

implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation may be transferred to another court,<sup>3</sup> the Department issued a **Federal Register** notice, 76 FR 59896, Sep. 28, 2011, postponing the effective date of the rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705. Following the postponement of the effective date to November 30, 2011, and in anticipation of the new effective date, the Office of Foreign Labor Certification (OFLC) issued participating employers two simultaneous wage determinations for work to be potentially performed before and after the new effective date of the Wage Rule. The first determination was based on the former regulations that applied up until November 30, and the second determination was based on the new prevailing wage methodology set forth in the Wage Rule, that was to be effective for work performed on and after November 30, 2011.

On November 18, 2011, the President signed into law the Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. (2011) (enacted). The legislation contains language prohibiting the Department from implementing, administering, or enforcing, prior to January 1, 2012, the Wage Rule. While the Act prevents the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it does not prohibit the Wage Rule from going into effect, which is scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and nullify the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H-2B regulations, which were promulgated under *Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes; Final Rule*, 73 FR 78020, Dec. 19, 2008 (the H-2B 2008 Rule).

Since dates of need are not included in prevailing wage determination

requests, it is possible that some of the pending requests with the Department would cover work to be performed before January 1, 2012, and accordingly, that wage would need to be determined in accordance with the 2008 H-2B Rule. However, if the Wage Rule were to go into "effect" on November 30, 2011, we would be legally precluded during the month of December 2011 from issuing prevailing wage determinations under the H-2B 2008 Rule. This result would be directly contrary to Congressional intent as expressed in the Conference Report, "[i]n making prevailing wage determinations for the H-2B nonimmigrant visa program for employment prior to January 1, 2012, the conferees direct the Secretary of Labor to continue to apply the [H-2B 2008 Rule]." H.R. Rept. No. 112-284 (Conf. Rep.), 157 Cong. Rec. H7528 (Nov. 14, 2011). Based on Congressional intent and to avoid an operational hiatus during the month of December 2011, the Department has published a Final Rule extending the effective date of the Wage Rule to apply to work performed on and after January 1, 2012. See the final rule delaying the effective date of the H-2B Wage Rule, published elsewhere in this issue of the **Federal Register**.

In light of the recent postponement of the effective date of the Wage Rule until January 1, 2012, the Department is hereby providing notice that the wage determinations previously issued under the Wage Rule will not be effective until January 1, 2012, and will apply only to work performed on or after January 1, 2012. Any employer who has received an H-2B prevailing wage determination in anticipation of either the September 30, 2011 or November 30, 2011 effective dates is not required to pay, and the Department's Wage and Hour Division will not enforce, the wage provided in the prevailing wage determination issued under the Wage Rule for any work performed by H-2B workers or U.S. workers recruited in connection with the H-2B application process until January 1, 2012. Employers are expected to continue to pay at least the prevailing wage as provided in a prevailing wage determination issued under the 2008 H-2B Rule for any work performed before January 1, 2012.

Further, employers who received a supplemental H-2B prevailing wage determination, or a prevailing wage determination issued under the Wage Rule, must pay at least that wage to any H-2B worker and any U.S. worker recruited in connection with the labor certification for work performed on or after January 1, 2012.

Signed at Washington, DC, this 23rd of November 2011.

**Jane Oates,**

*Assistant Secretary for Employment and Training.*

**Nancy Leppink,**

*Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2011-30745 Filed 11-25-11; 11:15 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2011-1034]

#### Drawbridge Operation Regulations; Saugus River, Lynn and Revere, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the General Edwards Bridge at mile 1.7, across the Saugus River between Lynn and Revere, Massachusetts. The deviation is necessary to facilitate scheduled bridge rehabilitation. This deviation allows the bridge to open upon a 48 hour advance notice during the rehabilitation period.

**DATES:** This deviation is effective from November 21, 2011 through April 24, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2011-1034 and are available online at <http://www.regulations.gov>, inserting USCG-2011-1034 in the "Keyword" 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 rule, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District, [john.w.mcdonald@uscg.mil](mailto:john.w.mcdonald@uscg.mil), or telephone (617) 223-8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

Civil Docket No. 11-445 (ND FL, Pensacola Division).

<sup>3</sup> On September 19, 2011, the plaintiffs in the CATA litigation moved to intervene in the LFA litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the CATA case remains pending. The plaintiffs' motion to intervene was granted by the U.S. District Court in the Western District of Louisiana on Sept. 22, 2011, but its similar motion in the Bayou litigation before the U.S. District Court in the Northern District of Florida remains pending.

The General Edwards Bridge, across the Saugus River at mile 1.7 between Lynn and Revere, Massachusetts, has a vertical clearance in the closed position of 27 feet at mean high water and 36 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.618(b).

The waterway users are recreational vessels of various sizes. The bridge opened only 9 times between November and April since 2002 and there were no openings between November and April in 2010. During the winter months the bridge rarely opens since the recreational vessels that transit this waterway are normally in winter storage.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the regulations to help facilitate rehabilitation at the bridge.

Under this temporary deviation the General Edwards Bridge shall operate as follows: From November 21, 2011 through April 24, 2012, the draw shall open after at least a 48 hour advance notice is given by calling the Massachusetts DOT Highway Operations Center at 1-(800) 227-0608. Vessels that can pass under the bridge in the closed position may do so at any time.

The Coast Guard believes that this temporary deviation should meet the reasonable needs of navigation because the mariners that normally use this bridge are recreational vessels that do not operate during the winter months when this deviation will be in effect.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 16, 2011.

**Gary Kasso,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. 2011-30720 Filed 11-28-11; 8:45 am]

BILLING CODE 9110-04-P

**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 November 29, 2011 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 email BM1 Silvestre Suga, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone (503) 240-9319, email [Silvestre.G.Suga@uscg.mil](mailto: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

**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.