

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

FACT SHEET

SUMMARY OF ACTION

- On November 15, 2024, the U.S. Environmental Protection Agency (EPA) took action to address a March 2024 decision from the United States Court of Appeals for the District of Columbia Circuit regarding EPA’s findings of substantial inadequacy and “State Implementation Plan or SIP calls” (2015 SSM SIP Call). These plans were required to ensure that all modes of source operation, including periods of startup, shutdown, and malfunction (SSM) have emissions limitations in place that can be appropriately enforced in all communities and populations across the affected states.
- The D.C. Circuit Court vacated the SSM SIP calls based on provisions that included automatic exemptions, director’s discretion provisions, and “complete affirmative defenses” (i.e. affirmative defenses that are functionally exemptions); and affirmed the SIP calls based on provisions that included overbroad enforcement discretion and affirmative defenses against specific relief.
- EPA is taking direct final action and issuing a parallel proposal to partially withdraw the:
 - January 22, 2022, national Findings of Failure to Submit (FFS) a response to EPA’s 2015 SSM SIP Call. EPA identified 12 states and local air pollution control agencies in the January 2022 rule. The withdrawal applies to a subset of them.
 - April 17, 2023, FFS a response to EPA’s 2015 SSM SIP Call issued to West Virginia.
- EPA is withdrawing only the FFS that apply to the provisions vacated by the D.C. Circuit Court. The six state and/or local air agencies affected by this partial final withdrawal are:
 1. Alabama
 2. District of Columbia
 3. Ohio
 4. Rhode Island
 5. South Dakota
 6. West Virginia
- This direct final action means that certain Clean Air Act (CAA) deadlines no longer apply, including sanctions if a state does not submit a complete SIP revision addressing the outstanding requirements, and a Federal Implementation Plan (FIP) if EPA does not approve the state’s responsive SIP revision.
- The Agency is electing to also issue a parallel proposed action. EPA will accept comment on the parallel proposal for 30 days after publication in the *Federal Register*. If no significant adverse comment is received, the direct final action will become effective 45 days after publication in the *Federal Register*.

BACKGROUND

- On June 12, 2015, EPA finalized an action regarding SSM provisions in SIPs. As part of the 2015 SSM SIP Action, EPA also issued a “SIP call” (2015 SIP Call) to 45 air agencies. The 2015 SIP Call required air agencies to adopt and submit revisions to the EPA to correct identified SSM-related deficiencies in their SIPs by November 22, 2016.
- In January 2022 and in April 2023, EPA issued Findings of Failure to Submit a response to the 2015 SSM SIP Call. The Agency included a total of 13 air agencies: Alabama, Arkansas, California – San Joaquin Valley Air Pollution Control District, District of Columbia, Illinois, North Carolina – Forsyth, Ohio, Rhode Island, South Dakota, Tennessee – Shelby (Memphis), Washington – Energy Facility Site Evaluation, Washington – Southwest Clean Air Agency and West Virginia.
- On March 1, 2024, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), in which it vacated portions of EPA’s 2015 SSM SIP Call. As a result, certain aspects of the January 2022 and April 2023 SIP Calls no longer apply, and EPA is issuing this rule to withdraw them for six air agencies.
- Because the D.C. Circuit vacated only certain portions of the EPA’s 2015 SSM SIP Call, other provisions of that action still apply in some states. The FFS continue to apply, at least in part, to the District of Columbia, Illinois, Tennessee – Shelby (Memphis), Washington – Energy Facility Site Evaluation Council, Washington – Southwest Clean Air Agency, and West Virginia. The CAA deadlines for EPA to impose sanctions and promulgate a FIP remain in effect as previously established in the January 2022 FFS and April 2023 FFS.
- EPA and its state partners work regularly on state implementation planning requirements including plan development, review, and approval. Often, national actions like this partial FFS withdrawal overlap with ongoing actions for specific areas. At or about the same time this direct final action is promulgated, EPA will take separate final action responding to two SIP revisions related to today’s action.
 1. Tennessee – Shelby (Memphis) SIP call revision submitted to the EPA on March 2, 2022. See 89 FR 74165, September 12, 2024. Once finalized, Tennessee-Shelby (Memphis) will have a fully approved SIP revision that partially responds to the January 2022 FFS. The FFS obligations will remain in effect for a portion of the Tennessee-Shelby (Memphis) SIP. For more information, see the Tennessee-Shelby (Memphis) Final Rule, (Docket ID No. EPA-R4-OAR-2023-0361) at <https://www.regulations.gov/docket/EPA-R04-OAR-2023-0361>.
 2. Washington – Energy Facility Site Evaluation Council (EFSEC) SIP call revision submitted on June 15, 2023. See 89 FR 84322, October 22, 2024. Once finalized, Washington-EFSEC will have a fully approved SIP revision in response to the January 2022 FFS and will have fulfilled their FFS obligations. For more information, see the Washington-EFSEC Final Rule, (Docket ID EPA-R10-OAR-2024-0372) at <https://www.regulations.gov/docket/EPA-R10-OAR-2024-0372>.

- EPA has fully approved SSM SIP revisions submitted by Arkansas, North Carolina-Forsyth, and California-San Joaquin Valley Air Pollution Control District. They are not included in this partial withdrawal.

FOR MORE INFORMATION

- To download a copy of the direct final and proposed action, go to EPA's Web site at: <https://www.epa.gov/air-quality-implementation-plans/emissions-during-periods-startup-shutdown-malfunction-ssm>.
- The direct final and proposed action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system.
- For further technical information about the rule, please contact Sydney Lawrence with EPA's Office of Air Quality Planning and Standards, at (919) 541-4768 or lawrence.sydney@epa.gov