

Dated: July 29, 2009.

**Wayne E. Justice,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0496]

RIN 1625-AA00

#### Safety Zone; Hood Canal Bridge Cable Laying Operation, Hood Canal, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the vicinity of the Hood Canal Bridge due to the ongoing Hood Canal Bridge Construction Project. The safety zone is necessary to help protect construction personnel and the maritime public from the numerous dangers associated with the Hood Canal Bridge Construction Project. All persons and vessel are prohibited from entering the zone unless authorized by the Captain of the Port, Puget Sound or her Designated Representative.

**DATES:** This rule is effective from 6 a.m. on June 15, 2009, until 6 a.m. on September 30, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0496 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0496 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 Ashley Wanzer, Waterways Management, Sector Seattle, Coast Guard; telephone 206-217-6175, e-mail [Ashley.M.Wanzer@uscg.mil](mailto:Ashley.M.Wanzer@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 publishing a NPRM would be contrary to the public interest because immediate action is necessary to ensure the safety of the construction personnel and the maritime public from the dangers associated with the Hood Canal Bridge Construction Project.

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

### Background and Purpose

The Hood Canal Bridge Construction Project is a complex construction operation involving multiple construction barges and the installation of underwater cables. Due to the numerous dangers associated with such operations, the Coast Guard is establishing a temporary safety zone for the project to help protect construction personnel and the maritime public from the numerous dangers associated with it.

### Discussion of Rule

The temporary safety zone established by this rule is necessary to help protect construction personnel in the Hood Canal Bridge Construction Project and the maritime public from the numerous dangers associated with the project and will do so by prohibiting any person or vessel from entering the zones unless authorized by the Captain of the Port, Puget Sound or her Designated Representative. Persons wishing to request authorization to operate within or transit through the safety zone must contact the USCG Sector Seattle Joint Harbor Operations Center at 206-217-6001. Additional information regarding the construction work may be obtained from Kiewit-General Construction Company at 360-620-3423 or the on-scene official patrol or M/V REDWOOD CITY on VHF-FM channel 13, 14, or 16.

*The safety zone encompass:* (1) All waters within a 100 yard radius around

any construction barge participating in the project while the barge is in operation; and, (2) all waters between any barge participating in the project and the Hood Canal Bridge itself. The safety zone will be in effect from 6 a.m. on June 15, 2009, until 6 a.m. on September 30, 2009, unless cancelled or ended sooner by the Captain of the Port or her Designated Representative.

The Captain of the Port, Puget Sound may enlist the aid and cooperation of Federal, State, or local Law Enforcement Officers to enforce the rules contained in this section pursuant to 33 CFR 6.04-11.

### 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 economic impact of this temporary rule is expected to be minimal. This expectation is based on the fact that the safety zone established by this regulation will encompass small areas and be of such a short duration that the zone should not significantly impact commercial or recreational traffic.

### 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 will affect the following entities, some of which may be small entities:* The owners or operators of vessels intending to transit the affected waterway during the effective period.

*The safety zone will not have a significant economic impact on a*

*substantial number of small entities for the following reasons:* This rule will be in effect for a limited duration and within a limited area. The area within the zone and the surrounding waterway is not considered a critical waterway to the boating public. The Captain of the Port Puget Sound may waive any of the requirements of this rule for any vessel or class of vessels upon finding that application of the rule is unnecessary or impractical for the purposes of port security, safety, or environmental safety. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 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.

#### Taking of Private Property

This rule will not effect 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.ID, 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 which 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, because it involves the establishment of a temporary safety zone.

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. 1226, 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 temporary § 165.T13–092 to read as follows:

**§ 165.T13-092 Safety Zone; Hood Canal Cable Laying Operation, Hood Canal, WA**

(a) *Location.* The following area is a safety zones: (1) All waters of the Hood Canal, from surface to bottom, within a 100 yard radius around any construction barge participating in the Hood Canal Bridge Construction Project while the barge is in operation; and

(2) All waters of the Hood Canal, from surface to bottom, between any barge participating in the Hood Canal Bridge Construction Project and the Hood Canal Bridge itself.

(b) *Enforcement period.* This rule will be enforced from 6 a.m. on June 15, 2009, until 6 a.m. September 30, 2009, unless cancelled or ended sooner.

(c) *Regulations.*

(1) In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone unless authorized by the Captain of the Port or her Designated Representative.

(2) "Designated Representative" means any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on her behalf.

(3) To request authorization to operate within the safety zone, contact the USCG Sector Seattle Joint Harbor Operations Center at 206-217-6001. Additional information regarding the construction work may be obtained from Kiewit-General Construction Company at 360-620-3423, or the on-scene official patrol, or M/V REDWOOD CITY on VHF-FM channel 13, 14, or 16.

Dated: June 14, 2009.

**S.E. Englebert,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 223**

**RIN 0596-AC80**

**Sale and Disposal of National Forest System Timber; Downpayment and Periodic Payments**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Forest Service's downpayment and periodic payment regulations to reflect changes in contracting procedures and authorities since these regulations were

adopted in 1991. The changes remove obsolete references and procedures; make downpayments and periodic payments optional for stewardship contracts; allow downpayment and periodic payment amounts to be recalculated when contracts receive rate redeterminations; revise procedures for releasing downpayments; and allow downpayments to be temporarily reduced for certain delays, interruptions, or extensions. This final rule protects the Government's financial security, reduces speculative bidding, and encourages purchasers to harvest timber in a timely manner. In addition, the rule provides financial relief to timber purchasers when forest product prices drastically decline or purchasers receive additional contract time and are not expected to operate.

**DATES:** This final rule is effective September 14, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Lathrop Smith, Forest Management staff, at (202) 205-0858, or Richard Fitzgerald, Forest Management staff, at (202) 205-1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background**

The downpayment regulation (36 CFR 223.49) and periodic payments regulation (36 CFR 223.50) were adopted on July 31, 1991, (56 FR 36099) to protect the Government's financial security, reduce speculative bidding, encourage purchasers to harvest timber in a timely manner and to comply with section 2d of the Federal Timber Contract Payment Modification Act (Pub. L. 98-478, 98 Stat 2213; 16 U.S.C. 618) (Buy-out Act).<sup>1</sup>

The downpayment regulation requires purchasers to make a cash deposit in the timber sale account at the time of sale award equal to 10 percent of the sale's total advertised value plus 20 percent of the bid premium. This cash is held by the Forest Service and cannot be used by the purchaser until (i) on scaled sales, stumpage representing 25 percent of the total bid value has been charged and paid for, or (ii) on tree measurement sales, stumpage representing 25 percent of the total bid value is shown on the timber sale statement of account to have

been cut, removed, and paid for. (36 CFR 223.49(d).)

*This final rule revises 36 CFR 223.49 by:* (1) Removing obsolete definitions, references and procedures; (2) making downpayments optional for stewardship contracts; (3) adding procedures to recalculate downpayments when contracts receive rate redeterminations; (4) revising procedures for releasing downpayments; and (5) adding procedures to temporarily reduce downpayments when the Forest Service authorizes or orders certain contract delays, interruptions, or extensions.

Section 223.49(b) is revised to make downpayments optional for stewardship contracts. Stewardship contracts are awarded on a best value basis, which virtually eliminates the potential for speculative bidding because factors other than price determine best value. Further, section 323 of the Department of the Interior and Related Agencies Appropriations Act of 2003 (as contained in division F of Public Law 108-7; 16 U.S.C. 2104 Note) authorizes the Forest Service to apply the value of timber or other forest products removed under a stewardship project as an offset against the cost of service work. Doing so provides financial security to the Government and incentivizes contractors to harvest timber and perform service work in a timely manner. Stewardship contracts require contractors to make cash deposits equal in value to timber they plan to cut before performing service work. To get these cash deposits back, contractors must perform the service work. Alternatively, if a contractor performs the service work first, the Government uses the value of timber the contractor harvests to offset the service work's cost. For these reasons, most stewardship contracts do not need a downpayment.

However, there can be exceptions. For example, if the value of the timber greatly exceeds the cost of services under a contract, a downpayment may be needed to provide financial security. Therefore, this final rule allows contracting officers to require downpayments on stewardship contracts when needed to ensure the Government's financial security.

This rule also revises § 223.49(c) to allow downpayments to be recalculated when contracts receive rate redeterminations. The initial downpayment amount deemed necessary to protect the Government's financial security and encourage purchasers to timely harvest timber in is based on a percentage of a contract's value at time of award. However, timber sale contracts contain procedures to redetermine stumpage rates for (1)

<sup>1</sup> Section 2(d) provides that "[e]ffective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash down-payment at the time the contract is executed and periodic payments to be made over the remaining period of the contract."