



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 52

[EPA-R06-OAR-2019-0212; FRL-10997-04-R6]

### **Air Plan Disapproval; Louisiana; Removal of Excess Emissions Provisions; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that a portion of a December 7, 2023, final disapproval action of a state implementation plan (SIP) revision submitted by the State of Louisiana was in error and making a correction pursuant to the Clean Air Act (CAA).

**DATES:** This final action is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSEES:** The EPA has established a docket for this action under Docket ID Number EPA-R06-OAR-2019-0212. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this publication should be addressed to Michael Feldman, Regional Haze and SO<sub>2</sub> Section, Air & Radiation Division, U.S. Environmental Protection Agency, Region VI, 1201 Elm

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## **SUPPLEMENTARY INFORMATION:**

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### **II. Background**

On November 8, 2024, the EPA proposed to correct an error in an earlier EPA action, using the authority of section 110(k)(6) of the CAA. Specifically, the proposed action explained that the error occurred in a December 7, 2023, EPA action<sup>1</sup> disapproving revisions to the SIP for the State of Louisiana submitted in response to the 2015 SSM SIP Action.<sup>2</sup>

On June 12, 2015, the EPA finalized the 2015 SSM SIP Action, which clarified, restated, and updated the EPA's national policy regarding SIP provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). As part of the 2015 SSM SIP Action, the EPA issued a finding that certain SIP provisions for 36 states that were applicable in 45 statewide and local jurisdictions were substantially inadequate to meet CAA requirements due to how those SIP provisions treated excess emissions during SSM periods. Further, the EPA issued a "SIP call" to each of those 45

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<sup>1</sup> 88 FR 85112 (December 7, 2023).

<sup>2</sup> 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 33840 (June 12, 2015).

air agencies, including the State of Louisiana on the basis that Louisiana’s SIP contained impermissible automatic and discretionary exemptions that were substantially inadequate to meet CAA requirements.<sup>3</sup> To respond to the EPA’s SIP call in the 2015 SSM SIP Action, each affected state was required to submit its corrective SIP revision by November 22, 2016. On December 7, 2023, the EPA took final action<sup>4</sup> to disapprove certain portions of a SIP revision submitted by the State of Louisiana on November 20, 2016, and supplemented on June 9, 2017, because the EPA found that Louisiana’s SIP revision did not correct the deficiency identified in Louisiana’s SIP in the 2015 SSM SIP Action.<sup>5</sup>

As a result of the March 1, 2024, decision from the United States Court of Appeals for the District of Columbia Circuit in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), certain portions of the EPA’s SIP call in the 2015 SSM SIP Action were vacated by the D.C. Circuit and therefore have no legal effect. Thus, certain states subject to the 2015 SSM SIP Action no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the deficiencies identified in the SIP call.<sup>6</sup> In other words, by partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Louisiana’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. As a result, the EPA proposed to correct the EPA’s December 7, 2023, disapproval action with respect to the consequences of that disapproval.

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<sup>3</sup> See 78 FR 12460, 12521-12522 (February 22, 2013) and 80 FR 33840 at 33967 (June 12, 2015).

<sup>4</sup> See 88 FR 85112 (December 7, 2023).

<sup>5</sup> On October 5, 2022, EPA Region 6 finalized approval of a portion of Louisiana’s SIP revision that corrected six of Louisiana’s seven deficient SIP provisions originally identified in EPA’s 2015 SSM SIP Call. See 87 FR 60292. On December 7, 2023 (88 FR 85112), the EPA Region 6 finalized disapproval of Louisiana’s SIP revision that sought to correct the remaining deficient provision.

<sup>6</sup> In vacating certain portions of the 2015 SSM SIP Action, the D.C. Circuit’s decision did not determine whether the SIP-called provisions were otherwise lawful under the CAA. See *e.g.* 94 F.4th at 110 (“We thus do not reach the question whether the called SIPs’ relevant emission restrictions in fact amount to (or must amount to) “emission limitations” per the statutory definition.”).

A more complete explanation of the reasons for the proposed error correction can be found in the November 8, 2024, proposed action. Comments on the November 8, 2024, proposed action were due on or before December 9, 2024. The EPA did not receive any comments on the November 8, 2024, proposed action.

### **III. What is the EPA correcting?**

In this action, the EPA is correcting the erroneous triggering of mandatory sanctions under CAA section 179 and 40 CFR 52.31 for the state of Louisiana following its December 7, 2023, disapproval of Louisiana's SIP revision submitted in response to the 2015 SSM SIP Call. The EPA is also correcting the erroneous triggering of the EPA's obligation to issue a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B). As a result, in finalizing this error correction action, the imposition of sanctions for the State of Louisiana and the FIP obligation for the EPA that were triggered as a result of the December 7, 2023, final disapproval action are no longer in effect.

### **IV. What action is the EPA taking?**

As a result of the D.C. Circuit's decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is determining that, pursuant to section 110(k)(6) of the CAA, a portion of the EPA's December 7, 2023, final disapproval action of Louisiana's SIP revision was in error with respect to the consequences of that disapproval. By partially vacating the EPA's 2015 SSM SIP Action, the D.C. Circuit's decision rendered Louisiana's SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. Thus, the EPA is finding that the triggering of mandatory sanctions and FIP obligation following the December 7, 2023, final disapproval was erroneous and, through this action, is terminating the imposition of sanctions for the State and the FIP obligation for the EPA triggered by that disapproval as they are no longer legally valid.

### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. However, this action, which seeks to correct an error in a prior SIP disapproval action under section 110(k)(6) of the CAA, is neither an approval nor a disapproval. This action merely corrects an error in EPA's prior action and does not impose additional requirements beyond those imposed by state law.

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it because it is an error correction taken under section 110(k)(6) of the CAA and does not directly or disproportionately affect children.
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Although not a basis for that action, the EPA performed an EJ analysis for informational purposes only in its June 13, 2023, proposed disapproval of Louisiana’s SIP revision. See 88 FR 38448, 38453-38455 (June 13, 2023) and 88 FR 85112, 85123-85124 (December 7, 2023) for more information. The EPA views this

action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SIP call. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for communities with EJ concerns.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 19, 2024.

**Earthea Nance,**  
*Regional Administrator, EPA Region 6.*

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