

(2)(i) Any person who violates a material provision of a mitigation agreement entered into on or after December 26, 2024, with, a material condition imposed on or after December 26, 2024, by, or an order issued on or after December 26, 2024, by, the United States under section 721(I) may be liable to the United States for a civil penalty per violation not to exceed the greatest of:

(A) \$5,000,000;

(B) The value of the person's interest in the covered real estate (or, as applicable, the owner of the covered real estate) at the time of the transaction;

(C) The value of the person's interest in the covered real estate (or, as applicable, the owner of the covered real estate) at the time of the violation in question or the most proximate time to the violation for which assessing such value is practicable; or

(D) The value of the transaction filed with the Committee.

(ii) For clarification, under paragraphs (b)(2)(i)(A) through (D) of this section, whichever penalty amount is greatest may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

\* \* \* \* \*

(e) Upon receiving notice of a penalty to be imposed under any of paragraphs (a) through (c) of this section, the subject person may, within 20 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue any final penalty determination within 20 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement or, where there is a compelling circumstance and if it is deemed appropriate by the Committee, the Staff Chairperson may extend either period by notifying the subject person in writing of the extended time frame. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

\* \* \* \* \*

**Paul M. Rosen,**

*Assistant Secretary for Investment Security.*  
[FR Doc. 2024-27310 Filed 11-25-24; 8:45 am]

**BILLING CODE 4810-AK-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR PART 52**

[EPA-HQ-OAR-2021-0863; EPA-R03-OAR-2023-0179; FRL-12161-02-OAR]

**Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Partial Withdrawals of Findings of Failure To Submit State Implementation Plan (SIP)**

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

**ACTION:** Direct final action.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to partially withdraw two final actions finding that 13 States and/or local air pollution control agencies failed to submit State Implementation Plan (SIP) revisions required by the Clean Air Act (CAA) in a timely manner to address the EPA's 2015 findings of substantial inadequacy and "SIP calls" for provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). This final action would render 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). Concurrently, the EPA is also issuing a parallel proposal of this withdrawal action. See the proposed action published in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** This action is effective on January 10, 2025, without further notice, unless the EPA receives significant adverse comment by December 26, 2024. If significant adverse comments are received on the accompanying proposed action, the EPA will publish a timely withdrawal of this direct final action in the **Federal Register**. If the direct final action is withdrawn, all comments will be addressed in a subsequent final action based on the accompanying proposed action. The EPA will not institute a second comment period pertaining to the revisions on the subsequent final action. Any parties interested in commenting should do so at this time.

**ADDRESSES:** You may send comments, identified by Docket ID Nos. EPA-HQ-OAR-2021-0863 and EPA-R03-OAR-2023-0179, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Email:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID Nos. EPA-HQ-OAR-2021-0863 and EPA-R03-OAR-2023-0179.

- *Fax:* (202) 566-9744
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday-Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this notice should be addressed to, Sydney Lawrence, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone (919) 541-4768; or by email at [lawrence.sydney@epa.gov](mailto:lawrence.sydney@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. How is the preamble organized?*

The information presented in this preamble is organized as follows:

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- M. Judicial Review

**B. Why is the EPA issuing a direct final action and parallel proposed action?**

As is discussed in further detail later, the EPA is taking this action as a result of the United States Court of Appeals for the District of Columbia mandate in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024). In that decision, the D.C. Circuit vacated portions of the EPA's 2015 findings of substantial inadequacy and SIP calls for provisions applying to excess emissions during periods of SSM ("2015 SSM SIP Call")<sup>1</sup> as it applied to State provisions including automatic exemptions, director's discretion provisions, and affirmative defenses that are functionally exemptions. Subsequent to the issuance of the 2015 SIP Call, EPA issued two findings of failure to submit (FFS) impacting multiple States.<sup>2,3</sup> This action seeks to withdraw relevant parts of the FFS that were invalidated by the D.C. Circuit's vacatur. Because of the D.C. Circuit's vacatur, there is no longer a legally valid predicate submission

<sup>1</sup> See "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).

<sup>2</sup> 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 (January 12, 2022).

<sup>3</sup> 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 (April 17, 2023).

obligation for those particular SIP-called provisions. As a result, the EPA's findings that such obligation was not met are also no longer valid and must be withdrawn. Concurrently, the EPA is also issuing a parallel proposal of this withdrawal action. See the proposed action published in the Proposed Rules section of this issue of the **Federal Register**. If we receive no significant adverse comment, we will not take further action on the proposed action and this direct final action will become effective as prescribed.

**C. Written Comments**

Submit your comments, identified by Docket ID Nos. EPA-HQ-OAR-2021-0863 and EPA-R03-OAR-2023-0179, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Our preferred method to receive CBI, PBI, or other information whose disclosure is restricted by statute is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, [oaqpscbi@epa.gov](mailto:oaqpscbi@epa.gov), and should include clear CBI or PBI markings. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email [oaqpscbi@epa.gov](mailto:oaqpscbi@epa.gov) to request a file transfer link. If sending CBI or PBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Nos. EPA-HQ-OAR-2021-0863 and EPA-R03-OAR-2023-0179. The mailed CBI or PBI material should be double wrapped and clearly marked. Any CBI or PBI markings should not show through the

outer envelope. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

**D. How can I get copies of this document and other related information?**

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0863 (as it pertains to the January 2022 national FFS) and Docket ID No. EPA-R03-OAR-2023-0179 (as it pertains to the April 2023 West Virginia FFS). All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742.

**E. Where do I go if I have specific air agency questions?**

For questions related to specific air agencies mentioned in this notice, please contact the appropriate EPA Regional Office:

EPA regional office	Air agencies
EPA Region 1: Alison Simcox, Air Quality Branch, EPA Region 1, 5 Post Office Square, Boston, Massachusetts 02109. <i>simcox.alison@epa.gov</i> .	Rhode Island.
EPA Region 3: Sean Silverman, Planning and Implementation Branch, EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. <i>silverman.sean@epa.gov</i> .	District of Columbia.
EPA Region 3: Serena Nichols, Planning and Implementation Branch, EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. <i>nichols.serena@epa.gov</i> .	West Virginia.
EPA Region 4: Faith Goddard, Air Planning and Implementation Branch, EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. <i>goddard.faith@epa.gov</i> .	Alabama; North Carolina-Forsyth; Tennessee-Shelby (Memphis).
EPA Region 5: Michael Leslie, Air Planning and Maintenance Section, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. <i>leslie.michael@epa.gov</i> .	Illinois; Ohio.
EPA Region 6: Michael Feldman, Air Program Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270. <i>feldman.michael@epa.gov</i> .	Arkansas.
EPA Region 8: Adam Clark, Air Quality Planning Branch, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. <i>clark.adam@epa.gov</i> .	South Dakota.
EPA Region 9: Eugene Chen, Control Measures Section, Air and Radiation Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. <i>chen.eugene@epa.gov</i> .	California-San Joaquin Valley Air Pollution Control District (APCD).
EPA Region 10: Randall Ruddick, Air Planning Section, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. <i>ruddick.randall@epa.gov</i> .	Washington-Energy Facility Site Evaluation Council (EFSEC); Washington-Southwest Clean Air Agency (SWCAA).

**II. Background**

On January 12, 2022, the EPA took final action (“January 2022 FFS”) <sup>4</sup> to find that 12 States and local air agencies failed to submit SIP revisions required by the CAA in a timely manner to address the EPA’s 2015 findings of substantial inadequacy and “SIP calls” for provisions applying to excess emissions during periods of SSM (“2015 SSM SIP Call” <sup>5</sup>) that were statutorily due no later than November 22, 2016.

On April 17, 2023, the EPA Region 3 took final action (“April 2023 FFS”) to find that the State of West Virginia failed to timely submit a SIP revision required by the CAA to address the deficiencies identified in the EPA’s 2015 SSM SIP Call that was statutorily due no later than November 22, 2016. <sup>6</sup> In total, the 13 States and/or local air agencies that were issued an FFS can be found in Table 1. For those States and/or local air agencies subject to the FFS for which EPA has fully approved their

submitted SIP revision—Arkansas, California-San Joaquin Valley Air Pollution Control District, and North Carolina-Forsyth—the FFS obligation has been fulfilled, and there is no need to for the EPA or those States to take further action. The States and/or local air agencies which have not submitted a SIP revision in response to the FFS 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 FFS AND APRIL 2023 FFS**

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 Council.
10	Washington-Southwest Clean Air Agency.

**TABLE 2—STATES AND/OR LOCAL AIR AGENCIES WITHOUT FULLY APPROVED SIP REVISIONS IN RESPONSE TO THE JANUARY 2022 FFS AND APRIL 2023 FFS <sup>7</sup>**

EPA region	State and/or local air agency
1	Rhode Island.
3	District of Columbia.

<sup>4</sup> See 87 FR 1680.

<sup>5</sup> See 80 FR 33840.

<sup>6</sup> See 88 FR 23353.

TABLE 2—STATES AND/OR LOCAL AIR AGENCIES WITHOUT FULLY APPROVED SIP REVISIONS IN RESPONSE TO THE JANUARY 2022 FFS AND APRIL 2023 FFS <sup>7</sup>—Continued

EPA region	State and/or local air agency
3	West Virginia.
4	Alabama.
4	Tennessee-Shelby (Memphis).
5	Illinois.
5	Ohio.
8	South Dakota.
10	Washington-Energy Facility Site Evaluation Council.
10	Washington-Southwest Clean Air Agency.

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). The Court granted the petitions in part, vacating the SIP calls that were based on SIP provisions that included automatic exemptions, director’s discretion provisions, and “complete affirmative defenses” (i.e. 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 *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is partially withdrawing the January 2022 FFS and the April 2023 FFS. Because certain portions of the SIP call were vacated by the D.C. Circuit and therefore have no legal effect, the States and/or local 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.<sup>8</sup> 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.

**III. Partial Withdrawals of Findings of Failure To Submit**

As a result of this final action, the January 22, 2022, national FFS and April 17, 2023, FFS are partially withdrawn with respect to the State and/or local 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<sup>9</sup>

Region	State/local air agency	Applicable provisions for which the FFS 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. 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).

<sup>7</sup> The EPA and its state partners work regularly on SIP 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, the EPA is also taking separate final action on 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>.

<sup>8</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. 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.)

<sup>9</sup> 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 FFS as they apply to those provisions corresponding to the vacatur. As a result, the FFS remain in place for provisions that 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 FFS for both types of provision.

TABLE 3—SIP PROVISIONS FOR WHICH THE EPA IS WITHDRAWING THE AGENCY’S FINDINGS OF FAILURE TO SUBMIT<sup>9</sup>—  
Continued

Region	State/local air agency	Applicable provisions for which the FFS are withdrawn
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).

**IV. Consequences of Withdrawn Portions of Findings of Failure To Submit and Remaining Air Agency Obligations**

For those State and/or local air agency SIP provisions listed in Table 3 of Section III for which the FFS 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 State and/or local jurisdiction SIP provisions in which the FFS 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.<sup>10 11</sup> The States and/or local air agencies for which the FFS are not withdrawn and mandatory CAA deadlines remain in effect can be found in Table 4.

TABLE 4—STATES AND/OR LOCAL AIR AGENCIES WITH REMAINING FFS OBLIGATIONS

EPA region	State and/or local air agency	Applicable provisions for which the FFS 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.
10 .....	Washington-Energy Facility Site Evaluation Council.	Wash. Admin. Code § 463–39–005.
10 .....	Washington-Southwest Clean Air Agency.	SWCAA 400–107.

**IV. Final Action**

In light of the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is taking final action to partially withdraw its finding that 12 air agencies have failed to submit SIP revisions in response to the 2015 SSM SIP Action that were statutorily due no later than November 22, 2016, and to partially withdraw the EPA Region 3’s finding that West Virginia failed to submit a SIP revision in response to the 2015 SSM SIP Action that was statutorily due no later than November 22, 2016. The six States and/or local air agencies affected by this final withdrawal action are: Alabama, District of Columbia, Ohio, Rhode Island, South Dakota, and West Virginia.

**V. Statutory and Executive Order Reviews**

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

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

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

*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.

<sup>10</sup> See 87 FR 1680, 1682.

<sup>11</sup> See 88 FR 88 FR 23353, 23354–23355.

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

This action does not have Tribal implications as specified in Executive Order 13175. This action finds that several air agencies have failed to submit SIP revisions in response to findings of substantial inadequacy under section 110(k)(5) of the CAA. 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 EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. 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) and does not directly or disproportionately affect children.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This final action does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on communities with EJ concerns.

The EPA believes it is not practicable to assess whether the conditions that exist prior to this proposed action result in disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples.

While it is difficult to assess the environmental justice implications of this proposed action because the EPA cannot geographically identify or quantify the resulting source-specific emission reductions, the EPA recognizes the potential for neutral or adverse environmental justice issues associated with this action. However, the EPA views this action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SSM SIP call.

*L. 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).

*M. Judicial Review*

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “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.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).<sup>12</sup> This final action consists of a partial withdrawal of findings of failure to submit required SIPs from six States and/or local air jurisdictions, including the District of Columbia, located in 5 of the 10 EPA regions, and in 6 different federal

<sup>12</sup> In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

judicial circuits.<sup>13</sup> This final action is also based on a common core of factual findings concerning the receipt and completeness of the relevant SIP submittals. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

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 District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must 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, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

**Joseph Goffman,**

*Assistant Administrator.*

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**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 102–118**

**[FMR Case 2023–02; Docket No. GSA–FMR–2023–0014; Sequence No. 2]**

**RIN 3090–AK73**

**Federal Management Regulation; Transportation Payment and Audit Regulations**

**AGENCY:** Office of Government-Wide Policy (OGP), General Services Administration (GSA).

<sup>13</sup> In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.