

Final Updates to EPA's Regulations Governing State Plans for Existing Sources Fact Sheet

Overview of Action

- On November 9, 2023, the U.S. Environmental Protection Agency (EPA) issued final updates to the Agency's "Implementing Regulations" under section 111(d) of the Clean Air Act. The Implementing Regulations set timelines and other requirements for state plans to limit pollution from existing sources under section 111.
- 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 a framework for states to develop plans that establish, implement, and enforce standards of performance for "designated facilities," which is the term EPA uses for existing sources.
- Based on the comments received on the proposal, the Agency is finalizing the following changes, among others: providing additional time for states to submit their plans; revising the definition of meaningful engagement and providing additional clarity and flexibility to states; extending the timeline that triggers consideration of increments of progress for state plans; and streamlining the process for considering particular sources' remaining useful life and other factors to apply a less-stringent standard of performance.
- The final rule updates the definition of "standard of performance" to include an "allowable rate, quantity, or concentration of emissions," consistent with applicable statutory definitions.
- In addition, the final rule clarifies that EPA may approve state plans, where appropriate, that allow sources to meet standards of performance in the aggregate, such as through trading or averaging.
- The final updates to the Implementing Regulations apply to state plans developed for all emissions guidelines published after July 8, 2019. Individual emissions guidelines can include requirements for state plans that are different.
- The updated requirements also 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.

- See the next page for a more detailed summary. To read the final rule, visit <https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr>

Requirements for State Plans

State Plan Deadlines

- The final rule issues several timing requirements in response to a January 2021 court decision that vacated certain provisions in the previous Implementing Regulations that the Agency issued in 2019.
- The timelines are intended to provide enough time for states to develop and submit plans, for EPA to review and act on those plans, and, if necessary, for EPA to issue a federal plan, while ensuring that emissions guidelines are implemented as quickly as possible to reduce emissions that are harmful to public health and welfare. However, EPA also recognizes that different emissions guidelines may address very different circumstances and notes that it may replace the timelines in the Implementing Regulations in individual emissions guidelines, as appropriate.
- The final Implementing Regulations include the following timelines:
 - **States plans due to EPA:** States will have 18 months to submit plans to EPA, rather than the 15 months the Agency had proposed. EPA made this change in response to public comments on the proposed rule.
 - **Completeness determination:** EPA will have 60 days to determine whether a state plan is complete. After 60 days, the plan is automatically deemed complete.
 - **EPA action on state plan:** EPA will have 12 months to take final action, such as approval or disapproval, on a complete plan or plan revision.
 - **Federal plan:** EPA must issue a federal plan within 12 months after 1) a state fails to submit a complete plan; or 2) EPA disapproves a state plan.
 - **Increments of progress:** State plans that include compliance deadlines that are longer than 20 months after the plan is due to EPA must include any increments of progress required under the applicable emissions guidelines. The Agency had proposed to require increments of progress if the plan required compliance more than 16 months after the plans were due.
 - 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. They include steps such as submitting a final control plan for a facility to the air pollution control agency, procuring emissions control systems, and final compliance, among others. The number of increments of progress a plan must include and the time to complete them will vary based on requirements in specific emissions guidelines.

Meaningful Engagement

- A robust and meaningful public participation process during the development of a state’s plan is critical to ensuring that the state understands and fully considers the impact of the plan on public health and welfare. The final rule makes several changes to the meaningful engagement requirements EPA proposed in 2022, including:
 - Providing more flexibility for states to meet their unique needs and those of their residents in conducting meaningful engagement. Rather than finalizing more prescriptive requirements, EPA is requiring that state plan submissions and significant plan revisions include a description of the state’s efforts to meaningfully engage with “pertinent stakeholders,” the input they received, and how that input was or was not used in the state plan.
 - Defining meaningful engagement as “timely engagement with pertinent stakeholders and/or their representatives in the plan development or plan revision process.” Pertinent stakeholders include, but are not limited to, industry, small business, and communities most affected by and/or vulnerable to the impacts of a state plan or plan revision. The rule notes that engagement should not favor certain stakeholders over others.
 - The rule also requires EPA to conduct meaningful engagement when it develops federal plans. EPA will include the same information in its federal plan that the Agency is requiring of states, including a description of meaningful engagement efforts, the input received, and the way in which that input was or was not used or not used.

Mechanisms to Improve Flexibility and Efficiency

- The final rule adds several “mechanisms” to improve flexibility and efficiency in the submission, review, and implementation of state plans. These mechanisms already are available for state implementation plans under section 110 of the Clean Air Act. They include:
 - **Partial approval and disapproval:** EPA can 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 will have the opportunity to comment on partial approvals or disapprovals through notice-and-comment rulemaking.
 - **Conditional approval:** EPA can 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 conditionally approve a state plan, 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, the conditional approval will convert to a disapproval.
 - **Parallel processing:** States may ask EPA to initially review a plan that is technically complete but not yet administratively complete. This streamlined process allows EPA to

propose approval of a state plan in parallel with the state completing its administrative process.

- To do this, a state must include the following with its proposed plan submission: a schedule for final adoption of its plan; a copy of the draft regulation; and documentation of meaningful engagement conducted and any additional planned engagement if appropriate.
- If EPA proposes to approve a plan through parallel processing, the state must submit a fully adopted and final plan that meets all completeness criteria before EPA issues a final approval.
- **State plan call** – EPA may find that a previously approved state plan(s) is substantially inadequate to meet Clean Air Act or emissions guidelines requirements and call for a plan revision. This can occur if technical or legal conditions, such as a court decision, that occur after the plan has been approved mean the plan is no longer adequate. To require a state to revise a plan, EPA must notify the state of its finding and set a deadline for states to submit a revised plan or demonstrate appropriate implementation of the approved plan that is within 12 months of the notification, or within a different time period as determined by EPA.
- **Error correction** – This provision allows EPA to revise a prior action if the Agency determines that its own action on a plan was in error. States are not required to submit a plan revision as part of an error correction.

Requirements for Applying Less-Stringent Standards to a Facility

- Under the Clean Air Act, state plans to implement emissions guidelines are generally required to include standards of performance for existing sources that are at least as stringent as the degree of limitation achievable by applying the best system of emission reduction (BSER) that EPA has determined. However, the Clean Air Act also requires EPA to provide regulations that permit states to account for the remaining useful life of a particular facility, among other factors, in determining the standard of performance that applies to that facility.
- The final rule provides a process for states and EPA to follow to apply a less-stringent standard of performance or a longer compliance deadline based on an existing source's remaining useful life or other factors. The final regulations include a subset of the requirements EPA proposed.
- To apply a less stringent standard of performance a state or EPA must:
 - **Demonstrate that the facility cannot reasonably achieve the degree of emission limitation (or the compliance date) in the applicable emissions guidelines**, because the cost of control is unreasonable due to the facility's age, location or basic process design; that it is physically impossible or technically infeasible to install the necessary

control equipment; or because of other factors specific to the facility. The state must demonstrate that there are **fundamental differences** between the facility-specific information and the information EPA considered in determining the degree of emission limitation for the source category (or subcategory) overall.

- States may not apply a less stringent standard in cases where a facility can a reasonably achieve the degree of emission limitation in the applicable emissions guideline using a system of emission reduction other than the BSER. That is, states must demonstrate that a facility cannot achieve the degree of emission limitation using *any* system of emission reduction in order to apply a less stringent standard.
 - **Determine the standard (or compliance date) that is no less stringent than needed to address the fundamental differences.** For sources that qualify for a less stringent standard, states are required to use, to the extent it is necessary, the process in the regulations to calculate a standard that deviates as little as possible from the degree of emission limitation the EPA determined in the applicable emissions guideline.
 - **For less-stringent standards that are based on a facility's operating conditions that are within the facility's control** (such as remaining useful life or restricted capacity), states must include the operating condition as an enforceable requirement in their plans.
 - A less-stringent standard of performance must still meet all other applicable requirements.
- To read the final rule, visit <https://www.epa.gov/stationary-sources-air-pollution/adoption-and-submittal-state-plans-designated-facilities-40-cfr> .