Frequently Asked Questions
EPA Region 4’s Proposed Withdrawal of Finding of Substantial Inadequacy for State Implementation Plan and of Call for North Carolina State Implementation Plan (SIP)
Revision: Automatic Exemptions and Director’s Discretion Provisions

General

Q: Describe the proposed action regarding startup, shutdown and malfunction (SSM) policy being taken in EPA Region 4 (Region 4 or the Region).

A: Region 4’s proposed action outlines an alternative interpretation under consideration regarding SSM exemption provisions for the North Carolina State Implementation Plan (SIP) that departs from the EPA’s 2015 policy on this subject. Consistent with the alternative interpretation under consideration, if adopted, a Region 4 final action would find that provisions 15A N.C. Admin. Code 2D .0535(c) and 15A N.C. Admin. Code 2D .0535(g) in the North Carolina SIP are not substantially inadequate to meet Clean Air Act (CAA) requirements and, accordingly, would withdraw the SIP Call for North Carolina that was issued as part of the 2015 SSM SIP Action. Also consistent with the alternative interpretation under consideration, if adopted, a Region 4 final action would approve a SIP revision submitted by North Carolina regarding nitrogen oxide (NOx) emissions from large internal combustion engines.

Q: What alternative policy is Region 4 considering?

A: EPA Region 4 is considering adopting a policy that SSM exemption provisions may not be substantially inadequate to meet CAA requirements so long as the SIP contains other provisions that remain in effect and ensure attainment and maintenance of the NAAQS.

Q: Why is Region 4 allowed to consider deviating from nationally-applicable EPA policy?

A: In accordance with the Regional Consistency regulations at 40 CFR § 56.5(b), on April 29, 2019, the Acting Region 4 Regional Administrator sought concurrence from the relevant headquarters office to propose and, if appropriate based on a review of relevant comments, finalize an action that is inconsistent with national policy. The Acting Region 4 Regional Administrator obtained concurrence on May 2, 2019.

Q: What is the impact of this proposal?

A: If EPA Region 4 finalizes this action as proposed, North Carolina would no longer have an obligation to submit a SIP revision addressing its existing director’s discretion exemption provisions because the SIP call would no longer apply. North Carolina may choose to withdraw the SIP revision it submitted on November 22, 2016 in response to the SIP call, on which the EPA has not proposed nor taken action to approve or disapprove.
Q: Does Region 4’s proposal impact EPA’s existing national policy regarding SIP provisions that include affirmative defense provisions for periods of SSM?

A: No. The alternative interpretation under consideration in Region 4’s proposal only concerns exemption provisions in SIPs. Region 4 is not considering any alternative interpretation with respect to SSM affirmative defense provisions in this action.

Questions about how other states are impacted

Q: If adopted in Region 4, will the alternative SSM policy regarding automatic exemptions apply in other states in the Region?

A: If adopted, Region 4 could apply the alternative SSM policy described in today’s action to states within this region, as appropriate.

Q: For states within Region 4 that were SIP-called for automatic exemptions, does Region 4 plan to withdraw the SSM SIP Call for those states?

A: In this action, Region 4 is proposing to withdraw the SSM SIP Call only for North Carolina based upon an analysis that North Carolina’s SIP may provide a reasonable basis for EPA to determine that the SIP, as a whole, provides for attainment and maintenance of the NAAQS, while providing limited exemptions from emission limitations during specific SSM events. Withdrawing the SSM SIP Call for other states within Region 4 would require the Region to evaluate each state’s SIP on a case-by-case basis and to propose to withdraw the SSM SIP Call through notice-and-comment rulemaking. The proposal is limited to the North Carolina SSM SIP Call.

Q: What effect does this action have on the SIP Call in other states?

A: The proposed action only addresses the North Carolina SIP. The alternative policy regarding SSM exemption provisions in SIPs being considered in this action is being proposed only by Region 4, based on the facts presented in the North Carolina SIP, and does not otherwise displace the 2015 SSM SIP Action. As noted above, if the policy is finalized, Region 4 could apply it to other states in the Region, as appropriate.

Q: My state submitted a SIP revision that was consistent with the national policy on SSM exemptions outlined in the 2015 Action. What if the state no longer wants this submittal to be approved into its SIP?

A: EPA has a statutory duty to act on all complete SIP submittals before the Agency and to approve SIP submittals that meet all applicable CAA requirements. States may, at their discretion, withdraw SIP submittals that are currently before EPA such that EPA would no longer act on the subject submittal, but there could be consequences of such withdrawal. For further information, interested state agencies should contact their respective EPA regional office.
Litigation/other issues

Q: What is the status of the litigation on the 2015 SSM SIP Action?

A: EPA requested that the court hold the litigation challenging the 2015 SSM SIP Action in abeyance while EPA reviews the agency’s SSM policy. The U.S. Court of Appeals for the D.C. Circuit issued an order on April 24, 2017 granting this request. EPA must file status reports on the review with the court every 90 days, and filed its most recent report on May 9, 2019.