

(outlining the process of establishing best available retrofit technology requirements for sources), State effective March 30, 2007;

- IDAPA 58.01.01.785 Rules for control of incinerators (establishing incinerator particulate matter limits), State effective May 1, 1994;
- IDAPA 58.01.01.786 Emission limits (limiting particulate matter emissions from incinerators), State effective April 5, 2000;
- IDAPA 58.01.01.787 Exceptions (exempting wigwam burners from incinerator emission limits), State effective March 23, 1998;
- IDAPA 58.01.01.805 Rules for control of hot mix asphalt plants (limiting particulate matter emissions from hot mix asphalt plants), State effective May 1, 1994;
- IDAPA 58.01.01.806 Emission limits (requiring compliance with the process weight rate limitations), State effective May 1, 1994;
- IDAPA 58.01.01.807 Multiple stacks (establishing that total emissions from all stacks are to be compared to the emission limit), State effective May 1, 1994; and
- IDAPA 58.01.01.808 Fugitive dust control (requiring fugitive dust control systems), State effective May 1, 1994.

## V. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section IV. of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

The EPA is also proposing to remove from incorporation by reference the provisions described in section IV. of this preamble.

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule would not have Tribal implications and would not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submission; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 13, 2024.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

[FR Doc. 2024-13587 Filed 6-21-24; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 63

[EPA-HQ-OAR-2023-0509; FRL-11625-01-OAR]

RIN 2060-AW16

### Removal of Affirmative Defense Provisions From Specified New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing amendments to several New Source Performance Standards (NSPS) and

National Emission Standards for Hazardous Air Pollutants (NESHAP) under the Clean Air Act (CAA). Specifically, the EPA is proposing to remove the affirmative defense provisions associated with violation of emission standards due to malfunctions. These provisions are being proposed for removal because the EPA finds that they are inconsistent with a D.C. Circuit Court decision that vacated affirmative defense provisions in one of the EPA's CAA regulations, and because the EPA finds that the reasoning in the decision applies equally to other CAA rules. Since the court decision, the EPA has been removing affirmative defense provisions from CAA rules when they were otherwise revised or amended. This action proposes to remove the remaining affirmative defense provisions more efficiently.

#### **DATES:**

*Comments.* Comments must be received on or before August 8, 2024.

*Public hearing.* If anyone contacts us requesting a public hearing on or before June 29, 2024, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2023-0509, 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 No. EPA-HQ-OAR-2023-0509 in the subject line of the message.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2023-0509.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2023-0509, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–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 any personal information provided. For detailed instructions on sending comments and additional information

on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact U.S. EPA, Attn. Dr. Michelle Bergin, Sector Policies and Programs Division (Mail Code D205-01), P.O. Box 12055, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-2726; and email address: [bergin.michelle@epa.gov](mailto:bergin.michelle@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Preamble acronyms and abbreviations.* 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  
 CFR Code of Federal Regulations  
 EPA Environmental Protection Agency  
 NAICS North American Industry Classification System  
 NESHAP National Emission Standards for Hazardous Air Pollutants  
 NSPS New Source Performance Standards  
 SIP state implementation plan  
 SSM startup, shutdown, and malfunction

*Participation in virtual public hearing.* To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov). If requested, the hearing will be held via virtual platform on July 9, 2024. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source>.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source> or contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov). The last day to pre-register to speak at the hearing will be July 6, 2024. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: [https://www.epa.gov/stationary-sources-air-](https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source)

[pollution/removal-affirmative-defense-provisions-specified-new-source](https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source).

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to [bergin.michelle@epa.gov](mailto:bergin.michelle@epa.gov). The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at [SPPDpublichearing@epa.gov](mailto:SPPDpublichearing@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by July 1, 2024. The EPA may not be able to arrange accommodations without advanced notice.

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2023-0509. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only as pdf versions that can only be accessed on the EPA computers in the docket office reading room. Certain data bases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at 202-566-1744. The docket office has up to 10 business days

to respond to these requests. With the exception of such material, publicly available docket materials are available electronically in <https://www.regulations.gov/>.

**Instructions.** Direct your comments to Docket ID No. EPA-HQ-OAR-2023-0509. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to <https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not

be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

**Submitting CBI.** Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI 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 at the email address [oaqpscbi@epa.gov](mailto:oaqpscbi@epa.gov), and as described above, should include clear CBI markings and note the docket ID. 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 information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, P.O. Box 12055, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina

27711, Attention Docket ID No. EPA-HQ-OAR-2023-0509. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

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

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document and other related information?
- II. Background
- III. What action is the EPA proposing to remove Affirmative Defense?
- IV. Summary of Cost, Environmental, and Economic Impacts
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review, as Amended by Executive Order 14094: Modernizing Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

## I. General Information

### A. Does this action apply to me?

This proposal addresses the industrial source sectors and includes, but is not limited to, the associated North American Industry Classification System (NAICS) codes subject to the rules shown in table 1 of this preamble. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—40 CFR PARTS 60 AND 63 RULES PROPOSED FOR REMOVAL OF AFFIRMATIVE DEFENSE

Source sector	Subpart	NAICS codes <sup>1</sup>
<b>Clean Air Act section 111 (40 CFR part 60)</b>		
Electric Utility Steam Generating Units (Boilers) .....	Da .....	221112, 921150.
Kraft Pulp Mills .....	BBa .....	3221.
Nitric Acid Plants .....	Ga .....	325311.
<b>Clean Air Act section 112 (40 CFR part 63)</b>		
Chemical Manufacturing Area Sources .....	VVVVVV (6V) .....	325.
Chromium Electroplating .....	N .....	332813.
Coal- and Oil-Fired Electric Utility Steam Generating Units (MATS) .....	UUUUU (5U) .....	221112, 221122, 921150.
Marine Vessel Loading Operations .....	Y .....	4883.
Pesticide Active Ingredient Production .....	MMM .....	325199, 325320.
Pharmaceuticals Production .....	GGG .....	3254.
Polyether Polyols Production .....	PPP .....	325199.
Polymers & Resins IV .....	JJJ .....	325211.
Primary Lead Processing .....	TTT .....	331419.
Printing and Publishing Surface Coating .....	KK .....	32311.
Pulp and Paper Industry .....	S .....	322.
Secondary Lead Smelters .....	X .....	331492.
Shipbuilding and Ship Repair Surface Coating .....	II .....	336611.
Steel Pickling .....	CCC .....	3311, 3312.
Wood Furniture Surface Coating .....	JJ .....	3371, 3372, 3379.

<sup>1</sup> North American Industry Classification System (NAICS).

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action is available on the internet at <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal at this same website.

A memorandum showing the edits that would be necessary to incorporate the changes proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2023-0509). Following signature by the EPA Administrator, the EPA also will post a copy of this memorandum to <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source>.

**II. Background**

In 2008, the United States Court of Appeals for the District of Columbia Circuit (the court) vacated portions of 2 provisions governing the emissions of hazardous air pollutants during periods of startup, shutdown, and malfunction (SSM) in the EPA’s CAA section 112 General Provisions regulations (40 CFR part 63, subpart A). *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008). The court held that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption

violates the CAA’s requirement that CAA section 112 standards must apply at all times. To address the court decision, the EPA began amending SSM provisions in 2010 with the Portland Cement Manufacturing NESHAP (75 FR 54970, September 9, 2010). In that action, in response to comments urging the EPA to not apply the same standards to malfunctions as to normal operations, the EPA added an affirmative defense to civil penalties for when the event that causes an exceedance of the emission limit meets the narrow definition of malfunction.

As defined in each subpart addressed in this action (see table 1), an affirmative defense means, “. . . in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.” This defense would most likely be applied to malfunction events that result in non-compliance with any applicable standards. Malfunctions in this context are a sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner. See 40 CFR 63.2 and 40 CFR 60.2. Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense in some rules to

provide a more formalized approach to malfunctions (e.g. 79 FR 1676, 1712). See also *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); but see *Marathon Oil Co. v. EPA*, 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of “upsets beyond the control of the permit holder”). Under the EPA’s regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed.

However, on April 18, 2014, the D.C. Circuit vacated the portion of the EPA’s CAA section 112 regulation pertaining to the affirmative defense in the NESHAP for the portland cement manufacturing industry. *NRDC v. EPA*, 749 F.3d 1055 (2014). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that CAA section 304(a) clearly vests the authority over private suits exclusively with the courts, not the EPA. *Id.* at 1063.

In light of the *NRDC* decision, the EPA has been removing affirmative defense provisions from CAA section 112 rules.<sup>1</sup> Additionally, the EPA

<sup>1</sup> For example, see affirmative defense removed in the “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters” (80 FR 72789, Sept. 20, 2015) and in

determined that although the *NRDC* decision addressed a CAA section 112 rule, the court's rationale also applies to affirmative defense provisions in CAA section 111 rules; accordingly, the EPA has also removed affirmative defense provisions from those rules when they were otherwise revised or amended.<sup>2,3</sup> As indicated in these actions, the EPA will continue to evaluate violations on a case-by-case basis and determine whether an enforcement action is appropriate.

If the EPA determines that bringing an enforcement action under CAA section 113(d)(2)(B) against a source for a violation of an emission standard is warranted, the source can raise any and all defenses in response and the federal district court will determine what, if any, relief is appropriate. The presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.<sup>4</sup> Similarly, as the court recognized, in a citizen enforcement action brought under CAA section 304(a), the reviewing court has the discretion to consider any defense raised when determining whether penalties are appropriate. *Cf. NRDC*, 749 F.3d at 1064.

Following the *NRDC* decision, on June 17, 2014, Sierra Club filed an administrative petition requesting the EPA to remove the affirmative defense provisions from a set of 29 rules.<sup>5</sup> On

"National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers" (81 FR 63112, Sept. 14, 2016).

<sup>2</sup> For example, see "Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards" (79 FR 79017, Dec. 31, 2014) (affirmative defense provision removed); and "Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units" (80 FR 64509, Sept. 23, 2015) (declining to finalize proposed affirmative defense provision).

<sup>3</sup> In March 2024, the D.C. Circuit issued a decision in *Environmental Committee of the Florida Electric Power Coordinating Group v. EPA*, No. 15–1239. Petitioners challenged an EPA final action relating to SSM provisions in state implementation plans (SIPs), and the court's holding was premised on certain language in CAA 110(a)(2)(A), which only applies to SIPs and not source sector rules under CAA sections 111 and 112.

<sup>4</sup> Although the *NRDC* case does not address the EPA's authority to establish an affirmative defense to penalties that are available in administrative enforcement actions, we are not proposing such an affirmative defense for the rules addressed by this action. As explained, such an affirmative defense is not necessary. Moreover, assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent. *Cf.* CAA section 113(e) (requiring both the Administrator and the court to take specified criteria into account when assessing penalties).

<sup>5</sup> Petition to Revise Air Emission Regulations Containing Affirmative Defense (Jun. 17, 2014). The twenty-nine rules addressed in the 2014 administrative petition include: under New Source

July 14, 2014, Sierra Club also filed a petition seeking judicial review of nine **Federal Register** actions which included 17 source sector rules that contain affirmative defense provisions promulgated by the EPA under the CAA in 2011 and 2012 (Case No. 14–1110 (D.C. Cir.)). In November 2014, the EPA granted the administrative petition, stating that the EPA will continue the ongoing process of removing affirmative defenses from the remaining rules included in the petition as expeditiously as practicable.<sup>6</sup> While the EPA has made significant progress in removing the affirmative defense provision from individual rules as the rules are opened for periodic review (including 3 from the administrative petition<sup>7</sup>), this action furthers that progress more efficiently by proposing to remove the affirmative defense provision from 18 rules, shown in Table

Performance Standards (CAA section 111)—40 CFR part 60 Subpart Da: Electric Utility Steam Generating Units; Subpart Ga: Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011; Subpart BBa: Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013; and Subpart OOOO: Crude Oil and Natural Gas Production, Transmission and Distribution. Under Solid waste combustion New Source Performance Standards & Emission Guidelines (CAA section 129)—40 CFR part 60 Subpart CCCC: Commercial and Industrial Solid Waste Incineration Units (new); Subpart DDDD: Commercial and Industrial Solid Waste Incineration Units (existing); Subpart LLLL: New Sewage Sludge Incineration Units; and Subpart MMMM: Existing Sewage Sludge Incineration Units. Under National Emission Standards for Hazardous Air Pollutants (CAA section 112)—40 CFR part 63 Subpart N: Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; Subpart S: Pulp and Paper Industry; Subpart U: Group I Polymers and Resins; Subpart X: Secondary Lead Smelting; Subpart Y: Marine Tank Vessel Tank Loading Operations; Subpart HH: Oil and Natural Gas Production Facilities; Subpart II: Shipbuilding and Ship Repair (Surface Coating); Subpart JJ: Wood Furniture Manufacturing Operations; Subpart KK: Printing and Publishing Industry; Subpart CCC: Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants; Subpart GGG: Pharmaceuticals Production; Subpart HHH: Natural Gas Transmission and Storage Facilities; Subpart JJJ: Group IV Polymers and Resins; Subpart MMM: Pesticide Active Ingredient Production; Subpart PPP: Polyether Polyols Production; Subpart TTT: Primary Lead Smelting; Subpart DDDDD: Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Subpart UUUUU: Coal- and Oil-Fired Electric Utility Steam Generating Units; Subpart JJJJJ: Industrial, Commercial, and Institutional Boilers Area Sources; Subpart VVVVV: Chemical Manufacturing Area Sources; Subpart HHHHHHH: Polyvinyl Chloride and Copolymers Production.

<sup>6</sup> Letter from J. McCabe, Acting EPA Administrator, to S. Johnson, Earthjustice (Nov. 19, 2014).

<sup>7</sup> 40 CFR part 60 subpart OOOO (79 FR 79017, Dec. 31, 2014) and 40 CFR part 63 subparts DDDDD (80 FR 72789, Nov. 20, 2015) and JJJJJ (81 FR 63112, Sept. 14, 2016).

1. This proposal does not address 5 rules (4 from the petition) for which removal of affirmative defense provisions has already been proposed but not yet finalized.<sup>8</sup> Finally, this action is not proposing removal of affirmative defense provisions from any waste incineration rules under CAA section 129, which will be addressed at a later time.

### III. What action is the EPA proposing to remove Affirmative Defense?

The EPA is proposing to remove the definition of affirmative defense and revise or remove and reserve regulatory sections that contain affirmative defense provisions from the eighteen source sector rules shown in table 1 of this preamble. These source sector rules are each codified under either 40 CFR part 60 or part 63 (NSPS and NESHAP, respectively). A memorandum showing the edits that would be necessary to incorporate the changes proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2023-0509). Following signature by the EPA Administrator, the EPA also will post a copy of this memorandum to <https://www.epa.gov/stationary-sources-air-pollution/removal-affirmative-defense-provisions-specified-new-source>. The EPA is soliciting comment on if there are any rules not listed in table 1 of this preamble that are under CAA sections 111 or 112 and have remaining affirmative defense provisions that the EPA needs to consider for removal. The EPA is also soliciting comment on if there are any additional considerations related to removal of affirmative defense provisions than addressed by this proposal. This document does not address or reopen any provisions in these regulations other than removal of provisions related to affirmative defense.

### IV. Summary of Cost, Environmental, and Economic Impacts

There are no air quality or cost impacts associated with the proposed amendments and, therefore, there are also no economic impacts. The affirmative defense provisions did not affect the stringency of or compliance requirements with affected standards in 40 CFR parts 60 and 63. The removal of the affirmative defense provisions does not have a material impact on the obligation for sources to comply with their respective standards, or on the ability of federal or state agencies to enforce such standards. When the EPA originally promulgated the affirmative

<sup>8</sup> 40 CFR part 63 subparts U, HH, HHH, DDDDD and HHHHHHH.

defense provisions in the rules addressed in this proposed action, the EPA estimated a small administrative burden to report deviations from standards as a result of malfunctions that included the option for an owner or operator to offer an affirmative defense. The proposed removal of the affirmative defense provisions does not affect that small administrative burden because the EPA expects that sources will continue to collect similar information in order to defend any compliance actions against a source. In addition, as required by the individual rules, sources will continue to report information regarding malfunctions that result in a failure to meet the standards.

## V. Statutory and Executive Order 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 Review, as Amended by Executive Order 14094: Modernizing 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.

### B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations. The removal of provisions for affirmative defense does not change any mandatory recordkeeping, reporting, or other activity previously established under prior final rules.

### C. 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. In making this determination, the EPA concludes that this rule will not have any significant adverse economic impact on small entities because the rule has no net burden on the small entities subject to the rule. The removal of the affirmative defense provisions does not have a material impact on the obligation for sources to comply with their respective standards, or on the ability of federal or state agencies to enforce such standards. When the EPA originally promulgated the affirmative defense provisions in the rules addressed in this proposed action, the EPA estimated a small

administrative burden to report deviations from standards as a result of malfunctions that included the option for an owner or operator to offer an affirmative defense. The proposed removal of the affirmative defense provisions does not affect that small administrative burden because the EPA expects that sources will continue to collect similar information in order to defend any compliance actions against a source. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

### D. Unfunded Mandates Reform Act (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.

### E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental 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. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern

human health, the EPA’s Policy on Children’s Health also does not apply.

### H. Executive Order 13211: Actions Concerning Regulations 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.

### I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking does not involve technical standards.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that this action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action does not change the underlying standards that have an impact on human health and the environment.

**Michael S. Regan,**  
Administrator.

[FR Doc. 2024–13188 Filed 6–21–24; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 24–152; RM–11982; DA 24–558; FR ID 226621]

### Television Broadcasting Services Boise, Idaho

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed May 10, 2024, by King Broadcasting Company (Petitioner), the licensee of KTVB, channel 7, Boise, Idaho (Station or KTVB). The Petitioner requests the substitution of channel 23 for channel 7 at Boise, Idaho (Boise), in the Table of TV Allotments.

**DATES:** Comments must be filed on or before July 24, 2024 and reply comments on or before August 8, 2024.