



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0267]

RIN 1625-AA00

Safety Zone; Tall Ships Challenge Great Lakes 2016, Fairport Harbor, OH, Bay City, MI, Chicago, IL Green Bay, WI, Duluth, MN, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is creating temporary safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2016 race series. These safety zones will provide for the regulation of vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 12:01 a.m. on September 12, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m. July 6, 2016 through [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-2016-0267 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 Mark Bobal, Ninth District Inspections and Investigations Branch, Passenger Vessel Safety Specialist, U.S. Coast Guard; telephone 216-902-6052, email [Mark.D.Bobal@uscg.mil](mailto:Mark.D.Bobal@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

During the Tall Ships Challenge Great Lakes 2016, tall ships will be participating in parades and then mooring in the harbors of Fairport Harbor, OH, Bay City, MI, Chicago, IL Green Bay, WI, Duluth, MN, Erie, PA. This is a tri-annual event that teaches character building and leadership through sail training. The Tall Ships event seeks to educate the public about both the historical aspects of sailing ships as well as their current use as training vessels for students. Tall ships are large, traditionally-rigged sailing vessels. The event will consist of festivals at each port of call, sail training cruises, tall ship parades, and races between the ports. More information regarding the Tall Ships Challenge 2016 and the participating vessels can be found at <http://www.sailtraining.org/tallships/2016greatlakes/TSC2016index.php>

The Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Tall Ships Challenge Great Lakes 2016, Fairport Harbor, OH, Bay City, MI, Chicago, IL Green

Bay, WI, Duluth, MN, Erie, PA (USCG-2016-0267, 81 FR 26767, May 4, 2016). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related. During the comment period that ended June 3, 2016, we received one comment.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Ninth District Commander has determined that potential hazards associated with tall ships operating in crowded harbors in close proximity to spectator craft necessitate a safety zone. The purpose of this rule is to ensure the safety of all vessels during the Tall Ship events.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comments on our NPRM published May 4, 2016. The comment was directed at a rule pertaining to a fireworks show during a university graduation and did not apply to this rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 12:01 a.m. July 6, 2016, that is established around each Tall Ship participating in this event. The safety zone covers all navigable waters within 100 yards of a tall ship in the Great Lakes. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 2016 Tall Ships Challenge. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the tall ships are operating in a confined area such as a small harbor and there is not adequate room for vessels to stay out of the safety zone because of a lack of navigable water, then vessels will be permitted to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. The navigation rules apply at all times

within the safety zone. The safety zone terminates at 12:01 a.m. on September 12, 2016.

## **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, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone. Commercial traffic does not typically come within the boundaries of the safety zone, and would be permitted to pass through the safety zone in accordance with the rule. 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.

### **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 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 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.

#### 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 a safety zone that will prohibit vessels from passing within 100 yards of a tall ship without coming to a slow speed. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion 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.

#### 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 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; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0073 to read as follows:

§ 165.T09-0073 Safety Zone; Tall Ships Challenge Great Lakes 2016; Fairport Harbor, OH, Bay City, MI, Chicago, IL Green Bay, WI, Sturgeon Bay, WI, Duluth, MN, Erie, PA.

(a) Definitions. The following definitions apply to this section:

(1) Navigation Rules means the Navigation Rules, International and Inland (See, 1972 COLREGS and 33 U.S.C. 2001 et seq.).

(2) Official Patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie, Duluth and Lake Michigan to monitor a tall ship safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

(3) Public Vessel means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(4) Tall Ship means any sailing vessel participating in the Tall Ships Challenge 2016 in the Great Lakes.

(b) Location. The following areas are safety zones: all navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any tall ship.

(c) Regulations. (1) No person or vessel is allowed within the safety zone unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(2) Persons or vessels operating within a confined harbor or channel, where there is not sufficient navigable water outside of the safety zone to safely maneuver are allowed to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. Vessels operating within the safety zone shall not come within 25 yards of a tall ship

unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(3) When a tall ship approaches any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the tall ship's safety zone unless ordered by or given permission from the cognizant Captain of the Port, their designated representative, or the on-scene official patrol to do otherwise.

(d) Effective period. This rule is effective from 12:01 a.m. on Wednesday, July 6, 2016 through 12:01 a.m. on Monday September 12, 2016.

(e) Navigation Rules. The Navigation Rules shall apply at all times within a tall ships safety zone.

Dated: July 5, 2016

J. E. RYAN,

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District

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