

[Federal Register: April 12, 2010 (Volume 75, Number 69)]
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[DOCID:fr12ap10-17]

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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; Amendment

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the Regulated Navigation Area (RNA) covering the Umpqua River Bar in Oregon so that it does not include those waters between ``Navigation Aid Number 8'' and ``Navigation Aid Number 6'' on the Umpqua River. The change has been requested by a number of individuals and organizations that believe they are able to safely use those waters when the bar is restricted or closed.

DATES: Comments and related material must be received by the Coast Guard on or before May 12, 2010. Requests for public meetings must be received by the Coast Guard on or before May 12, 2010.

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 four methods. See the ``Public Participation and Request for Comments'' portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Kion Evans, Thirteenth Coast Guard District,

Prevention Division; telephone 206-220-7232, e-mail Kion.J.Evans@uscg.mil. 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 (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. 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>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2008-1017" in the "Keyword" box. Click "Search" 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 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit comments 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

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as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2008-1017" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit 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. 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 on or before May 12, 2010 using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

On November 17, 2009, the Coast Guard published a Final Rule entitled ``Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' in the Federal Register (74 FR 59098), which established Regulated Navigation Areas covering each of the coastal bars in Oregon and Washington. Following implementation of the rule, as codified at 33 CFR 165.1325, on December 17, 2009, the Coast Guard began receiving feedback from a number of individuals and organizations that use the waters near the Umpqua River Bar in Oregon indicating that the RNA covering that bar, as defined in 33 CFR 165.1325(a)(12), is too large in that they believe they are able to safely use the area between ``Navigation Aid Number 8'' and ``Navigation Aid Number 6'' in the Umpqua River when the bar is restricted or closed.

In light of the public desires expressed, the possible economic impact on the local community, and the Coast Guard's assessment that mariners are, in most circumstances, able to safely operate between ``Navigation Aid Number 8'' and ``Navigation Aid Number 6'' on the Umpqua River when the bar is restricted or closed, the Coast Guard proposes to change the Umpqua River Bar RNA as defined in 33 CFR 65.1325(a)(12) to allow such use without obtaining permission of the Captain of the Port or his/her designated representatives.

Discussion of Proposed Rule

The proposed rule will change the Umpqua River Bar Regulated Navigation Area as defined in 33 CFR 165.1325(a)(12) so that it does not include those waters between ``Navigation Aid Number 8'' and ``Navigation Aid Number 6'' on the Umpqua River.

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 has made this determination based on the fact that this rule will simply reduce the size of an established Regulated Navigation Area.

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 rule will affect those small entities that use the waters near the Umpqua River Bar. The rule would not have a significant economic impact on a substantial number of small entities, however, because it will simply reduce the size of an established Regulated Navigation 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 LT Kion Evans, Thirteenth Coast Guard District, Prevention Division; telephone 206-220-7232, e-mail Kion.J.Evans@uscg.mil. 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 (adjusted for inflation) 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 cause a taking of private property or otherwise

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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 Management Directive 023-01 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. This rule involves the reduction in size of a Regulated Navigation Area. 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, 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, 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. Amend Sec. 165.1325 by revising paragraph (a)(12) to read as follows:

Sec. 165.1325 Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.

(a) * * *

12) Umpqua River Bar, Oreg.: From a point on the shoreline at 43[deg]41'20'' N., 124[deg]11'58'' W. thence westward to 43[deg]41'20'' N., 124[deg]13'32'' W. thence southward to 43[deg]38'35'' N., 124[deg]14'25'' W. thence eastward to a point on the shoreline at 43[deg]38'35'' N., 124[deg]12'35'' W. thence northward along the shoreline to the north end of the training jetty at 43[deg]40'15'' N., 124[deg]11'49'' W. thence northward to a point on the west bank of the entrance channel at 43[deg]40'40'' N., 124[deg]11'41'' W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

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Dated: March 26, 2010.

G.T. Blore,
Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard
District.

[FR Doc. 2010-8208 Filed 4-9-10; 8:45 am]

BILLING CODE 9110-04-P