



ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

WASHINGTON, D.C. 20460

September 1, 2026

MEMORANDUM

SUBJECT: Policy Implementation Update Regarding Startup, Shutdown, and Malfunction (SSM) Provisions in State Implementation Plans

FROM: Aaron Szabo
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TO: Regional Administrators, Regions 1-10

The purpose of this memorandum is to provide updates and clarity to State and local air agencies on how the U.S. Environmental Protection Agency (EPA) intends to evaluate State Implementation Plan (SIP)¹ submittals following two decisions from the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The first decision, *Environmental Committee of the Florida Electric Power Coordinating Group, Inc. v. EPA*, 94 F.4th 77 (D.C. Cir. 2024) (*Florida Electric*), addresses SIP provisions pertaining to excess emissions during periods of startup, shutdown, and malfunction (SSM). The second decision, *SSM Litigation Group v. EPA*, 150 F.4th 593 (D.C. Cir. 2025) (*SSM Litigation Group*), addresses affirmative defense provisions that an air agency may elect to include in its SIP. Summaries of both the *Florida Electric* decision and the *SSM Litigation Group* decision are provided in Section II. This memorandum supersedes the memorandum dated December 19, 2024, entitled “SSM Policy Implementation Following the *Environ. Comm. Fl. Elec. Power v. EPA* Decision.”²

This memorandum is offered for guidance purposes, only, and does not bind air agencies, the EPA, or other entities and does not constitute a “final” action on the part of the Agency or the Administrator. Rather, the EPA’s evaluation of any SIP submissions will be conducted through notice and comment proceedings in which the Agency will determine whether a given SIP provision, in light of all applicable statutory and regulatory provisions, is consistent with the requirements of the Clean Air Act (CAA). If the policy described here is relied upon in a future EPA action on a SIP submission, such reliance will be open to public comment in that future proceeding and evaluated, as appropriate, based on the facts and circumstances presented. That is, this memorandum’s application to any particular facts and circumstances will be considered on a case-by-case basis and, if potentially applicable, proposed, open for public comment, and subject to judicial review in any resulting final Agency action.

¹ For convenience, the EPA refers in this memorandum to “State Implementation Plans” or “SIPs.” However, the discussion in this memorandum may be equally applicable to Federal Implementation Plans (FIPs) or Tribal Implementation Plans (TIPs). Also for convenience, the EPA refers to “State” or “States” and “air agency” or “air agencies” in this memorandum to refer in general to States, the District of Columbia, U.S. territories, local air permitting authorities, and eligible Tribes that are currently administering, or may administer in the future, EPA-approved implementation plans.

² Relevant content from the December 2024 memorandum that remains pertinent is also included in this memorandum to provide stakeholders with the most updated information.

I. BACKGROUND

General Information on SIPs

With regard to implementation of the National Ambient Air Quality Standards (NAAQS), a SIP comprises the EPA-approved State requirements to implement, maintain, and enforce the NAAQS within the State for six criteria air pollutants: carbon monoxide (CO), lead (Pb), ozone (O₃), nitrogen dioxide (NO₂), particulate matter (PM), and sulfur dioxide (SO₂). By approval into the SIP, these State requirements become federally enforceable legal obligations in accordance with the CAA. SIPs also include certain other non-NAAQS implementation requirements, such as those for the Regional Haze Program that pertains to visibility impairment in designated areas (Class I areas) across the U.S. as described in CAA sections 169A and 169B.

Once the EPA promulgates a new or revised NAAQS, designation of areas as attainment, nonattainment, or unclassifiable triggers certain planning obligations on the part of air agencies to develop and submit SIP revisions. States have discretion regarding how best to meet their obligations to implement, attain, maintain, and enforce the NAAQS, so long as they meet applicable statutory and regulatory requirements. A SIP submission to address implementation, attainment, maintenance, and enforcement of the NAAQS or other SIP requirements can include a wide variety of types of provisions, such as source-specific emission limitations and associated monitoring, recordkeeping, and reporting; applicable State or local rules (or State laws) regarding controls on sources or categories of sources; other local or State commitments to undertake certain activities; and non-regulatory supporting information.³ The EPA evaluates and acts on SIP submissions through notice and comment rulemaking. The EPA reviews each submission against applicable CAA requirements for that particular submission, which can vary based on program requirements and the relevant NAAQS.

Emission Limitations

CAA section 302(k) defines “emission limitation” and “emission standard” as “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard promulgated under [the CAA].”⁴ In the context of a SIP, that can mean a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation in a SIP provision. If it is necessary or appropriate for a SIP provision to meet the definition of emission limitation and thus apply “on a continuous basis,” the provision can take various forms or a combination of forms. Importantly, the EPA has observed that an emission limitation may include different numerical levels or other specific control requirements that apply during different modes of operation, and the Agency has approved SIP provisions that include different requirements applicable during periods of, for example, startup and shutdown, than those applicable during routine operations.

³ See U.S. Environmental Protection Agency. Last updated 2025. Basic Information About Air Quality SIPs. <https://www.epa.gov/air-quality-implementation-plans/basic-information-about-air-quality-sips>.

⁴ 42 U.S.C. § 7602(k).

The EPA refers to these types of limitations that apply during specific modes of operation, such as startup or shutdown, as “alternative emission limitations” (AELs).⁵ 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, *e.g.*, the statutory requirement of CAA section 172(c)(1) for imposition of reasonably available control measures (RACM) and reasonably available control technology (RACT) on sources located in designated nonattainment areas.⁶

2015 SSM SIP Action and SIP Call

On June 12, 2015, the EPA finalized an action regarding certain SSM-related provisions in SIPs (the “2015 SSM SIP Action”).⁷ The 2015 SSM SIP Action explained that certain types of provisions related to emissions during SSM events are inconsistent with CAA requirements. As described in the 2015 SSM SIP Action, such provisions include automatic exemptions, director’s discretion exemptions, overly broad enforcement discretion provisions, and affirmative defense provisions. At the same time, the EPA issued a SIP call pursuant to CAA section 110(k)(5) to 36 air agencies (applicable in 45 Statewide and local jurisdictions) directing those air agencies to revise SIPs to correct deficiencies in specific individual SIP provisions related to emissions during SSM events (the “2015 SIP Call”).⁸ The 2015 SSM SIP Action was challenged in the *Florida Electric* case in the D.C. Circuit.⁹

II. D.C. CIRCUIT DECISIONS AND IMPACTS TO SIP PROVISIONS

A. Florida Electric

In *Florida Electric*, the D.C. Circuit upheld the EPA’s interpretation of the Agency’s SIP call authority under CAA section 110(k)(5)¹⁰ and certain aspects of the 2015 SIP Call while, at the same time, holding that the Agency had not correctly interpreted certain requirements of CAA section 110(a)(2)(A)¹¹ in the 2015 SIP Call.

The D.C. Circuit granted the petitions in part, vacating the 2015 SIP Call with respect to SIP provisions that the EPA identified as automatic exemptions, director’s discretion provisions, and affirmative defenses (some of which the court understood as “creat[ing] an exemption from the normal emission rule” and some of which the court understood as “limit[ing] the relief that Congress empowered federal courts to grant for violations of emissions rules”).¹² The D.C. Circuit denied the petitions in part as to EPA’s 2015 SIP Call based on overbroad enforcement discretion provisions¹³ and affirmative defense

⁵ A continuous emission limitation can include different requirements that apply during certain modes of operation such as different numerical levels, technological control requirements, or work practice standards.

⁶ 42 U.S.C. § 7502(c)(1).

⁷ 80 FR 33840 (June 12, 2015).

⁸ *Id.*

⁹ See *Florida Electric*, 94 F.4th 77 (upholding certain aspects of the 2015 SIP Call and vacating the 2015 SIP Call with respect to SIP provisions that the EPA identified as automatic exemptions, director’s discretion provisions, and “complete” affirmative defenses).

¹⁰ See 42 U.S.C. § 7410(k)(5) (“Whenever the Administrator finds that the [SIP] for any area is substantially inadequate to . . . otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan . . .”).

¹¹ See 42 U.S.C. § 7410(a)(2)(A) (requiring each SIP to “include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the CAA]”).

¹² *Florida Electric*, 94 F.4th at 114–116.

¹³ The EPA issued the 2015 SIP Call to only a single State’s “overbroad enforcement discretion” provisions because they could be read to allow State officials, in the name of enforcement discretion, to excuse emission violations during SSM periods in a way that forecloses the Agency’s enforcement actions and citizen suits. The D.C. Circuit upheld the EPA’s action.

provisions that limited the relief available to a federal court in enforcement cases, which the court also referred to as “specific relief.”¹⁴ As such, the 2015 SIP Call remains in effect for those provisions identified as overbroad enforcement discretion or impermissible affirmative defense provisions.

The D.C. Circuit’s partial vacatur was premised on the conclusion that the EPA did not first make a determination that it was “necessary or appropriate” to meet applicable requirements of the CAA as required by CAA section 110(a)(2)(A) for the specific SIP provisions at issue to be “emission limitations,” and thus continuous as provided by the statutory definition of that term in CAA section 302(k). Crucially, the court did not opine whether the SIP provisions with automatic exemptions or director’s discretion exemptions belonged in the SIP. Rather, the court explicitly withheld judgment as to whether the “called SIPs’ relevant emission restrictions in fact amount to (or must amount to) ‘emission limitations’ per the statutory definition.”¹⁵ The D.C. Circuit stated that if the EPA “were to determine that, for States to meet the CAA’s applicable requirements, it is ‘necessary or appropriate’ for their emission reduction measures to meet the statutory definition of ‘emission limitations’ and operate during SSM periods, the agency could explain and implement that rationale and its action would be subject to judicial review.”¹⁶

Following the *Florida Electric* decision, the EPA partially withdrew the Findings of Failure to Submit the Agency issued to 13 States that did not submit a response to the 2015 SIP Call.¹⁷ Through that action, the EPA stopped sanctions and Federal Implementation Plan (FIP) clocks for States with SIP provisions addressed in the 2015 SIP Call that were affected by the partial vacatur.

SSM Litigation Group

In *SSM Litigation Group*, the D.C. Circuit held that “complete” affirmative defenses (*i.e.*, affirmative defenses that preclude, if proven, any form of liability or remedy for violations of emissions limitations, rather than affirmative defenses to specific forms of relief) are permissible.¹⁸ The court reasoned that “complete” affirmative defenses are a “defense to liability, not a limitation on judicial remedies,”¹⁹ thus building upon the *Florida Electric* distinction between affirmative defenses to specific forms of relief, which remain impermissible, and “complete” affirmative defenses.²⁰ In addition, the court held that a “complete affirmative defense to liability does not render an emission limitation non-continuous under 42 U.S.C. 7602(k).”²¹ On this basis, the D.C. Circuit vacated the EPA’s prior rescission of longstanding title V affirmative defense provisions on the ground that the Agency had incorrectly understood the law.²² Although the decision in *SSM Litigation Group* pertained specifically to an affirmative defense provision that a State may elect to include in title V permits for sources in such State, the EPA expects that the D.C. Circuit’s reasoning would apply more broadly to affirmative defenses that a State may elect to include in its SIP provisions outside of the title V permit context.

Summary of Impacts on SIP Provisions

¹⁴ *Florida Electric*, 94 F.4th at 116.

¹⁵ *Id.* at 110.

¹⁶ *Id.*

¹⁷ 91 FR 35628 (June 12, 2026).

¹⁸ *SSM Litigation Group*, 150 F.4th at 593, 600. The D.C. Circuit denied rehearing en banc in *SSM Litigation Group* on January 2, 2026.

¹⁹ *Id.* at 599.

²⁰ *Id.* at 559 (citing *Florida Electric*, 94 F.4th at 86, 114–15).

²¹ *Id.* at 600.

²² *Id.* (vacating regulatory amendments finalized in 88 FR 47029 (July 21, 2023)).

In *Florida Electric*, the D.C. Circuit addressed SIP provisions that included automatic exemptions, director's discretion provisions, affirmative defenses, and overbroad enforcement discretion, while in *SSM Litigation Group*, the court addressed "complete" affirmative defenses. Below is a summary of the different types of exemptions as they were discussed in these two D.C. Circuit decisions.

1. Automatic Exemptions

An automatic exemption is "a generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations."²³ "Automatic exemptions exclude SSM periods from otherwise applicable emission restrictions."²⁴

The 2015 SIP Call relied, with respect to automatic exemption provisions, on the premise that the specific provisions at issue submitted by States to meet various SIP requirements were "emission limitations" and thus must be continuous pursuant to the definition of that term in CAA section 302(k). Under CAA section 110(a)(2)(A), SIPs shall include "enforceable emission limitations and other control measures, means or techniques . . . as may be necessary or appropriate to meet" CAA requirements.

Based on the language of CAA section 110(a)(2)(A), the D.C. Circuit found that, regardless of the labels a State placed on the provisions submitted as part of its SIP, not every SIP provision must necessarily be an "emission limitation" subject to continuous requirement in the definition of "emission limitation" because a provision could potentially qualify instead as "other control measures, means or techniques." The court stated that it would only be appropriate for the EPA to issue a SIP call based upon an automatic exemption in a SIP provision if the Agency first made a determination that it was "necessary or appropriate" to meeting applicable CAA requirements for the SIP provision to be considered an "emission limitation." Because the EPA had not made any such "necessary or appropriate" determination for the specific SIP provisions that contained automatic exemptions for emissions during SSM or other events, the D.C. Circuit vacated the SIP call with respect to those provisions.

2. Director's Discretion Exemptions

A director's discretion exemption, historically called "director's discretion provision," is "a regulatory provision that authorizes a state regulatory official unilaterally to grant exemptions or variances from otherwise applicable emission limitations or control measures, or to excuse noncompliance with otherwise applicable emission limitations or control measures, which would be binding on the EPA and the public."²⁵ "Director's discretion provisions give state officials discretion to grant SSM-related exemptions from otherwise applicable emission limitations."²⁶

The D.C. Circuit vacated the 2015 SIP Call as to specific director's discretion exemption provisions, finding that "the continuity-based rationale fails as to director's discretion provisions for the same reasons it fails as to automatic exemptions."²⁷ The court again found that a "necessary or appropriate" determination by the EPA would be required before the Agency could issue a SIP call for a SIP provision because it contains a director's discretion term that authorizes exemptions and is thus not continuous.

²³ 80 FR 33840, 33842 (June 12, 2015).

²⁴ *Florida Electric*, 94 F.4th at 99.

²⁵ 80 FR 33840, 33842 (June 12, 2015).

²⁶ *Florida Electric*, 94 F.4th at 110.

²⁷ *Id.* at 111.

However, the D.C. Circuit stated that it was not “foreclos[ing] the possibility that EPA in the SIP Calls touched on reasons that specific director’s discretion provisions, depending on their particulars, might interfere with the CAA.” For example, “a provision might be so unbounded as to interfere with the agency’s ability to predict the impact on compliance with the CAA’s requirements.”²⁸ The court thus acknowledged the EPA’s concern that a given SIP provision could include such unbounded discretion that it would not meet applicable CAA requirements. Those requirements could be both substantive and procedural. Given this, the D.C. Circuit did not foreclose the EPA’s authority to disapprove a SIP submission on the basis that the contents include an impermissibly unbounded director’s discretion provision, notwithstanding the absence of a broader SIP call being in effect.

3. Affirmative Defense

An affirmative defense provision is “a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304.”²⁹ In *Florida Electric*, the D.C. Circuit distinguished between two different kinds of affirmative defenses. The first provides “a complete affirmative defense to an action brought for noncompliance with an emission rule,” which “create[s] an exemption from the normal emission rule.”³⁰ The second “preclude[s] certain remedies after a source has violated an emission rule.”³¹

The D.C. Circuit in *Florida Electric* held that the first type of affirmative defense provision functioned under the circumstances as an exemption and vacated the EPA’s SIP call in that respect for failing to make the “necessary or appropriate” determination required to treat the provision as an “emission limitation” that must operate continuously.³² The D.C. Circuit upheld the 2015 SIP Call with respect to affirmative defense provisions that “preclude certain remedies,” finding that they would otherwise interfere with the CAA’s enforcement regime.³³

More recently, in *SSM Litigation Group*, the D.C. Circuit held that an affirmative defense provision that precludes any form of liability or remedy for violations of emission limitations or other SIP requirements, *i.e.*, a “complete” affirmative defense, is valid.³⁴ In that decision, the court explained that a complete affirmative defense is permissible because it does not function as an exemption from applicable emission standards.³⁵ Thus, a “complete affirmative defense to liability does not render an emission limitation non-continuous under 42 U.S.C. 7602(k).”³⁶

III. EVALUATING SIP SUBMITTALS

To provide clarity regarding the EPA’s review of SIPs following *Florida Electric* and *SSM Litigation Group*, the Agency intends for this memorandum to be used as a tool for air agencies in developing and submitting SIPs that comport with the CAA. As such, the EPA provides the following information

²⁸ *Id.*

²⁹ 80 FR 33840, 33842 (June 12, 2015).

³⁰ *Florida Electric*, 94 F.4th at 114 (internal quotations removed).

³¹ *Id.*

³² *Id.*

³³ *Id.* at 115.

³⁴ *SSM Litigation Group*, 150 F.4th 593.

³⁵ *Id.* at 600 (“An affirmative defense allows a defendant to avoid liability, but it does not alter the underlying legal requirements.”).

³⁶ *Id.*

regarding how the Agency intends to evaluate SIP submissions that raise issues related to emissions during SSM or similar events.

Any SIP provision that is required by law to be an “emission limitation,” or that the EPA determines is “necessary or appropriate” for compliance with applicable statutory requirements to be an “emission limitation,” must be continuous in accordance with the definition of that term in CAA section 302(k). Thus, such an emission limitation may not contain any exemption for emissions during SSM events.³⁷

The D.C. Circuit affirmed that “states are initially charged with determining whether an ‘emission limitation’ is ‘necessary or appropriate’ to meet the CAA’s applicable requirements.”³⁸ However, the D.C. Circuit also made it clear that the final determination of what is “necessary or appropriate” is the EPA’s responsibility.³⁹

Thus, the EPA expects air agencies, in the first instance, to articulate in their SIP submittals their views on whether it is “necessary or appropriate” for the provisions being proposed for inclusion into the SIP to be emission limitations. The EPA intends to review an air agency’s determination of whether it is “necessary or appropriate” for a provision it submits for the Agency’s evaluation and approval into the SIP to be an “emissions limitation” to meet CAA requirements by considering the following categories of provisions:

1. The provision is required to be an emission limitation or emissions standard under a provision of the CAA other than section 110(a)(2)(A).
2. The State is using the provision explicitly to achieve attainment or maintenance of a NAAQS or to meet another comparable requirement in the CAA.

When evaluating a submitted SIP provision, if the State indicates that the provision falls into either of the two categories above, or if the State does not provide any relevant information, the EPA will generally presume, given the provision’s relationship with a statutory requirement and the likelihood that absent relevant information, such provision relates to such a requirement, that it is “necessary or appropriate” for that provision to meet the definition of emission limitation under CAA section 302(k) and, therefore, must be continuous. For example, if a provision were assumed to be continuous when modeled for an attainment demonstration to show attainment of the NAAQS, the EPA will generally presume that the SIP provision is an emission limitation and, therefore, must be continuous. In other words, the application of the SIP provision in practice must match the assumptions made about its application in the SIP submission.

To the extent a future SIP submittal contains a provision that falls within at least one of these two categories and has no information clarifying whether that SIP provision should or should not meet the statutory definition of emission limitation, the EPA intends to presume the air agency intends that it is necessary or appropriate for the provision to be an emission limitation. If the air agency does not agree that it is necessary or appropriate for the provision at issue to be an emission limitation, the air agency may include rationale and analysis in its SIP submission for Agency to consider whether such rationale

³⁷ The CAA allows SIP provisions that include numerical limitations, specific technological control requirements, and/or work practice requirements that limit emissions during startup and shutdown as components of a continuously applicable emission limitation. Regardless of its form, the emission limitation as a whole must be continuous, must meet applicable CAA stringency requirements, and must be legally and practically enforceable. *See, e.g.*, 80 FR 33840, 33978–80 (June 12, 2015).

³⁸ *Florida Electric*, 94 F.4th at 107.

³⁹ *Id.* at 101.

and analyses warrant a different outcome. If the State disagrees with the EPA's proposed action on their SIP submittal, they may again seek to rebut the Agency's initial view during the public comment period.

Additional rationale for each of the two categories is included below.

Category 1: The provision is required to be an emission limitation or emission standard under any provision of the statute other than CAA section 110(a)(2)(A).

This category is intended to capture situations in which the submitted SIP provision is already required to be an "emission limitation" under some other provision of the CAA. For example: (1) the provision was intended to constitute best available control technology (BACT) per CAA section 169(3) and is being submitted for inclusion in the SIP to satisfy a SIP obligation; and (2) the provision is an emission limitation from the New Source Performance Standards (NSPS) that was adopted by the State and is being incorporated into the SIP to satisfy a SIP obligation.

Category 2: The State is using the provision explicitly to achieve attainment or maintenance of a NAAQS or to meet another comparable requirement in the CAA.

If a State's purpose in submitting a particular SIP provision is to achieve attainment or maintenance of the NAAQS or to meet another comparable requirement in the statute, automatic exemptions or unbounded director's discretion (including authority to grant discretionary exemptions) make it difficult for the EPA to assess whether the provision will in fact accomplish that purpose. For example, if a State submits a modeled attainment demonstration that incorporates a particular provision but provides an exemption during SSM periods, the attainment modeling might not take into account the excess emissions during SSM events that the provision does not restrict. By referring both to attainment or maintenance of a NAAQS and to other comparable requirements, the EPA includes provisions that are not NAAQS but operate similarly in certain respects. For example, the CAA's regional haze and interstate transport provisions may also involve submitting modeling and SIP provisions that involve a comparable analysis and comparable considerations.

Importantly, the EPA recognizes that SIP provisions need not be composed solely of numerical emission limitations; SIP provisions can contain both non-numerical types of emission limitations and other forms of controls in addition to emission limitations. Certain forms of controls other than emission limitations may not need to apply to sources continuously to achieve the goals of the SIP.⁴⁰ However, without at least some limits applying at all times, there is no assurance that the emissions impacts the State is counting on to achieve or maintain the NAAQS or comparable requirements will be accomplished.⁴¹

IV. MOVING FORWARD

The SIP development and submission process is iterative, with air agencies across the U.S. in different stages of SIP development for multiple NAAQS and other CAA obligations, such as regional haze. Due

⁴⁰ See, e.g., 71 FR 7683 (Feb. 14, 2006) (approving as BACM the use of "conservation management practices" to control fugitive dust emissions from agricultural sources, including techniques that limit emissions only during certain activities or times); 68 FR 56181 (Sept. 30, 2003) (approving as BACM an "episodic wood burning curtailment" program that restricts the use of wood-burning stoves based on predicted particulate matter concentrations); see also 40 CFR 51.100(n) (listing additional examples of control measures that would not constitute emission limitations).

⁴¹ Historically, the EPA has treated certain types of SIP submissions as directly affecting attainment or maintenance of the NAAQS, such as attainment demonstrations, RACM, reasonable further progress (RFP), and contingency measures. See e.g., 40 CFR §§ 51.1318, 51.1015.

to the fundamental nature of the issues addressed in this memorandum, the EPA intends to continue to apply the analytical framework described in this memorandum.⁴² This approach is expected to be consistent with the CAA and provide the most streamlined way for the EPA to evaluate and take action on SIP submissions.

As the EPA explained in December 19, 2024 memorandum, to the extent air agencies have already made a SIP submission to the Agency for which they wish to clarify the characterization of any SIP provisions, the Agency recommends that the air agency reach out to the appropriate EPA Regional Office to discuss options and to provide additional information as expeditiously as possible. Depending on the circumstances, withdrawal of submitted SIPs, submitting a supplemental revision, and/or resubmittal may be available paths forward for air agencies that want to provide additional information.⁴³

With regard to SIPs under development, air agencies may choose to exercise their discretion to characterize provisions or simply rely on the presumptions that the EPA intends to apply during the Agency's review of any submission. Notably, the EPA has not conducted a systematic review of all SIPs to identify SSM SIP provisions that may not be consistent with the Agency's SSM policy or the D.C. Circuit decisions discussed herein. Therefore, the EPA intends to coordinate closely with air agencies in evaluating SIP submittals.

Please share this memorandum with the air agencies in your EPA region. This memorandum can also be found on the Air Quality Implementation Plans webpage under Emissions During Periods of Startup, Shutdown, & Malfunction (SSM) (<https://www.epa.gov/air-quality-implementation-plans/emissions-during-periods-startup-shutdown-malfunction-ssm>). If you have any questions regarding the memorandum, please contact Patrick Lessard in the Air Quality Planning Division of the Office of State Air Partnerships at Lessard.Patrick@epa.gov.

⁴² The EPA has not observed any complications or received negative stakeholder feedback since effectuating this framework in December 2024.

⁴³ To note, these actions may have legal implications consistent with CAA deadlines and obligations.