

FACT SHEET

Amendments to NESHAP General Provisions for Exemption from Emission Standards During Periods of Startup, Shutdown, and Malfunction (SSM)

ACTION

- On March 5, 2021, the U.S. Environmental Protection Agency (EPA) issued a ministerial final rule to amend General Provisions (40 CFR part 63, subpart A) of the Clean Air Act (CAA) section 112 National Emission Standards for Hazardous Air Pollutants (NESHAP).
- This action will specifically amend General Provisions language that exempted facilities, unless otherwise regulated, from compliance with emission standards during periods of startup, shutdown, and malfunction (SSM).
- This action fulfills a decision issued by the United States Court of Appeals for the District of Columbia Circuit (the court) in 2008, which found that SSM exemptions from emission standards in the General Provisions violated a requirement of the CAA. The court determined that emissions standards or limitations issued pursuant to section 112 of the Act must be continuous in nature.
- Today's action, published for efficiency, does not change legal requirements, but rather reflects the 2009 mandate of the court decision.

BACKGROUND

- EPA is amending two provisions in 40 CFR part 63, subpart A ("General Provisions") provided under CAA section 112 NESHAP.
- Specifically, EPA will amend language in 40 CFR 63.6 (f)(1) and (h)(1) that exempted sources, unless otherwise regulated, from compliance with emission standards during periods of SSM.
- In 2002, EPA received petitions for judicial review of the NESHAP General Provisions.
- The court found that SSM exemptions from emission standards in the General Provisions violated a requirement under section 302(k) of the CAA that emissions standards or limitations issued pursuant to section 112 of the Act be continuous in nature.
- On October 16, 2009, vacatur of the SSM exemptions in these two provisions was mandated by the court, making the removal of SSM exemptions immediately effective.
- Since then, EPA has been codifying the court decision by modifying SSM exemptions in individual NESHAP as they are opened for review and modification.
- This ministerial action codifies the mandate universally by removing the SSM exemptions from the provisions at 40 CFR 63.6(f)(1) and (h)(1), fulfilling the court's order.

FOR MORE INFORMATION

Today's action is available electronically at <https://www.regulations.gov/>, EPA's electronic public docket and comment system, or at <https://www.epa.gov/stationary-sources-air-pollution/amendments-general-provisions-exemption-emission-standards-during>.