

# EPA Proposes Updated Requirements to Regulation Governing State Plans for Existing Sources Fact Sheet

## Overview of Action

- On December 14, 2022, the U.S. Environmental Protection Agency (EPA) proposed updates to the Agency’s regulations governing the timelines and other requirements for state plans to limit pollution from existing sources under section 111(d) of the Clean Air Act.
- The regulations, known as the “Implementing Regulations,” apply to states that must submit plans for sources covered by specific Emissions Guidelines. Emissions Guidelines do not impose requirements directly on sources. Instead, they establish procedures for states to follow as they develop plans that establish, implement, and enforce performance standards for “designated facilities,” which is the term EPA uses for existing sources.
- The proposed updates also would apply to eligible Tribal Nations that choose to develop their own plans. Eligible tribes have the opportunity, but not the obligation, to develop plans that establish standards for existing sources in their jurisdictions.
- The proposed updates to the Implementing Regulations would:
  - Revise state plan timing requirements, including the allowed time for states to submit plans and for EPA to review them, for states to establish “increments of progress,” and for EPA to issue a federal plan if a state does not submit a plan that is approvable.
  - Add mechanisms to make state plan submission, review, approval and implementation more flexible and efficient, such as parallel processing, and partial approval and disapproval.
  - Provide states clear guidance on when they can apply a less-stringent standard to a facility or class of facilities.
  - Require states and EPA to conduct meaningful engagement as part of state plan and federal plan development, including with communities and Tribal Nations most affected by, and vulnerable to, the plans’ impacts.
  - Require states to submit plans electronically.
- The proposal also would amend the definition of performance standard and would clarify compliance flexibilities that EPA could approve in a state plan.
- The proposed updates to the Implementing Regulations would apply to state plans developed for Emissions Guidelines published after July 8, 2019. The proposed updates

would apply to all state plans, unless specific Emissions Guidelines include requirements that are different. In those cases, requirements in the Emissions Guidelines would supersede requirements in the Implementing Regulations.

- EPA will take public comment on the proposed updates through Feb. 27, 2023. The Agency also will hold a virtual public hearing.

## Summary of Proposed Timing Requirements for State Plans

### *State Plan Submittal and Review*

- EPA is proposing updates to several timing requirements in response to a January 2021 court decision that vacated several provisions in the Implementing Regulations that the Agency issued in 2019.
- The updated timelines are intended to provide enough time for states to develop and submit plans, for EPA to review and act on those plans, and for EPA to issue a federal plan, if necessary, all while ensuring that Emissions Guidelines are implemented as expeditiously as possible to reduce emissions that are harmful to health.
- To establish the timeline for state plan submittals in the proposal, EPA reviewed the steps states need to take to develop, adopt and submit a plan to EPA and states' histories in implementing previous emissions guidelines. The Agency also reviewed statutory deadlines, processes and the content of plans submitted to meet comparable Clean Air Act requirements, including attainment plans for the 2012 National Ambient Air Quality Standards (NAAQS) for fine particulate matter and plans submitted to implement solid waste incineration rules.
- EPA is proposing the following timelines for states to submit plans and for EPA to review them:
  - **States would have 15 months** after final emissions guidelines are published in the Federal Register to **submit a state plan** unless EPA supersedes this timeline in a particular Emissions Guideline.
    - This timeline is intended to provide states the necessary time, for a typical state plan, to conduct meaningful engagement with stakeholders, adopt a plan and related regulations (including the time to meet any state administrative process requirements), and submit the plan to EPA.
    - *Note:* EPA's supplemental proposal to reduce methane from oil and natural gas operations would give states 18 months to submit plans to limit methane from existing sources, due to the size and variety of emission sources addressed by the Emission Guidelines.

- **EPA would have a maximum of 60 days to determine whether each state's plan is complete.**
  - If the Agency misses that deadline, the plan would automatically be deemed complete.
- **EPA would then have 12 months** after a plan is complete to **review the plan and take final action to approve or disapprove it.**
  - This schedule includes time for: drafting a proposed action and publishing it in the Federal Register; taking and considering public comment; and drafting and publishing a final action.

### *Federal Plans*

- If a state does not submit a plan, does not submit a complete plan on time, or if EPA disapproves a plan, EPA must issue a federal plan for that state.
- The Agency is proposing to **require that EPA issue a federal plan within 12 months:**
  - If a state does not submit a complete plan. This timeline would begin the day after a state's deadline for submitting a plan.
  - After EPA disapproves a state plan. In this case, the federal plan timeline would begin when the disapproval is issued.

### *Increments of Progress*

- Increments of progress are legally enforceable steps that an owner or operator of an existing source must take toward achieving compliance with requirements in a state plan. The use of increments of progress in specific Emissions Guidelines will vary based on the category of sources they regulate, and the type of regulation.
- EPA is proposing to generally require that **any state plan with compliance schedules longer than 16 months** after the deadline to submit the plan to EPA would have to include increments of progress for each existing source or category of existing sources.

### *Mechanisms to Improve Flexibility and Efficiency*

- EPA is proposing to add several mechanisms to the Implementing Regulations to improve flexibility and efficiency in the submission and review implementation of state plans. These mechanisms already are available for state implementation plans under section 110 of the Clean Air Act. The proposed mechanisms are:
  - **Partial approval and disapproval** – EPA would be allowed to partially approve or disapprove a state plan if parts of the plan are separately approvable, but another portion of the plan is not. The public would have the opportunity to comment on such an action through notice-and-comment rulemaking.

- **Conditional approval** – EPA would be able to approve a state plan that substantially meets the requirements of emissions guidelines but that requires some additional, specific revisions to be fully approvable. For EPA to grant this conditional approval, the state governor or designee must commit to adopt and submit the necessary revisions no later than one year after the conditional approval takes effect. If a state does not meet this commitment, its plan would automatically be disapproved.
- **Parallel processing** – This approach would allow states to ask EPA to evaluate and propose approval of a plan that is technically complete but not yet administratively complete. A state requesting parallel processing would have to include a schedule for final adoption of the plan and a copy of the draft regulation or document indicating the changes to be made. The state’s plan would have to meet all completeness criteria, not change materially from the proposed plan and be fully adopted before EPA could finalize approval.
- **State plan call** – This provision would allow EPA to find that a previously approved state plan does not meet Clean Air Act or emissions guidelines requirements and call for a plan revision. EPA could “call” for a state plan(s) if technical or legal conditions, such as a court decision, that occur after the plan has been approved mean is the plan is no longer adequate. For example, the Agency also could call for a plan(s) if the state has failed to adequately implement it due to funding changes or changes in state-level authority. EPA could require the state to either revise the plan to align with actual implementation or demonstrate that it is adequately implementing the plan that EPA previously approved. States would have no more than 12 months to revise their plans.
- **Error correction** – This provision would allow EPA to revise a prior action if the Agency determines that its own action on a plan was in error. The state would not be required to submit a plan revision.

## Other Proposed Requirements for Plans

### *Requirements for Meaningful Engagement*

- A robust and meaningful public participation process during the development of a state’s plan is critical to ensuring the state understands and fully considers the impact of the plan on public health and welfare.
- The proposed updates to the Implementing Regulations would require states to conduct meaningful engagement as they develop their plans – sharing information and seeking input from “pertinent stakeholders” at critical points during plan development. This includes ensuring that all members of the public have reasonable notice of information -- including communities most affected by and vulnerable to the impacts of the emissions from the facilities that the state plan would regulate. These may include low-income communities, communities of color, and indigenous people living near the designated facilities who may be affected by a state’s plan. States also would be required to conduct meaningful

engagement with Tribal Nations most affected by and vulnerable to the impacts of a state's plan.

#### *Requirements for Applying Less-Stringent Standards to a Facility*

- The proposed rule would clarify a provision that allows states to apply a performance standard for a facility or class of facilities that is less stringent than the degree of emission limitation achievable through application of the best system of emission reduction (BSER) that EPA has determined.
- State plans to implement the Emissions Guidelines are generally required to include performance standards to limit emissions from designated facilities that are at least as stringent as the degree of emission limitation that EPA has determined. However, section 111(d) of the Clean Air Act requires EPA to permit states to account for the remaining useful life of a facility, among other factors (referred to as “RULOF” in the proposed rule), in determining the standard(s) to apply to a specific existing source.
- The proposed updates include provisions that would apply when a state chooses to consider a less-stringent standards of performance for a specific facility, including:
  - **Threshold requirements** – EPA is proposing to require that a state seeking to apply a less-stringent standard to a designated facility must demonstrate that the facility cannot reasonably apply the BSER, because the cost is unreasonable, it is physically impossible or technically infeasible to do so, or other circumstances specific to the facility are fundamentally different from the information EPA considered.
  - **Requirements for calculating a less-stringent standard** -- EPA is proposing that, to apply a less-stringent standard to a facility, a state would be required to determine a source-specific BSER. The state would be required to evaluate BSER in the same manner that EPA did in developing the Emissions Guidelines. Once the state calculates BSER for the facility, it would have to calculate the emissions reductions that applying BSER would achieve and select a standard that reflects that degree of emission limitation. Documentation of these calculations would be included in the state's plan.
  - **Contingency requirements** – For less-stringent standards that are based on a facility's operating conditions, a state would be required to include the operating **condition** as a federally enforceable requirement. If a facility's operating conditions change in a way that could violate the contingency requirements, the state would need to submit a plan revision for EPA approval.
  - **Remaining Useful Life of a Facility** – EPA is proposing requirements that would apply when a state includes a less-stringent standard for a designated facility in its plan, on the **grounds** that the facility will retire in the near future. The proposal would require EPA to identify an outermost retirement date, or conditions and

methodology, in specific Emissions Guidelines that that would govern whether a state could rely on the remaining useful life of a designated facility to set a less stringent standard. If a designated facility's retirement date falls within the period identified in the Emissions Guidelines, the state may account for the facility's remaining useful life in applying a less-stringent performance standard. The state would be required to impose a standard for the facility until its retirement.

- **Consideration of Affected Communities** – EPA's proposal would require states developing a less-stringent standard for a facility to consider the impact of pollution and benefits of pollution control to communities most affected by and vulnerable to the effects of the emissions from the designated facility as they develop the standard. Individual Emissions Guidelines will provide more specific guidance or requirements on how to meet this requirement. EPA also is proposing to require this consideration of affected and vulnerable communities in the development of a federal plan.
- **Review of Plans that Implement the Remaining Useful Life Provision** – The proposal would require that state plans justify the use of the remaining useful life provision in applying a less-stringent standard to a facility. This includes using information that is applicable to, and appropriate for, the specific designated facility and showing how the information is applicable and appropriate in the plan. The information used in the state's demonstrations must come from reliable and adequately documented sources.

### *Performance Standards and Compliance Flexibilities*

- EPA also is proposing to clarify the definition of "standard of performance" to mean "allowable rate, quantity, or concentration of emissions" rather than the current definition, which is an "allowable rate or limit of emissions." This proposed change would align with definitions for related terms in section 302 of the Clean Air Act. In addition, EPA is proposing to interpret the statute to permit EPA to approve state plans, where appropriate, that allow sources to meet performance standards in the aggregate, such as through trading or averaging.

### *Commenting on the Proposal*

- EPA will take public comment on the proposed updates through Feb. 27, 2023. The Agency also will hold a virtual public hearing.
- There are two ways to comment on EPA's supplemental proposed rule:
  1. **Comment in writing:** Once the proposal publishes in the Federal Register, the public will have until Feb. 27, 2023, to submit written comments to EPA in writing (see instructions below).

2. **Comment at the public hearing.** EPA will hold a virtual public hearing January 24, 2023. You will need to register to speak in advance. Information on registering to speak will be posted on EPA's [website](#) after the proposal is published in the Federal Register. Each speaker will have four minutes to speak.
  - **NOTE: If you need language translation or other reasonable accommodation, please notify EPA by Jan. 9, 2023,** so that the Agency may provide this service. Information on requesting reasonable accommodation will be available in the instructions for registering to speak at the hearing.
  - Comments EPA receives in writing get the same weight as comments received at the public hearing.

**Instructions for submitting written comments on EPA's proposed rule:**

- When you send EPA comments on the proposal, it is critical that you label your comments with the docket number. That's how EPA knows which comments go with which proposed rule. The docket number for the proposed amendments for the Implementing Regulations is **Docket ID No. EPA-HQ-OAR-2021-0527**.
- EPA prefers that you submit comments online through the [Federal eRulemaking Portal](#). When you get to the portal, type **EPA-HQ-OAR-2021-0527** in the search box. That will take you to a link to the docket for the proposed rule. Under the link, there will be a button that says "Comment." Click on that button to submit your comments, or you can open the link, and use the blue button in the upper left to enter your comments.
- You also may send your comments the following ways:
  - Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2021-0527 in the subject line of the message.
  - Fax: (202) 566-9744. Label your fax: Attention Docket ID No. EPA-HQ-OAR-2021-0527.
  - Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2021-0527, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
  - Express Mail/Courier Delivery/Hand Delivery: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday through Friday, except Federal holidays.
    - Note: William Jefferson Clinton (WJC) West, like most other federal office buildings, is governed by strict security requirements for visitors. To ensure that you will be permitted entry, [please familiarize yourself with these requirements](#) before you visit.

- See additional information about the EPA Docket Center, including instructions for visiting the [Docket Center Reading Room](#).