



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1174]

RIN 1625-AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two safety zones to remain in effect throughout the duration of the construction and renewal of the Sellwood Bridge on the Willamette River, in Portland, OR. 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 outside 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.

DATES: This rule is effective in the CFR from [INSERT DATE OF PUBLICATION] through 11 a.m., July 1, 2012. This rule is effective with actual notice for purposes of enforcement from 4 p.m., March 1, 2012, through 11 a.m. July 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1174 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1174 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503-240-9319, e-mail Ian.P.McPhillips@uscg.mil. If you have questions on viewing the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest".

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest. The Sellwood Bridge is an 86 year old bridge that is structurally inadequate and functionally obsolete. Although public outreach for the Sellwood Bridge renewal project began in June 2006, specific construction dates were not predetermined due to funding constraints. As a result of the delay in determining a specific date to commence work and in order to avoid the imposition of financial penalties on the state and local governments funding construction due

to delays, the safety zones are immediately necessary. Should construction commence without a safety zone in place, the safety of recreational and commercial vessels transiting the area may be threatened by their close proximity to cranes, barges, and temporary structures associated with this construction project. Thus, any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the bridge construction. Additionally, in order to allow public comment on safety zones in this area, the Coast Guard will issue a notice of proposed rulemaking for a temporary rule that establishes safety zones in the same locations from the expiration of this rule through January 1, 2015.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Background 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. 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.

Construction work is anticipated to continue through January 1, 2015. During the effective period of this rule a notice of proposed rulemaking will be issued for a temporary rule that establishes safety zones in the same locations from the expiration of this rule through January 1, 2015.

Discussion of Rule

The two safety zones created by this rule 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 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 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls 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 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 rule will not result in such any expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this 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 concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated 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. 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-207 to read as follows:

§ 165.T13-207 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/ 122-40'40'03.5"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) Enforcement period. The safety zones created by this section will be in effect from 4 p.m. March 1, 2012, through 11 a.m. July 1, 2012.

Dated: March 1, 2012 B. C. Jones
Captain, U. S. Coast Guard
Captain of the Port, Columbia
River

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