

Federal SIP-Related Actions

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This is Not Legal Advice!

- For specific issues and legal interpretations associated with a specific State Implementation Plan (SIP) revision, consult your General Counsel and EPA Regional Office.
- Only the basic tenets of sanctions and FIP provisions.

Available Sanctions

- Two sets of sanctions available to EPA
 - Sec 179: mandatory
 - Sec 110(m): discretionary
- Clock starts or sanctions are triggered

Sec 179 Sanctions Triggers

- Finding of failure to **submit** a complete Title I, Part D nonattainment area plan or revision or a Part D SIP element (incomplete submittals are treated as a failure to submit)
- Finding of failure to **implement** any element of approved Part D SIP.

Sec 179 Sanctions Triggers (2)

- **Disapproval** under of a Part D plan/revision or required element of same
- Failure to **submit** a SIP revision for which EPA has issued a **SIP call** or disapproval of the SIP revision submitted in response to a SIP call

SIP Calls

- If EPA finds an approved SIP is “substantially inadequate” to attain or maintain NAAQS or otherwise comply with the CAA
 - EPA may call on state to revise its SIP to correct the inadequacies by a given date
 - If not submitted by the due date, or the SIP submission is disapproved, the state may be subject to sec 179 and 110(m) sanctions processes

Sec 179 Sanctions Details

- The sanctions apply within nonattainment areas where the SIP or SIP element associated with the findings of failure or disapproval applies (could be statewide in the OTR)
- Are **not** triggered if an area fails to attain NAAQS on time (i.e., an approved SIP did not “work”)

Sec 179 Sanctions

- A ratio of at least 2:1 emissions reductions within the nonattainment area for new or modified major facilities undergoing NSR (may be statewide in the OTR)
- Highway funding sanctions. FHWA is required to impose funding moratorium for all but exempt projects (safety, mass transit)
- Withholding of Section 105 grant funds (*not mandatory, even under the mandatory sanctions provision, but EPA may retain funds to prepare FIP, for example)

Order of Sec 179 Sanctions (1)

- 40 CFR 52.31: often referred to as “EPA’s Order of Sanctions Rule”
- Rule details when and how the mandatory sanctions clocks and sanctions are triggered.
- Explains when and how the sanctions clocks are halted and any already imposed sanctions are lifted.

Order of Sec 179 Sanctions (2)

The mandatory order of 179 sanctions:

- 18 months after trigger = offset sanctions
- 24 months after trigger = highway sanctions

Federal Implementation Plans (1)

- Air pollution reduction plan developed by EPA in the absence of a state-developed plan
- 24 months after EPA disapproves or makes a finding of failure to submit a required plan, it has a ***nondiscretionary*** duty to promulgate a Federal Implementation Plan (FIP)
- FIP should correct the deficiency in the SIP, **no more, no less**

Federal Implementation Plans (2)

- EPA publishes an NPR to be codified in 40 CFR Part 52, holds public hearings, and publishes in the FR
- If EPA subsequently approves a SIP, it can then remove the FIP
- Clock (or alternatively, the FIP itself) is turned off only after EPA approves the SIP/revision

Sec 179 Sanction & FIP Clocks

- Sanction and FIP clocks commence when the action taken by EPA to make a finding or to disapprove is effective (the FR notice's effective date)
- Usually the 179 sanction clocks “run” for 18 and 24 months
- The FIP clocks “run” for 24 months

Turning Off Sec 179 Sanctions & Sanction Clocks (1)

- If before 18 months: EPA can issue an “interim final determination” (IFD) that the deficiency is corrected to defer all sanctions pending EPA final action on corrective SIP/revision
- If between 18 and 24 months, IFD will stay offsets and defer highway sanctions
- If after 24 months, IFD will stay both sanctions

Turning Off Sec 179 Sanctions & Sanctions Clocks (2)

- **For sanctions resulting from finding of failure to submit:**
 - EPA's final action is a letter to the Governor who submitted an administratively and technically complete the SIP/revision that corrects the deficiencies
- **For sanctions resulting from an EPA final action to disapprove a SIP/revision**
 - EPA's final action is a final rulemaking action approving a SIP/revision that is administratively and technically complete and corrects the deficiencies
- **For sanctions resulting from an EPA finding of failure to implement**
 - EPA's final action is a FR notice indicating that the State is implementing its SIP

EPA Not Limited to Mandatory Sanctions

- Section 110(m): CAA gives EPA the discretionary authority to impose either or both sanctions any time after a finding or disapproval is made

110(m) Sanctions

- Applies to non-Part D plans/elements and Part D plans (any “plan or plan item required under this chapter,” i.e., the CAA)
- Because they apply “at any time” after trigger, they provide EPA discretionary authority to shorten the 18/24 month clock for a Part D SIP, SIP element, or SIP call
- Offset sanctions only apply where the nonattainment NSR SIP requirements apply
- Highway sanctions may apply in both attainment and nonattainment areas

Conformity Implications of Disapprovals of Part D Control Strategy Plans (1)

- In both the ROP Plan and the whole Attainment Plan (including the attainment demonstration) for a given nonattainment area, mobile budgets must be identified for the NAAQS pollutant and/or its precursors
- Disapproval of either of these control strategy plans has Transportation Conformity implications

Conformity Implications of Disapprovals of Part D Control Strategy Plans (2)

- Conformity Freeze
 - If a control strategy SIP/revision is disapproved, only projects within the first 4 years of current conformity transportation plan can be funded and move forward until a new SIP/revision is submitted and its mobile budgets are found adequate or the SIP approved
 - Effective immediately upon the effective date of the disapproval of the control strategy SIP/revision. Not 18 or 24 months later

Conformity Implications of Disapprovals of Part D Control Strategy Plans (3)

- Conformity Lapse
 - Once highway sanctions have been imposed for the disapproval or non-submittal of a control strategy SIP, no new TIP, plan or project can be funded or found to conform until the new SIP submitted. A new TIP or plan cannot be approved until the mobile budgets in the new SIP are found adequate or approved
- Protective Finding
 - Prevents the freeze (but not the lapse) **if** the disapproved SIP nevertheless contained enforceable measures **to achieve all required emissions reductions**

Recent Example

- 82 FR 9158 (February 5, 2017)
- Findings of failure to submit SIPS for the 2008 ozone NAAQS in a timely manner
- 15 states and District of Columbia
- Sanction clock starts March 6, 2017
- Issued notwithstanding regulatory freeze

Recent Example: Mid-Atlantic States Affected

TABLE 1—FINDINGS OF FAILURE TO SUBMIT CERTAIN REQUIRED SIP ELEMENTS FOR 2008 OZONE NAAQS
NONATTAINMENT AREAS

Region	State	Area name	Required SIP element
1	CT	Greater Connecticut	Nonattainment NSR rules—Marginal.
1	CT	New York-N. New Jersey-Long Island	Nonattainment NSR rules—Marginal.
1	MA	Dukes County	Nonattainment NSR rules—Marginal.
2	NJ	New York-N. New Jersey-Long Island	Nonattainment NSR rules—Marginal.
2	NJ	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules—Marginal.
3	DC	Washington	Nonattainment NSR rules—Marginal.
3	DE	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules—Marginal.
3	DE	Seaford	Nonattainment NSR rules—Marginal.
3	MD	Baltimore	I/M Basic.
3	MD	Baltimore	Nonattainment NSR rules—Moderate.
3	MD	Baltimore	NO _x RACT for Major Sources.
3	MD	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules—Marginal.
3	MD	Washington	Nonattainment NSR rules—Marginal.
3	PA	Allentown-Bethlehem-Easton	Nonattainment NSR rules—Marginal.
3	PA	Lancaster	Nonattainment NSR rules—Marginal.
3	PA	Philadelphia-Wilmington-Atlantic City	Nonattainment NSR rules—Marginal.
3	PA	Pittsburgh-Beaver Valley	Nonattainment NSR rules—Marginal.
3	PA	Reading	Nonattainment NSR rules—Marginal.
3	VA	Washington	Nonattainment NSR rules—Marginal.

Recent Example: OTR-Specific Elements Affected

TABLE 2—FINDINGS OF FAILURE TO SUBMIT CERTAIN REQUIRED SIP ELEMENTS FOR STATES IN THE OZONE TRANSPORT REGION

EPA region	State	Required SIP element
1	MA	Non-CTG VOC RACT for Major Sources.
1	MA	NO _x RACT for Major Sources.
1	MA	CTG VOC RACT (for all 44 CTGs *).
1	ME	Non-CTG VOC RACT for Major Sources.
1	ME	CTG VOC RACT (for all 44 CTGs *).
1	NH	Non-CTG VOC RACT for Major Sources.
1	NH	NO _x RACT for Major Sources.
1	NH	CTG VOC RACT (for all 44 CTGs *).
1	RI	Non-CTG VOC RACT for Major Sources.
1	RI	NO _x RACT for Major Sources.
1	RI	CTG VOC RACT (for all 44 CTGs *).
1	VT	Non-CTG VOC RACT for Major Sources.
1	VT	NO _x RACT for Major Sources.
1	VT	CTG VOC RACT (for all 44 CTGs *).
2	NJ	CTG VOC RACT Fiberglass Boat Manufacturing Materials (2008).
2	NJ	CTG VOC RACT Miscellaneous Metal Products Coatings (2008).
2	NJ	CTG VOC RACT Paper, Film, and Foil Coatings (2007).
2	NJ	CTG VOC RACT Plastic Parts Coatings (2008).
2	NJ	CTG VOC RACT Industrial Cleaning Solvents (2006).
3	DC	NO _x RACT for Major Sources.
3	DC	CTG VOC RACT (for all 44 CTGs *).
3	DC	Non-CTG VOC RACT for Major Sources.
3	MD	NO _x RACT for Major Sources.
3	PA	CTG VOC RACT (for all 44 CTGs *).
3	VA	Non-CTG VOC RACT for Major Sources.
3	VA	NO _x RACT for Major Sources.
3	VA	CTG VOC RACT (for all 44 CTGs *).

* See the explanation after Table 1.

Resources

- CAA sections 179 and 110(m)
- 40 CFR Part 52.30
- 40 CFR Part 52.31

- For questions related to the applicability and implementation of sanctions for a finding or disapproval in a given nonattainment area contact your EPA Regional Office.

Any questions or comments?

Thank you!

See you tomorrow at 8:30 am!