



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0401]

RIN 1625-AA00

Safety Zone; East River and Buttermilk Channel, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Brooklyn half of the East River, south of Dupont Street in Greenpoint, Brooklyn and East 25<sup>th</sup> Street in Manhattan, and Buttermilk Channel, north of the Buttermilk Channel Entrance Lighted Gong Buoy 1 (LLNR 36985). The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a dielectric oil spill response and shoreside repair operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

**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. on May 8, 2017 [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-2017-0401 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. 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	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
PCB	Polychlorinated Biphenyl
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

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 it would be 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 and shoreside repair efforts.

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 COTP has determined that the emergency pollution response activities pose hazards to the boating public within the Brooklyn, NY half of the East River and Buttermilk Channel. The COTP has determined that this rule is necessary to protect the public from these hazards.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 4 p.m. on May 8, 2017 through 5 p.m. on July 14, 2017. The safety zone will cover all navigable waters of the Brooklyn, NY half of the East River and Buttermilk Channel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the dielectric fluid is being recovered and necessary shoreside repair operations are ongoing. No person or vessel will be permitted to enter the safety zone unless obtaining permission from the 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 safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the East River and Buttermilk Channel for approximately two months. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone if the response activities are completed in less than two months.

#### 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 safety zone may be small entities, for the reasons stated in section V A above, this rule will not have a significant economic impact on any recreational 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 the establishment of a safety zone for up to two months. Therefore, it is 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 is 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 record keeping 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.T01-0401 to read as follows:

#### **§ 165.T01-0401 Safety Zone; East River and Buttermilk Channel, NY.**

(a) **Location.** The following area is a safety zone: All waters of the Brooklyn 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 25<sup>th</sup> Street, Manhattan, NY) and Buttermilk Channel, north of the Buttermilk Channel Entrance Lighted Gong Buoy 1 (LLNR 36985).

(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 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 safety zone is effective and will be enforced from 4 p.m. on May 8, 2017 through 5 p.m. on July 14, 2017.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, no vessel shall enter the safety zone unless permitted by the COTP or a designated representative. Any person or vessel allowed to enter the safety zone must comply with all orders and directions from the COTP or a COTP's designated representative while said person or vessel is within the safety zone.

(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 8, 2017

Michael H. Day,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

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