

complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction 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. An environmental analysis checklist and a categorical exclusion supporting this determination are available in the docket where indicated under **ADDRESSES**.

#### 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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. Add § 165.836 to read as follows:

#### § 165.836 Security Zone; Escorted Vessels, Mobile, Alabama, Captain of the Port.

(a) *Definitions.* The following definitions apply to this section:

*COTP* means Captain of the Port Mobile, AL.

*Designated representatives* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

*Escorted vessel* means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by flashing lights, vessel markings, or with agency insignia as follows: Coast Guard surface or air asset displaying the Coast Guard insignia. State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency. *Escorted vessel* also means a moored or anchored vessel that was escorted by

Coast Guard assets or other Federal, State or local law enforcement agency assets to its present location and is identifiable by the use of day boards or other visual indications such as lights or buoys when law enforcement assets are no longer on-scene.

*Minimum safe speed for navigation* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake or surge. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed for navigation. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

- (1) On a plane;
- (2) In the process of coming up onto or coming off a plane; or
- (3) Creating an excessive wake or surge.

(b) *Regulated Area.* All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Mobile, Alabama, as described in 33 CFR 3.40–10.

(c) *Security Zone.* A 500-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations.* (1) The general regulations for security zones contained in § 165.33 applies to this section.

(2) A vessel may request the permission of the COTP Mobile or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative.

(e) *Notice of Security Zone.* The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by broadcast notices to mariners, normally issued at approximately 30-minute intervals while the security zones remains in effect. Escorted vessels will be identified by the presence of Coast Guard assets or other Federal, State or local law enforcement agency assets, or the use of day boards or other visual indications such as lights or buoys

when the vessels are moored or anchored and law enforcement assets are no longer on-scene, as specified in the definition of *escorted vessel* in paragraph (a) of this section.

(f) *Contact Information.* The COTP Mobile may be reached via phone at (251) 441–6211. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: October 7, 2008.

**E.M. Stanton,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 49

[EPA–RO9–OAR–2006–0184; FRL–8739–7]

#### Stay of Effectiveness of Control Measure Regulating Dust Emissions at the Four Corners Power Plant; Navajo Nation

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to stay the effectiveness of a control measure regulating dust emissions from certain operations that we promulgated in our Federal Implementation Plan for the Four Corners Power Plant located on the Navajo Nation. The control measure would take effect on November 5, 2008. On October 1, 2007, Arizona Public Service Company filed a Petition for Review claiming, *inter alia*, that EPA had not provided an adequate explanation for promulgating the control measure. In the litigation, EPA has agreed that the control measure should be remanded and vacated. EPA needs to complete this action staying the effectiveness of the control measure until the Court rules on the Petition, including the Petitioner's and EPA's requests to remand and vacate the control measure.

**DATES:** The stay to 40 CFR 49.23(d)(3) is effective on November 13, 2008 until further notice. The EPA will publish a document in the **Federal Register** announcing that the stay is lifted.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–RO9–OAR–2006–0184. All documents in the docket are listed in the Federal Docket Management System index at [www.regulations.gov](http://www.regulations.gov). 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 either electronically through

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket is (202) 566-1742. You can inspect a copy of the docket at our Region IX office during normal business hours by appointment. The address is: Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:**  
Steve Frey, EPA Region IX, (415) 972-3990 or [frey.steve@epa.gov](mailto:frey.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
Throughout this document, “we,” “us” and “our” refer to EPA.

## I. Overview

On May 7, 2007 (72 FR 25698), we published a Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation (hereinafter “FIP”). The operator and partial owner of the Four Corners Power Plant is the Arizona Public Service Company (“APS”). One provision of the FIP regulated dust emissions at the power plant’s coal handling and storage operations, flyash handling and storage and road sweeping activities, as follows: “Within 548 days of promulgation of this section each owner or operator shall not emit dust with an opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.” 72 FR 25705, codified at 40 CFR 49.23(d)(3)(hereinafter “dust control measure”).

APS filed a timely Petition for Review of the FIP challenging, *inter alia*, EPA’s basis for requiring compliance with the dust control measure. *Arizona Public Service Company v. EPA et al.*, Case No. 07-9546, (10th Cir., Oct. 1, 2007). Sierra Club requested and was granted leave to intervene in the case. All parties have filed their briefs regarding the Petition and the Court has heard oral argument

from the parties. The Court has not issued any decision in the matter.

EPA, however, has taken the position in the litigation by APS that it would be appropriate for the Court to remand and vacate the dust control measure. In its brief, EPA has advised the Court that the FIP did not contain an adequate explanation of its rationale for imposing the dust control measure. The Court has not ruled on the case. EPA, therefore, considers it appropriate to stay the effectiveness of the dust control measure pending the outcome of the litigation.

EPA believes that this rulemaking qualifies for the “good cause” exemption under the Administrative Procedures Act (“APA”). 5 U.S.C. 553(b)(3). EPA has determined that prior proposal and opportunity for comment are impracticable and unnecessary because the public is not likely to be particularly interested, and notice and opportunity for comment were previously provided when EPA promulgated the dust control measure. (See 72 FR at 25705 (May 7, 2007).) EPA also believes that this rulemaking qualifies for the “good cause” exemption to make the rule effective immediately under Section 553(d) because it is a relaxation of a restriction by staying the implementation of the dust control measure. 5 U.S.C. 553(d). EPA has also found that consistent with 5 U.S.C. 705, it is in the interest of justice to postpone the effective date of the dust control measure pending the Court’s decision in *Arizona Public Service v. EPA*. All of the remaining provisions of the FIP remain in place and effective.

## II. Statutory and Executive Order Reviews

This action stays a federal control measure and imposes no additional requirements.

This rule is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and therefore is not subject to review under the EO.

This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice

and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the “good cause” exemption under 5 U.S.C 553(b), therefore it is not subject to the notice and comment requirement.

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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. Thus, Executive Order 13175 does not apply to this action.

This action does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 1985, April 23, 1997), because it has not been determined to be economically significant as defined under Executive Order 12866 and because it does not establish an environmental standard intended to mitigate health or safety risks.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule because this action does not involve technical standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 13, 2008. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petitions for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 5, 2008.

**Stephen L. Johnson,**

*Administrator.*

■ 40 CFR Part 49 is amended as follows:

#### **PART 49—[AMENDED]**

■ 1. The authority citation for part 49 continues to read as follows:

*Authority:* 42 U.S.C. 7401, *et seq.*

#### **§ 49.23 [Amended]**

■ 2. In § 49.23, paragraph (d)(3) is stayed until further notice.

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