

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–1017]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Lower Mississippi River. This action is necessary to provide for the safety of life on these navigable waters near the bluffs, Natchez, MS, during a fireworks display on December 31, 2016. The safety zone will cover all navigable waters between mile markers 363.4 and 364.4 in the Lower Mississippi River located near the bluffs in Natchez, MS. This rulemaking will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Memphis (COTP) or a designated representative.

DATES: This rule is effective from 9:40 p.m. on December 31, 2016 until 10:40 p.m. on January 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2016–1017 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Todd Manow, Waterways Management, Sector Lower Mississippi River, U.S. Coast Guard; telephone 901–521–4813, email todd.m.manow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On August 12, 2016, Natchez Specialties notified the Coast Guard that it will be conducting a fireworks display from 10 to 10:15 p.m. on December 31,

2016, to celebrate New Year's Eve. The fireworks are to be launched from a barge in the Lower Mississippi River at mile marker 363.9 approximately 200 yards northwest of the bluffs in Natchez, MS at approximate position 31°33.83' N, 091°24.50' W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Memphis (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within an area on the Lower Mississippi River from mile marker 363.4 to mile marker 364.4.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because, although the event sponsor originally submitted notice to the Coast Guard on August 12, 2016, final details of the event, safety zone requirements, and regulatory patrol parameters were not finalized until November of 2016. It is impracticable to publish an NPRM because we must establish this safety zone by December 31, 2016.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with this fireworks event would be a safety concern for anyone on the Lower Mississippi River from mile marker 363.4 to mile marker 364.4. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:40 p.m. to 10:40 p.m. on December 31, 2016. In the case of inclement weather on December 31, 2016, this safety zone will be enforced from 9:40 p.m. until 10:40 p.m. on January 1, 2017. The safety zone will cover all navigable waters of the Lower Mississippi River from mile marker 363.4 to mile marker 364.4 in the vicinity of the bluffs in Natchez, MS at approximate position 31°33.83' N, 091°24.50' W. The duration of the zone is intended to ensure the safety of waterway users on these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this 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 (E.O.) 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be restricted from entering this safety zone which will impact a small designated area of the Lower Mississippi River for one hour during the evening of New Year's Eve. This safety zone may be ended early if conditions allow. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

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 rule will 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 V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will 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 E.O. 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 rule under that Order and have determined that it is consistent with the

fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 rule has implications for federalism or Indian tribes, please contact 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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 rule involves a safety zone lasting one hour that would prohibit entry into a one mile stretch of the Lower Mississippi River, one half mile to either side of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 contact 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.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165 REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

- 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add temporary § 165.T08–1017 to read as follows:

§ 165.T08–1017 Safety Zone; Mississippi River, Natchez, MS.

(a) *Location.* The following area is a safety zone: All waters of the Lower Mississippi River from mile marker 363.4 to mile marker 364.4 in the vicinity of the fireworks launch platform at approximate position 31°33.83’ N, 091°24.50’ W, 200 yards northwest of the Natchez bluffs.

(b) *Effective dates and enforcement times.* The safety zone will be in effect from 9:40 p.m. on December 31, 2016 until 10:40 p.m. on January 1, 2017. The safety zone will be enforced from 9:40 p.m. until 10:40 p.m. on December 31, 2016. In the case of inclement weather on December 31, 2016, this safety zone will be enforced from 9:40 p.m. until 10:40 p.m. on January 1, 2017.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis (COTP) or a designated representative.

(2) Any vessel desiring to enter this safety zone must first obtain permission from the COTP or a designated representative, who may be contacted on VHF–FM Channel 16 or by telephone at 866–777–2784.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement periods for the safety zone.

Dated: December 20, 2016.

T. J. Wendt,

Captain, U.S. Coast Guard, Captain of the Port, Memphis, Tennessee.

[FR Doc. 2016-31729 Filed 12-30-16; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2016-0690; FRL-9957-29-OAR]

Extension of Deadline for Action on the November 2016 Section 126 Petition From Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition submitted by the state of Maryland pursuant to section 126 of the Clean Air Act (CAA). The petition requests that the EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia emit air pollution that significantly contributes to nonattainment and interferes with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in state of Maryland. Under section 307(d)(10) of CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the section 307(d) notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is therefore extending the deadline for acting on the petition to no later than July 15, 2017.

DATES: This final rule is effective on January 3, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2016-0690. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Gibson, Office of Air Quality Planning and Standards (C545-E), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541-3277, email: gibson.benjamin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Requirements for Interstate Air Pollution

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of Maryland filed pursuant to CAA section 126(b). The EPA received the petition on November 16, 2016. The petition requests that the EPA make a finding under section 126(b) of the CAA that the 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are operating in a manner that emits air pollutants in violation of the provisions of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 and 2015 ozone NAAQS.

Section 126(b) of the CAA authorizes states to petition the EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of CAA section 110(a)(2)(D)(i) ¹ by contributing significantly to nonattainment or maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. The petition asserts that emissions from 36 electric generating units emit air pollutants in violation of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS, set at 0.075 parts per million (ppm), and the revised 2015 8-hour ozone NAAQS, set at 0.070 ppm.²

¹ The text of CAA section 126 codified in the United States Code cross references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to CAA section 110(a)(2)(D)(i). See *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

² On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare. See 80 FR 65291 (October 26, 2015).

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

CAA section 126(b) further provides that the EPA must hold a public hearing on the petition. The EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). See CAA section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3)-(6).

In addition, CAA section 307(d)(10) provides for a time extension, under certain circumstances, for a rulemaking subject to CAA section 307(d). Specifically, CAA section 307(d)(10) provides:

Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

CAA section 307(d)(10) may be applied to section 126 rulemakings because the 60-day time limit under CAA section 126(b) necessarily limits the period for promulgation of a final rule after proposal to less than 6 months.

II. Final Rule

A. Rule

In accordance with CAA section 307(d)(10), the EPA is determining that the 60-day period afforded by CAA section 126(b) for responding to the petition from the state of Maryland is not adequate to allow the public and the agency the opportunity to carry out the purposes of CAA section 307(d). Specifically, the 60-day period is insufficient for the EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether the 36 electric generating units identified in