

Frequently Asked Questions

**Final Withdrawal of Finding of Substantial Inadequacy of
Implementation Plan and of Call for Texas State Implementation Plan (SIP) Revision:
Affirmative Defense Provisions for Malfunctions**

General

Q: What action is Region 6 finalizing regarding EPA's Startup, Shutdown, or Malfunction (SSM) policy?

A: Region 6's final action (1) outlines an alternative interpretation regarding the permissibility of affirmative defense provisions in the Texas State Implementation Plan (SIP) that departs from the EPA's 2015 policy on this subject; and (2) withdraws the finding of substantial inadequacy and a SIP Call issued to Texas in 2015 for the affirmative defense provisions in the SIP for the state of Texas applicable to excess emissions that occur during certain upset events and unplanned maintenance, startup, or shutdown activities.

Q: Why is Region 6 allowed to deviate from nationally-applicable EPA policy?

A: In accordance with the Regional Consistency regulations at 40 CFR § 56.5(b), the Region 6 Regional Administrator sought and received concurrence from the relevant headquarters office to take an action that is inconsistent with national policy on January 6, 2020.

Q: What is the impact of this final action?

A: Upon becoming effective, this final action will mean that Texas may choose to withdraw the SIP revision it submitted in November 2016 in response to the SIP call, on which the EPA has not proposed nor taken final action to approve or disapprove.

Q: Does Region 6's final action impact EPA's existing national policy regarding SIP provisions that provide exemptions from emission limitations during periods of SSM?

A: No. This action only concerns the Texas SIP affirmative defense provisions. Region 6 has not taken any regional action related to SSM exemption provisions, and this action does not impact the Agency's policy with respect to SSM exemption provisions.

Questions about how other states are impacted

Q: Does the alternative interpretation regarding the permissibility of SSM affirmative defenses in the Texas SIP announced in this action apply for all states within Region 6?

A: No. This action only adopts an alternative interpretation with respect to the Texas SIP affirmative defense provisions. This interpretation does not apply to any other Region 6 state.

Q: How does the final action affect the 2015 SSM SIP Call for other states?

A: The final action has no effect for states other than Texas. In this action, Region 6 is withdrawing the SSM SIP Call previously issued to Texas regarding its affirmative defense provisions. The alternative interpretation being announced in this final action does not change the national policy that was outlined in the 2015 SSM SIP Action, which remains applicable to all states other than Texas.

Q: My state submitted a SIP revision that was consistent with the national policy on SSM affirmative defense provisions outlined in the 2015 SSM SIP Action. When will EPA take action to approve this SIP submittal? What if my state no longer wants this submittal to be approved into its SIP?

A: EPA has a statutory duty to approve SIP submittals that meet all applicable CAA requirements. States may, at their discretion, withdraw SIP submittals that are currently before EPA so that EPA would no longer be required to act on the submittal. However, as long as a SIP Call remains in place for a specific state, that state has an obligation to submit a SIP revision that is responsive to the SIP Call.