

promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this proposal will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557-0221, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, because OCC is proposing to extend the pilot program, we invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on the respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

#### List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

#### Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 84, and 93a.

2. In § 32.7, paragraphs (c) and (e) are revised to read as follows:

#### § 32.7 Pilot program for residential real estate and small business loans.

\* \* \* \* \*

(c) *Duration of approval.* Except as provided in paragraph (d) of this section, a national bank that has received OCC approval may continue to make loans and extensions of credit under the special lending limits in paragraphs (a)(1) and (2) of this section until the date three years after September 10, 2004, provided the bank remains an "eligible bank."

\* \* \* \* \*

(e) *Duration of pilot program.* The pilot program will terminate on June 11, 2007, unless it is terminated sooner by the OCC.

\* \* \* \* \*

Dated: April 20, 2004.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

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**BILLING CODE 4810-33-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 165

[COTP Memphis 04-001]

RIN 1625-AA00

#### Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel. This proposed safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. Entry into this proposed zone during the enforcement periods would be prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before June 22, 2004.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard, Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301,

Memphis, Tennessee 38103-2300, Attn: Chief Petty Officer James Dixon. Marine Safety Office Memphis maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, Tennessee, 38103-2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Chief Petty Officer (CPO) James Dixon, Marine Safety Office Memphis at (901) 544-3941, extension 2116.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Memphis 04-001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Memphis at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

On February 26, 2004, the Army Corps of Engineers requested a channel closure for the Lower Mississippi River from mile 778.0 to 781.0, to occur daily from 6 a.m. until 6 p.m. beginning on August 1, 2004 and ending on September 30, 2004. The effective dates for this proposed rule are based upon the best available information and may change. This closure is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of ten,

bendway weir construction sites. These ten bendway weir sites are located on the left descending bank, in the vicinity of Driver Bar between mile 778.0 and 781.0, Lower Mississippi River.

Construction of the bendway weirs is needed to maintain the integrity of the left descending bank of the Mississippi River at the project site and can only be performed under optimal conditions. During working hours, construction equipment will be located in the navigable channel creating a hazard to navigation. A safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. During non-working hours, the construction equipment will be moved out of the channel, allowing vessels unrestricted passage through the safety zone.

### Discussion of Proposed Rule

The Captain of the Port Memphis proposes to establish a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 to mile 781.0. Entry into this proposed zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project, would be prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative. This proposed regulation would be effective from 6 a.m. on August 1, 2004 until 6 p.m. on September 30, 2004. This proposed rule would only be enforced from 6 a.m. until 6 p.m. each day of the effective period. During non-enforcement hours all vessels would be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative would inform the public through broadcast notice to mariners of any changes to the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to navigate through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners would be issued announcing those times when it is safe to transit.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not

"significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This proposed rule would be enforced for 12 hours each day that it is effective. During non-enforcement hours all vessels would be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative would inform the public through broadcast notice to mariners of changes to the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to transit through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners would be issued announcing those times when it is safe to transit. The impacts on routine navigation are expected to be minimal.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact 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.

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.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the waters of the Lower Mississippi River, Mile Marker 778.0 to 781.0 daily from 6 a.m. on August 1, 2004 until 6 p.m. on September 30, 2004.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This proposed rule would be enforced from 6 a.m. until 6 p.m. on each day that it is effective; (2) During non-enforcement hours all vessels would be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative; (3) The Captain of the Port Memphis may permit vessels to transit through

the safety zone during work hours if conditions allow for safe transit.

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 rule would economically affect it.

### Assistance for Small Entities

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 so that they can better evaluate its effects on them and participate in the rulemaking. 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 Chief Petty Officer James Dixon at (901) 544–3941, extension 2116.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### 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 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

## Indian Tribal Governments

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.

## Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National

Environmental Policy Act of 1969 (NEPA).

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

## 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. From August 1, 2004, to September 30, 2004, add temporary § 165.T08–024 to read as follows:

### § 165.T08–024 Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR.

(a) *Location*. The following area is a safety zone: all waters of the Lower Mississippi River from mile 778.0 to mile 781.0, extending the entire width of the channel.

(b) *Effective period*. This section is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

(c) *Enforcement period*. This section will be enforced from 6 a.m. until 6 p.m. each day of the effective period. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of any changes to the enforcement periods for the safety zone.

(d) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project is prohibited unless authorized by the Captain of the Port Memphis.

(2) During non-enforcement hours all vessels are permitted to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative.

(3) The Captain of the Port Memphis may permit vessels to navigate during

work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit.

(4) Persons or vessels requiring entry into or passage through the zone at times other than those specified in section (d)(2) and (d)(3) of this section must request permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis may be contacted by telephone at (901) 544–3912, extension 2124. Coast Guard Group Lower Mississippi River may be contacted on VHF-FM Channel 13 or 16.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated representatives. Designated representatives include Coast Guard Group Lower Mississippi River.

Dated: April 6, 2004.

**D.C. Stallfort,**

*Commander, U.S. Coast Guard, Captain of the Port Memphis.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R04–OAR–2004–KY–0001–200415; FRL–7653–1]

### Approval and Promulgation of Implementation Plans; KY: 1-Hour Ozone Maintenance Plan Update for Lexington Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the Lexington portion of a draft revision to the state implementation plan (SIP) of the Commonwealth of Kentucky submitted on February 19, 2004. The draft SIP revision provides the 10-year update to the original 1-hour ozone maintenance plans for five 1-hour maintenance areas, including the Lexington Maintenance Area, which is composed of the Kentucky counties of Fayette and Scott. Kentucky has requested that EPA parallel process this draft SIP revision, for which the Commonwealth scheduled a public hearing on March 31, 2004. EPA is parallel processing the Lexington portion of this draft SIP revision and is proposing to approve the Lexington portion because it satisfies the requirement of the Clean Air Act (CAA) for the 10-year update to the 1-hour