



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0380]**

**RIN 1625-AA00**

**Safety Zone; Willamette River, Lake Oswego, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Willamette River near Lake Oswego, OR. This action is necessary to provide for the safety of life on these navigable waters during a fireworks display on July 4, 2018. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

**DATES:** This rule is effective from 9 p.m. to 11:30 p.m. on July 4, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0380 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Laura Springer, Waterways Management Division, Marine Safety

Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email  
msupdxwwm@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 Information and Regulatory History**

On April 17, 2018, the City of Lake Oswego notified the Coast Guard that it will be conducting a fireworks display launched from a barge in the Willamette River approximately 150 yards east of George Rodgers Park in Lake Oswego, OR. In response, on May 29, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Willamette River, Lake Oswego, OR (83 FR 24443). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 13, 2018, we received three comments.

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**. Delaying the effective date of this rule would be impracticable because the Coast Guard needs to have a safety zone regulation in place by July 4, 2018, to respond to the potential safety hazards associated with the fireworks display on that date.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this July 4, 2018 display will be a safety concern for anyone within a 450-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received three comments on our NPRM published May 29, 2018. The first comment was an email from an individual concerned with fire and health hazards associated with the fireworks display and not with the proposed safety zone. The individual was directed to contact the sponsoring organization to address those concerns. The second comment contained no suggested changes or recommendations. The third comment suggested a lack of communication with neighborhoods regarding the scope and ramifications of the river closure, and a concern with the containment of human wastes from boaters due to beach closures. As stated later in this temporary final rule, vessel traffic can request to transit through this safety zone, which will affect a limited area of the Willamette River for approximately two and a half hours during the evening when vessel traffic is normally low. This safety zone does not include any beach closures. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. to 11:30 p.m. on July 4, 2018. The safety zone will cover all navigable waters of the Willamette River within 450-yards of a barge located at 45° 24' 37.46" N, 122°39' 29.70"W, in vicinity of George Rogers Park in Lake Oswego, OR. The duration of the zone is intended to ensure the safety of vessels

and these navigable waters before, during, and after the scheduled 10 p.m. to 10:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this 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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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 safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Willamette River for approximately two and a half hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

### **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 received no comments from the Small Business Administration on this rulemaking. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 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.

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.

C. Collection of Information

This rule will 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 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 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. If you believe this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this 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 determined 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 rule involves a safety zone lasting less than two and a half hours that will prohibit entry within 450-yards of a barge in the Willamette River located approximately 150 yards east of George Rodgers Park in Lake Oswego, OR. It is 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 Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### 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.

#### **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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-0380 to read as follows:

**§ 165.T13-0380 Safety Zone; Willamette River, Lake Oswego, OR.**

(a) Safety zone. The following area is designated a safety zone: Waters of the Willamette River, within a 450-yard radius of the fireworks barge located at 45° 24' 37.46" N, 122°39' 29.70"W in vicinity of George Rogers Park in Lake Oswego, OR.

(b) Regulations. In accordance with § 165.23, no person may enter or remain in this safety zone unless authorized by the Captain of the Port Columbia River or his designated representative. Also in accordance with § 165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative.

(c) Enforcement period. This section will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2018.

Dated: June 25, 2018

D. F. Berliner,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port,  
Sector Columbia River.

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