

Findings of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction

FACT SHEET

ACTION

- On January 4, 2022, the US Environmental Protection Agency (EPA) found that certain state and local air pollution control agencies failed to submit State Implementation Plan (SIP) revisions to appropriately address excess emissions during periods of startup, shutdown, and malfunction (SSM).
- In 2015, EPA found that 45 state and local jurisdictions needed to revise and submit to EPA their state plans to remedy SSM-related deficiencies. This finding, known as the 2015 SSM SIP Call, required states to correct SSM-related deficiencies in their SIPs by November 22, 2016.
- Today’s finding applies to a subset of those 45 jurisdictions and includes the following states and local areas:

Alabama	Ohio
Arkansas	Rhode Island
California – San Joaquin Valley Air Pollution Control District	South Dakota
District of Columbia	Tennessee – Shelby (Memphis)
Illinois	Washington – Energy Facility Site Evaluation
North Carolina – Forsyth	Washington – Southwest Clean Air Agency

- These findings of failure to submit establish a 24-month deadline for EPA to either approve SIPs or finalize Federal Implementation Plans (FIPs) that would apply in areas that do not submit an approvable plan for provisions applying to excess emissions during periods of SSM.
- This action also establishes timelines for the implementation of two mandatory sanctions that will begin if the named state and local jurisdictions do not submit complete SIPs to address the finding of failure to submit.
 1. Eighteen months after the effective date of these findings, a 2-to-1 offset ratio for the nonattainment New Source Review (NSR) permitting program will go into effect.
 2. Six months after the date of offset sanctions, federal highway funding may be withheld from nonattainment areas.

- Once EPA determines that a jurisdiction has submitted a plan that meets the minimum completeness criteria, any applicable sanctions will end.
- EPA is committed to working with all of the affected air agencies to support the development and submission of their state plan revisions and to ensure continued progress toward cleaner air.

BACKGROUND

- In 2015, EPA issued a final action regarding its national policy on SSM provisions in SIPs (2015 SSM SIP Action). As directed by the Clean Air Act, that action also included a finding of substantial inadequacy for 45 states and local jurisdictions, and a “SIP call” for those states and local jurisdictions to remedy the SSM-related deficiencies in their SIPs. To date, we have received SIP revisions for 33 of the 45 affected jurisdictions.
- On July 27, 2015, the 2015 SSM SIP Action was challenged in the United States Court of Appeals for the District of Columbia Circuit. In 2017, EPA requested that pending litigation on the final 2015 SSM SIP Action be held in abeyance to allow the then-new administration time to review the action. EPA subsequently withdrew the SIP Calls issued to TX, NC, and IA, which are the subject of pending litigation.
- In October 2020, EPA issued a Memorandum putting forth a new national policy that certain provisions governing SSM periods in SIPs, including exemption and affirmative defense provisions, could be permissible in some circumstances (“2020 Memorandum”). The 2020 Memorandum did not affect or withdraw the SIP Calls issued in 2015 to any states.
- On September 30, 2021, the Deputy Administrator signed a Memorandum (“2021 Memorandum”) that announced a withdrawal of the 2020 Memorandum and EPA’s intent to return to the policy articulated in the 2015 SSM SIP Action and to fully implement that policy and the SIP Calls issued in 2015. On November 3, 2021, EPA filed a motion in the United States Court of Appeals for the District of Columbia Circuit to lift the abeyance on the 2015 SSM SIP Action.
- On September 8, 2021, Sierra Club, Environmental Integrity Project, and Natural Resources Defense Council filed a deadline suit in the Northern District of California alleging that the EPA is in violation of its mandatory duty to issue findings of failure to submit for those states that have not yet responded to the 2015 SIP Call.
- Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA

section 110(k)(1)(A). The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.”

FOR MORE INFORMATION

- To download this action from EPA’s website, go to <https://www.epa.gov/air-quality-implementation-plans/emissions-during-periods-startup-shutdown-malfunction-ssm>.
- Today’s action and other background information are also available either electronically at <http://www.regulations.gov>, the EPA’s electronic public docket and comment system, or in hardcopy at the EPA Docket Center’s Public Reading Room. (Docket ID EPA-HQ-OAR-2021-0863).
- The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the William Jefferson Clinton West Building, located at 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.
- Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.
- 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.
- For further information about this action, contact Ms. Erin Lowder of EPA’s Office of Air Quality Planning and Standards by email at lowder.erin@epa.gov.