

The EPA Assistant Administrator for the Office of Air and Radiation, Aaron Szabo, signed the following final rule on 06/09/2026, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2021-0863 and Docket No. EPA-R03-OAR-2023-0179. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2021-0863; EPA-R03-OAR-2023-0179; FRL-12161-04-OAR]

RIN 2060-AW38

Partial Withdrawals of Findings of Failure to Submit State Implementation Plan (SIP) Revisions to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is partially withdrawing two final actions finding that 13 States and/or local air pollution control agencies failed to submit State Implementation Plan (SIP) revisions to address the Agency's 2015 findings of substantial inadequacy and "SIP call" for provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). The partial withdrawal affects six air pollution control agencies. Withdrawing relevant parts of the findings for failure to submit is consistent with the decision from the U.S. Court of Appeals for the District of Columbia Circuit Court (D.C. Circuit) partially vacating the findings of substantial inadequacy and SIP call. This final action renders no longer applicable certain CAA deadlines for the EPA to impose sanctions if a State does not submit a complete SIP revision addressing the outstanding requirements, and to promulgate a Federal Implementation Plan (FIP).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established two dockets for this action under Docket ID Nos. EPA-HQ-OAR-2021-0863 and EPA-R03-OAR-2023-0179. All documents in the dockets are listed on the <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 the disclosure of which 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 electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about this final rule, contact Carrie Wheeler, Office of State Air Partnerships, Air Quality Planning Division (C504-05), Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, NC 27711; telephone number: (919) 541-9771; email address: wheeler.carrie@epa.gov.

Preamble acronyms and abbreviations. Throughout this preamble, the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA	Clean Air Act
CBI	Confidential Business Information
D.C. Circuit	District of Columbia Circuit Court
EPA	Environmental Protection Agency
FIP	Federal Implementation Plan
SIP	State Implementation Plan
SSM	startup, shutdown, malfunction

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

This document is a prepublication version signed by EPA Assistant Administrator for the Office of Air and Radiation, Aaron Szabo on 06/09/2026. We have taken steps to ensure the accuracy of this version, but it is not the official version.

I. Background and Overview of the Final Action

II. Response to Comments

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

C. Paperwork Reduction Act (PRA)

D. Regulatory Flexibility Act (RFA)

E. Unfunded Mandates Reform Act of 1995 (UMRA)

F. Executive Order 13132: Federalism

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

J. National Technology Transfer and Advancement Act (NTTAA)

K. Congressional Review Act (CRA)

L. Judicial Review

I. Background and Overview of the Final Action

On January 12, 2022, the EPA took final action (the “January 2022 Findings of Failure to Submit”)¹ to find that 12 air agencies failed to submit SIP revisions that were due by November 22, 2016, to address a now partially vacated 2015 SSM SIP Call.² On April 17, 2023, EPA Region 3 took final action (the “April 2023 Finding of Failure to Submit”) to find that the State of West Virginia failed to submit a SIP revision in response to the now partially vacated 2015 SSM SIP Call.³ On November 26, 2024, the EPA issued a direct final action⁴ and parallel

¹ See “Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” 87 FR 1680 (Jan. 12, 2022).

² See “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of the 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 (Jun. 12, 2015).

³ See “West Virginia; Finding of Failure to Submit State Implementation Plan Revision in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” 88 FR 23353 (Apr. 17, 2023).

⁴ See “Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Partial Withdrawals of Findings of Failure to Submit State Implementation Plan (SIP),” 89 FR 93187 (Nov. 26, 2024).

proposal (the “November 2024 Action”) to partially withdraw the January 2022 Findings of Failure to Submit and the April 2023 Finding of Failure to Submit. The EPA is now taking final action to partially withdraw certain prior Agency actions that found that 13 States and/or local air pollution control agencies (“air agencies”) failed to timely submit SIP revisions required by the CAA.

In total, the 13 air agencies that were included in the findings of failure to submit can be found in Table 1. For those air agencies subject to the prior findings of failure to submit for which the EPA has fully approved their submitted SIP revision, the obligation under the findings of failure to submit has been fulfilled, and there is no need for the Agency or those air agencies to take further action. The air agencies that have not submitted a SIP revision in response to the prior findings of failure to submit, or for which the EPA has not taken final action on their submittal (*i.e.*, the States for which some obligation still exists), can be found in Table 2.

Table 1: 13 States and/or Local Air Pollution Control Agencies Included in the January 2022 Findings of Failure to Submit and April 2023 Finding of Failure to Submit.

EPA Region	State and/or Local Air Agency
1	Rhode Island
3	District of Columbia
3	West Virginia
4	Alabama
4	North Carolina – Forsyth
4	Tennessee – Shelby (Memphis)
5	Illinois
5	Ohio
6	Arkansas
8	South Dakota
9	California – San Joaquin Valley Air Pollution Control District
10	Washington – Energy Facility Site Evaluation
10	Washington – Southwest Clean Air Agency

Table 2: Air Agencies Without Fully Approved SIP Revisions in Response to the January 2022 Findings of Failure to Submit and April 2023 Finding of Failure to Submit.⁵

EPA Region	State and/or Local Air Agency
1	Rhode Island
3	District of Columbia
3	West Virginia
4	Alabama
5	Illinois
5	Ohio
8	South Dakota

On March 1, 2024, the D.C. Circuit issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024) (*Florida Electric*). The D.C. Circuit granted the petitions in part, vacating the SIP calls that were based on SIP provisions that included automatic exemptions, director’s discretion provisions, and affirmative defenses that are functionally exemptions, and denied the petitions in part, affirming the SIP calls based on SIP provisions that included overbroad enforcement discretion provisions and affirmative defenses against specific relief.

As a result of the D.C. Circuit’s decision in *Florida Electric*, the EPA issued the November 2024 Action to partially withdraw the January 2022 Findings of Failure to Submit and the April 2023 Finding of Failure to Submit. The EPA withdrew the direct final rule effective January 10, 2025, due to comments received.⁶

After reviewing comments received on the proposed action, the EPA is finalizing this action to partially withdraw the January 2022 Findings of Failure to Submit and the April 2023

⁵ The EPA and its State partners work regularly on SIP requirements including plan development, review and approval. After the November 2024 proposal, the EPA took action on two SIP revisions related to today’s action: (1) Washington-Energy Facility Site Evaluation Council (EFSEC) SIP call revision was finalized on December 27, 2024, *see*, 89 FR 105456; and (2) Washington – Southwest Clean Air Agency (SWCAA) SIP call revision was finalized on May 9, 2025, *see*, 89 FR 19650. These fully approved SIP revisions in response to the January 2022 Findings of Failure to Submit fulfilled their findings of failure to submit obligations.

⁶ *See* “Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Partial Withdrawals of Findings of Failure to Submit State Implementation Plan (SIP),” 90 FR 1903 (Jan. 10, 2025).

This document is a prepublication version signed by EPA Assistant Administrator for the Office of Air and Radiation, Aaron Szabo on 06/09/2026. We have taken steps to ensure the accuracy of this version, but it is not the official version.

Finding of Failure to Submit. The partial withdrawal affects six air agencies. Because certain portions of the SIP call were vacated by the D.C. Circuit and, therefore, have no legal effect, the air agencies with provisions to which those vacated portions of the SIP call previously applied no longer have a legal obligation to submit the revisions that the EPA had originally determined were required pursuant to the 2015 SSM SIP Call.⁷ Further, as there is no longer a predicate submission obligation for those particular SIP-called provisions, the EPA’s findings that such obligation was not met are no longer valid and must be withdrawn. As a result of this final action, the January 2022 Findings of Failure to Submit and April 2023 Finding of Failure to Submit are withdrawn with respect to the air agency SIP provisions listed in Table 3.

Table 3. SIP Provisions for Which the EPA is Withdrawing the Agency’s Findings of Failure to Submit.⁸

Region	State	Applicable Provisions for Which the Findings of Failure to Submit Are Withdrawn
1	Rhode Island	25-4-13 R.I. Code R. §16.2
3	District of Columbia	D.C. Mun. Regs. tit. 20 §107.3 D.C. Mun. Regs. tit. 20 §606.1 D.C. Mun. Regs. tit. 20 §606.2
	West Virginia	W. Va. Code R. §45-2-9.1 W. Va. Code R. §45-7-10.3 W. Va. Code R. §45-40-100.8. W. Va. Code R. §45-2-10.1 W. Va. Code R. §45-3-7.1 W. Va. Code R. §45-5-13.1 W. Va. Code R. §45-6-8.2 W. Va. Code R. §45-7-9.1 W. Va. Code R. §45-7-10.4 W. Va. Code R. §45-10-9.1

⁷ In vacating certain portions of the 2015 SSM SIP Call, the D.C. Circuit’s decision did not determine whether the SIP-called provisions were otherwise lawful under the CAA. *See e.g.*, slip op. at 55 (“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.”).

⁸ Because the D.C. Circuit only vacated certain portions of the EPA’s 2015 SSM SIP Action, the 2015 SIP Call is still applicable for certain provisions in some States. As such, the EPA is only withdrawing the findings of failure to submit as they apply to those provisions that clearly correspond to the vacatur. As a result, the findings of failure to submit remain in place for provisions that may correspond to the portions of the 2015 SSM SIP Action that were not vacated (*i.e.*, provisions that were SIP called because they include an affirmative defense that provides specific relief and provisions that constitute overbroad enforcement discretion). Some States were included in the findings of failure to submit for both types of provisions.

		W. Va. Code R. §45-21-9.3 W. Va. Code R. §45-3-3.2 W. Va. Code R. §45-2-10.2
4	Alabama	Ala Admin Code Rule 335-3-14-.03(1)(h)(1) Ala Admin Code Rule 335-3-14-.03(1)(h)(2)
5	Ohio	Ohio Admin. Code 3745-15-06(A)(3) Ohio Admin. Code 3745-17-07(A)(3)(c) Ohio Admin. Code 3745-17-07(B)(11)(f) Ohio Admin. Code 3745-14-11(D) Ohio Admin. Code 3745-15-06(C)
8	South Dakota	S.D. Admin. R. 74:36:12:02(3)

For those air agencies’ SIP provisions in Table 3 for which the prior findings of failure to submit are withdrawn, the CAA deadlines for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) are no longer applicable. For those air agency’s SIP provisions for which the findings of failure to submit are not withdrawn and are still applicable, the CAA deadlines for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) remain in effect as previously established (*see* Table 4).

Table 4. States and/or Local Air Agencies with Remaining Findings of Failure to Submit Obligations.

EPA Region	State and/or Local Air Agency	Applicable Provisions for Which the Findings of Failure to Submit Remain in Effect
3	District of Columbia	D.C. Mun. Regs. tit. 20 §606.4
3	West Virginia	W. Va. Code R. §45-2-9.4
4	Tennessee – Shelby (Memphis)	Shelby County Code §16-87
5	Illinois	Ill. Admin. Code tit. 35 §201.261 Ill. Admin. Code tit. 35 §201.262 Ill. Admin. Code tit. 35 §201.265

The EPA notes that the D.C. Circuit issued another decision related to the court’s interpretation of the CAA relevant to SSM provisions, *SSM Litigation Group v. EPA*, 150 F.4th

593 (D.C. Cir. 2025). In that case, the D.C. Circuit reversed the EPA's July 2023 removal of affirmative defense provisions from the title V regulations.⁹ However, the *SSM Litigation Group v. EPA* decision is not directly relevant to this action, which is focused on withdrawal of the SIP calls vacated by the D.C. Circuit in the *Florida Electric* decision. Further, none of the provisions for which the EPA is withdrawing the SIP call in this action are affirmative defense provisions.

II. Response to Comments

Commenters generally supported the proposed withdrawal of the findings of failure to submit, and two supported the associated direct final rule. While no commenter provided an adverse comment on the provisions specified within the proposal, four commenters asserted that the EPA should have included the applicable provisions for Illinois and West Virginia (identified in Table 4) in the November 2024 Action. As the EPA did not propose to withdraw the findings of failure to submit for these specific provisions, the comments are considered outside the scope of this rulemaking. The EPA intends to further consider these comments outside of the context of this rulemaking before identifying next steps regarding the applicable provisions for Illinois and West Virginia.

III. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and, therefore, was not submitted to the Office of Management and Budget (OMB) for review.

⁹ 88 FR 47029 (Jul. 21, 2023).

This document is a prepublication version signed by EPA Assistant Administrator for the Office of Air and Radiation, Aaron Szabo on 06/09/2026. We have taken steps to ensure the accuracy of this version, but it is not the official version.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction for States because the CAA deadlines for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) are no longer applicable.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final action does not establish any new information collection requirement apart from what is already required by law. This action relates to the requirement in the CAA for States to submit SIPs in response to findings of substantial inadequacy under CAA section 110(k)(5).

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action relates to the requirement in the CAA for States to submit SIPs in response to findings of substantial inadequacy under CAA section 110(k)(5).

E. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531-1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. No Tribe is subject to the requirement to submit an implementation plan under the findings of inadequacy relevant to this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it relates to the requirement in the CAA for States to submit SIPs in response to findings of substantial inadequacy under CAA section 110(k)(5).

Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action relates to the requirement in the CAA for States to submit SIPs in response to findings of substantial inadequacy under CAA section 110(k)(5).

J. National Technology Transfer and Advancement Act (NTTAA)

This final action does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 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).

L. Judicial Review

CAA section 307(b)(1) governs judicial review of final actions by the EPA. This section generally provides that petitions for review of final actions that are nationally applicable must be filed in the D.C. Circuit, and petitions for judicial review of actions that are locally or regionally applicable must be filed in the appropriate regional circuit.¹⁰ However, petitions for judicial review of a final action that is locally or regionally applicable must be filed in the D.C. Circuit when “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”¹¹

As the Supreme Court recently articulated in *EPA v. Calumet*, 605 U.S. 627 (2025), the first step in determining the appropriate venue for judicial review of an EPA final action is to ascertain whether the action at issue is nationally applicable or locally or regionally applicable.¹² If the action is locally or regionally applicable, venue lies in the appropriate regional circuit unless the “nationwide scope or effect” exception applies to override the default rule of regional circuit review.¹³ The exception applies, and judicial review of the EPA’s action belongs in the D.C. Circuit, if the Agency invokes the exception for a final action that is “based on a determination of nationwide scope or effect” and accompanied by an EPA finding of this basis.¹⁴

This rulemaking describes a number of final actions that are “locally or regionally applicable” because each action withdraws a previous final action by the EPA finding that a State failed to submit a required SIP revision under CAA section 110. Each withdrawal action is a

¹⁰ CAA section 307(b)(1).

¹¹ *Id.*

¹² *Calumet*, 605 U.S. at 636-39.

¹³ *Id.* at 642.

¹⁴ *Id.*

separate “action” for the purposes of determining venue under CAA section 307(b)(1) and, because each action only applies to a single State, each action is locally or regionally applicable. The Administrator has not made and published a finding that these actions are based on a determination of nationwide scope or effect.

Under CAA section 307(b)(1), petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated:

Aaron Szabo,
Assistant Administrator,
Office of Air and Radiation.