



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0131]

RIN 1625-AA00

Safety Zones; Sellwood Bridge Project, Willamette River;
Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of two safety zones to remain in effect throughout the duration of the construction and renewal of the Sellwood Bridge located on the Willamette River in Portland, Oregon. This action is necessary to ensure the safety of vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project. During the effective period, all vessels will be required to remain at the prescribed safe distance from the construction area while transiting in the vicinity of the Sellwood Bridge project; however, the establishment of these safety zones does not entirely close this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it

will have a minimum channel width of 138 feet at all times.

The two safety zones proposed in this rule are located within the same geographical points as safety zones issued as a temporary final rule effective through 11 a.m., July 1, 2012.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0131 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 ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail Ian.P.McPhillips@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-2012-0131), 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-2012-0131" 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 8½ 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 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-2012-0131" 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 [Insert Date 30 DAYS FROM PUBLICATION in Federal Register] 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.

Basis and Purpose

The Sellwood Bridge project will replace the existing 86 year old bridge that is structurally inadequate and functionally obsolete. The project will renew the bridge with a new deck arch structure compliant with current loading and seismic requirements, upgrade the interchange at Oregon Route 43, and provide substantially improved bicycle and pedestrian facilities. Construction work will continue through January 1, 2015. The project includes the construction of two temporary structures and two new bridge piers which will each require a cofferdam. The temporary structures will be constructed to facilitate the moving of the older bridge. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, this will ensure that the vessels operating in the vicinity of the designated areas will not be in any dangerous areas near the temporary structures or cranes.

Discussion of Proposed Rule

The proposed rule would create two safety zones that cover all waters of the Willamette River; however, the establishment of these safety zones does not entirely close

this section of the Willamette River. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum channel width of 138 feet at all times. The first safety zone on the West river bank is encompassed within the following four lines: line one starting at 45-27'53.5"N/ 122-40'03.5"W then heading 375 feet offshore to 45-27'53.5"N/ 122-39'58.5"W then heading up river 200 feet to 45-27'49.5"N/ 122-39'58.5"W then heading 375 feet back to the shore at 45-27'49.5"N/ 122-40'04.5"W then following the shoreline to end at 45-27'53.5"N/ 122-40'03.5"W. The second safety zone on the East river bank is encompassed within the following four lines: line one starting at 45-27'53.5"N/ 122-39'50.5"W then heading 420 feet offshore to 45-27'53.5"N/ 122-39'55.0"W then heading up river 200 feet to 45-27'49.5"N/ 122-39'55.0"W then heading 420 feet back to the shore at 45-27'49.5"N/ 122-39'47.0"W then following the shoreline to end at 45-27'49.5"N/ 122-39'47.0"W. Geographically this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times. These safety zones will ensure the safety

of the all vessels and crew that are working and transiting in the construction areas.

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

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866. The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because vessels may still transit in the

vicinity of the safety zones.

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 rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river, which will maintain a minimum width of 138 feet. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit around the safety zones or through the open section.

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 (Public Law 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 Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail Ian.P.McPhillips@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 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 that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the instruction. This proposed rule involves the creation of two safety zones. 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. 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-208 to read as follows:

§ 165.T13-208 Safety Zones; Sellwood Bridge project, Willamette River; Portland, OR

(a) Location. The safety zone on the western river bank encompasses all waters of the Willamette River within the following four lines: line one starting at 45-27'53.5"N/ 122-40'03.5"W then heading 375 feet offshore to 45-27'53.5"N/ 122-39'58.5"W then heading up river 200 feet to 45-27'49.5"N/ 122-39'58.5"W then heading 375 feet back to the shore at 45-27'49.5"N/ 122-40'04.5"W then following the shoreline to end at 45-27'53.5"N/ 122-40'03.5"W. The safety zone on the eastern river bank is encompassed within the following four lines: line one starting at 45-27'53.5"N/ 122-39'50.5"W then heading 420 feet offshore to 45-27'53.5"N/ 122-39'55.0"W then heading up river 200 feet to 45-27'49.5"N/ 122-39'55.0"W then heading 420 feet back to the shore at 45-27'49.5"N/ 122-39'47.0"W then following the shoreline to end at 45-27'49.5"N/ 122-39'47.0"W. Geographically, this rule will cover all waters of the Willamette River 100 feet upriver and downriver of the existing Sellwood Bridge, inward 375 feet from the Western side shoreline, and inward 420 feet from the Eastern side shoreline. The section of the Willamette River between the safety zones will remain open for vessel transits, and it will have a minimum width of 138 feet at all times.

- (b) Regulations. In accordance with the general regulations in 33 CFR Part 165, subpart C, no person may enter or remain in the safety zones created in this section or bring, cause to be brought, or allow to remain in the safety zones created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zones.
- (c) Effective Period. The Safety zones created by this section will be in effect from 11 a.m. on July 1, 2012 through 11:00 p.m. on January 31, 2015.

Dated: 3/1/12 B. C. Jones
Captain, U.S. Coast Guard
Captain of the Port, Columbia
River

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Date: 03/14/2012]