

State Implementation Plans: Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction

FACT SHEET

ACTION

- On February 15, 2023, EPA proposed actions relating to state implementation plans (SIPs) in 8 states for provisions applicable in 10 statewide or local jurisdictions addressing industrial emissions during periods of Startup, Shutdown, and Malfunction (SSM). These plans were evaluated consistent with the Agency’s SSM Policy as outlined in the 2015 SSM SIP Action.¹
- EPA is proposing to reinstate its findings of substantial inadequacy (“SIP calls”) that were withdrawn in 2020 for the states of Texas, North Carolina, and Iowa.
- For additional SSM provisions identified as deficient by EPA, the Agency is also proposing to issue new findings of substantial inadequacy of SSM provisions and SIP calls to:
 - the state of Connecticut;
 - the state of Maine;
 - Shelby County, Tennessee;
 - the state of North Carolina;
 - Buncombe County, North Carolina;
 - Mecklenburg County, North Carolina;
 - the state of Wisconsin; and
 - the state of Louisiana.
- The table below lists the specific provisions for each state and/or local jurisdiction covered in this proposed action.

State/Local Jurisdiction	Provision
Connecticut	Connecticut Administrative Code Title 22a Chapter 174 Section 38(c)(11).
Maine	Maine Administrative Code 06-096 Chapter 138 Section 3-O. Maine Administrative Code 06-096 Chapter 150 Section 4-C.
North Carolina	North Carolina Administrative Code Title 15A Chapter 02 Subchapter D Section .0535(c) and (g) North Carolina Administrative Code Title 15A Chapter 02 Subchapter D Section.1423(g)
North Carolina (Mecklenburg County)	Mecklenburg County Air Pollution Control Ordinance Rule Section 2.0535(c).

¹ See “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” (80 FR 33839, June 12, 2015).

State/Local Jurisdiction	Provision
North Carolina (Buncombe County) ²	Western North Carolina Regional Air Quality Agency Air Code Section 1-137(c).
Tennessee (Shelby County)	Shelby County Air Code 3-17 (City of Memphis Code 16-83).
Wisconsin	Wisconsin Administrative Code Chapter NR 431.05(1)-(2) and Chapter NR 436.03(2).
Louisiana	Louisiana Administrative Code Title 33 Chapter 9 Section 917
Texas	Texas Administrative Code Title 30 Part 1 Chapter 101 Subchapter F Division 3 Section 101.222(b)-(e)
Iowa	Iowa Administrative Code Agency 567 Chapter 24 Rule 24.1(1)

- EPA is committed to working with the affected air agencies to support the development and submission of their state plan revisions and to ensure continued progress toward cleaner air.
- EPA will accept comment on this proposed action for 60 days after it is published in the *Federal Register*.

BACKGROUND

- In its 2015 SSM SIP Action³, EPA clarified its SSM policy interpretation that SIP provisions cannot include exemptions (whether automatic or director's discretion) or provide affirmative defenses for excess emissions during SSM events. In order to be permissible in a SIP, an emission limitation must be applicable to the source continuously, *i.e.*, cannot include periods during which emissions from the source are legally or functionally exempt from regulation. Additionally, a SIP cannot include an affirmative defense provision that would limit or eliminate the jurisdiction of federal courts to assess liability or to impose remedies in an enforcement proceeding for exceedances of SIP emission limitations. Regardless of its form, a fully approvable SIP emission limitation must also meet all substantive requirements of the CAA applicable to such a SIP provision.
- If EPA finalizes a finding of substantial inadequacy and issues a SIP call for any state and/or jurisdiction, the final action will establish a deadline to rectify the deficiency by submitting a revised SIP. Consistent with CAA section 110(k)(5), EPA is proposing that the deadline for

² EPA notes that the local agency formerly referred to as the Western North Carolina Regional Air Quality Agency has recently been renamed as the Asheville-Buncombe Air Quality Agency. This program and the corresponding portion of the North Carolina SIP, *see* 42 CFR 52.1770(c)(4), covers Buncombe County in North Carolina. The version of the code approved into the SIP is codified as the Western North Carolina Regional Air Quality Agency (WNCRAQA) Air Code.

³ See 80 FR 33842 (June 12, 2015).

included states and/or jurisdictions to respond to the final SIP call would be 18 months after the final finding publishes in the *Federal Register*. EPA wants to give impacted states and/or jurisdictions sufficient time to make appropriate SIP revisions following their own SIP development process. Eighteen months, the maximum time allowable under CAA section 110(k)(5), would allow for the necessary SIP development process to correct the deficiencies yet still achieve the necessary SIP improvements as quickly as possible. EPA will review the adequacy of that new SIP submission in accordance with CAA requirements.

- If EPA finds that a state subject to a SIP call has failed to submit a complete SIP revision as required, or EPA disapproves such a SIP revision, then the finding or disapproval would trigger an obligation for EPA to impose a federal implementation plan (FIP) within 24 months. In addition, either action would also trigger mandatory sanctions under CAA section 179. Eighteen months after EPA's finding or disapproval, a 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review program would take effect. Six months later (24- months after EPA's finding or disapproval) restrictions on highway funding in nonattainment areas would take effect.

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>.
- EPA has established a docket for this action under Docket EPA-HQ-OAR-2022-0814. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton Building, Room 3334, 1301 Constitution Avenue NW, Washington, D.C. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. 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 Sydney Lawrence of EPA's Office of Air Quality Planning and Standards by email at lawrence.sydney@epa.gov.