

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.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where located under **ADDRESSES**.

#### 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 amends 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–008 to read as follows:

#### § 165.T11–008 Security Zones; Navigable Waters of the United States Surrounding Pier Two and Pier Three at Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zones, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, within 600 yards of any portion of both Pier Two and Pier Three at Military Ocean Terminal Concord (MOTCO), California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of these security zones may contact the Patrol Commander on scene on VHF-FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Effective period.* This section becomes effective at 7 a.m. PDT on April 8, 2004, and terminates at 11:59 p.m. PDT on May 6, 2004. If the need for these security zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zones and will announce that fact via Broadcast Notice to Mariners.

Dated: March 31, 2004.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04–7996 Filed 4–7–04; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 167

[USCG–2001–11201]

#### Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of study results.

**SUMMARY:** The Coast Guard announces the completion of a Port Access Route Study that evaluated the need for modifications to current vessel routing and traffic management measures along the sea coast and in the approaches to the Cape Fear River and Beaufort Inlet, North Carolina. The study was completed in February 2004. This notice summarizes the study recommendations, which include the creation of a traffic separation scheme and an offshore anchorage area in the approach to the Cape Fear River and an offshore anchorage area in the vicinity of Beaufort Inlet, North Carolina.

**ADDRESSES:** Comments and material received from the public, as well as the

actual study and other documents mentioned in this notice, are part of docket USCG–2001–11201 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further information on this notice, contact John Walters, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6230, e-mail [jwalters@lantd5.uscg.mil](mailto:jwalters@lantd5.uscg.mil); or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0416, e-mail [Gdetweiler@comdt.uscg.mil](mailto:Gdetweiler@comdt.uscg.mil). For questions on viewing the docket, contact Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

**SUPPLEMENTARY INFORMATION:** You may obtain a copy of the Port Access Route Study by contacting either person listed under the **FOR FURTHER INFORMATION CONTACT** section. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web Site at <http://dms.dot.gov>.

#### Definitions

The following definitions are from the International Maritime Organization’s (IMO’s) “Ships’ Routeing Guide” (except those marked by an asterisk) and should help you review this notice:

*Offshore anchorage area\** means an anchorage area located in the 3-to-12-nautical-mile belt of the territorial sea in which vessels directed by the Captain of the Port (COTP) to await further orders before entering a U.S. port may stand-by or anchor.

*Precautionary area* means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

*Separation Zone or separation line* means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

*Traffic lane* means an area within defined width in which one-way traffic is established. Natural obstacles,

including those forming separation zones, may constitute a boundary.

*Traffic Separation Scheme or TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

*Vessel routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

**Background and Purpose**

*When Did the Coast Guard Conduct This Port Access Route Study (PARS)?*

We announced the PARS in a notice published in the **Federal Register** on January 18, 2002, (67 FR 2616). This notice had a comment submission deadline of March 19, 2002. On April 16, 2002, we reopened the comment period in a notice published in the **Federal Register** (67 FR 18527). The submission deadline for this comment period was May 19, 2002.

*What is the Study Area?*

The study area encompassed the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983.):

Latitude	Longitude
34°40' N .....	77°00' W
34°40' N .....	76°15' W
34°10' N .....	76°15' W
33°15' N .....	77°30' W
33°00' N .....	78°20' W
33°50' N .....	78°20' W
33°50' N .....	77°55' W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial, private, recreation, fishing, and public vessels transiting to and from these ports.

*Why Did the Coast Guard Conduct This PARS?*

The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published in the **Federal Register** on July 22, 1982 (47 FR 31766). The study concluded that “there is no need to impose new ship routing measures such as TSS’s or shipping safety fairways where fixed structures would be prohibited, in any” area off the North Carolina coast.

Vessel size, traffic density and channel depth and width have changed

since the 1981 study. Major channel depth, width and alignment changes are currently underway in the Cape Fear River and port of Wilmington, NC. A PARS was initiated in 1996 (61 FR 35703; July 8, 1996), but was not completed due to personnel and funding issues. The U.S. Army Corps of Engineers’ (ACoE) report, “Waterborne Commerce of the United States” reports that, from 1981 to 1999, annual trips to and from the Port of Wilmington, NC, increased from 10,060 to 24,190 or 140% and the number of trips to and from Morehead City, NC, decreased from 7,842 to 3,388 or 57%.

Since 1981 the North Carolina State Ports Authority (NCSPA) has initiated a capital improvement program to reinvest in its ports. The entire Cape Fear River Channel has been deepened to 42 feet with portions of the channel to be widened for a passing lane in 2005. The approaches over Bald Head Shoals have been realigned to take advantage of the original riverbed with depths of 44 feet. The new alignment at the approaches was opened to marine traffic in December 2003. In addition to the ACoE’s newly deepened channel, the U.S. Coast Guard has made improvements to 8 aids to navigation ranges, and is planning to improve an additional 13 ranges to enhance the safety of marine navigation on the river. The ACoE expects the deepening project to produce estimated annual benefits of \$34 million per year compared to the estimated annual cost of \$26 million. Additionally, NCSPA estimates the deepened channel will allow container ships to carry up to an additional \$12 million of cargo to and from the port of Wilmington. The NCSPA is expecting shipping companies not now calling at Wilmington to consider making Wilmington a regular call due to the deepened channel.

The Port of Wilmington opened a new facility to handle the export and import of grain and other bulk commodities in May 2003. The port of Wilmington has four container cranes with capacity up to 50 long-tons, four gantry cranes with capacity up to 225 tons, one 140 ton mobile crane, 59 lift trucks with 3,000 to 52,000 pound capacities, nine top-lift container handlers and two 30-ton mobile cranes.

The Port of Morehead City has recently been receiving cargoes of domestic scrap metals via ocean barges or vessels for transshipment via river barge to mills via the Intracoastal Waterway and is planning improvements to the Radio Island property. This port has one 40 long-ton container crane, two 115-ton capacity gantry cranes, and 36 lift trucks with

4,000 to 70,000 pound capacities. Both ports have truck and rail connections.

The safety and security of the United States is a top priority for our nation. As the awareness of threats to this country increases, the plans for preparedness and prevention of emergency situations have evolved to address threats against America’s shorelines. Since every scenario cannot be perfectly planned for, it is important to provide flexibility for alternatives. As an example, if an inbound vessel is denied permission to enter the Cape Fear River or Beaufort Inlet, that vessel needs a designated place to anchor or maintain station so as not to introduce an increased navigational threat to other vessels transiting the approaches. In a designated area, the position and status of a vessel may be monitored and easily accessed by security or inspection personnel.

Within the study area, there exist grounds that could support anchoring any of the largest vessels that call upon the Port of Wilmington now or in the future. No designated anchorages exist off Beaufort Inlet that can be used by naval and commercial vessels. An existing anchorage ground adjacent to the Cape Fear River became obsolete since available water depths are less than the drafts of current and expected larger ships of the future. An offshore anchorage area off the Cape Fear River approaches should be established for munitions ships to await favorable conditions to berth at the U.S. Army’s Military Ocean Terminal Sunny Point. Designating an anchorage area off Beaufort Inlet also provides a temporary place for vessels carrying munitions or other hazardous cargoes to be directed. Both anchorages will provide a temporary place for vessels to be directed while the appropriate authorities determine their situation under the authority of the Magnuson Act.

*How Did the Coast Guard Conduct This PARS?*

First, we announced the start of the study through a Notice of Study published in the **Federal Register** on January 18, 2002, (67 FR 2616). This notice identified potential study recommendations and solicited comments concerning these recommendations as well as answers to questions provided in the notice. Second, we considered previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and the effects of weather. This PARS recommendations are based mainly on

comments received to the docket and the results of the previous studies, analyses, and agency and stakeholder experience.

### Study Recommendations

The PARS recommendations include the following:

1. Establish a Precautionary Area near the approaches to the Cape Fear River. A pilot transfer area will be located inside the precautionary area.
2. Establish a Traffic Separation Scheme (TSS) near the approaches to the Cape Fear River.
3. Establish offshore anchorage areas near the approaches to the Cape Fear River and Beaufort Inlet, NC.

### Next Steps

A brief synopsis of how the PARS recommendations will proceed towards implementation follows:

1. Establishing a TSS will require approval by the International Maritime Organization (IMO). The addition of the TSS to the Code of Federal Regulations (CFR) will be accomplished through the rulemaking process.
2. The establishment of offshore anchorage areas will be accomplished through the rulemaking process.
3. Changes to aids to navigation resulting from the above actions will be accomplished through the following established procedures—notification of proposed changes in the Local Notice to Mariners with an opportunity for comment and notification of the final changes in the Local Notice to Mariners.

### Conclusion

We appreciate the comments we received concerning the PARS. We will provide ample opportunity for additional comments on any recommended changes to existing routing or operational measures that require codification through notices of proposed rulemakings (NPRMs) published in the **Federal Register**.

Dated: March 31, 2004.

#### Howard L. Hime,

*Acting Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 04-7956 Filed 4-7-04; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[FRL-7644-8]

#### State of Alabama: Underground Injection Control Program Revision; Proposed Response to Court Remand

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed determination on remand of final rule; request for public comment.

**SUMMARY:** In this document, the Environmental Protection Agency (EPA) is requesting public comment on its proposed response to the Eleventh Circuit Court of Appeals' remand in *Legal Environmental Assistance Foundation, Inc., v. United States Environmental Protection Agency*, 276 F.3d 1253 (11th Cir. 2001) (hereinafter *LEAF II*), directing EPA to determine whether Alabama's revised underground injection control (UIC) program covering hydraulic fracturing of coal bed seams to recover methane gas complies with the requirements for Class II wells. In *LEAF II*, the Eleventh Circuit Court affirmed EPA's decision to review Alabama's hydraulic fracturing program pursuant to the approval criteria in section 1425 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h *et seq.*, instead of the approval criteria in section 1422 of the SDWA, and rejected LEAF's claim that EPA's approval of the program pursuant to section 1425 was arbitrary. However, the Court remanded the matter, in part, for EPA "to determine whether Alabama's revised UIC program complies with the requirements for Class II wells." After considering this issue, EPA has preliminarily determined that the hydraulic fracturing portion of the State's UIC program relating to coal bed methane production, which was approved under section 1425 of the SDWA, complies with the requirements for Class II wells within the context of section 1425's approval criteria. EPA is requesting comment on this proposed determination.

**DATES:** Comments on this proposed response to the Court remand must be in writing and either postmarked or received by the docket for this action by May 10, 2004.

**ADDRESSES:** Send written comments to: Larry Cole, U.S. Environmental Protection Agency, Region 4, Water Management Division, Ground Water and Drinking Water Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth

Street, SW., Atlanta, Georgia 30303. When submitting written comments, please submit an original and three copies of your comments and enclosures (including any references). Documents relevant to this action are available for inspection at this same address between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** General questions and questions on technical issues concerning today's document should be directed to Larry Cole at (404) 562-9474, or at the address above. Questions on legal issues concerning today's document should be addressed to Zylpha Pryor, Office of Environmental Accountability, U.S. Environmental Protection Agency—Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, telephone (404) 562-9535.

#### SUPPLEMENTARY INFORMATION:

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- I. Background Information
  - A. Court Decisions
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- II. EPA's Response to Court Remand

#### I. Background Information

##### A. Court Decisions

On May 3, 1994, the Legal Environmental Assistance Foundation, Inc., (LEAF) submitted a petition to EPA to withdraw Alabama's UIC program, asserting that the State was not appropriately regulating injection activities associated with coal bed methane gas production wells. Following the Agency's May 5, 1995, denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF v. EPA*, 118 F.3d 1467 (11th Cir. 1997) (*LEAF I*), the Court held that hydraulic fracturing activities constitute underground injection under Part C of the SDWA and must be regulated by permit or rule. On February 18, 1999, the Eleventh Circuit directed EPA to implement the Court's August 1997 decision. The Court established a schedule for EPA to follow in determining whether, in light of the Court's ruling regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC program. In a January 19, 2000, **Federal Register** (FR) final rule, EPA announced its determination that Alabama's UIC program regulating hydraulic fracturing associated with coal bed methane production was consistent with the requirements of the SDWA and the