

BILLING CODE 6717-01-C

**United States of America****Federal Energy Regulatory Commission**

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes

Docket No. RM16-17-000

(August 19, 2021)

DANLY, Commissioner, *dissenting*:

1. I dissent from today's order adopting the proposal to collect additional information for the relational database.<sup>1</sup> With this issuance, the Commission now requires further submissions from market-based rate sellers with upstream affiliates holding blanket authorizations under Federal Power Act (FPA) section 203(a)(2).<sup>2</sup> This additional administrative burden which we now foist upon these entities is unnecessary (and therefore unjustifiable) because the information we will glean simply cannot aid us as the majority supposes.

2. Earlier this year, in a separate proceeding, Commissioner Chatterjee and I concurred in an order denying a petition for declaratory order filed by NextEra Energy, Inc. and a number of other utilities. In that order, the Commission seized upon the opportunity to reiterate public utilities' reporting obligations regarding the informational database.<sup>3</sup> Although we concurred in the result of that order, we objected to inclusion of institutional investors in the relational database as a pointless regulatory burden with little to no value.<sup>4</sup> Many of the objections we offered in that concurrence are equally applicable to this order. I recite those objections in large measure here.

3. As today's order recognizes, in *NextEra*, the Commission found that as a result of the conditions in a section 203(a)(2) blanket authorization, institutional investors subject to a section 203(a)(2) blanket authorization lack the ability to control the utilities whose voting securities they acquire.

<sup>59</sup>The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, <https://www.census.gov/eos/www/naics/>.

<sup>60</sup>13 CFR 121.201 (Sector 22—Utilities). To be conservative, we are using a small business threshold of 1,000 employees.

<sup>1</sup> *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, 176 FERC ¶ 61,109 (2021) (August 2021 Order); see also *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, 174 FERC ¶ 61,214 (2021); *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g and clarification*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).

The Commission concluded that, because those conditions prevent institutional investors from exercising control over those utilities, utilities commonly owned by an institutional investor are not affiliates of each other under 18 CFR 35.36(a)(9)(iv), so long as their common institutional investor owner complies with the conditions imposed as part of a section 203(a)(2) blanket authorization.<sup>5</sup>

The Commission thus acknowledged that, in conditioning those blanket authorizations, institutional investors were prevented from exercising control over utilities by acquiring their securities.

4. That determination remains true. Under our current regime, there is little to no value in listing institutional investors as the ultimate upstream affiliate of market-based rate sellers in the relational database. The Commission grants blanket authorizations premised on the finding that the institutional investors can exercise no control over the utilities whose securities they have purchased and that the acquisition would not adversely affect competition.<sup>6</sup> The conclusion that the institutional investors cannot exercise control or influence sellers so as to affect market power is confirmed by our holding that sellers under common control of an institutional investor are not affiliates. Indeed, it could not be otherwise.

5. Given those predicate determinations, I cannot understand why the Commission believes it important to include institutional investors in a database that is designed to enable the Commission to monitor the opportunity for market-based rate sellers to exercise market power. For the same reason, I do not understand why the Commission should require change in status filings to be made whenever an institutional investor's ownership of the seller's voting securities crosses the 10% threshold. To the extent that a particular institutional investor's ownership of voting securities ever becomes relevant to the Commission because it may have violated the conditions of its authorization, that information is easily ascertainable from the quarterly informational filings we require as a condition of granting the blanket authorizations.<sup>7</sup>

6. There is a simple solution that would allow the Commission to eliminate the requirement to include

<sup>5</sup> August 2021 Order, 176 FERC ¶ 61,109 at P 4 (citations omitted).

<sup>6</sup> See, e.g., *Legg Mason, Inc.*, 121 FERC ¶ 61,061, at P 26 (2007).

<sup>7</sup> See, e.g., *id.* P. 30.

institutional investors in the relational database and in change of status filings without waiving the applicability of section 35.36(a)(9)(i) of our regulations. Section 35.36(b) provides: "The provisions of this subpart apply to all Sellers authorized, or seeking authorization, to make sales for resale of electric energy, capacity or ancillary services at market-based rates *unless otherwise ordered by the Commission.*"<sup>8</sup> Here the Commission could have—and in my opinion should have—used this authority to order that sellers are not obligated to report institutional investors in the relational database or to make change in status filings when institutional investor holdings cross the 10% voting security threshold. The Commission would also need to make a minor amendment to its relational database regulations to provide that when an institutional investor is the ultimate upstream affiliate, sellers should instead list the next highest upstream affiliate in the database. For example, subsidiaries of NextEra should list NextEra as the ultimate upstream affiliate in the database if any institutional investor owns 10% or more of NextEra pursuant to a blanket authorization.

7. I appreciate that the Commission has acted to reduce the burden on sellers resulting from the requirement to include institutional investors in the relational database and in change-in-status filings. But a pointless regulatory burden is a pointless regulatory burden, no matter how small.

For these reasons, I respectfully dissent.

James P. Danly,  
Commissioner.

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG-2021-0208]

RIN 1625-AA87

**Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth, DE**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

<sup>8</sup> 18 CFR 35.36(b) (emphasis added).

**SUMMARY:** The Coast Guard is establishing two security zones for certain waters of Rehoboth Beach to prevent waterside threats and incidents for persons under the protection of the United States Secret Service (USSS) in the vicinity of Rehoboth Beach, Delaware. These security zones will be enforced intermittently and only for the protection of persons protected by USSS when in the area and will restrict vessel traffic while the zone is being enforced. This rule prohibits vessels and people from entering the zones unless specifically exempt under the provisions of this rule or granted specific permission from the Captain of the Port (COTP) Delaware Bay or a designated representative. Any vessel requesting to transit the zones without pause or delay will typically be authorized to do so by on-scene enforcement vessels.

**DATES:** This rule is effective August 26, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0208 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 about this rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4889, email [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@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**

On occasion the USSS has requested heightened security measures for persons protected by the USSS in the vicinity of Rehoboth Beach, Delaware. In response, on June 3, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth, DE” (86 FR 29727). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these visits by USSS protectees. During the comment period that ended July 19, 2021, we received no comments.

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. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

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

Under the Ports and Waterways Safety Act, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area, 46 U.S.C. 7001(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during USSS protectee presence in Rehoboth, Delaware. The Coast Guard will activate the security zone when requested by the USSS for the protection of persons the USSS protects under 18 U.S.C. 3056 or pursuant to Presidential memorandum. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), as delegated by Department of Homeland Security Delegation No.00170.1(I)(70), Revision No. 01.2, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 to the Captains of the Port. The Captain of the Port Delaware Bay (COTP) has determined that recurring presence of persons under the protection of the USSS, which started in January of 2021, presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is necessary to protect these persons, the public, and the surrounding waterways.

##### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published June 3, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM, other than a correction of a minor grammatical error in paragraph (a).

This rule establishes two security zones for the protection of USSS protectees when present in the vicinity of Rehoboth Beach, Delaware. This rule is necessary to expedite the establishment and enforcement of these

security zones when short notice is provided to the COTP for USSS protectees who may be present in the area.

Security Zone One is bounded on the north by a line drawn from 38°44.36′ North Latitude (N), 075°5.32′ West Longitude (W), thence easterly to 38°44.37′ N, 075°5.31′ W proceeding from shoreline to shoreline on the Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38°43.89′ N, 075°5.31′ W, thence easterly to 38°43.90′ N, 075°5.07′ W thence northerly across the entrance to the yacht basin to 38°43.93′ N, 075°5.09′ W.

Security Zone Two extends 500 yards seaward from the shoreline, into the Atlantic Ocean beginning at 38° 44.86′ N, 075° 4.83′ W, proceeding southerly along the shoreline to 38°43.97′ N, 075°4.70′ W.

These security zones may be activated individually or simultaneously with respect to the presence of USSS protectees. These zones will be enforced intermittently. Enforcement of these zones will be broadcast via Broadcast Notice to Mariners (BNM) and/or local Safety Marine Information Broadcast (SMIB) on VHF–FM marine channel 16, as well as actual notice via on-scene Coast Guard Personnel. The public can learn the status of the security zone via an information release for the public via website <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40>.

No vessel or person is permitted to enter either security zone without first obtaining permission from the COTP or a designated representative. However, we anticipate that vessels requesting to transit these zones will typically be authorized to transit without pause or delay by on-scene enforcement vessels. When a vessel or person is permitted to enter the security zone after obtaining permission from the COTP or a designated representative, the vessel or person must proceed as directed by on-scene enforcement vessels. Any vessel or person permitted to transit the security zone will be required to continue through the zone without pause or delay as directed by on-scene enforcement vessels. No vessel or person will be permitted to stop or anchor in the security zone. At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, actual notice will be given to vessels in the area.

When these security zones are enforced, the COTP will issue a BNM and/or SMIB via VHF–FM channel 16.

The public can learn the status of the security zone via an information release for the public via website <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40>.

**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 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A combined regulatory analysis (RA) and Regulatory Flexibility Analysis follows.

This rule will establish the following two security zones: (1) A half-mile stretch of the Lewes and Rehoboth Canal; and (2) a one-mile section of Rehoboth Beach stretching 500 yards from the shoreline. The enforcement of these two security zones is expected to be intermittent. Vessels will normally be

allowed to transit but not stop within the security zones. However, when persons protected by the USSS are moving in or out of the area, the Coast Guard may halt traffic in these two security zones. The Coast Guard expects such instances to happen relatively infrequently and for a short duration (1–3 hours).

The Coast Guard will station Coast Guard personnel at the borders of the security zones with the authority to enforce this security zone. In the few instances where USSS protectees are in transit, these Coast Guard personnel will ensure that no traffic transits through the security zones. Recreational boaters wishing to transit the area may inquire directly with the Coast Guard personnel posted at the boundaries of the security zones, rather than being required to contact the COTP.

Table 1 provides a summary of the rule’s costs and qualitative benefits.

TABLE 1—SUMMARY OF THE RULE’S IMPACTS

| Category                              | Summary  |
|---------------------------------------|--|
| Potentially Affected Population ..... | This rule will impact recreational boaters wishing to use the Lewes and Rehoboth Canal or the North Shores section of Rehoboth Beach.  |
| Unquantified Costs .....              | Recreational boaters of the Lewes and Rehoboth Canal will need to speak with Coast Guard personnel stationed at the entrances of the security zones. These recreational boaters will be informed that they will be unable to stop or loiter inside the security zone. In certain instances where persons protected by USSS are in transit, traffic may be halted on the Lewes and Rehoboth Canal. In these instances, recreational boaters wishing to use the canal will instead need to take a circuitous route or forgo their trip all together. |
| Unquantified Benefits .....           | This rule will secure the area to meet objectives of the USSS and keep USSS protectees safe.   |

**Affected Population**

The Coast Guard does not collect data on the vessels and individuals using either the Lewes and Rehoboth Canal or the North Shores Section of Rehoboth Beach, the areas that would be impacted by this rule. To estimate the affected population, we used information directly observable from Google Maps, as well as the subject-matter expertise of Coast Guard personnel with knowledge of the area.

The two security zones—a half-mile section of the Lowes Rehoboth Canal and a one-mile section of Rehoboth

Beach—are distinct. As such, we assess the affected populations for these two areas separately.

**(1) Security Zone 1: Lewes Rehoboth Canal**

This regulation will impact any recreational boater wishing to transit the Lewes Rehoboth Canal. The Lewes Rehoboth Canal is about 10 miles long and connects the Broadkill River and the Delaware Bay to Rehoboth Bay. The security zone begins approximately two-thirds of the way through the canal (if starting from the Delaware Bay) and

lasts for about a half mile. As such, recreational boaters wishing to transit the canal from the communities of Lewes, Dewey Beach, North Shores, Rehoboth Beach, and West Rehoboth may be impacted by this rule.<sup>1</sup>

These communities are seasonal; their populations are much larger and more active in the summer than in the winter. Vessel traffic in the canal follows the same pattern. Coast Guard officers stationed in this region estimated the numbers of vessels transiting this zone per day by season. We present these estimates in table 2.

TABLE 2—VESSEL TRAFFIC BY TIME OF YEAR

| Months                         | Vessels transiting the canal per day |
|--------------------------------|--------------------------------------|
| January through March .....    | 20 vessels per day.                  |
| April .....                    | 75 vessels per day.                  |
| May through September .....    | More than 200 vessels per day.       |
| October through December ..... | 50 vessels per day.                  |

<sup>1</sup> Dewey Beach lies on the isthmus between Rehoboth Bay and the Atlantic Ocean south of

Rehoboth beach and north of the Delaware Seashore State Park.

The vessel traffic in the canal is entirely recreational. There are no commercial vessels that transit the canal. Moreover, the canal is quite shallow. The Coast Guard's 27-foot vessels navigate the canal with difficulty because of the depth. Kayaks, canoes, and other manually powered watercraft are frequently used in the canal (not counted in the daily vessel traffic estimates).

In addition to the daily traffic of recreational boaters wishing to transit the security zone, there are a number of boat slips located either within the security zone or that require transiting the security zone to access. There are also houses that border sections of the canal wholly inside the security zone. We reviewed satellite images from Google Maps to identify the number of boat slips within the security zone or that require transiting the security zone to access. Based on these satellite images, we estimate that 17 private houses that lie entirely within the canal security zone contain either a boat slip or dock. The boat slips indicate that recreational vessel usage might be undertaken by the owners or occupiers of these properties. Because they lie fully inside the security zone, they will be impacted every time they take out their vessels.

Additionally, a small man-made canal branches off the main Lewes and Rehoboth Canal and leads into a small man-made lake. The southern edge of the safety zone continues just past the entrance to this second canal. Private houses and the North Shores Marina inhabit the land surrounding the second canal and its adjoining lake. Some of these houses contain docks or boat slips. Recreational vessel operations will require transiting through the security zone to reach either the boat slips at these private homes or the North Shores Marina. Use of this canal and lake is primarily local and by small recreational vessels, as this second canal may only be 3 feet deep in certain places. Using Google Maps, we count 14 boat slips or docks connected to private houses and 30 spaces for recreational vessels at the North Shores Marina.

#### (2) Security Zone 2: Rehoboth Beach

This rule will also impact any recreational boaters that transit the area 1 mile by 500 yards offshore of the North Shores section of Rehoboth Beach. Because of its proximity to the shore, the Coast Guard does not estimate any recreational boaters or commercial vessels routinely operate in this section of the ocean. Vessels operating this close to shore could face additional

hazards due to the surf and other marine currents and would avoid this area.

#### Costs

As above, we assess the costs of the two security zones separately.

##### (1) Security Zone 1: Lewes and Rehoboth Canal

In table 2, we present the Coast Guard's estimate of the average vessel traffic. Under normal course of operations, the Coast Guard anticipates that recreational boaters transiting the canal would have a brief conversation with the Coast Guard official stationed at the entrance to the security zone. Recreational boaters would then proceed through the security zone (without stopping or loitering) and exit the security zone. We anticipate that this conversation would last between 15 and 30 seconds per recreational boater. Because we do not know how many recreational boaters are on the average boat and because of how small the amount of time per recreational boater is likely to be, we do not estimate the total costs of these conversations.

Additionally, above we discussed that there are a number of houses and a marina that are contained within the security zone or would require transiting the security zone in order to access. Recreational vessel operators who reside or are visiting a location inside the security zone should be able to relay this information to the Coast Guard personnel stationed at the entrance of the security zone. When recreational boaters provide this additional information, it may increase the duration of the conversation. However, there are only 17 houses with private docks or boat slips contained within the security zone. It is likely, therefore, that the Coast Guard personnel stationed at either end of the security zone would become aware of these vessels and their owners and operators. As a result, conversations may become more brief over time.

In order to access the private docks and boat slips of the 14 houses and the North Shores Marina, recreational vessel operators will need to transit through a small portion of the security zone. The Coast Guard will interpret the vessels seeking to access this second canal as innocent passage. As a result, the Coast Guard personnel do not intend to converse with recreational boaters intending to access the second canal unless they notice suspicious activity. Instead, Coast Guard personnel will report vessels transiting the second canal to the USSS representatives. Because Coast Guard personnel will not converse with the recreational vessel

operators transiting this region, we estimate that there would be no costs on boaters who only pass through the lower stretch of the canal security zone in order to access the North Shores Marina or the private houses on the canal or lake.

The costs discussed above cover the normal operations when access to the canal is still permitted. However, when certain individuals protected by the USSS are transiting the area, the Coast Guard may shut down access to the canal. Such closures could last from 1 to 3 hours, or longer. If the security zone is closed to all traffic, recreational boaters will not be able to transit the length of the canal. Recreational boaters wishing to transit through the security zone will be unable to do so.

If this closure happens suddenly, recreational boaters could be stranded on either side of the canal. The distance through the canal is about 10 miles, but to avoid the canal by taking a more circuitous route around Rehoboth Beach would add 25 miles to the journey. Additionally, a significant portion of this distance requires operating in the Atlantic Ocean. The Atlantic Ocean is considerably rougher than the intracoastal waterways. As a result, many of the recreational watercraft unable to transit the security zone may be unable to take an alternate route, either because they may not have a vessel suitable to a coastwise route or may not have the time to add an additional 25 miles on to the journey.

Because we do not know the frequency or duration of full closures of the security zone, we are unable to quantitatively assess the costs to either temporarily stranded vessel operators or to vessel operators wishing to transit the closed waterway.

##### (2) Security Zone 2: North Shores Section of Rehoboth Beach on the Atlantic Ocean

We do not estimate that any vessels routinely operate in this section of Rehoboth Beach, as discussed in the Affected Population section above. Additionally, were recreational vessel operators to transit this security zone, it is far easier to exit or avoid the security zone than in the canal. Recreational boaters merely will need to be greater than 500 yards from shore. As a result, we do not estimate any costs incurred by the second security zone.

#### Benefits

Upon request by the USSS for the Coast Guard to implement security measures in certain sections of the Lewes and Rehoboth Canal and certain sections offshore from Rehoboth Beach,

the Coast Guard is establishing two security zones covering these areas. The security zones are necessary to prevent waterside threats and incidents that could impact the safety and security of USSS protectees when present in the area.

Both security zones aid the USSS in controlling the area and preventing actors wishing to cause harm to the functioning of the U.S. Government by attacking persons protected by the USSS. Were such an attack to be attempted or to occur, the societal impacts could be sizable and potentially severe to the Nation's Government. Additionally, the local impacts would be substantial as well. The area could be closed for a significant period as any necessary investigations occur. This regulatory action will greatly decrease the likelihood of these potential impacts. The Coast Guard has no way to quantify the frequency of malfeasant actors or the extent to which this rule will diminish the frequency of their attempted or successful actions. However, we believe that the value of these benefits justify the costs of the regulation.

#### Regulatory Alternatives Considered

We considered alternatives to the regulatory action to determine if an alternative could accomplish the stated objectives of applicable statutes and could minimize any economic impact on small entities. In developing this rule, the Coast Guard considered the following alternatives:

##### Alternative 1: No Action/Status Quo

Without this rule, malfeasant actors could have unfettered access to locations near persons protected by USSS. We believe that this unfettered access presents an unacceptable security risk to the United States. As such, we rejected this alternative.

##### Alternative 2: Do Not Permit any Traffic Inside the Security Zone

The Coast Guard considered closing the security zone to traffic entirely, which would have had the added cost of making it impossible to fully transit the canal. We rejected this alternative because there are potentially over 200 recreational boaters a day transiting the security zones in the summer. These boaters would lose their ability to have recreational access of the waterway and any enjoyment that provides them. Additionally, 31 homes with boat slips and a marina with 30 spots are inaccessible without transiting the security zones. These homes, despite existing on the canal with a dock, would be unable to use the waterway.

Consequently, we rejected this alternative because the costs would be too high.

##### Alternative 3: Allow Vessels To Transit the Waterway, but Do Not Permit Vessels To Transit During the Movement of Certain Individuals Protected by USSS

This is our preferred alternative and discussed throughout the regulatory analysis. We believe it balances the costs to public in the form of quick conversations with transiting recreational vessels and the occasional inconvenience of a temporary canal closure due to USSS protectees moving around the area with the benefits of ensuring the security of these protected persons.

##### B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic effect on a substantial number of small entities. 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 people.

As discussed above, the affected population is entirely recreational. As a result, the individuals directly regulated by this rule are not small entities as defined by the Regulatory Flexibility Act. Based on this analysis, we found this rulemaking will not affect a substantial number of small entities.

Therefore, 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. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 rule 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 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 two security zones for the protection of USSS protectees while present in the vicinity of Rehoboth Beach, Delaware. It is categorically excluded from further review under paragraph L[60a] 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 is amending 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 § 165.561 to read as follows:

### § 165.561 Security Zones; Lewes and Rehoboth Canal and Atlantic Ocean, Rehoboth Beach, DE.

(a) *Location.* The following areas are security zones; these coordinates are based on North American Datum 83 (NAD83):

(1) *Security zone one:* All waters of the Lewes and Rehoboth Canal bounded on the north by a line drawn from 38° 44.35′ North Latitude (N), 075° 5.32′ West Longitude (W), thence easterly to 38° 44.37′ N, 075° 5.31′ W proceeding from shoreline to shoreline on the

Lewes and Rehoboth Canal in a Southeasterly direction where it is bounded by a line drawn from 38° 43.89′ N, 075° 5.31′ W, thence easterly to 38° 43.90′ N, 075° 5.07′ W thence northerly across the entrance to the yacht basin to 38° 43.93′ N, 075° 5.09′ W.

(2) *Security zone two:* All waters of the Atlantic Ocean extending 500 yards seaward from a line beginning at 38° 44.86′ N, 075° 4.86′ W, proceeding southerly along the shoreline to 38° 43.97′ N, 075° 4.70′ W.

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

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

*USSS protectee* means any person for whom the United States Secret Service requests implementation of a security zone in order to supplement protection of said person(s).

*Official patrol vessel* means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP, Sector Delaware Bay, or designated representative.

(2) Entry into or remaining in a security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or designated representative when the security zones are being enforced. At the start of each enforcement, all persons and vessels within the security zone must depart the zones immediately or obtain authorization from the COTP or designated representative to remain within either zone. All vessels authorized to remain in the zone(s) must proceed as directed by the COTP or designated representative.

(3) A person or vessel operator who intends to enter or transit the security zones while the zones are being enforced must obtain authorization from the COTP or designated representative. While the zones are being enforced the COTP or designated representative will determine access to the zones on a case-by-case basis. A person or vessel operator requesting permission to enter or transit the security zone may contact the COTP or designated representative at 215–271–4807 or on marine band radio VHF–FM channel 16 (156.8 MHz),

or by visually or verbally hailing the on-scene law enforcement vessel enforcing the zone. On-scene Coast Guard personnel enforcing this section can be contacted on marine band radio, VHF–FM channel 16 (156.8 MHz). The operator of a vessel must proceed as directed upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light, or other means. When authorized by the COTP or designated representative to enter the security zone all persons and vessels must comply with the instructions of the COTP or designated representative and proceed at the minimum speed necessary to maintain a safe course while within the security zone.

(4) Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local law enforcement agency vessel, by siren, radio, flashing light or other means, a person or operator of a vessel must proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(5) Unless specifically authorized by on-scene enforcement vessels, no vessel or person will be permitted to stop or anchor in the security zone. A vessel granted permission to enter or transit within the security zone(s) must do so without delay or pause for the entirety of its time within the boundaries of the security zone(s). At times, for limited duration, it is anticipated that vessels may be prohibited from entering the zone due to movement of persons protected by USSS. During those times, the Coast Guard will provide actual notice to vessels in the area.

(6) The U.S. Coast Guard may secure the entirety of either or both security zones if deemed necessary to address security threats or concerns.

(7) The U.S. Coast Guard may be assisted by Federal, State, and local law enforcement agencies in the patrol and enforcement of the security zone described in paragraph (a) of this section.

(d) *Enforcement.* (1) The Coast Guard activates the security zones when requested by the U.S. Secret Service for the protection of individuals who qualify for protection under 18 U.S.C 3056(a) or Presidential memorandum. The COTP will provide the public with notice of enforcement of security zone by Broadcast Notice to Mariners (BNM), information release at the website: <https://homeport.uscg.mil/my-homeport/coast-guard-prevention/waterway-management?cotpid=40> as well as on-scene notice by designated

representative or other appropriate means in accordance with 33 CFR 165.7.

(2) These security zones may be enforced individually or simultaneously.

Dated: August 20, 2021.

**Jonathan D. Theel,**

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

[FR Doc. 2021-18427 Filed 8-25-21; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0341; FRL-8728-02-R9]

### Severe Area Submission Requirements for the 2008 Ozone NAAQS; California; Eastern Kern Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act, the Environmental Protection Agency (EPA) is establishing a schedule for the the California Air Resources Board (CARB) to submit revisions to the state implementation plan (SIP) addressing “Severe” area requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) for the Eastern Kern nonattainment area (“Eastern Kern”). CARB will be required to submit SIP revisions addressing Severe area requirements for Eastern Kern, including revisions to new source review (NSR) rules, no later than January 7, 2023. Submittal of any necessary revisions to the title V rules that apply in Eastern Kern are due no later than January 7, 2022. Lastly, the EPA is establishing a deadline for implementation of new reasonably available control technology (RACT) rules as expeditiously as practicable but no later than July 7, 2024.

**DATES:** This rule is effective September 27, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0341. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ben Leers, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4279, [leers.ben@epa.gov](mailto:leers.ben@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

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#### I. Background

On June 7, 2021, the EPA issued a final rulemaking granting a request by CARB to reclassify Eastern Kern from “Serious” to Severe for the 2008 ozone NAAQS under section 181(b)(3) of the Clean Air Act (CAA).<sup>1</sup> Our reclassification of Eastern Kern from Serious to Severe is in effect as of July 7, 2021. In a separate document published on June 7, 2021, the EPA proposed a schedule for CARB to submit revisions to the California SIP addressing Severe area requirements for the 2008 ozone NAAQS and to submit revisions to the title V operating permit rules for Eastern Kern.<sup>2</sup>

Our June 7, 2021 proposed rule includes background information concerning the EPA’s promulgation of the 2008 ozone NAAQS and history of the designation and classification of Eastern Kern for the 2008 ozone NAAQS. Our proposed rule also describes the Severe area SIP requirements that apply to Eastern Kern as a result of the reclassification and proposes a schedule for CARB to submit Severe area SIP requirements and title V rule revisions.

More specifically, in our proposed rule, we proposed to establish a deadline for CARB to submit SIP revisions addressing Severe area requirements for Eastern Kern, including revisions to NSR rules, no later than 18 months from the effective date of the EPA’s final rule reclassifying Eastern Kern to Severe for the 2008 ozone NAAQS. We also proposed to

establish a deadline of no later than six months from the effective date of the reclassification for CARB to submit any corresponding revisions to title V rules for Eastern Kern. Lastly, we proposed to establish a deadline for implementation of new RACT rules in Eastern Kern as expeditiously as practicable but no later than 18 months from the date when the Severe area RACT SIP is due. The effective date of the EPA’s final rule reclassifying Eastern Kern to Severe for the 2008 ozone NAAQS is July 7, 2021. In this final rule, we are taking final action to establish the various deadlines based on the July 7, 2021 effective date for reclassification.

#### II. Public Comment Period

The public comment period on the proposed rule opened on June 7, 2021, the date of its publication in the **Federal Register**, and closed on July 7, 2021. During this period, the EPA did not receive any comments on our proposed action.

#### III. Final Action

For the reasons described in our June 7, 2021 proposed rule, the EPA is invoking its CAA section 301(a) authority to establish a deadline of no later than January 7, 2023 (*i.e.*, 18 months from the effective date of our final rule reclassifying Eastern Kern as Severe) for CARB to submit SIP revisions addressing all Severe area SIP elements for the Eastern Kern ozone nonattainment area. We are also establishing a deadline of January 7, 2022 (*i.e.*, six months from the effective date of reclassification to Severe) for CARB to submit any necessary revisions to title V rules for Eastern Kern. Lastly, the EPA is establishing a deadline for implementation of Severe area RACT controls in Eastern Kern as expeditiously as practicable but no later than July 7, 2024 (*i.e.*, 18 months from the date when the Severe area RACT SIP is due, or 36 months from the effective date of reclassification to Severe).

#### IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classification, the timing of the submittal of the Severe area requirements does not impose a materially adverse impact under

<sup>1</sup> 86 FR 30204.

<sup>2</sup> 86 FR 30234.