

provide that the applicable election period for waiving the qualified joint and survivor annuity form of benefit under section 417 is the 180-day period ending on the annuity starting date, and that a notice required to be provided under section 402(f), section 411(a)(11), or section 417 may be provided to a participant as much as 180 days before the annuity starting date (or, for a notice under section 402(f), the distribution date). These regulations would affect administrators of, employers maintaining, participants in, and beneficiaries of tax-favored retirement plans.

**DATES:** The public hearing, originally scheduled for Friday, February 20, 2009, at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on Thursday, October 9, 2008 (73 FR 59575) announced that a public hearing was scheduled for February 20, 2009, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code.

The public comment period for the proposed rulemaking expired on January 7, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, February 4, 2009, no one has requested to speak. Therefore, the public hearing scheduled for February 20, 2009, is cancelled.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*  
[FR Doc. E9-3066 Filed 2-11-09; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1017]

RIN 1625-AA11

#### Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington that will include procedures for restricting and/or closing those bars as well as additional safety requirements for recreational and small commercial vessels operating in the RNAs. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before March 16, 2009 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-2008-1017 using any one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *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.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed

rule, call LCDR Emily Saddler, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch, telephone 206-220-7210. 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.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-1017), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-1017" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand 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 and may change the rule based on your comments.

##### 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>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-1017 in the Docket ID box, press Enter, and then click on the item in the

Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation 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 Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch in Room 3506 on the 35th floor of the Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### 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 bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. More importantly, the bars can and very often do become extremely hazardous for all types of maritime traffic. In fact, a review of recreational, passenger, and commercial fishing vessel casualty data shows that since 1992 there have been 39 vessel capsizings on or in the vicinity of the bars, resulting in 66 fatalities. Some notable recent vessel casualties include the capsizing of the inspected charter vessel TAKI-TOOO while trying to cross the Tillamook Bay bar, resulting in the deaths of 11 people, and the capsizing of the uninspected passenger vessel SYDNEY MAE II while attempting to cross the Umpqua River bar, resulting in the deaths of 3 people. In addition, several commercial fishing vessels, including the CATHERINE M, the ASH, the STARRIGAVAN and the NETWORK have recently capsized on or

in the vicinity of various bars, resulting in the deaths of 10 people.

As evidenced in part by the tragedies noted above, the current regulations governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington are insufficient to ensure the safety of the persons and vessels operating in those areas. Additionally, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have indicated a need for additional regulations to mitigate the risks associated with the bars and enhance the safety of the persons and vessels operating on and in the vicinity of them. As such, the Thirteenth Coast Guard District is proposing this rule to help ensure the safety of persons and vessels operating on or in the vicinity of the bars.

#### Discussion of Proposed Rule

The purpose of this rule is to help ensure the safety of, and reduce the risk to, the persons and vessels that operate on and in the vicinity of the bars along the coasts of Oregon and Washington. The rule will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating on or in the vicinity of the bars when certain conditions exist. The former will help expedite bar restrictions and closures as well as the mariner notification process which will keep more vessels away from hazardous bars. The latter will require the use and/or making ready of safety equipment as well as additional reporting requirements when certain conditions exist which will help ensure the safety of persons on vessels that are on or in the vicinity of hazardous bars.

The proposed rule will replace the Regulated Boating Area provisions in 33 CFR Part 177. The geographic boundaries used to identify the bar areas in the proposed rule are the same as those currently used to identify the Regulated Boating Areas in 33 CFR Part 177, except for one minor change being made to the Umpqua River bar boundaries.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

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 Coast Guard expects the economic impact of this proposed rule to be negligible in part because: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the Captain of the Port (COTP), or his designated representative.

#### 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 and operators of recreational vessels, uninspected passenger vessels, inspected small passenger vessels, and commercial fishing vessels. The rule would not have a significant economic impact on a substantial number of small entities; however, for the following reasons: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar

restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP, or his designated representative.

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 LCDR Emily Saddler, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch, telephone 206–220–7210. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the 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 Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.1D, which guide 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 one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. A preliminary “Environmental Analysis Checklist” supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### **List of Subjects**

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

*33 CFR Part 177*

Marine safety.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 and 33 CFR part 177 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, 3306, 3703; 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. Add § 165.1322 to read as follows:

## **§ 165.1322 Regulated Navigation Areas; Bars along the Coasts of Oregon and Washington**

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area:

(1) *Quillayute River Entrance, Wash.:* From the west end of James Island 47°54'23" N., 124°39'05" W. southward to buoy No. 2 at 47°53'42" N., 124°38'42" W. eastward to the shoreline at 47°53'42" N., 124°37'51" W., thence northward along the shoreline to 47°54'29" N., 124°38'20" W. thence northward to 47°54'36" N., 124°38'22" W. thence westward to the beginning.

(2) *Grays Harbor Entrance, Wash.:* From a point on the shoreline at 46°59'00" N., 124°10'10" W. westward to 46°59'00" N., 124°15'30" W. thence southward to 46°51'00" N., 124°15'30" W. thence eastward to a point on the shoreline at 46°51'00" N., 124°06'40" W. thence northward along the shoreline to a point at the south jetty 46°54'20" N., 124°08'07" W. thence eastward to 46°54'10" N., 124°05'00" W. thence northward to 46°55'00" N., 124°03'30" W. thence northwestward to Damon Point at 46°56'50" N., 124°06'30" W. thence westward along the north shoreline of the harbor to the north jetty at 46°55'40" N., 124°10'27" W. thence northward along the shoreline to the beginning.

(3) *Willapa Bay, Wash.:* From a point on the shoreline at 46°46'00" N., 124°05'40" W. westward to 46°44'00" N., 124°10'45" W. thence eastward to a point on the shoreline at 46°35'00" N., 124°03'45" W. thence northward along the shoreline around the north end of Leadbetter Point thence southward along the east shoreline of Leadbetter Point to 46°36'00" N., 124°02'15" W. thence eastward to 46°36'00" N., 124°00'00" W. thence northward to Toke Point at 46°42'15" N., 123°58'00" W. thence westward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(4) *Columbia River Bar, Wash.-Oreg.:* From a point on the shoreline at 46°18'00" N., 124°04'39" W. thence westward to 46°18'00" N., 124°09'30" W. thence southward to 46°12'00" N.,

124°09'30" W. thence eastward to a point on the shoreline at 46°12'00" N., 123°59'33" W. thence eastward to Tansy Point Range Front Light at 46°11'16" N., 123°55'05" W.; thence northward to Chinook Point at 46°15'08" N., 123°55'25" W. thence northwestward to the north end of Sand Island at 46°17'29" N., 124°01'25" W. thence southwestward to a point on the north shoreline of the harbor at 46°16'25" N., 124°02'28" W. thence northwestward and southwestward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(5) *Nehalem River Bar, Oreg.:* From a point on the shoreline 45°41'25" N., 123°56'16" W. thence westward 45°41'25" N., 123°59'00" W. thence southward to 45°37'25" N., 123°59'00" W. thence eastward to a point on the shoreline at 45°37'25" N., 123°56'38" W. thence northward along the shoreline to the north end of the south jetty at 45°39'40" N., 123°55'45" W. thence westward to a point on the shoreline at 45°39'45" N., 123°56'19" W. thence northward along the shoreline to the beginning.

(6) *Tillamook Bay Bar, Oreg.:* From a point on the shoreline at 45°35'15" N., 123°57'05" W. thence westward 45°35'15" N., 124°00'00" W. thence southward to 45°30'00" N., 124°00'00" W. thence eastward to a point on the shoreline at 45°30'00" N., 123°57'40" W. thence northward along the shoreline to the north end of Kincheloe Point at 45°33'30" N., 123°56'05" W. thence northward to a point on the north shoreline of the harbor at 45°33'40" N., 123°55'59" W. thence westward along the north shoreline of the harbor then northward along the seaward shoreline to the beginning.

(7) *Netarts Bay Bar, Oreg.:* From a point on the shoreline at 45°28'05" N. thence westward to 45°28'05" N., 124°00'00" W. thence southward to 45°24'00" N., 124°00'00" W. thence eastward to a point on the shoreline at 45°24'00" N., 123°57'45" W. thence northward along the shoreline to 45°26'03" N., 123°57'15" W. thence eastward to a point on the north shoreline of the harbor at 45°26'00" N., 123°56'57" W. thence northward along the shoreline to the beginning.

(8) *Siletz Bay Bar, Oreg.:* From a point on the shoreline at 44°56'32" N., 124°01'29" W. thence westward to 44°56'32" N., 124°03'00" W. thence southward to 44°54'40" N., 124°03'15" W. thence eastward to a point on the shoreline at 44°54'40" N., 124°01'55" W. thence northward along the shoreline to 44°55'35" N., 124°01'25" W. thence northward to a point on the north

shoreline of the harbor at 44°55'45" N., 124°01'20" W. thence westward and northward along the shoreline to the beginning.

(9) *Depoe Bay Bar, Oreg.:* From a point on the shoreline at 44°49'15" N., 124°04'00" W. thence westward to 44°49'15" N., 124°04'35" W. thence southward to 44°47'55" N., 124°04'55" W. thence eastward to a point on the shoreline at 44°47'53" N., 124°04'25" W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank at the bridge thence westward along the north bank of the entrance channel and northward along the seaward shoreline to the beginning.

(10) *Yaquina Bay Bar, Oreg.:* From a point on the shoreline at 44°38'11" N., 124°03'47" W. thence westward to 44°38'11" N., 124°05'55" W. thence southward to 44°35'15" N., 124°06'05" W. thence eastward to a point on the shoreline at 44°35'15" N., 124°04'02" W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank of the entrance channel at the bridge thence westward along the north bank of the entrance channel and northward along the seaward shoreline to the beginning.

(11) *Siuslaw River Bar, Oreg.:* From a point on the shoreline at 44°02'00" N., 124°08'00" W. thence westward to 44°02'00" N., 124°09'30" W. thence southward to 44°00'00" N., 124°09'30" W. thence eastward to a point on the shoreline at 44°00'00" N., 124°08'12" W. thence northward along the shoreline and southward along the west bank of the entrance channel to 44°00'35" N., 124°07'48" W. thence southeastward to a point on the east bank of the entrance channel at 44°00'20" N., 124°07'31" W. thence northward along the east bank of the entrance channel and northward along the seaward shoreline to the beginning.

(12) *Umpqua River Bar, Oreg.:* From a point on the shoreline at 43°41'20" N., 124°11'58" W. thence westward to 43°41'20" N., 124°13'32" W. thence southward to 43°38'35" N., 124°14'25" W. thence eastward to a point on the shoreline at 43°38'35" N., 124°12'35" W. thence northward along the shoreline to light "8" at 43°40'57" N., 124°11'13" W. thence southwestward to a point on the west bank of the entrance channel at 43°40'52" N., 124°11'34" W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

(13) *Coos Bay Bar, Oreg.*: From a point on the shoreline at 43°22'15" N., 124°19'34" W. thence westward to 43°22'20" N., 124°22'28" W. thence southwestward to 43°21'00" N., 124°23'35" W. thence southeastward to a point on the shoreline at 43°20'25" N., 124°22'28" W. thence northward along the shoreline and eastward along the south shore of the entrance channel to a point on the shoreline at 43°20'52" N., 124°19'12" W. thence eastward to a point on the east shoreline of the harbor at 43°21'00" N., 124°18'50" W. thence northward to a point on the west shoreline of the harbor at 43°21'45" N., 124°19'10" W. thence south and west along the west shoreline of the harbor thence northward along the seaward shoreline to the beginning.

(14) *Coquille River Bar, Oreg.*: From a point on the shoreline at 43°08'25" N., 124°25'04" W. thence southwestward to 43°07'50" N., 124°27'05" W. thence southwestward to 43°07'03" N., 124°28'25" W. thence eastward to a point on the shoreline at 43°06'00" N., 124°25'55" W. thence northward along the shoreline and eastward along the south shoreline of the channel entrance to 43°07'17" N., 124°25'00" W. thence northward to the east end of the north jetty at 43°07'24" N., 124°24'59" W. thence westward along the north shoreline of the entrance channel and northward along the seaward shoreline to the beginning.

(15) *Rogue River Bar, Oreg.*: From a point on the shoreline at 42°26'25" N., 124°26'03" W. thence westward to 42°26'10" N., 124°27'05" W. thence southward to 42°24'15" N., 124°27'05" W. thence eastward to a point on the shoreline at 42°24'15" N., 124°25'30" W. thence northward along the shoreline and eastward along the south shoreline of the entrance channel to the highway bridge thence northward across the inner harbor jetty to a point on the north shoreline of the entrance channel at the highway bridge thence westward along the north shoreline of the entrance channel thence northward along the seaward shoreline to the beginning.

(16) *Chetco River Bar, Oreg.*: From a point on the shoreline at 42°02'35" N., 124°17'20" W. thence southeastward to 42°01'45" N., 124°16'30" W. thence northwestward to a point on the shoreline at 42°02'10" N., 124°15'35" W. thence northwestward along the shoreline thence northward along the east shoreline of the channel entrance to 42°02'47" N., 124°16'03" W. thence northward along the west face of the inner jetty and east shoreline of the channel entrance to the highway bridge thence westward to the west shoreline of the channel at the highway bridge

thence southward along the west shoreline of the channel thence westward along the seaward shoreline to the beginning.

(b) *Definitions.* For the purposes of this section:

(1) *Bar crossing plan* (also known as a Go/No-Go plan) means a plan developed by local industry professionals, in coordination with the Coast Guard, for a bar within a regulated navigation area established in paragraph (a) of this section and adopted by the master or operator of a small passenger vessel to guide his vessel's operations on and in the vicinity of that bar.

(2) *Bar restriction* means passage across a bar within a regulated navigation area established in paragraph (a) of this section has been prohibited by the Coast Guard due to unsafe conditions.

(3) *Commercial fishing industry vessel* means a fishing vessel, fish tender vessel, or a fish processing vessel.

(4) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer that has been authorized by the Captain of the Port to act on his behalf.

(5) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(6) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(7) *Fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(8) *Immediately available* means equipment that is taken out of stowage and readily accessible within the same space as any person for immediate use during an emergency.

(9) *Recreational vessel* is any vessel manufactured or used primarily for non-commercial use or leased, rented, or chartered to another for the latter's non-commercial use. It does not include a vessel engaged in carrying paying passengers.

(10) *Small passenger vessel* means a vessel inspected under 46 CFR Subchapter T or 46 CFR Subchapter K.

(11) *Uninspected passenger vessel* means an uninspected vessel—

(i) Of at least 100 gross tons;

(A) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; or

(ii) Of less than 100 gross tons;

(A) Carrying not more than six passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

(12) *Unsafe condition* exists when the wave height within a regulated navigation area identified in paragraph (a) of this section is equal to or greater than the maximum wave height determined by the formula  $L/10 + F = W$  where:

$L$  = Overall length of a vessel measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

$F$  = The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

$W$  = Maximum wave height in feet to the nearest highest whole number.

(c) *Regulations.*

(1)(i) *Bar restriction.* Passage across the bars located in the regulated navigation areas established in paragraph (a) of this section will be restricted for recreational and uninspected passenger vessels as determined by the Captain of the Port (COTP) or his designated representative. In making this determination, the COTP or his designated representative will determine whether an unsafe condition exists for such vessels as defined in paragraph (b) of this section. Additionally, the COTP or his designated representative will use their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: Size and type of vessel, sea state, winds, wave period, and tidal currents. When a bar is restricted, the operation of recreational and uninspected passenger vessels in the regulated navigation area established in paragraph (a) of this section in which the restricted bar is located is prohibited unless specifically authorized by the COTP or his designated representative.

(ii) *Bar closure.* The bars located in the regulated navigation areas established in paragraph (a) of this

section will be closed to all vessels whenever environmental conditions exceed the operational limitations of the relevant Coast Guard search and rescue resources as determined by the COTP. When a bar is closed, the operation of any vessel in the regulated navigation area established in paragraph (a) of this section in which the closed bar is located is prohibited unless specifically authorized by the COTP or his designated representative.

(iii) The Coast Guard will notify the public of bar restrictions and bar closures via a Broadcast Notice to Mariners on VHF-FM Channel 16 and 22A. Additionally, Coast Guard personnel may be on-scene to advise the public of any bar restrictions and/or closures.

(2) *Safety Requirements for Recreational Vessels.* The operator of any recreational vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that whenever their vessel is being towed or escorted across a bar by the Coast Guard all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are immediately available for/to all persons located in any enclosed areas of their vessel.

(3) *Safety Requirements for Uninspected Passenger Vessels (UPV).*

(i) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are immediately available for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

- (A) Vessel name,
- (B) Vessel location or position,
- (C) Number of persons onboard the vessel, and
- (D) Vessel destination.

(4) *Safety Requirements for Small Passenger Vessels (SPV).*

(i) The master or operator of any small passenger vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are immediately available for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge of Marine Inspection (OCMI) are exempt from the safety requirements provided in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel must wear lifejackets, however, then the master or operator must comply with the safety requirements provided in paragraph (c)(4)(i) of this section in their entirety.

(iii) The master or operator of any small passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

- (A) Vessel name,
- (B) Vessel location or position,
- (C) Number of persons onboard the vessel, and
- (D) Vessel destination.

(5) *Safety Requirements for Commercial Fishing Vessels (CFV).* (i) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are immediately available for/to all persons located in any enclosed spaces of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF-FM Channel 16 prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

- (A) Vessel name,
- (B) Vessel location or position,
- (C) Number of persons onboard the vessel, and
- (D) Vessel destination.

(6) All persons and vessels within the regulated navigation areas established in paragraph (a) of this section must comply with the orders of Coast Guard personnel. Coast Guard personnel include commissioned, warrant, and petty officers of the United States Coast Guard.

## PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

3. The authority citation for part 177 continues to read as follows:

**Authority:** 46 U.S.C. 4302, 4311; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45 and 1.46.

4. In § 177.07, remove paragraph (f) and redesignate paragraph (g) as paragraph (f).

5. Remove § 177.08 and redesignate § 177.09 as § 177.08.

Dated: January 15, 2009.

**J.P. Currier,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50 and 51

[EPA–HQ–OAR–2007–0956; FRL–8772–8]

RIN–2060–AO63

### Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Revision on Subpart 1 Area Reclassification and Anti-Backsliding Provisions Under Former 1-Hour Ozone Standard; Proposed Deletion of Obsolete 1-Hour Ozone Standard Provision

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