



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2010-0939

RIN 1625-AA00

Safety Zone; M/V DAVY CROCKETT, Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U. S. Coast Guard is extending the enforcement period of a safety zone established on the waters of the Columbia River surrounding the remaining cofferdam at the M/V DAVY CROCKETT removal sight at approximate river mile 117. The original safety zone was established on January 28, 2011. The safety zone continues to be necessary to help ensure the safety of the response workers and maritime public while they conduct the removal of the cofferdam. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port, Columbia River or his designated representative.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through November 30,

2011. This rule is effective with actual notice for purposes of enforcement on November 1, 2011. This rule will remain in effect through November 30, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0939 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0939 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 BM1 Silvestre Suga, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail Silvestre.G.Suga@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 safety zone remains urgently necessary to help ensure the safety of the response workers and the maritime public due to the ongoing cofferdam removal operations and site cleanup.

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 because the safety zone continues to be immediately necessary to help ensure the safety of the response workers and the maritime public due to the cofferdam removal operations. Additionally, the consequences of the reduced publication notice is diminished by the fact that a safety zone has already been in place at this location.

Background and Purpose

The remaining cofferdam at the M/V DAVY CROCKETT removal site is located on the Washington State side of the Columbia River at approximately river mile 117. The Coast Guard, other state and federal agencies, and federal contractors are conducting cofferdam removal operations. The cofferdam removal operations require a minimal wake in the vicinity of the cofferdam to help ensure the safety of response workers. Only authorized persons and/or vessels can be safely allowed in the worksite cleanup area.

A 300 ft safety zone is necessary to keep vessels clear of the cofferdam removal operations. The previous 300 ft safety zone will expire on October 31, 2011.

Discussion of Rule

The Coast Guard is extending the enforcement of the safety zone created by this rule until November 30, 2011. The safety zone will cover all waters of the Columbia River encompassed within the following four points: point one at 45° 34' 59.74"N/122° 28' 35.00"W on the Washington bank of the Columbia River then proceeding into the river to point two at 45° 34' 51.42"N/122° 28' 35.47"W, then proceeding upriver to the third point at 45° 34' 51.02"N/122° 28' 07.32"W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45° 34' 56.06"N/122° 28'

07.36"W, then back along the shoreline to point one.

Geographically, this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam removal area extending to 300 ft abreast of the cofferdam removal area and then ending 300 ft down river of the cofferdam removal area.

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

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

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 the areas covered are limited in size and/or have little commercial or recreational activity. In addition, vessels may enter the safety zones with the permission of the

Captain of the Port, Columbia River or his designated representative.

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 areas covered by the safety zones created in this rule. The safety zones will not have a significant economic impact on a substantial number of small entities because the areas covered are limited in size. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

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 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, eliminates 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 creation of safety zones. An environmental analysis checklist and a categorical exclusion determination will be 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. Revise § 165.T13-175 to read as follows:

§ 165.T13-175 Safety Zone; M/V DAVY CROCKETT, Columbia River

(a) Location: The following area is a safety zone:

(1) All waters of the Columbia River encompassed within the following four points: point one at 45° 34' 59.74"N/122° 28' 35.00"W on the Washington bank of the Columbia River then proceeding into the river to point two at 45° 34' 51.42"N/122° 28' 35.47"W, then proceeding upriver to the third point at 45° 34' 51.02"N/122° 28' 07.32"W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45° 34' 56.06"N/122° 28' 07.36"W, then back along the shoreline to point one. Geographically this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam removal area extending to 300 ft abreast of the cofferdam removal area and then ending 300 ft down river of the cofferdam removal area.

(2) [Reserved]

(b) Regulations. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may

enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Columbia River or his designated representative.

(c) Enforcement Period. The safety zone created in this section will be in effect from November 1, 2011 through November 30, 2011 unless cancelled sooner by the Captain of the Port, Columbia River.

Dated: October 28, 2011

B. C. Jones
Captain, U.S. Coast Guard
Captain of the Port, Columbia River

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