



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0296]**

**RIN 1625-AA11**

**Regulated Navigation Area; Lake Washington, Seattle, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a permanent regulated navigation area for certain waters of Lake Washington. The regulated navigation area is intended to protect personnel and vessels from potential hazards created by excessive vessel wake prior to and following high traffic Seafair events. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0296 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Amy Hamilton, Sector Puget Sound

Waterways Management, Coast Guard; telephone 206-217-6051,  
SectorPugetSoundWWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Coast Guard was notified by the Mercer Island Police Department of hazardous conditions associated with increased vessel and swimmer congestion after high traffic Seafair marine events, which can make routine navigation for persons and vessels unsafe. The Seafair event draws an extraordinary amount of boaters and persons to the waterway to observe several high traffic events, such as the Seafair Hydroplane Races and Seafair Air Shows. The wakes created by transiting vessels near the vicinity of vessels moored to the log boom during high traffic events pose a safety concern to vessels and swimmers in the area. Coast Guard action is needed to restrict vessel movement prior to and after Seafair events where significant marine traffic endanger the safety of swimmers and vessels proximate to the log boom.

The purpose of this rulemaking is to ensure the safety of persons and vessels on the navigable waters of Lake Washington within the regulated navigation area from excessive vessel wake occurring prior to and after Seafair events. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The District Commander is proposing to establish a regulated navigation area prior to and after Seafair activities, which usually occur during the last week of July and the first two weeks of August. The regulated navigation area would cover all navigable waters within Lake Washington south of the Interstate 90 floating Bridge and north of a line between Bailey Peninsula and Mercer Island. The duration of the regulated navigation area is intended to protect personnel and vessels in these navigable waters from excessive wake associated with vessels before and after high traffic Seafair events. Vessels transiting the area will be required to create minimum wake at speeds of less than 7 miles per hour, unless a higher minimum speed is necessary to maintain bare steerageway. Enforcement periods for this rule will occur daily prior to and immediately following Seafair activities. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been

designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time-of-day of the regulated navigation area. Vessel traffic will be able to transit through the regulated navigation area, and the regulation will only impact a small designated area of Lake Washington for less than three days. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated navigation area.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT section. 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.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. 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.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area enforced annually for a total of less than 3 days that would restrict vessel speed to a minimum wake of less than 7 miles per hour. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this proposed rule.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be

viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **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 is proposing 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:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1341 to read as follows:

§ 165.1341 Regulated Navigation Area; Lake Washington; Seattle, WA.

(a) Location. The following area is a regulated navigation area: All waters of Lake Washington south of the Interstate 90 Floating West Bound Bridge and north of the points between Bailey Peninsula at 47° 33' 14.4" N, 122° 14' 47.3" and Mercer Island at 47° 33' 24.5" N, 122° 13' 52.5" W.

(b) Definitions. As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the

enforcement of the regulated navigation zone.

(c) Regulations. All vessels and persons transiting the regulated navigation area described in paragraph (a) of this section must proceed at a speed which creates minimum wake, 7 miles per hour or less, unless a higher minimum speed is necessary to maintain bare steerageway.

(d) Enforcement periods. This section will be enforced annually immediately before and after Seafair activities which usually occurs during the last week in July and the first two weeks of August. The event will be one week or less in duration and the specific dates and times of the enforcement periods will be published in a notice of enforcement in the *Federal Register*.

Dated: May 21, 2019.

D. G. Throop,  
RADM, U.S. Coast Guard,  
Commander, Thirteenth Coast Guard District.

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