711 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: On July 1, 2025, (90 FR 27992), the Department published a direct final rule removing its regulations in parts 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, and 672 of title 20 of the CFR programs that are no longer operative. In the direct final rule, the Department stated that, if no significant adverse comments were received, then the direct final rule would become effective on September 2, 2025. Comments from the public were due on July 31, 2025, and were posted publicly in Docket ID ETA–2025–0001 on *www.regulations.gov.*

The Department received one comment opposed to the removal of the WIA regulations, but the comment did not meet the criteria to be considered a significant adverse comment to the removal of these regulations. The commenter argued for retaining the WIA regulations in the CFR, largely for historical purposes and preserving access to the regulations. Users can access the *Workforce Investment Act* final rule at *https://www.govinfo.gov/content/pkg/FR-2000-08-11/pdf/00-19985.pdf.* The final rule was published on August 11, 2000 (65 FR 49294) in the **Federal Register**, and previous editions of the **Federal Register** are available online at the *www.federalregister.gov* website.

Additionally, the CFR is the codification of the general and permanent rules published in the **Federal Register** by the departments and agencies of the Federal Government. The Electronic Code of Federal Regulations (eCFR) is a point-in-time system that allows users to browse the CFR as it existed at any point in time since January 2017. The *www.ecfr.gov* website allows users to view parts after they have been removed from the CFR by viewing a point in time in the eCFR prior to the parts' removal. Paper copies of the CFR are also available for purchase through the Government Publication Office bookstore.[1]

Parties who are interested in the history of regulations have several ways to access these changes over time. As noted in the *Rescission of Workforce Investment Act Regulations;* direct final rule (DFR) (herein, *Rescission DFR*), WIA was repealed by WIOA. In the Notice of Proposed Rulemaking for the WIOA regulations (80 FR 20690), the Department discussed the major changes in the WIOA regulations from the WIA regulations in III. B. of the background section. The public was invited to comment on the proposed WIOA regulations during a 60-day comment period. To assist the public with understanding the changes from WIA to WIOA, the WIOA final rule (81 FR 56072) contained a crosswalk of WIA and WIOA regulations by subject matter in Table 1, allowing users to clearly see which part of the WIOA regulations correspond with which part of the WIA regulations.

As the WIOA final rule is contained in the **Federal Register**, the regulatory history of WIA and WIOA is already preserved. The CFR is not the appropriate venue for maintaining outdated regulations for a repealed law. The commenter suggested that these regulations must be preserved in the CFR for oversight, program equity, and accountability, but did not state why the current CFR is the appropriate venue for maintaining regulations that are no longer in effect. As noted above, the foundation for the current WIOA regulations is well captured in other documents, including the WIOA final rule.

The commenter stated that WIA continues to have bearing on litigation, audits, performance monitoring, and congressional oversight, but did not specify any current litigation, audits, performance monitoring, or congressional oversight that references the WIA regulations. The Department is unaware of any instance in which the WIA regulations are currently applicable. Finally, the commenter discussed the need for the public to be able to comment on the rescission of the WIA regulations. In addition to the 60-day comment period in 2015 associated with the promulgation of the WIOA regulations, the *Rescission DFR* provided 30-days for the public to provide substantive, significant adverse comments in opposition to the removal of the WIA regulations. This commenter availed themselves of the opportunity to comment during the open comment period to provide input on the rescission.

A significant adverse comment[2] is one which explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. This comment is not a significant adverse comment as it does not indicate a reason why removing these regulations from the CFR would be inappropriate or how removal would have consequences for the administration of Departmental programs. Therefore, the direct final rule will become effective as scheduled.

Susan Frazier,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2025–16771 Filed 8–29–25; 8:45 am]

BILLING CODE 4510–FN–P

[1] CFR Title 20 Pts. 657–END, *https://bookstore.gpo.gov/products/cfr-title-20-pts-657-end-code-federal-regulations-2024.* Accessed July 31, 2025.

[2] Administrative Conference of the United States, ''Procedures for Noncontroversial and Expedited Rulemaking'', Recommendation by the Committee on Regulation, January 15, 1995. Accessed on August 1, 2025, at: *https://www.acus.gov/document/procedures-noncontroversial-and-expedited-rulemaking.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2023–0509; FRL–11651–04–OAR]

RIN 2060–AW56

National Emission Standards for Hazardous Air Pollutants for the Polyether Polyols Production Industry: Removal of Affirmative Defense

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols (PEPO) Production under the Clean Air Act (CAA). Specifically, for this NESHAP, the EPA is finalizing the removal of affirmative defense provisions associated with the violation of air emission standards due to malfunctions.

DATES: This final rule is effective on September 2, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0509. All documents in the docket are listed on the *https://www.regulations.gov* website. 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 databases 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. Except for such material, publicly available docket

materials are available electronically on *Regulations.gov* or on the EPA computers in the docket office reading room at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this 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; email address: *bergin.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CRA Congressional Review Act
D.C. Circuit United State Court of Appeals for the District of Columbia Circuit
EPA Environmental Protection Agency
NAICS North American Industry Classification System
NRDC Natural Resources Defense Council
NTTAA National Technology Transfer and Advancement Act
NESHAP National Emission Standards for Hazardous Air Pollutants
NSPS New Source Performance Standards
PRA Paperwork Reduction Act
PEPO Polyether Polyols
RFA Regulatory Flexibility Act
SSM Startup, Shutdown, and Malfunction
UMRA Unfunded Mandates Reform Act

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I. General Information

A. Does this action apply to me?

This final rule is applicable to facilities subject to the NESHAP for PEPO Production source category (referred to as the ''PEPO NESHAP'' in this document). Facilities associated with this rule are often referred to as ''PEPO facilities.'' There are approximately 23 PEPO facilities in the United States, largely in the eastern half of the nation. The North American Industry Classification System (NAICS) code for PEPO facilities is 325199 (All Other Basic Organic Chemical Manufacturing). This NAICS code does not preclude the applicability of this rule to other sources but rather provides a guide for readers regarding the entities that this action is likely to affect. To determine whether this action applies to your facility, you should examine the applicability criteria in the regulations. This final rule does not impact the Federal Government or state, local or Tribal governments. If you have any questions regarding the applicability of this action to a particular entity, please contact your Regional EPA office or the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket (Docket ID No. EPA–HQ–OAR–2023–0509), an electronic copy of this final action is available on the internet at *https://www.epa.gov/stationary-sources-air-pollution/polyether-polyols-production-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of this action and of key related documents at this same website.

C. Judicial and Administrative Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by November 3, 2025. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

CAA section 307(d)(7)(B) further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section provides a mechanism for the EPA to convene a proceeding for reconsideration ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

In *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of two provisions exempting 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). The D.C. Circuit held that CAA section 302(k) requires emissions standards or limitations to be continuous in nature and that the SSM exemption from otherwise applicable CAA section 112 standards violated this requirement. To address the court's decision, the EPA began amending SSM provisions in various rules, starting in 2010 with the Portland Cement Manufacturing

NESHAP (75 FR 54970, September 9, 2010; 40 CFR part 63, subpart LLL).

In that action, the EPA responded to comments on malfunctions by adding an affirmative defense to civil penalties for when the event that causes an exceedance of an applicable standard meets the narrow regulatory definition of ''malfunction.'' Specifically, the EPA has long defined malfunctions in its General Provisions regulation for CAA section 112 as 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 which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.'' [1]

Under the EPA's 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. Although the EPA recognized that its case-by-case enforcement discretion provided flexibility to address circumstances in which malfunction events resulted in non-compliance with any applicable standards, it included the affirmative defense in some rules to provide a more formalized approach to malfunctions (*e.g.,* 79 FR 1676, 1712, January 9, 2014).[2]

With respect to the PEPO NESHAP, the EPA established affirmative defense provisions in 2014 at 40 CFR 63.1420(i).[3] However, in *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir., 2014), the D.C. Circuit soon thereafter vacated the portion of the EPA's CAA section 112 regulation pertaining to the affirmative defense in the Portland Cement Manufacturing NESHAP. The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that CAA section 304(a) vests the authority over private suits exclusively with the courts, not the EPA. *Id.* at 1063.

Since the *NRDC* decision, the EPA has been removing affirmative defense provisions from CAA section 112 rules, as well as from section 111 (New Source Performance Standards) and section 129 (Solid Waste Combustion) rules.[4] In this rule, the EPA is finalizing, as proposed, the removal of affirmative defense provisions from the PEPO NESHAP (40 CFR part 63 subpart PPP). The removal of the affirmative provisions from the PEPO NESHAP was proposed along with removal of affirmative defense from 17 other rules (89 FR 52425, June 24, 2024). This final action removes affirmative defense provisions only from the PEPO NESHAP and does not take final action on any of the other regulatory changes set out in the proposal.

As indicated in the previous actions removing affirmative defense provisions and in the proposed rulemaking, the EPA will continue to evaluate possible 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 all defenses available under the law, and the Federal district court will determine what, if any, relief is appropriate. The presiding officer in an administrative proceeding can also consider any defense raised and determine whether administrative penalties are appropriate.[5] Similarly, as the D.C. Circuit recognized in *NRDC,* 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.* 749 F.3d at 1064.

III. What action is the EPA finalizing?

The EPA is finalizing the removal of affirmative defense provisions from the PEPO NESHAP (40 CFR part 63 subpart PPP). This action on the PEPO NESHAP is under a consent decree to be finalized by September 10, 2025.[6] These provisions imply legal authority that the D.C. Circuit has stated the EPA does not have.

On June 24, 2024, the EPA proposed to remove the affirmative defense provisions in 40 CFR part 63 subpart PPP and from 17 other rules, each codified under either 40 CFR part 60 or part 63 (NSPS and NESHAP, respectively).[7] In this action, the EPA is finalizing only the removal of affirmative defense provisions from the PEPO NESHAP to comply with the terms of the consent decree noted above, which applies only to the PEPO NESHAP provisions. We are not taking final action on any of the other proposed amendments and are not withdrawing or determining not to finalize the remainder of the proposed amendments. Rather, we are finalizing the proposed rule in relevant part and intend to, at an appropriate future date, take final action on the remainder of the proposal. *See, e.g., Las Vegas* v. *Lujan,* 891 F.2d 927, 935 (D.C. Cir. 1989) (''agencies have great discretion to treat a problem partially''); *Nat'l Ass'n of Broads.* v. *FCC*, 740 F.2d 1190, 1210 (D.C. Cir. 1984) (recognizing the ''reasonableness'' of agency ''decision to engage in incremental rulemaking'').

IV. Response to Comments

The EPA received five substantive comment submittals on the proposal (89 FR 52425, June 24, 2024), which addressed 18 rules. The following section provides a summary of comments relevant to the removal of affirmative defense provisions for the PEPO NESHAP (40 CFR part 63 subpart PPP), including general comments that apply to multiple aspects of the proposed rulemaking and the PEPO NESHAP, and the EPA responses thereto. The EPA has reviewed all comments received and will respond to any additional comments as appropriate when taking final action on the remaining aspects of the proposed rule.

Comment: One commenter requested that, before eliminating the malfunction affirmative defense, the EPA review each regulation and adopt appropriate work practice standards. Per the commenter, this approach would provide the relevant source category a compliance option during situations

[1] See 40 CFR 63.2.

[2] 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'').

[3] See 79 FR 17340 (March 27, 2014).

[4] For example, see ''Removal of Affirmative Defense Provisions From the NESHAP for the Oil and Natural Gas Production Facility and Natural Gas Transmission and Storage Facility Source Categories'' (89 FR 84291, October 22, 2024); ''National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters'' (80 FR 72789, September 20, 2015); and ''National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers'' (81 FR 63112, September 14, 2016).

[5] 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 did not include such an affirmative defense for the rule 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).

[6] On November 22, 2024, the U.S. District Court for the District of Columbia entered a consent decree in *Louisiana Environmental Action Network, et al.* v. *Regan,* Case No. 1:23–cv–2714 establishing a deadline for action on the affirmative defense provision in the PEPO NESHAP. This deadline was subsequently extended to September 10, 2025.

[7] See 89 FR 52425, June 24, 2024.

when ''it is technically impossible to properly operate'' some required pollution control techniques during ''unpredicted and reasonably unavoidable failures of air pollution control systems.'' Per the commenter, the EPA must methodically and diligently examine relevant data and information before articulating an explanation for its final decision as part of its periodic reviews for NESHAP standards and updates to NSPS standards.

Response: The EPA disagrees with the commenter's assertion that it must adopt work practice standards before removing affirmative defense provisions.

In 2014, the EPA finalized the residual risk and technology review for the PEPO NESHAP.[8] In that rule, the EPA eliminated the SSM exemptions in the PEPO NESHAP and required that the applicable standards always apply, including during periods of SSM. In establishing these standards for the PEPO NESHAP, the EPA considered startup and shutdown periods, and for the reasons explained in the 2014 rule it did not establish alternate standards for these periods.

In addition, the EPA took the position in the 2014 rule that the Agency is not required to take malfunctions into account in setting applicable standards or to devise separate standards that apply specifically to malfunction-caused emissions.[9] The EPA determined that CAA section 112 does not require emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. This reading was upheld as reasonable in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (D.C. Cir. 2016).[10]

Finally, commenters did not provide the EPA with any data or specific information for the PEPO NESHAP to support their comments or give any indication that there are unaddressed circumstances for the PEPO NESHAP that would be impacted by removal of the affirmative defense provisions. The EPA retains the discretion to take into consideration any unique operating conditions at a particular source or pertinent data in the context of future reviews or of an enforcement investigation and action under CAA section 113.

Comment: Some commenters stated that ''[t]he legal basis for concluding EPA must remove the affirmative defense from all regulations that contain it is even stronger than EPA's proposal makes it seem,'' referring to *Environmental Committee of the Florida Electric Power Coordinating Group* v. *EPA,* 94 F.4th 77 (D.C. Cir. 2024). Environmental organizations comment that the decision ''expressly addresses affirmative defenses against civil penalties, unanimously holding that such defenses are illegal both in state implementation plans and in 'EPA-created rules.' '' *Id.* at 115–16. The commenter further stated that ''*Environmental Committee* thus confirms no affirmative defense against civil penalties can continue in any EPA-issued or approved air pollution regulation.'' Thus, according to the commenter, the D.C. Circuit reaffirmed its earlier *NRDC* decision.

Response: Although the D.C. Circuit's decision in *Environmental Committee* was largely premised on certain language in CAA section 110(a)(2)(A) rather than the relevant language in CAA section 112, the EPA agrees that the decision supports this final action. In *Environmental Committee,* the D.C. Circuit upheld the EPA's action requiring states to remove certain affirmative defenses from their State Implementation Plans. These affirmative defenses precluded certain remedies in judicial actions against sources that violated emissions limits. The court held that because CAA sections 304(a) and 113(b) authorize citizens and the EPA to seek injunctive relief and monetary penalties against sources that violate emission limits, such an affirmative defense would ''block that aspect of the Act's [CAA] enforcement regime.'' 94 F.4th at 89. This holding supports the EPA's decision to remove affirmative defenses against civil penalties from CAA section 112 rules.

Comment: One commenter noted that, when affirmative defenses were added, the EPA provided a reasoned justification for including affirmative defenses in the rules. As an example, the commenter quoted language included in the preamble of a 2012 rule: ''[T]he EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause a violation of the relevant emission standard. The EPA is therefore finalizing an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions.'' [11] The commenter further quoted: ''The EPA proposed and is now finalizing an affirmative defense in this rule in an attempt to balance a tension, inherent in many types of air regulations, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances beyond the control of the source.'' [12]

Response: The EPA acknowledges that affirmative defense provisions were added when exemptions to emissions released during malfunction were not included in the revised standards. The commenter accurately states the rationale at the time of that 2012 final rule in the language quoted above. However, the D.C. Circuit subsequently found in the 2014 *NRDC* decision that the EPA lacks the authority to provide this affirmative defense to civil penalties. There is no change to the fact that emission standards must apply during malfunction, in accordance with the D.C. Circuit's 2008 decision in *Sierra Club.* The EPA still retains enforcement authority for case-by-case consideration of emission standard deviations. 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 all legal defenses in response, and the Federal district court will determine what, if any, relief is appropriate.

Comment: One commenter submitted a discussion of some aspects of a source's operation, that by nature cause variability in emissions. The commenter expressed concern that this ''[p]roposed Rule could have a chilling effect on state provisions put in place to delineate emissions from SSM conditions from steady-state emissions.'' Another commenter ''advocates for a work practice standard approach that would apply during SSM events, in lieu of striking SSM exclusions and affirmative defenses.''

Response: The EPA disagrees that this final rule could have an impact on state provisions to delineate emissions from SSM conditions from steady-state operation. This action does not impact or change the applicable standards in the PEPO NESHAP. This action only removes the affirmative defense provision pursuant to the D.C. Circuit's decision in *NRDC.* As explained earlier in this preamble, the EPA has already removed SSM exemptions from the PEPO NESHAP, with the appropriate evaluation, proposal, and comment period, when it provided emission standards that always apply. Emission

[8] See 79 FR 17340, March 27, 2014.

[9] See 79 FR 17355, March 27, 2014.

[10] See 79 FR 17355, March 27, 2014, in *U.S. Sugar Corp.* ''the [CAA section 112] language permits the EPA to ignore malfunctions in its standard-setting and account for them instead through its regulatory discretion''.

[11] See 77 FR 48433, 48436 (August 14, 2012).

[12] *Id.*

standards during periods of SSM previously addressed in that final rule are outside of the scope of this action.

Comment: Some commenters, in support of the proposal, disagreed with the EPA's statements regarding the rule's estimated lack of air quality impacts and benefits. The commenters agreed instead with statements the EPA included in the preamble of a 2023 proposed rule that ''. . . [r]emoving loopholes from air quality regulations takes away exemptions and defenses from liability that polluters routinely invoke when they violate emission standards, and thus removal of such loopholes makes standards easier to enforce,'' and that ''[a]s a result of the removal, polluters have greater incentives to minimize excess emissions, and pollution levels should drop, benefiting air quality, the environment, and human health.'' [13]

Response: The EPA disagrees that its statements regarding this rulemaking's implications conflict with prior EPA statements noted by the commenter. The quotation provided by the commenter was made in the context of a CAA section 110 proposed rulemaking considering different kinds of SSM provisions with varying scope and effect, rather than solely the affirmative defenses against the specific relief at issue here. As noted earlier in this preamble, the EPA has already removed SSM exemptions for the PEPO NESHAP in a previous final rule. This action does not impact or change the applicable standards in the PEPO NESHAP, but rather removes the affirmative defense provision pursuant to the D.C. Circuit's decision in *NRDC.* Whereas removing SSM exemptions may be expected to reduce certain emissions during SSM periods, this action to simply remove affirmative defense provisions from the PEPO NESHAP is not expected to reduce emissions because affirmative defense provisions were not included in the rule to excuse the sources from complying with applicable emission standards.

Comment: Some commenters stated that the proposed rulemaking overlooks cost impacts. For example, one commenter stated that the EPA should consider the costs that will result should the EPA remove relief for SSM events, such as affirmative defenses. The commenter stated: ''If SSM emissions are not delineated, then notices of violation and enforcement activities are likely to increase for utilities. Implementing agencies will not be armed with information to discern the reasons behind elevated emissions during a SSM event. Financial impacts on sources subject to enforcement are evident. Companies must contend with direct State and Federal civil penalties, as well as the loss of enforcement discounts for first-time offenders.''

Response: The EPA disagrees with the commenter that we overlooked the cost impacts of removing the affirmative defense provisions. This action does not impact or change the applicable standards in the PEPO NESHAP or the recordkeeping and reporting requirements associated with such standards. This action only removes the affirmative defense provisions in 40 CFR 63.1420(i) pursuant to the D.C. Circuit's decision in *NRDC.* When the EPA originally promulgated the affirmative defense provisions in the PEPO NESHAP, the EPA estimated a small administrative burden (not savings) of $1,584 annual cost, noting that ''these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.'' [14] However, the removal of the affirmative defense provisions does not likely affect that burden because the EPA expects that sources will continue to collect similar information to comply with the recordkeeping requirements in 40 CFR 63.1439(b)(1).

Finally, the rulemaking does not impact notices of violation or enforcement activities. 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 legal defenses in response, and the Federal district court will determine what, if any, relief is appropriate. The presiding officer in an administrative proceeding can also consider any defense raised and determine whether administrative penalties are appropriate. Similarly, as the D.C. Circuit recognized in *NRDC* and *Environmental Committee,* 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.

V. Summary of Cost, Environmental, and Economic Impacts

There are no air quality or cost impacts associated with the amendments we are finalizing and, therefore, there are no economic impacts. The affirmative defense removal does not affect the stringency of or compliance requirements of the PEPO NESHAP. 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 PEPO NESHAP, the EPA estimated a small administrative burden for reporting deviations from standards that a result from malfunctions which included the option for an owner or operator to offer an affirmative defense. The removal of the affirmative defense provisions does not affect that small administrative burden because the EPA expects that sources will continue to comply with the recordkeeping requirements in 40 CFR 63.1439(b)(1). In addition, sources will continue to report required information regarding malfunctions that result in a failure to meet applicable standards.

VI. 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 and Executive Order 13563: Improving Regulation and Regulatory Review

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

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. 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.

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. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is

[13] 88 FR 11842, 11863 (February 24, 2023).

[14] 79 FR 17361, March 27, 2014.

certifying that this rule will not have a significant economic impact on a substantial number of 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 PEPO NESHAP, the EPA estimated a small administrative burden (less than $2,000 annually). The estimate of this burden was described as illustrative because ''these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.'' See 79 FR 17361 (March 27, 2014). The 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 to comply with the malfunction recordkeeping requirements in 40 CFR 63.1439(b)(1) and 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.

E. 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.

F. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. 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.

H. 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.

I. 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.

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

This rule does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

§ 63.1420 [Amended]

■ 2. Amend § 63.1420 by removing paragraph (i).

§ 63.1423 [Amended]

■ 3. In § 63.1423, amend paragraph (b) by removing the definition of ''Affirmative defense.''

[FR Doc. 2025–16744 Filed 8–29–25; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[Docket No. BLM–2025–0006; A2407–014–004–065516; #O2412–014–004–047181.1]

RIN 1004–AF34

Rescission of Regulations Regarding Plans of Operations for Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Bureau of Land Management is withdrawing a duplicate direct final rule regarding regulations that address Mining Claims Under the General Mining Laws—Surface Management—Operations Conducted Under Plans of Operations—Does this subpart apply to my existing or pending plan of operations? which published on July 17, 2025.

DATES: As of September 2, 2025, the direct final rule published at 90 FR 33318 on July 17, 2025, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Kirk Rentmeister, National Mining Law Program Lead, telephone: 775–435–5514; email: *krentmei@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

For a summary of the final rule, please see the abstract description of the document in Docket Number BLM–2025–0006 on *www.regulations.gov.*

SUPPLEMENTARY INFORMATION: BLM is withdrawing FR Doc. 2025–13396, ''Rescission of Regulations Regarding