



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0393]

RIN 1625-AA11

Regulated Navigation Area; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is issuing an Interim Final Rule establishing a Regulated Navigation Area (RNA) for certain waters of the Cuyahoga River in Cleveland, Ohio.

This action is necessary to provide for the safety of life on these navigable waters near the “Irishtown Bend” in Cleveland, Ohio, during a bank stabilization construction project from December 2, 2024, with an anticipated completion date of all waterside work on July 11, 2025. This rulemaking would limit vessel speeds near the area and prohibit vessels from being inside the RNA during construction hours unless authorized by the Captain of the Port Sector Eastern Great Lakes or a designated representative. We invite your comments on this rulemaking.

DATES: This interim rule is effective on December 2, 2024. Comments and related material must be received by the Coast Guard [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2024-0393 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email MST1 Cody Mayrer at Marine Safety Unit Cleveland’s Waterways Management Division, U.S. Coast Guard; telephone 216-937-0111, email D09-SMB-MSUCLEVELAND-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

II. Basis and Purpose, and Regulatory History

On December 17, 2023, Goettle Construction company notified the Coast Guard that they will be conducting waterside construction associated with a bank stabilization project on the Cuyahoga River in Cleveland, Ohio from August 15, 2024,

through November 30, 2025. Construction is intended to shore-up and replace approximately 2,400 linear feet of corrugated steel bulkhead located on the western (left descending) bank of the Cuyahoga River between the Detroit-Superior Bridge and the Columbus Road Bridge. The Captain of the Port Sector Eastern Great Lakes (COTP) has determined that potential hazards associated with the equipment used to complete this project would be a safety concern for any craft intending to navigate near the project area during construction hours. Furthermore, additional safety measures are necessary to keep workers on the construction barges safe while completing the construction project.

There will be impacts to the Cuyahoga River in Cleveland during this stabilization project. However, this work is necessary because if the bank of the river is allowed to slide into the river, then it could potentially close the river for an estimated 12-18 months for all vessel traffic.

The Coast Guard published a notice of proposed rulemaking on May 21, 2024, with a 30-day comment period, 89 FR 44622. During this period, 10 comments were received. After a review of all comments, several meetings were held with project stakeholders to discuss concerns over impacts to commercial vessel traffic in the affected area of the navigable waterway. The result of the analysis of the comments and collaboration with stakeholders was to maintain the original engineering scope of the project, however, with modified project dates and timing to accommodate stakeholder concerns related to vessel and facility scheduling. The Coast Guard is satisfied with these modifications to the project schedule.

Due to the significant nature of this project, and in the interest of continued collaboration with stakeholders, this rulemaking provides for an additional 30-day comment period. Also, 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 of the

need to protect the public from hazards associated with the project.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70011 and 70034. The authority to promulgate regulations under this section is delegated to the Commandant of the Coast Guard under Department of Homeland Security (DHS) Delegation No. 00170.1(II)(70), Revision No. 01.4.

III. Discussion of Comments

During the NPRM comment period, 10 comments were received from industry representatives potentially affected by the construction plan. Their shared, consistent concern was the restriction of commercial vessel traffic during the daily construction periods resulting in impacts to the transportation of various commodities to and from waterfront processing facilities. These comments have been addressed directly with the stakeholders during several in-person meetings. As a result of these comments and meetings, we adjusted the dates and times for the RNA in this document.

IV. Discussion of the Rule

This rule establishes a RNA starting on December 2, 2024, with an anticipated completion date of July 11, 2025. The RNA would cover all navigable waters within 10 feet of construction barges in the Cuyahoga River located on the western bank (left descending bank) of the Cuyahoga River between the Detroit-Superior Bridge and the Columbus Road Bridge in Cleveland, Ohio. The duration of the Regulated Navigation Area is intended to ensure the safety of vessels and these navigable waters during the following scheduled hours of the construction project:

- December 2, 2024, through January 31, 2025
 - 7 a.m. each Tuesday through 7 a.m. each Thursday
- February 3, 2025, through February 28, 2025
 - No transit restrictions required due to lack of anticipated vessel traffic
- March 3, 2025, through March 28, 2025
 - 8 a.m. through 4 p.m. each Monday through Friday

- March 31, 2025, through July 11, 2025
 - 7 a.m. each Tuesday through 7 a.m. each Thursday

No vessel or craft would be permitted to be operated within 10 feet of the construction barges without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

The economic impact of this rule is reduced to reasonable minimums as a result of consideration of comments and collaboration with affected stakeholders.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Two additional Executive orders were recently published to promote the goals of Executive Order 13563: Executive Order 13609 (Promoting International Regulatory Cooperation) and Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Executive Order 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). A regulatory analysis (RA) follows.

B. 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.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V above, this interim rule would not have a significant economic impact on any vessel owner or operator. The Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this interim rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

C. 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 this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. 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.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. chapter 700 (Ports and Waterways Safety), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the primary source of a vessel's or facility's obligations, are within the fields generally foreclosed from regulation by the States. *See, e.g., United States v. Locke*, 529 U.S. 89 (2000) (finding that the States are foreclosed from regulating tanker vessels), *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978) (State regulation is preempted where "the scheme of Federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the Federal interest is so dominant that the Federal system will

be assumed to preclude enforcement of State laws on the same subject.” (citations omitted)).

This Interim Final Rule will establish a Regulated Navigation Area (RNA) for certain waters of the Cuyahoga River in Cleveland, Ohio. In enacting 46 U.S.C. 70011 (Waterfront safety) Congress articulated a need for the Coast Guard to protect the navigable waters of the United States. We have analyzed this interim rule for an RNA under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. The Coast Guard recognizes that the States may prescribe higher safety standards pursuant to 46 USC 70011(c), but such standards may not, conflict with Federal statutes and regulations. *Ray v. Atlantic Richfield Co.*, at 158. Therefore this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. 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).

H. 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.

I. 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 will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. 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.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, 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.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination 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 Regulated Navigation Area during specific periods each day from December 2, 2024, through July 11, 2025, that would prohibit vessels from operating within 10 feet of the construction barges. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph L60a pertains to Regulated Navigation Areas. This rule involves Regulations establishing, disestablishing, or changing Regulated Navigation

Areas.

VI. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received on this interim rule during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this interim rule, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-0393 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the FOR FURTHER INFORMATION CONTACT section of this interim rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this interim rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the interim rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see

DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We are not planning to hold a public meeting but will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

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 is amending 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T24-0393 to read as follows:

§ 165.T24-0393 Regulated navigation area; Irishtown Bend Construction, Cuyahoga River, Cleveland, OH.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of the Cuyahoga River between the Detroit-Superior Bridge in position 41°29'37" N, 081°42'13"W (NAD 83) and the Columbus Road Bridge in position 41°29'17"N, 081°42'01"W (NAD 83), from surface to bottom, during the time of enforcement described in paragraph (d) of this section.

(b) *Definition.* As used in this section, “*on-scene representative*” of the Captain of the Port Eastern Great Lakes (COTP) is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-

scene representative may be on a Coast Guard vessel, other designated craft, or on shore and communicating with vessels via VHF-FM radio or loudhailer.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) A vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless it is engaged or intending to engage in construction work discussed in the RNA or are able to maintain a safe distance from the construction barges. All movement within the RNA is subject to a “Slow-No Wake” speed limit. No vessel may produce a wake or attain speeds greater than 5 knots unless a higher minimum speed is necessary to maintain bare steerageway.

(2) The operator of any vessel transiting in the RNA must comply with all lawful directions given to them by the Captain of the Port Eastern Great Lakes (COTP) or the COTP's on-scene representative.

(3) The inland navigation rules in 33 CFR chapter I, subchapter E remain in effect within the RNA and must be followed at all times.

(4) No vessel may navigate within 10 feet of the construction barges during the Enforcement Periods.

(d) *Enforcement periods.* (a) This section is enforceable during the following periods:

(1) December 2, 2024 through January 31, 2025; 7:00 a.m. each Tuesday through 7:00 a.m. each Thursday.

(2) February 3, 2025 through February 28, 2025; No transit restrictions required due to lack of anticipated vessel traffic.

(3) March 3, 2025 through March 28, 2025; 8:00 a.m. though 4:00 p.m. each Monday through Friday.

(4) March 31, 2025 through Jul 11, 2025; 7:00 a.m. each Tuesday through 7:00 a.m. each Thursday.

(b) If the COTP determines this section need not be enforced during these times on a given day, marine broadcast notices to mariners will be used to announce the specific periods when this section will not be subject to enforcement. For information on radio stations broadcasting BNMs, see 33 CFR 72.01-25 and check the latest Local Notice to Mariners (LNM) for Coast Guard District 9 on <https://www.navcen.uscg.gov>.

Dated: November 20, 2024.

J. P. Hickey,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.

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