

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2008-0747]

RIN 1625-AA11

**Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to create a permanent regulated navigation area on a portion of the Thea Foss and Wheeler-Osgood Waterways, Commencement Bay, Tacoma, Washington. This regulated navigation area would be used to preserve the integrity of a clean sediment cap placed over certain areas of the Thea Foss and Wheeler-Osgood Waterways as part of the remediation process of the Environmental Protection Agency's (EPA) Commencement Bay Nearshore/Tideflats superfund cleanup site. This regulated navigation area would prohibit activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the cap. It would not affect transit or navigation of the area.

**DATES:** Comments and related material must reach the Coast Guard on or before November 18, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0747 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:** If you have questions on this proposed rule, call ENS Heidi Bevis, U.S. Coast Guard Sector Seattle, Waterways

Management Division, at 206-217-6147. 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-2008-0747), 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 a 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-2008-0747) in the Search box, and click "Go >>." You may also visit either 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; or the Waterways Management Division, U.S. Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 3 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 now 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 Thea Foss and Wheeler-Osgood Waterways are part of the Commencement Bay Nearshore/Tideflats Superfund Cleanup Site. The Thea Foss Waterway is the southernmost of the waterways in Commencement Bay, and the Wheeler-Osgood Waterway is a smaller waterway connected to the eastern shoreline of the Thea Foss Waterway at approximately its midpoint. The Thea Foss and Wheeler-Osgood Waterways cleanup encompassed the inner approximately three-fourths of the waterway, with active remediation performed primarily south of the 11th Street Bridge. This site is bounded by numerous publicly and privately owned properties. The City of Tacoma is leading the cleanup and monitoring effort in approximately 80% of the Thea Foss and Wheeler-Osgood Waterways in conjunction with the United States Environmental Protection Agency. A group of private utilities performed the cleanup in the remainder of the waterway.

Remediation activities performed in the Thea Foss and Wheeler-Osgood Waterways included a combination of dredging, placement of enhanced natural recovery material (i.e., approximately 6 inches of clean sand), placement of a thick-layer cap, and natural recovery. These thick-layer caps consist of approximately three feet of sand and gravel and/or riprap and were

placed in various locations within the waterway to contain contaminated sediments. These caps were designed to withstand activities common to a working waterfront. The thick-layer caps cover approximately 30 acres of sediment in the waterway.

#### Discussion of Proposed Rule

This will be a permanent regulation restricting activities such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the caps. Activities common in the proposed regulated areas include recreational boating, tugboat movement, and shipyard activities. The thick-layer cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material used for the caps was chosen to be able to contain underlying sediments without altering the main activities of the working waterway.

#### 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. The proposed rule is not "a significant regulatory action" because the regulated areas established by the rule would encompass a small area that should not impact commercial or recreational traffic and prohibited activities are not routine for the designated areas.

#### 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 U.S. 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 rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The zone would not have a

significant economic impact due to its small area.

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.

#### 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 ENS Hiedi Bevis, U.S. Coast Guard Sector Seattle, Waterways Management Division, at 206–217–6147. The U.S. Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the U.S. Coast Guard.

#### 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 an 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.

#### 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.ID and Department of Homeland Security Management Directive 5100.1, which guide the U.S. 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 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. As a proposal to establish a regulated navigation area, this rule meets the criteria outlined in paragraph (34)(g).

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this 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, 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. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1324 to read as follows:

#### § 165.1324 Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas*. The following areas are regulated navigation areas:

(1) All waters of the Thea Foss and Wheeler-Osgood Waterways bounded by a line connecting the following points: Point 1: 47°15'43.0513" N, 122°26'22.9718" W; Point 2: 47°15'43.0920" N, 122°26'20.5400" W; Point 3: 47°15'42.1625" N, 122°26'19.0741" W; Point 4: 47°15'40.9149" N, 122°26'18.2348" W; Point 5: 47°15'40.5821" N, 122°26'19.3051" W; Point 6: 47°15'38.9184" N, 122°26'18.1889" W; Point 7: 47°15'38.4275" N, 122°26'19.7759" W. [Datum: NAD 1983].

(2) All waters of the Thea Foss and Wheeler-Osgood Waterways bounded by a line connecting the following points: Point 1: 47°15'22.1992" N, 122°25'57.2126" W; Point 2: 47°15'22.1465" N, 122°25'58.5186" W; Point 3: 47°15'20.8927" N, 122°25'59.1811" W; Point 4: 47°15'19.7138" N, 122°25'59.0136" W; Point 5: 47°15'18.6957" N, 122°25'57.4348" W; Point 6: 47°15'18.9079" N, 122°25'56.5456" W. [Datum: NAD 1983].

(3) All waters of the Thea Foss and Wheeler-Osgood Waterways south of a line bounded by connecting the following points: Point 1: 47°15'13.9421" N, 122°26'05.5628" W; Point 2: 47°15'15.0083" N, 122°25'55.1405" W. [Datum: NAD 1983].

(b) *Regulations*. All vessels and persons are prohibited from activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the cap in the designated regulated navigation area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver*. The Captain of the Port (COTP) Puget Sound, upon advice from the U.S. Environmental Protection Agency (USEPA) Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if the COTP Puget Sound determines that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests should be submitted in triplicate to Commander (dpw), 13th Coast Guard District, 915 2nd Avenue, Room 3510, Seattle, WA 98174–1067 to facilitate review by USEPA, U.S. Coast Guard, and the Washington State Department of Natural Resources. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the

Thea Foss and Wheeler-Osgood Waterway Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the U.S. Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: July 28, 2008.

**John P. Currier,**

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

[FR Doc. E8–19211 Filed 8–19–08; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[OAR–2004–0091; FRL–8707–2]

### Outer Continental Shelf Air Regulations Consistency Update for California

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

**ACTION:** Proposed rule—Consistency Update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (“OCS”) Air Regulations. Requirements applying to OCS sources located within 25 miles of States’ seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (“COA”), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (“the Act”). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

**DATES:** Any comments must arrive by September 19, 2008.

**ADDRESSES:** Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).