



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: Final rule

SUMMARY: The Coast Guard is issuing a 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 limits vessel speeds near the area and prohibits 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.

DATES : This final rule is effective from [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] through July 11, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0393 in the search box and click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document call or email, 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:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IFR	Interim Final Rule
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information 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, the Coast Guard published an Interim Final Rule (IFR) on November 25, 2024. This rulemaking provided for an additional 30-day comment period. Also, under 5 U.S.C. 553(d)(3), the Coast Guard found that good cause existed 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 proposed this rulemaking under authority in 46 U.S.C. 70011 & 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.

The IFR comment period ended on December 26, 2024, and no comments were received. As a result, this Final Rule is issued.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this Final Rule under authority in 46 U.S.C. 70011 & 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.

This rulemaking limits vessel speeds near the area and prohibits 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.

IV. Discussion of Comments, Changes, and the Rule

As noted above, no comments were received on the IFR published November 25, 2024. There are no changes in the regulatory text of this rule from the proposed rule in the IFR.

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 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 a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

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. A regulatory analysis (RA) follows.

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 received no comments from the Small Business Administration on this rulemaking. 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 regulated area may be small entities, for the reasons stated in section V above, this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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 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 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 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.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 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. Revise and republish § 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 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.* This section is enforceable during the following periods:

(1) December 2, 2024 through January 31, 2025: 7 a.m. each Tuesday through 7 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 a.m. through 4 p.m. each Monday through Friday.

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

(e) 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: February 19, 2025.

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

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