

whether it is appropriate to consider agreeing to reimbursement of these or other costs, subject to the level of remaining appropriated funds and the limitations specified in CALEA. Despite some reductions in the level of appropriated funding, these discussions create a continuing need for the CALEA Cost Recovery Regulations. In addition, as is also described above, the FBI might in its discretion, and within the very limited circumstances of an FCC decision that compliance by a particular entity is "not reasonably achievable," agree to pay certain eligible other costs. Payments in these situations might also require the entity to submit a claim in accordance with the Cost Recovery Regulations. For these reasons, there is a continued need for the Regulations.

#### D. 2. The Nature of Complaints or Comments Received From the Public Concerning the Regulations

The FBI has processed 84 claims for reimbursement to date. Each of these claims was paid, and required only minor adjustments to the amount claimed. No complaints have been received by the FBI regarding the Cost Recovery Regulations. In those few cases where the FBI required additional information beyond the information initially submitted by the entity with the claim, the FBI's questions were answered satisfactorily and reimbursement was made.

There have been no instances since the adoption of the Regulations where an entity has expressed to the FBI any difficulties in its compliance with the Regulations. In fact, in many cases, carriers expressed satisfaction that they had received proper reimbursement for the costs they had incurred. In addition, some carriers found the Regulations to be useful, because the process allowed the entity to proceed with CALEA-related modifications while after receiving assurance from the FBI that eligible costs would be reimbursed. The Regulations thus serve as a helpful tool that provide carriers and other entities with guidance as to how to verify the eligibility of compliance costs for reimbursement before such costs are actually incurred.

Additionally, as described above, the FBI is also authorized to use an alternate procedure authorized in, whereby the FBI may agree to a firm fixed-price arrangement with a carrier, manufacturer or other entity. See Public Law 106-246, Div. B, Title II, July 13, 2000, 114 Stat. 542. This alternative provides flexibility for cases where a firm-fixed price is appropriate, and has been used by the FBI in two arrangements.

The FBI also considered whether any changes that could be made to improve the cost-reimbursement process. Based on the flexibility inherent in the Regulations themselves and the firm-fixed price strategy, and also on the success of the Regulations to date, the FBI determined that no changes are necessary.

#### D. 3. The Complexity of the Regulations

The CALEA Cost Recovery Regulations are roughly similar in complexity to other existing cost-accounting regulations imposed by the Federal government, including for example, the Federal Acquisition Regulations. Based upon our review, the Regulations do not appear to be excessively complex. In the FBI's experience, all of the entities submitting claims in accordance with the Regulations have successfully complied with minimal assistance from the FBI.

#### D. 4. The Extent to Which the Regulations Overlap, Duplicate, or Conflict With Other Federal Rules and to the Extent Feasible With State and Local Government Rules

No other Federal or State regulations overlap, duplicate or conflict with the CALEA Cost Recovery Regulations. This is because the FBI, as the authorized delegate of the Attorney General, is the only Federal or State agency with the authority and responsibility for implementing the cost recovery provisions of CALEA. As described above, there is no analogue to CALEA under State law.

#### D. 5. The Length of Time Since the Regulations Have Been Evaluated or the Degree to Which Technology, Economic Conditions, or Other Factors Have Changed in the Area Affected by the Regulations

The Regulations were evaluated in some respect in 2000, when it was determined that it would be beneficial to add flexibility by providing the government with the discretion to make firm fixed-price agreements in certain cases. The FBI has re-evaluated the Regulations pursuant to this inquiry. Technology, economic conditions, and other factors have changed in the telecommunications area affected by the Regulations since the time when they were adopted. For example, the wide deployment by carriers of new technologies, such as broadband internet access and Voice-Over-Internet-Protocol, has led the FCC to adopt new rules for CALEA-compliance. See *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First

Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005). These changes however have no impact on the requirements for the Cost Recovery Regulations, since the Regulations are based on accounting concepts which are essentially neutral as to technology, economic conditions, or other factors. For example, the application of the definition of "reasonable costs" found in 28 CFR 100.12(a) ("A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.") would be the same without regard to the technology utilized by the entity incurring the cost. This is the case for all of the Cost Recovery Regulations. For these reasons the FBI has determined that no changes are necessary at this time to the Cost Recovery Regulations.

#### E. Conclusion

For the reasons discussed herein, the FBI concludes that the CALEA Cost Recovery Regulations do not have a significant economic impact upon a substantial number of small entities. The FBI further concludes after consideration of the criteria set forth in the Regulatory Flexibility Act, Section 610(b), Title 5, United States Code, that the Regulations should be maintained in their current status, without changes.

Dated: April 10, 2008.

**Marybeth Paglino,**

*Unit Chief, Federal Bureau of Investigation, CALEA Implementation Unit.*

[FR Doc. E8-12399 Filed 6-2-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0121]

RIN 1625-AA11

#### "McCormick & Baxter" Regulated Navigation Area, Willamette River, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is establishing a Regulated Navigation Area on the Willamette River, Portland Oregon Captain of the Port Zone. This action is necessary to preserve the integrity of the engineered pilot cap placed over contaminated sediments as part of an Environmental Protection

Agency (EPA) Superfund cleanup action at the McCormick & Baxter Creosoting Company Superfund Site. This proposed rule is needed to prohibit activities that would cause disturbance of pilot cap material, which was placed to isolate and contain underlying contaminated sediment.

**DATES:** Comments and related material must reach the Coast Guard on or before July 3, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard Docket number USCG–2008–0121 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:**

MST1 Lucia Mack, Waterways Division, Sector Portland, OR at 503–240–9301. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0121), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and mailing address,

an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, 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.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0121) in the Search box, and click "Go>>." You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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**

The McCormick & Baxter Creosoting Company operated between 1944 and 1991, treating wood products with creosote, pentachlorohenol, and

inorganic (arsenic, copper, chromium, and zinc) preservative solutions. Historically, process wastewaters were discharged directly to the Willamette River, and other process wastes were dumped in several areas of the Site. Significant concentrations of wood-treating chemicals have been found in soil and groundwater at the site and in river sediments adjacent to the Site. The EPA listed the Site on the National Priorities List (NPL) in June 1994 based on information collected by DEQ between September 1990 and September 1992. The EPA also designated the DEQ as the lead agency for implementing the selected remedy while funding for remedial design and construction was primarily provided by EPA. The DEQ implemented a number of interim removal measures between 1992 and 1994, including plant demolition, sludge and soil removals, and extraction of creosote from the groundwater aquifers. The Record of Decision (ROD) was issued by WPA and DEQ in April 1996 after considering public comments on the Proposed Cleanup Plan. The remedy addressed contaminated groundwater, soil and sediment. A component of the groundwater remedy, initiated in 1994, consisted of an automated creosote extraction and groundwater treatment system. However, due to poor product recovery and high operating costs, the automated system was discontinued in late 2000. Creosote is currently being recovered by passive and manual methods. Approximately 6,200 gallons have been recovered since 1991. A contingency groundwater remedy was implemented in the summer of 2003, with the construction of a combination steel sheet pile and soil Bentonite slurry wall surrounding 18 acres. The purpose of the barrier wall is to prevent migration of creosote to the Willamette River. Implementation of the soil remedy began in March 1999 with the removal of 33,000 tons of highly contaminated soil and debris. The soil remedy was completed in September 2005 following installation of a combination impermeable/earthen cap—the impermeable portion covering the area within the subsurface barrier wall. The sediment remedy was implemented in 2004 and primarily consisted of an armored sand cap placed over 23 acres of contaminated sediment. Construction occurred during the summers of 2004 and 2005. Sediment cap construction performed in 2005 followed construction work performed by the City of Portland to stabilize two high pressure sewer lines located within a one-acre portion of the sediment cap. In

addition to the sand layer, an oil adsorptive material known as organophillic clay was used in two creosote seep areas. To protect the cap from erosion, the sand and organophillic clay were armored with a combination of rock and articulated concrete blocks. Erosional forces evaluated in designing the cap armoring layer included hydraulic-induced stresses due to river currents associated with a 500-year flood, vessel-induced propeller velocities from a tractor tug and various sized recreational boats, wind waves associated with a 100-year wind storm and vessel wakes associated with various boats including a 100-ft fireboat traveling at 14 knots. These forces were evaluated for river level variations due to tidal action and flood currents. Additionally, numerical modeling was used to analyze wave transformation and capping of the riverbank with two feet of topsoil, turf reinforcement matting and herbaceous vegetation. Revegetation of the capped riverbank with native trees and shrubs took place in February 2006 after the soil had been stabilized with the native grasses planted in November 2004. The DEQ has requested the issuance of this RNA in order to prohibit activities that may damage the engineered sediment cap at the Site. Although the sediment cap is designed to withstand a variety of anticipated erosional forces, the cap is susceptible to damage, such as from propeller wash, deployment of barge spuds, deployment and dragging of anchors, and grounding of large vessels. If the engineered sediment cap were to be damaged by marine activities, the contaminated sediments which underlie the cap could be released to the river thereby posing an unacceptable threat to public health and the environment.

#### Discussion of Rule

This proposed rule would create a regulated navigation area (RNA) on all waters of the Willamette River encompassed by a line commencing at 45°34'33" N, 122°44'17" W to 45°34'32" N, 122°44'18" W thence to 45°34'35" N, 122°44'24" W thence to 45°34'35" N, 122°44'27" W thence to 45°34'35" N, 122°44'36" W thence to 45°34'35" N, 122°44'37" W thence to 45°34'38" N, 122°44'42" W to 45°34'39" N, 122°44'43" W thence to 45°34'44" N, 122°44'51" W thence to 45°34'45" N, 122°44'53" W thence to 45°34'47" N, 122°44'51" W thence to 45°34'45" N, 122°44'46" W to 45°34'45" N, 122°44'45" W thence to 45°34'47" N, 122°44'43" W thence to 45°34'46" N, 122°44'42" W thence to 45°34'48" N, 122°44'40" W thence to 45°34'48" N, 122°44'38" W and along the shoreline to 45°34'46" N, 122°44'39"

W and then back to the point of origin. Vessels are prohibited from anchoring, spudding, dredging, laying cable, dragging, trawling, conducting salvage operations. Operation of commercial vessels of any size, operating recreational vessels greater than 30 feet in length, and operating other vessels in excess of no wake speed or the minimum speed needed to maintain steerage is prohibited.

Violations of the RNA regulations are punishable by civil penalties (not to exceed \$35,500 per violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than \$250,000) and in rem liability against the offending vessel.

#### 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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this regulation will not be significant based on the fact there will be minimal if any effect on the navigable waterway around the proposed regulated area due to the regulated navigation area's proximity to the shore. The local maritime community will be informed of the regulated navigation area via marine informational Notice to Mariners.

#### 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 will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Willamette River. This proposed rule will not have a significant economic impact on a substantial number of small entities because the regulated navigation area is

limited in size leaving ample room for vessels to navigate around the area. Vessels engaged in commerce with the existing refueling pipeline located within the site should not be affected by this regulation in those activities but are advised to minimize potential impacts such as anchoring, wake scouring, and dragging in the vicinity of the pilot cap.

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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST1 Lucia Mack, Waterways Division, Sector Portland, at 503–240–9301. 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.

#### Collection of Information

This calls 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 will not affect 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 proposed rule is not an economically significant rule and will 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 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.

### 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.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. A preliminary "Environmental Analysis Check List" supporting this determination is available in the docket under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1323 to read as follows:

#### § 165.1323 Regulated Navigation Area: Willamette River Portland, Oregon Captain of the Port Zone.

(a) *Location.* The following is a regulated navigation area (RNA): All waters of the Willamette River encompassed by a line commencing at 45°34'33" N, 122°44'17" W to 45°34'32"

N, 122°44'18" W thence to 45°34'35" N, 122°44'24" W thence to 45°34'35" N, 122°44'27" W thence to 45°34'35" N, 122°44'36" W thence to 45°34'35" N, 122°44'37" W thence to 45°34'38" N, 122°44'42" W to 45°34'39" N, 122°44'43" W thence to 45°34'44" N, 122°44'51" W thence to 45°34'45" N, 122°44'53" W thence to 45°34'47" N, 122°44'51" W thence to 45°34'45" N, 122°44'46" W to 45°34'45" N, 122°44'45" W thence to 45°34'47" N, 122°44'43" W thence to 45°34'46" N, 122°44'42" W thence to 45°34'48" N, 122°44'40" W thence to 45°34'48" N, 122°44'38" W and along the shoreline to 45°34'46" N, 122°44'39" W and back to the point of origin. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Regulations.* (1) Anchoring, spudding, dredging, laying cable, dragging, trawling, conducting salvage operations, operating commercial vessels of any size, and operating recreational vessels greater than 30 feet in length are prohibited in the regulated area.

(2) All vessels transiting or accessing the regulated area shall do so at no wake speed or at the minimum speed necessary to maintain steerage.

Dated: May 6, 2008.

**J.P. Currier,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. E8–12147 Filed 6–2–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[Docket No. PTO–C02008–0004]

RIN 0651–AC21

#### Revision of Patent Fees for Fiscal Year 2009

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is proposing to adjust certain patent fee amounts for fiscal year 2009 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business.

**DATES:** Written comments must be received on or before July 3, 2008. No public hearing will be held.