

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket Number USCG–2022–0655]****RIN 1625–AA00****Safety Zone; Little Egg Harbor, Beach Haven, NJ****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of Little Egg Harbor in Beach Haven, NJ. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by barge-based fireworks displays. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Delaware Bay.

**DATES:** This rule is effective from 8 p.m. on September 3, 2022, through 10:30 p.m. on September 23, 2022. This rule will be enforced from 8 p.m. until 10:30 p.m. on September 3, 2022, or those same hours on September 4, 2022, in the case of inclement weather on September 3, 2022. It will also be enforced from 8 p.m. until 10:30 p.m. on September 23, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2022–0655 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Dylan Caikowski, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone: 215–271–4814, Email: [SecDelBayWWM@uscg.mil](mailto:SecDelBayWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 NPRM Notice of proposed rulemaking  
 § Section  
 U.S.C. United States Code

**II. Background Information and Regulatory History**

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 it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the event. The rule must be in force by September 3, 2022, the date the first fireworks display is scheduled for. We are taking immediate action to ensure the safety of spectators and the general public from hazards associated with a barge based fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

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**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. The rule needs to be in place by September 3, 2022, to mitigate the potential safety hazards associated with a barge based fireworks display in this location.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority granted in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port, Delaware Bay (COTP) has determined that potential hazards associated with a barge based fireworks display will be a safety concern for anyone within a 150-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after a barge based fireworks display.

**IV. Discussion of the Rule**

This rule establishes a temporary safety zone on the waters of Little Egg Harbor in Beach Haven, NJ, during a barge based fireworks display. The first fireworks display is scheduled to take place between 8 p.m. and 10:30 p.m. on September 3, 2022, with a rain date of September 4, 2022. The second fireworks display will occur those same hours on September 23, 2022. The safety zone will extend 150 yards around the barge, which will be anchored at approximate position latitude 39°34′10″ N, longitude 074°14′31″ W. The duration of the zone is intended to

protect personnel, vessels, and the marine environment in these navigable waters during the barge based fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

**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 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 rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following factors: (1) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Delaware Bay or a designated representative during the enforcement period, they may operate in the surrounding area; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners and/or Local Notice to Mariners.

**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 call or email 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 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 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 rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this 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 determined 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 temporary safety zone that prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters in Little Egg Harbor, during a barge based fireworks display. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### 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.

### 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 amends 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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T05–0655 to read as follows:

### § 165.T05–0655 Safety Zone; Little Egg Harbor, Beach Haven, NJ.

(a) *Location.* The following area is a safety zone: All waters of Little Egg Harbor in Beach Haven, NJ within 150 yards of the fireworks barge anchored in approximate position latitude 39°34'10" N, longitude 074°14'31" W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from 8 p.m. until 10:30 p.m. on September 3, 2022, or those same hours on September 4, 2022, in the event of inclement weather on September 3, 2022. It will also be enforced from 8 p.m. until 10:30 p.m. on September 23, 2022.

Dated: August 10, 2022.

**Jonathan D. Theel,**

*Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2017-0290; FRL-10115-02-R3]

#### **Air Plan Partial Disapproval; Commonwealth of Pennsylvania; Reasonably Available Control Technology Regulations for the 1997 and 2008 Ozone National Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to disapprove a specific part of a state implementation plan (SIP) revision that was previously approved by EPA. On May 19, 2019, EPA fully approved certain parts of a SIP revision submitted by the Commonwealth of Pennsylvania to address reasonably available control technology (RACT) for the 1997 and 2008 ozone national ambient air quality standards (NAAQS), and conditionally approved other parts of that submission. The U.S. Court of Appeals for the Third Circuit vacated EPA's approval of a portion of the SIP revision, as discussed below. EPA is now disapproving the portion of the SIP submission addressed by the court's decision. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on September 15, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0290. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, 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 in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section for additional availability information.

#### **FOR FURTHER INFORMATION CONTACT:**

Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5511. Mr. Silverman can also be reached via electronic mail at [silverman.sean@epa.gov](mailto:silverman.sean@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On May 9, 2019, EPA published a final action fully approving certain provisions of Pennsylvania's May 16, 2016 SIP revision submission to implement RACT for both the 1997 and 2008 ozone NAAQS (hereafter the "RACT II rule"), and conditionally approving other provisions of the SIP revision. 84 FR 20274 (May 9, 2019). Specifically, EPA's action fully approved "25 Pa. Code [Pennsylvania Code] sections 121.1, 129.96, 129.97, and 129.100 as meeting certain aspects of major stationary source RACT in CAA section 172, 182, and 184 for the 1997 and 2008 ozone NAAQS submitted May 16, 2016" and conditionally approved "25 Pa. Code sections 129.98 and 129.99 based on the commitment provided by Pennsylvania to submit additional SIP revisions to address the deficiencies identified by EPA in the May 16, 2016 SIP revision." *Id.* at 20290. The May 16, 2016 SIP submittal was intended to satisfy CAA sections 182(b)(2)(C), 182(f), and 184 for the 1997 and 2008 8-hour ozone NAAQS for all major sources of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in Pennsylvania not subject to control techniques guidelines (CTG), with a few exceptions not relevant to this action.

The Sierra Club filed a petition for review with the U.S. Third Circuit Court of Appeals. The petition challenged EPA's approval of the portion of the RACT II rule applicable to coal-fired electricity generating units (EGUs) equipped with selective catalytic reduction (SCR) for control of NO<sub>x</sub>. For these EGUs, the petition challenged EPA's approval of the presumptive RACT NO<sub>x</sub> limit of 0.12 pounds of NO<sub>x</sub> per Million British Thermal Units (MMBtu) of heat input (lbs/MMBtu) when the inlet temperature to the SCR was 600 degrees Fahrenheit or above, the less stringent NO<sub>x</sub> limits of 25 Pa. Code 129.97(g)(1)(vii) when the SCR inlet temperature is below 600 degrees Fahrenheit, and the failure of the rule to specifically require EGUs to keep inlet

temperature data and report it to the Pennsylvania Department of Environmental Protection (PADEP).

*In Sierra Club v. U.S. EPA*, No. 19-2562 (3rd Cir. 2020), on August 27, 2020, the Third Circuit ruled in favor of the Sierra Club and vacated the Agency's approval of the SIP submission on all three challenged portions of Pennsylvania's plan. On September 15, 2021, EPA proposed to disapprove the specific SIP provisions for which the court had vacated EPA's prior approval. See 86 FR 51315.

##### **II. Summary of SIP Revisions Being Disapproved**

The purpose of this action is to partially disapprove those portions of Pennsylvania's RACT II SIP for which the Third Circuit vacated EPA's approval. The specific section of Pennsylvania's regulation in the SIP that is at issue here is 25 Pa. Code 129.97(g)(1)(viii), which set a "presumptive" RACT limit for coal-fired combustion units equipped with SCR at 0.12 lbs NO<sub>x</sub>/MMBtu. The court held that the selected limit was arbitrary and capricious, in light of evidence submitted which demonstrated that EGUs covered by 25 Pa. Code 129.97(g)(1)(viii) had achieved much lower emission rates in the past and that other states had adopted lower RACT NO<sub>x</sub> limits for similar coal fired sources. *Sierra Club* at 299-303. The court also held that the 600-degree Fahrenheit "exemption" to the 0.12 lbs NO<sub>x</sub>/MMBtu was arbitrary and capricious as the record failed to support why the exemption was needed or why the threshold was set at 600 degrees. *Id.* at 303-307. Thus, the court vacated EPA's approval of these two provisions, both of which are only found in 25 Pa. Code 129.97(g)(1)(viii). See *Id.* at 309.

The court also took issue with the recordkeeping and reporting requirements of 25 Pa. Code 129.100(d), stating "[b]ecause the SIP's 600-degree threshold necessarily depends upon accurate temperature reporting, the EPA's approval of such inadequate requirements on this record was arbitrary and capricious." *Id.* at 309. The court agreed with the Sierra Club that language in 25 Pa. Code 129.97(g)(1)(viii) was too vague to be enforceable and would not ensure that subject sources keep specific SCR temperature inlet data, report that data to PADEP, and make it available to the public. Further, the court explained that "[t]he combination of this lack of mandatory reporting and the temperature waiver created a potent loophole for polluters to walk through."