



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0368]

RIN 1625-AA08

Special Local Regulation; Tall Ships Celebration Bay City, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for a tall ships parade located in the Captain of the Port Detroit Zone. This action is necessary and intended to ensure safety of life and property on navigable waters during this event. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of the Captain of the Port Detroit Zone. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

DATES: This rule is effective from 12:30 p.m. until 4:30 p.m. on July 11, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0368]. 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." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9508, e-mail Adrian.F.Palomeque@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory Information

The Coast Guard is issuing this temporary final 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 doing so would be impracticable. The final details for this Tall Ships parade were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators, participants, and vessels from the hazards associated with this event.

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. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period run would be impracticable and contrary to the public interest.

Although this is the Coast Guard's first regulatory act for the celebration specific to Bay City, MI, the Coast Guard recently published a separate NPRM in the Federal Register seeking to establish safety zones around each tall ship participating in various events throughout the Great Lakes this

summer, to include the Tall Ships Celebration Bay City. Specifically, on May 1, 2013, the Coast Guard published in the Federal Register an NPRM titled Safety Zone; Tall Ship Safety Zones; War of 1812 Bicentennial Commemoration, Great Lakes (78 FR 25410), proposing to establish temporary safety zones around each of the twenty-one tall ships participating in the Tall Ships Challenge Great Lakes 2013 from June 13, 2013 to September 17, 2013.

B. Basis and Purpose

Between 12:30 p.m. until 4:30 p.m. on July 11, 2013, the Tall Ships Celebration Bay City 2013 parade will take place in a portion of Saginaw Bay and the Saginaw River. This portion of waterway will need to be clear of vessel traffic during the parade.

Even though the Coast Guard has separately proposed a 100 yards radius safety zone around each tall ship participating in events throughout the Great Lakes, to include Bay City's celebration, the Captain of the Port Detroit has determined that these safety zones will be insufficient on their own to safeguard navigational safety in a portion of Saginaw Bay and the Saginaw River during the Tall Ships Celebration parade on July 11, 2013. The high possibility that tall ships participating in the parade on July 11, 2013 will encounter recreational and commercial vessels in the relatively narrow

navigable channel of the Saginaw River, compounded with the decreased maneuverability of these tall ships, poses extra and unusual hazards to public safety and property. Moreover, the Captain of the Port Detroit has determined that the existing navigational rules of the road are not sufficient to protect the public against these extra and unusual hazards. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation, pursuant to the authority in 33 U.S.C. 1233, throughout the parade course will help ensure the safety of life during this event.

C. Discussion of Rule

In light of the aforesaid hazards, the Captain of the Port Detroit has determined that a special local regulation is necessary to ensure the safety of spectators, vessels, and participants. This special local regulation will be enforced from 12:30 p.m. until 4:30 p.m. on July 11, 2013. The special local regulation will encompass all waters throughout the federal navigational channel of Saginaw Bay from Light Buoy 11 at position 43°43'54"N, 083°46'52" W and Light 12 at position 43°43'56"N, 083°46'57" W to the Saginaw River, and on all waters of the Saginaw River from its mouth to the Veterans Memorial Bridge in Bay City, MI at position 43°35'46"N, 083°53'36"W. All geographic coordinates are North American Datum of 1983 (NAD 83). Entry into, transiting, or anchoring within the proposed

regulated area while it is being enforced is prohibited unless authorized by the authority of the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. 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.

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 that Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy

issues.

The Coast Guard's use of this special local regulation will be of relatively small size and short duration, and it is designed to minimize its impact on navigation. Furthermore, vessels may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulation. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

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 will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Saginaw Bay beginning at Light Buoy 11 at position 43°43'54"N, 083°46'52" W

and Light 12 at position 43°43'56"N, 083°46' 57" W to the Saginaw River, and on a portion of the Saginaw River from its mouth to the Veterans Memorial Bridge in Bay City, MI at position 43°35'46"N, 083°53'36"W between 12:30 p.m. and 4:30 p.m. on July 11, 2013.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This regulated area will only be in effect and enforced for four hours on one day. Additional vessel traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

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 this 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 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 calls for no 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 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 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade, and, therefore it is categorically excluded from further review under paragraph (34)(h) of Figure 2-1 of the Commandant Instruction. During the annual permitting process for this event an environmental analysis was conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination are required for this rulemaking action.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read

as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.T09-0368 to read as follows:

§ 100.T09-0368 Special Local Regulation; Tall Ships Celebration
Bay City, Bay City, MI.

(a) Regulated area. All waters of the federal navigational channel of Saginaw Bay from Light Buoy 11 at position 43°43'54"N, 083°46'52" W and Light 12 at position 43°43'56"N, 083°46' 57" W, to the Saginaw River, and all waters of the Saginaw River from its mouth to the Veterans Memorial Bridge in Bay City, MI at position 43°35'46"N, 083°53'36"W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Effective and enforcement period. This special local regulation is effective and will be enforced from 12:30 p.m. until 4:30 p.m. on July 11, 2013. The Captain of the Port Detroit may suspend enforcement of this special local regulation at any time. In the event that the enforcement is ended early, the Captain of the Port Detroit will notify the public via Broadcast Notice to Mariners.

(c) Regulations. (1) No vessel may enter, transit through, or anchor within the regulated area unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: June 10, 2013

J. E. Ogden
Captain, U. S. Coast Guard
Captain of the Port Detroit

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