



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0434]

RIN 1625-AA11

Regulated Navigation Area; East River, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) for the navigable waters of the Manhattan side of the East River, south of Dupont Street in Greenpoint, Brooklyn, and East 25th Street in Manhattan, and north of a line drawn from the northwest corner of Pier 5 Brooklyn to the northeast corner of the Governors Island Ferry Manhattan Terminal. The RNA is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a dielectric oil spill response. This RNA establishes vessel speed restrictions on vessels transiting near the pollution response area unless specifically authorized by the First District Commander or the Captain of the Port New York to exceed those restrictions.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 5 p.m. on July 14, 2017. For the purposes of enforcement, actual notice will be used from 4 p.m. May 16, 2017, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0434 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 Mr. Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617-223-8351, email craig.d.lapiejko@uscg.mil or Mr. Jeff Yunker, Sector New York Waterways Management Division; telephone 718-354-4195, email jeff.m.yunker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
RNA	Regulated Navigation Area
TFR	Temporary final rule
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 8, 2017, we established a temporary safety zone entitled “Safety Zone; East River and Buttermilk Channel, Brooklyn, NY” for emergency pollution response. The effective period for the safety zone is from 4 p.m. on May 8, 2017, until 5 p.m. on July 14, 2017. This safety zone prohibits all vessels from transiting through the Brooklyn side of the East River and Buttermilk Channel, south of Dupont Street in Greenpoint, Brooklyn and East 25th Street in Manhattan, and Buttermilk Channel, north of the Buttermilk Channel Entrance Lighted Gong Buoy 1 (LLNR 36985).

The Coast Guard is issuing this temporary 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 impracticable and contrary to the public interest to delay this rule to let a comment period run. It would be impracticable and contrary to the public interest because waiting for a comment period to run would inhibit the Coast Guard's response to protecting the environment and public from the dangers associated with a maritime pollution response effort.

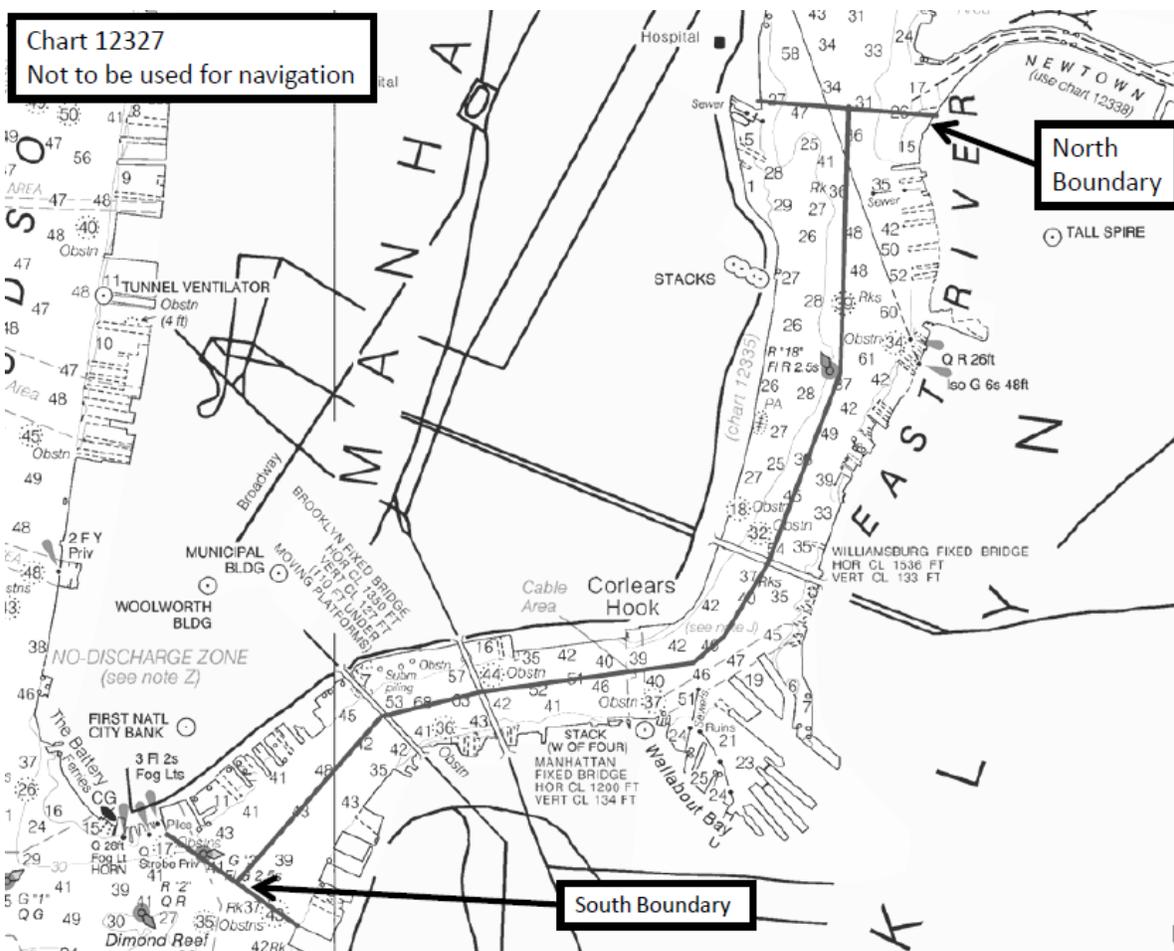
We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest for the same reasons discussed in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The First District Commander and COTP have determined that vessels producing a wake near the emergency pollution response activities and in-water shoreside repair operations will be a safety concern for pollution response vessels, machinery, and personnel. Further, the emergency pollution response activities pose hazards to the boating public and the maritime environment. This rule is necessary to limit damage to deployed containment boom, and to protect personnel, vessels, and the marine environment in the navigable waters adjacent to the RNA while these activities are in progress.

IV. Discussion of the Rule

This rule establishes a RNA from 4 p.m. May 16, 2017 through 5 p.m. July 14, 2017. The RNA will cover all navigable waters of the Manhattan side of the East River, south of Dupont Street in Greenpoint, Brooklyn, and East 25th Street in Manhattan, and north of a line drawn from the northwest corner of Pier 5 Brooklyn to the northeast corner of the Governors Island Ferry Manhattan Terminal.



Additional illustration showing the location of this regulated navigation area is available in the docket.

The duration of the RNA is intended to limit damage to the pollution containment boom, and protect personnel, vessels, and the marine environment adjacent to these navigable waters during the emergency pollution response. No vessel or person will be permitted to produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway without obtaining permission from the First District Commander, 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 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 Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the RNA. Vessel traffic will be able to safely transit through this RNA, which will impact a small designated area of the East River, NY during emergency pollution response operations. Vessels will be able to transit at a “Slow-No Wake” speed limit and vessels may attain speeds greater than five (5) knots if a higher minimum speed is necessary to maintain bare steerageway. The Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the RNA.

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 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 RNA 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 above.

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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 RNA lasting two months that will prohibit vessels from producing a wake or attaining speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration for Categorically Excluded Actions will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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, and 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, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0434 to read as follows:

§165.T01-0434 Regulated Navigation Area; East River, Brooklyn, NY.

- (a) **Location.** The following area is a regulated navigation area (RNA): All waters of the Manhattan half of the East River, south of a line drawn from (pa) 40°44'07.5"N., 073°57'40.3"W. (Dupont Street, Greenpoint, Brooklyn, NY) to 40°44'10.1"N., 073°58'21.6"W. (NAD 83) (East 25th Street, Manhattan, NY) and north of a line drawn from the northwest corner of Pier 5 Brooklyn to the northeast corner of the Governors Island Ferry Manhattan Terminal.
- (b) **Definitions.** The following definitions apply to this section:
 - (1) **Designated Representative.** A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the First District Commander or COTP to act on his or her behalf. A designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.
 - (2) **Official Patrol Vessels.** Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.
- (c) **Enforcement Period.** This RNA is effective and will be enforced from 4 p.m. on May 16, 2017, through 5 p.m. July 14, 2017.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 as well as the following regulations, apply.

(2) During periods of enforcement, all vessel movement within the RNA is subject to a “Slow-No Wake” speed limit. Vessels may not produce a wake nor not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: May 16, 2017

S. D. Poulin,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.
[FR Doc. 2017-11212 Filed: 5/30/2017 8:45 am; Publication Date: 5/31/2017]