



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0705]

RIN 1625-AA11

Regulated Navigation Area-Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Hudson River surrounding the Tappan Zee Bridge. This temporary interim rule allows the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the bridge.

DATES: This rule is effective with actual notice from 5 a.m. on September 15, 2013 until 11:59 p.m. on December 31, 2018. In compliance with 5 U.S.C. 552 (a) (1), this rule is effective without actual notice from the date that it is published in the

Federal Register, [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on December 31, 2018.

Comments and related material will be accepted and reviewed by the Coast Guard through [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2013-0705. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

- (2) Fax: (202) 493-2251.

- (3) Mail or Delivery: Docket Management Facility (M-30),

U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Craig D. Lapiejko, Waterways Management at Coast Guard First District, telephone 617-223-8385, e-mail craig.d.lapiejko@uscg.mil; or LT Hannah Eko, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718-354-4114, e-mail hannah.o.eko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on

the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a

Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard is issuing this temporary interim 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 an NPRM would be impracticable. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the

date when the bridge is expected to reopen for normal operations. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

For the same reasons mentioned above, 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. Construction is scheduled to begin on September 15, 2013, and it is necessary to have the rule effective by that date.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1221 et. seq., and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

This rule is prompted by the navigation safety situation created by the construction of the Tappan Zee Bridge. The Coast Guard has discussed this project with New York State Thruway Authority and Tappan Zee Constructors, LLC to determine whether the project can be completed without channel closures. While the majority of construction activities during the span of this project will not require waterway closures, there are certain tasks that can only be completed in the channel and will require

closing the waterway. The construction of the bridge will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver. At present, New York State Thruway Authority and Tappan Zee Constructors, LLC has not submitted a plan for waterway closures.

D. Discussion of the Interim Rule

The Coast Guard is establishing a RNA on the navigable waters of the Hudson River surrounding the Tappan Zee Bridge, NY. This RNA allows the Captain of the Port Sector New York (COTP) to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard will enforce a five knot speed limit as well as a "NO WAKE" zone and will be able to close the designated area to all vessel traffic under any circumstances, planned or unforeseen, that pose an imminent threat to waterway users or construction operations in the area. Complete waterway closures will be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures, mariners may request permission from the COTP to transit through the RNA.

Entry into, anchoring, or movement within this RNA during a

closure is prohibited unless authorized by the COTP or a designated representative.

If the project is completed before December 31, 2018, the COTP will suspend enforcement of the RNA. The COTP will ensure that any notice of the suspension of enforcement reaches affected segments of the public by all appropriate means. Such means of notification could include, but would not be limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

The COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting the Coast Guard Sector New York Command Center at (718) 354-4353.

E. 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 and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during closure may be authorized by the COTP New York or designated representative.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, advanced public notifications may be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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.

3. Assistance for Small Entities

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, above.

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.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. 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.

9. 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.

10. Protection of Children from Environmental Health Risks

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.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we

did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are 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.

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. 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 § 165.T01-0174 to read as follows:

§ 165.T01-0174 Regulated Navigation Area-Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

(a) *Boundaries.* The following is a regulated navigation area; all waters north of a line drawn from the following approximate positions: 41°04'17.37"N, 073°55'13.16"W on the western shoreline; thence to 41°04'10.97"N, 073°55'05.05"W; thence to 41°04'10.03"N, 073°55'03.42"W; thence to 41°04'07.14"N, 073°54'54.48"W; thence to 41°04'05.30"N, 073°54'43.18"W; thence to 41°04'04.72"N, 073°52'22.52"W; thence to 41°04'02.52"N, 073°52'16.13"W; thence to 41°03'59.74"N, 073°52'10.83"W; thence to a point on the eastern shoreline at 41°03'54.39"N, 073°52'03.26"W; and all waters south of a line drawn from the following approximate positions: 41°04'34.79"N, 073°55'03.26"W on the western shoreline; thence to 41°04'33.62"N, 073°55'01.52"W; thence to 41°04'26.14"N, 073°54'53.96"W; thence to 41°04'23.76"N, 073°54'50.57"W; thence

to 41°04'21.58"N, 073°54'43.77"W; thence to 41°04'20.96"N, 073°52'20.17"W; thence to 41°04'20.31"N, 073°52'15.83"W; thence to 41°04'16.76"N, 073°52'04.52"W; thence to a point on the eastern shoreline at 41°04'13.84"N, 073°51'59.44"W.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port New York (COTP) or his on-scene representative. The "on-scene representative" of the 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; New York State Police, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) During periods of enforcement, entry and movement within the RNA is subject to a "Slow-No Wake" speed limit. Vessels may not produce a wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. All

vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(4) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's on-scene representative.

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

(6) Vessel operators desiring to enter or operate within the regulated area when it is closed shall contact the COTP or the on-scene representative via VHF channel 16 or 718-354-4353 (Sector New York Command Center) to obtain permission.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84-Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) Enforcement Periods. This regulation is enforceable 24 hours a day from 5:00 a.m. on September 15, 2013 until 11:59 p.m. on December 31, 2018.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to be given the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast

Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(2) Violations of this RNA may be reported to the COTP at 718-354-4353_or on VHF-Channel 16.

Dated: September 6, 2013

V.B. Gifford,
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District.

[FR Doc. 2013-22902 Filed 09/25/2013 at 8:45 am; Publication Date: 09/26/2013]