



Proposed Amendments to EPA's Requirements Governing State Plans for Existing Sources

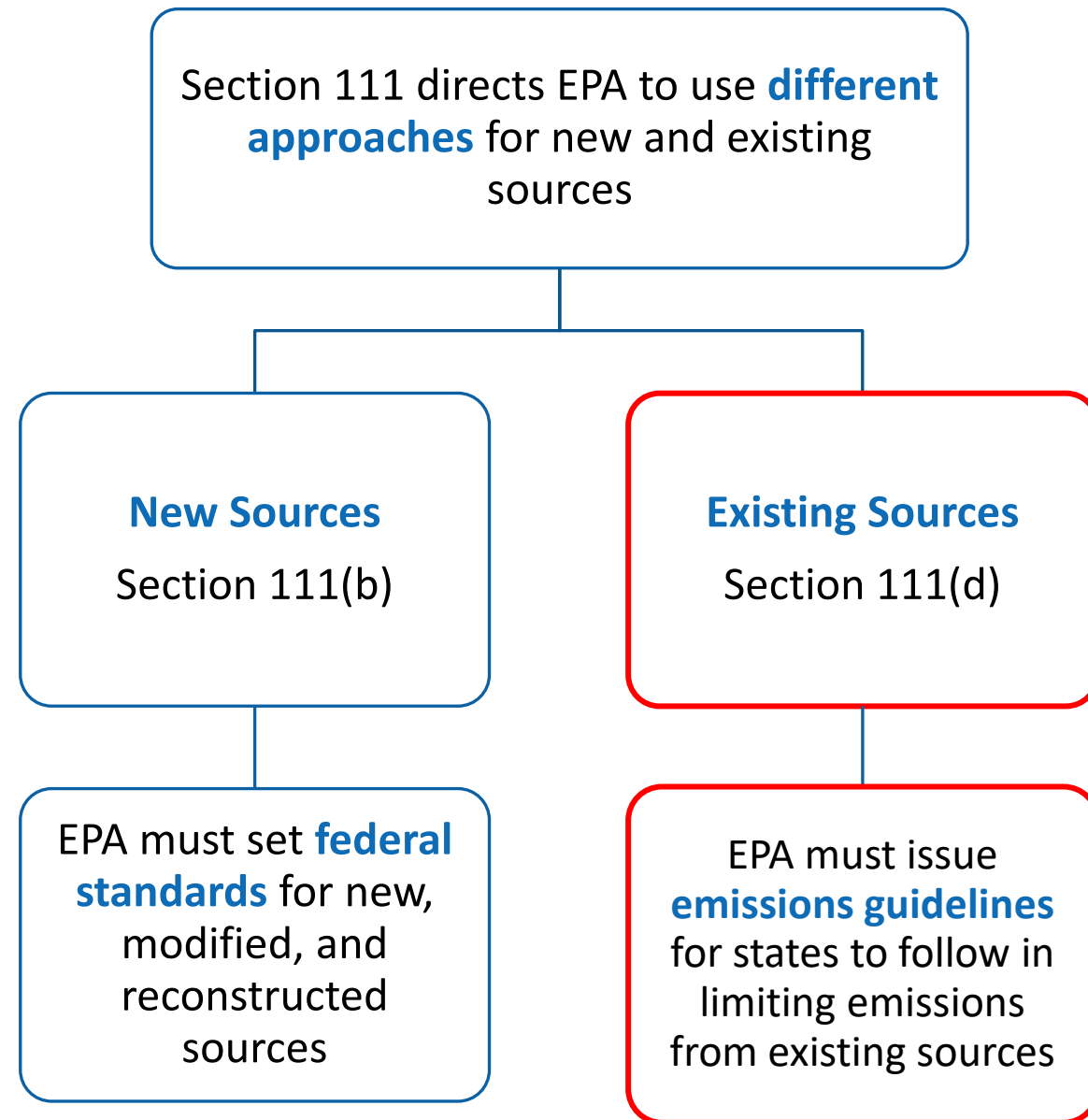
Training
January 31, 2023

Background

Clean Air Action section 111(d),
Emission Guidelines, and
Implementing Regulations

Clean Air Act Section 111

Directs EPA to control air emissions from a category of stationary source that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”



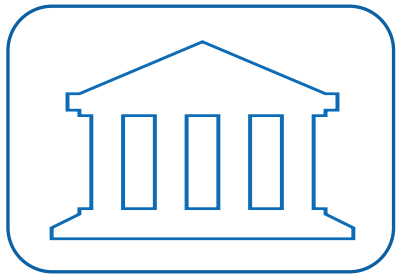
Clean Air Act
Section 111(d):

Emissions Guidelines

Implementing
Regulations
apply to state plans

- Required in certain circumstances once EPA issues New Source Performance Standards for new, modified and reconstructed sources.
- Do not impose requirements directly on sources.
- Inform states as they develop, submit and implement **required plans that set standards for existing sources.**
- Can override requirements in the Implementing Regulations

Where the Implementing Regulations Fit In



Congress
Issued Clean Air
Act Section
111(d)



EPA
Sets **emission guidelines**



States
Develop State
Plans to submit to
the EPA



EPA
Reviews and
approves **State**
Plans or issues
Federal Plans



Plans Achieve
Emissions
Reductions

Clean Air Act
Section 111(d):

Implementing Regulations

Set the processes and timelines for the development, adoption and submittal of state plans for existing sources, and for EPA to review plans and approve them or issue a federal plan

Proposed Amendments

2022 Proposed Amendments

Include
requirements for:

1. Timing of State Plans and Federal Plan

2. Mechanisms to Improve Flexibility & Efficiency

3. Meaningful Engagement

4. Applying a Less-Stringent Standard to a Source

5. Performance Standards and Compliance
Flexibility

6. Updates/Electronic Submission of State Plans

Proposed Timing Requirements for State and Federal Plans

Step	Proposed Due Date*
State plan to EPA for review	15 months after effective date of Emissions Guidelines
EPA completeness determination	2 months after submission
EPA final action on state plan	12 months after plan deemed complete
EPA issue federal plan	12 months after submission deadline or disapproval if no approved state plan

*Due dates also apply to eligible Tribes that submit plans

Other Proposed
Timing
Requirements:

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.
- EPA is proposing to require states to include increments of progress for each existing source or category of existing sources if their plan includes **compliance schedules longer than 16 months** after the deadline to submit the plan to EPA

Proposed Regulatory Mechanisms

These mechanisms would improve flexibility and efficiency in the submission, review, approval, revision, and implementation processes for state plans:

- 1) Partial approval and disapproval** allows EPA to partially approve or disapprove severable parts of a state plan
- 2) Conditional approval** allows EPA to approve a state plan that substantially meets emissions guideline requirements; the state must commit to adopt and submit necessary revisions within 12 months
- 3) Parallel processing** allows EPA to propose approval of plan that is technically but not yet administratively complete (*i.e.*, state adoption and public engagement are yet to occur); plan would have to be complete with no material change and fully adopted before EPA could finalize approval
- 4) State plan call** allows EPA to find that a previously approved plan does not meet requirements or has not been adequately implemented and require revision/or demonstration of adequate implementation within 12 months
- 5) Error correction** allows EPA to revise a prior action on a plan if it determines the action was in error; the state would not be required to submit a plan revision

Meaningful Engagement

Proposed Definition

“

... timely engagement with **pertinent stakeholder** representation in the **plan development** or plan revision process. Such engagement must not be disproportionate in favor of certain stakeholders ... It must include **early outreach, sharing information, and soliciting input** on the State plan.

”

Pertinent Stakeholders


Proposed Definition

“ ... include, but are not limited to, industry, small businesses, and communities that are most affected by and vulnerable to the impacts of the plan or plan revision. ”


In particular, pertinent stakeholders include those ***who are most affected by and vulnerable to the health or environmental impacts*** of pollution from the designated facilities addressed by the plan or plan revision.

Meaningful Engagement

Proposed Requirements



EPA's proposal would require states to identify all **pertinent stakeholders** and to conduct meaningful engagement 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

Meaningful Engagement

Proposed Requirements, continued



Communities most affected by and vulnerable to the impacts 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.

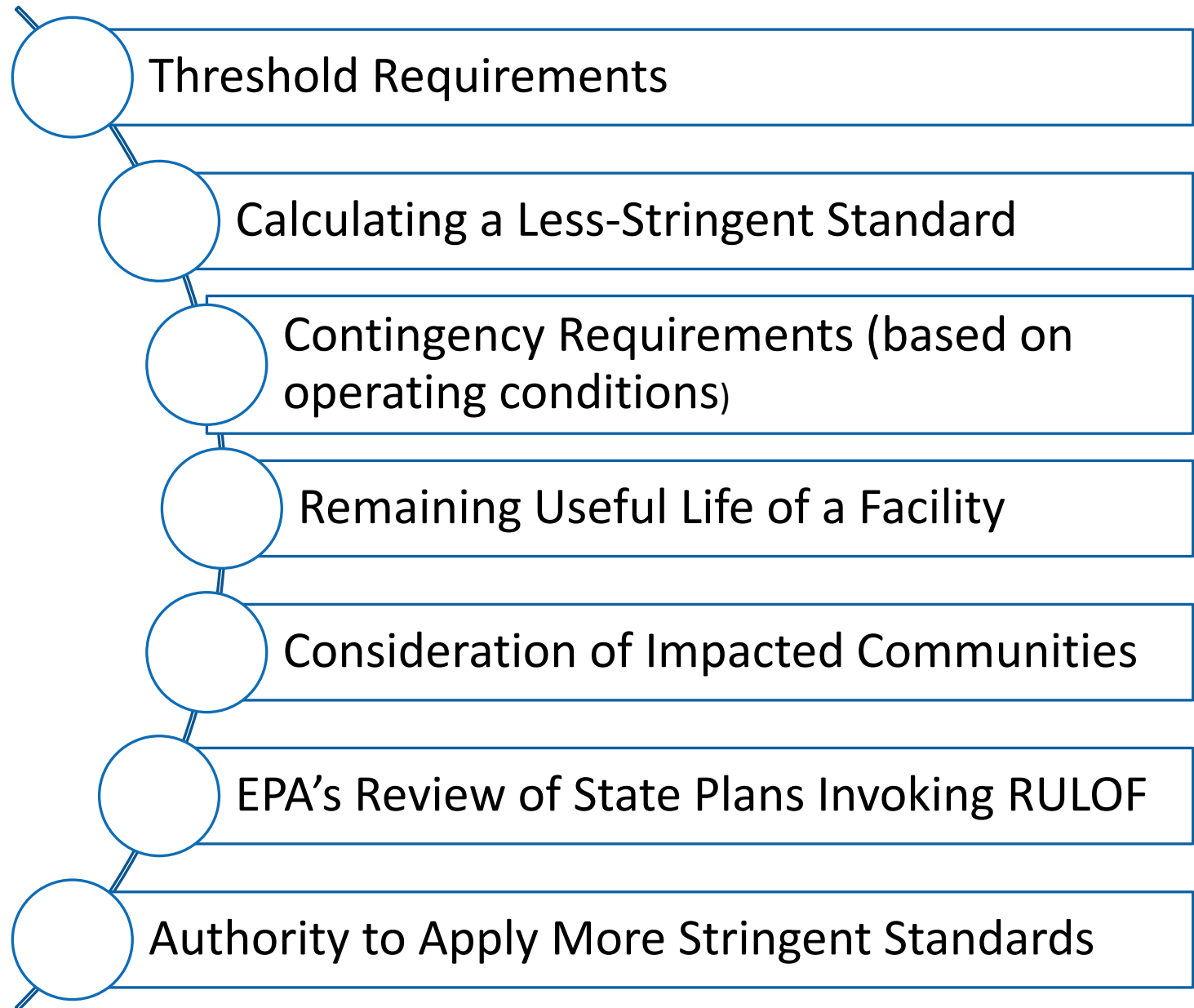
Requirements for Applying a Less-Stringent Standard to a Source

Clean Air Act section 111(d)(1) requires EPA to **permit states to apply a different standard** to a particular existing source based on the source's **remaining useful life and other factors (also called "RULOF")**

EPA is proposing clarifications and revisions for **when and how a state may seek to invoke RULOF** in its plan and for how **the EPA reviews** a submitted state plan

The proposed revisions are designed to improve **regulatory certainty and ensure consistency** during the planning and approval processes

Remaining Useful Life and Other Factors (RULOF)



Performance Standards and Compliance Flexibilities

Definition of Standard of Performance

EPA is proposing to amend the definition of “standard of performance” to clarify that state plans may include standards based on quantity or rate of emissions of air pollutants into the atmosphere

Compliance Flexibilities

EPA is proposing to interpret section 111(d) of the Clean Air Act as permitting the EPA to approve state plans that allow sources, where appropriate, to meet performance standards in the aggregate, such as through averaging or trading

Electronic Submission of State Plans

The proposal would require states to submit plans electronically, using either:

- The State Planning Electronic Collaboration System (SPeCS) (SPeCS can be accessed by the states through EPA's Central Data Exchange at <https://cdx.epa.gov/>); or
- An analogous electronic reporting tool provided by EPA

Timing and Next Steps

Next Steps



Proposal

- Signed Dec. 14, 2022
- Published in the Federal Register Dec. 23, 2022



Outreach

- Outreach is ongoing
- Public hearing Jan. 24, 2023
- **Comment period open to Feb. 27, 2023**



Final Rule

- **Planned for 2023**

How to Comment

Your comments may
address any aspect of
the proposal

Comment in Writing

- Due by **February 27, 2023**
- Label your comments with **Docket ID No. EPA-HQ-OAR-2021-0527**
- Submit through the Federal eRulemaking Portal at <https://www.regulations.gov/>
 - Type **EPA-HQ-OAR-2021-0527** in the search box

To read the proposed rule and additional resources, visit:

<https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr>

Thank you!