

**ADDRESSES:** You may submit comments, identified by RIN 3038–AF21, by any of the following methods:

- *CFTC Comments Portal:* <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Wasserman, Chief Counsel, Division of Clearing and Risk, at 202–418–5092 or [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), or Daniel O’Connell, Special Counsel, Division of Clearing and Risk, at 202–418–5583 or [doconnell@cftc.gov](mailto:doconnell@cftc.gov), at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** On April 14, 2023, the Commission published in the **Federal Register** an NPRM proposing to amend the CFTC’s derivatives clearing organization (DCO) risk management regulations adopted under section 5b of the Commodity Exchange Act to permit futures commission merchants that are clearing members to treat the separate accounts of a single customer as accounts of separate entities for purposes of Commission regulation

§ 39.13(g)(8)(iii).<sup>2</sup> The proposed amendments would add a new paragraph (j) to regulation § 39.13 establishing the conditions under which a DCO may permit such separate account treatment. The comment period for the NPRM closes on June 13, 2023. As requested by a commenter, the Commission is extending the comment period for this NPRM by an additional 17 days.<sup>3</sup> This extension of the comment period will allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on June 12, 2023, by the Commission.

**Christopher Kirkpatrick,**  
*Secretary of the Commission.*

**NOTE:** The following appendix will not appear in the Code of Federal Regulations.

#### **Appendix to Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants—Commission Voting Summary**

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Phan voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2023–12832 Filed 6–14–23; 8:45 am]

**BILLING CODE 6351–01–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

**[Docket Number USCG–2023–0462]**

**RIN 1625–AA08**

#### **Special Local Regulation; Back River, Baltimore County, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD during a high-speed power boat event on July 15, 2023, (alternate date on July 16, 2023). This proposed

<sup>2</sup> Derivatives Clearing Organization Risk Management Regulations To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934 (Apr. 14, 2023).

<sup>3</sup> FIA Letter dated June 9, 2023 to Christopher J. Kirkpatrick.

rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 30, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0462 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LCDR Samuel M. Danus, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2519, email [MDNCRMarineEvents@uscg.mil](mailto:MDNCRMarineEvents@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PATCOM Patrol Commander  
§ Section  
U.S.C. United States Code

##### **II. Background, Purpose, and Legal Basis**

Tiki Lee’s Dock Bar of Sparrows Point, MD, notified the Coast Guard that they will be conducting the 2023 Tiki Lee’s Shootout on the River from 9 a.m. to 5 p.m. on July 15, 2023. The individually-timed power boat speed runs event consists of approximately 40 participants competing on a designated, marked linear course located on Back River between Porter Point to the south and Stansbury Point to the north. The event is being staged out of Tiki Lee’s Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. In the event of inclement weather on July 15, 2023, the event will be conducted from 9 a.m. to 5 p.m. on July 16, 2023. Hazards from the high-speed power boat event include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as operating within approaches to local marinas and boat facilities and waterfront residential communities. The COTP Maryland-National Capital Region has determined that potential hazards associated with

<sup>1</sup> 17 CFR 145.9.

the high-speed power boat event would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of Back River.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041. The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring the Coast Guard has time to review and respond to any significant comments and has a final rule in effect in time for the scheduled event to protect against the identified hazards.

### III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 8 a.m. to 6 p.m. on July 15, 2023. The regulated area would cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include "Course Area," "Buffer Area," and "Spectator Areas."

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9 a.m. to 5 p.m. on July 15, 2023, (alternate date on July 16, 2023). The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event

participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2023 Tiki Lee's Shootout on the River participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels would be allowed to enter the aerobatics box. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses

based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small, designated area of Back River for 10 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic would be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

**ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 10 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

**Submitting comments.** We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type

USCG–2023–0462 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

**Viewing material in docket.** To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

**Personal information.** We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

- 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05–1.

- 2. Add § 100.501T05–0161 to read as follows:

#### § 100.501T05–0161 2nd Annual Tiki Lee’s Shootout on the River, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area

bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14'46" N, longitude 076°26'23" W, thence northeast to Porter Point at latitude 39°15'13" N, longitude 076°26'11" W, thence north along the shoreline to Walnut Point at latitude 39°17'06" N, longitude 076°27'04" W, thence southwest to the shoreline at latitude 39°16'41" N, longitude 076°27'31" W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Course Area.* The course area is a polygon in shape measuring approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16'14.98" N, longitude 076°26'57.38" W, thence east to latitude 39°16'15.36" N, longitude 076°26'55.56" W, thence south to latitude 39°15'33.40" N, longitude 076°26'49.70" W, thence west to latitude 39°15'33.17" N, longitude 076°26'51.60" W, thence north to and terminating at the point of origin.

(3) *Buffer Area.* The buffer area is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16'18.72" N, longitude 076°27'01.74" W, thence east to latitude 39°16'20.36" N, longitude 076°26'52.39" W, thence south to latitude 39°15'29.27" N, longitude 076°26'45.36" W, thence west to latitude 39°15'28.43" N, longitude 076°26'54.94" W, thence north to and terminating at the point of origin.

(4) *Spectator Areas—(i) East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15'20.16" N, longitude 076°26'17.99" W, thence west to latitude 39°15'17.47" N, longitude 076°26'27.41" W, thence north to latitude 39°16'18.48" N, longitude 076°26'48.42" W, thence east to latitude 39°16'25.60" N, longitude 076°26'27.14" W, thence south to latitude 39°15'40.90" N, longitude 076°26'31.30" W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16'01.64" N, longitude 076°27'11.62" W, thence

south to latitude 39°15'47.80" N, longitude 076°27'06.50" W, thence southwest to latitude 39°15'40.11" N, longitude 076°27'08.71" W, thence northeast to latitude 39°15'45.63" N, longitude 076°27'03.08" W, thence northeast to latitude 39°16'01.19" N, longitude 076°27'05.65" W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15'30.81" N, longitude 076°27'05.58" W, thence south to latitude 39°15'21.06" N, longitude 076°26'56.14" W, thence east to latitude 39°15'21.50" N, longitude 076°26'52.59" W, thence north to latitude 39°15'29.75" N, longitude 076°26'56.12" W, thence west to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

*Aerobatics Box* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander* or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means a person or vessel registered with the event sponsor as participating in the "2nd Annual Tiki Lee's Shootout on the River" event, or otherwise designated by the event sponsor as having a function tied to the event.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the

regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8 a.m. to 6 p.m. on July 15, 2023, and, if necessary due to inclement weather on July 15, 2023, from 8 a.m. to 6 p.m. on July 16, 2023.

Dated: June 9, 2023.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2023-12749 Filed 6-14-23; 8:45 am]

BILLING CODE 9110-04-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2019-0647; FRL-10975-01-R10]

### Air Plan Approval; WA; Excess Emissions, Startup, Shutdown, and Malfunction Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Washington, through the Department of Ecology on November 12, 2019. The revisions were submitted by Washington in response to an EPA's June 12, 2015 "SIP call" in which EPA found a substantially inadequate Washington SIP provision providing affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions and proposing to determine that removal of the substantially inadequate provision corrects the deficiency identified in the June 12, 2015, SIP call.

**DATES:** Comments must be received on or before July 17, 2023.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2019-0647, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. 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. 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>.

#### FOR FURTHER INFORMATION CONTACT:

Randall Ruddick, EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, (206) 553-1999; or email [ruddick.randall@epa.gov](mailto:ruddick.randall@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," or "our," is used, it refers to EPA.

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#### I. Background

On February 22, 2013, the EPA issued a **Federal Register** notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.<sup>1</sup> For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5).<sup>2</sup> On September 17, 2014, EPA issued a supplemental proposal revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined EPA

does not have authority under the CAA to create or approve affirmative defense provisions applicable to private civil suits.<sup>3</sup> EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate.<sup>4</sup>

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized "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), hereinafter referred to as the "2015 SSM SIP Action." The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states (including Washington State) were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

In October 2020, EPA issued a SSM Memorandum (2020 Memorandum).<sup>5</sup> Importantly, the 2020 Memorandum stated that it "did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act." Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Washington in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP

<sup>3</sup> The term *affirmative defense provision* means a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304. 80 FR 33839, June 12, 2015.

<sup>4</sup> See 79 FR 55920, September 17, 2014.

<sup>5</sup> October 9, 2020, memorandum "Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans," from Andrew R. Wheeler, Administrator.

<sup>1</sup> State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

<sup>2</sup> The term "SIP Call" refers to the requirement for a revised SIP in response to a finding by the EPA that a SIP is "substantially inadequate" to meet CAA requirements pursuant to CAA section 110(k)(5), titled "Calls for plan revisions."