Grant
II	New Jersey	Partially grant, partially deny
III	Delaware	Grant
	District of Columbia	Partially grant, partially deny
	Virginia	Grant
	West Virginia	Grant
IV	Alabama	Grant
	Florida	Grant
	Georgia	Grant
	Kentucky	Grant
	Mississippi	Grant
	North Carolina	Grant
	South Carolina	Partially grant, partially deny
	Tennessee	Grant
V	Illinois	Grant
	Indiana	Grant
	Michigan	Grant
	Minnesota	Grant
	Ohio	Partially grant, partially deny
VI	Arkansas	Grant
	Louisiana	Grant
	New Mexico	Grant
	Oklahoma	Grant
VII	Iowa	Partially grant, partially deny
	Kansas	Grant
	Missouri	Partially grant, partially deny
	Nebraska	Deny
VIII	Colorado	Partially grant, partially deny
	Montana	Grant
	North Dakota	Grant
	South Dakota	Grant
	Wyoming	Grant
IX	Arizona	Partially grant, partially deny
X	Alaska	Grant
	Idaho	Deny
	Oregon	Deny
	Washington	Grant