



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2016-0797]

RIN 1625-AA08

Special Local Regulations; Tall Ships Duluth 2016 Parade of Sail, Lake Superior, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing temporary special local regulations on the navigable waters of Lake Superior and Duluth Harbor, Minnesota for the Tall Ships Duluth 2016 Parade of Sail. This action is necessary to provide for the safety of life and property on the navigable waters of Lake Superior and Duluth, Minnesota, during Tall Ships Duluth 2016 Parade of Sail on August 18, 2016. These temporary special local regulations would restrict vessel traffic in portions of Lake Superior and Duluth Harbor, Minnesota, unless authorized by the Captain of the Port (COTP) Duluth.

**DATES:** This rule is effective from 9:00 a.m. through 5:00 p.m. August 18, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0797 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 Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218-725-3818, e-mail [John.V.Mack@uscg.mil](mailto:John.V.Mack@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**

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 doing so would be impracticable. Amplifying information regarding event schedule, plan, and vessel participants was not provided by the event sponsor with sufficient time to accommodate the comment period prior to the August 18, 2016 event. Thus, delaying the effective date of this rule to wait for the comment period to run would be both impracticable because it would be impossible to have the rule implemented before the date of the event.

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 contrary to public interest as it would inhibit the Coast Guard’s ability to protect spectator and vessels from the hazards associated with the event.

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

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. These temporary special

local regulations will provide for the safety of life and protection of property on the navigable waters of Lake Superior and Duluth Harbor, Minnesota, by providing for the organized viewing of Tall Ships and preventing the large number of spectator vessels from interfering with the organized and controlled Parade of Sail.

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

Duluth, Minnesota will host the Tall Ships Duluth 2016 from August 18-21, 2016. This visit of sailing vessels is part of a recurring series of sail training races, rallies, cruises, and port festivals organized by Tall Ships America in conjunction with host ports in the United States and Canada. The Tall Ships Duluth 2016, including a Parade of Sail, is akin to similar events held several times in the past in Duluth, Minnesota, the most recent being in 2013.

The Tall Ships visit to Duluth, which will occur from August 18-21, 2016, will include a Parade of Sail on August 18, 2016. About 9 vessels are expected to participate in the Parade of Sail. These temporary special local regulations will provide for the safety of life and protection of property on the navigable waters of Lake Superior and Duluth Harbor, Minnesota, by providing for the organized viewing of Tall Ships and by preventing the large number of spectator vessels from interfering with the organized and controlled Parade of Sail. There may be vessels participating in the event from several foreign countries and the high visibility of this event warrants that temporary special local regulations be established to ensure the safety of vessels and spectators from hazards associated with Tall Ships Duluth 2016.

The participating vessels will berth at assigned facilities in Duluth, Minnesota, from August 18-21, 2016. On August 19, 2016, visitors will be permitted to board the berthed vessels from shore. On the morning of August 22, 2016, the Tall Ships will depart the Duluth Harbor.

The Coast Guard believes that vessel congestion due to the large number of participating and

spectator vessels may pose a significant hazard to navigation. To reduce the risk associated with congested waterways the Coast Guard is proposing to establish regulated areas to restrict vessel movement around the location of the participating Tall Ships while participating in the Parade of Sail in Duluth Harbor. These temporary special local regulations would be in effect from 9:00 a.m. through 5:00 p.m. August 18, 2016.

Area “Duluth Harbor”: This Area includes all waters of Lake Superior and Duluth Harbor bounded by Rice’s Point to the west and Duluth to the north, within the following boundaries: Beginning at position 46°49’11” N, 92°02’20” W, then due south to position 46°45’12” N, 92°02’20” W, and then west to position 46°45’12” N, 92°05’40” W (Duluth Marine Terminal South Light (LLNR 15935)). This area is needed to protect the maritime public and participating vessels from hazards to navigation associated with numerous spectator craft during the Parade of Sail on August 18, 2016.

Area “Parade of Sail”: This Area includes all waters of Lake Superior and Duluth Harbor bounded by Duluth to the north, within the following boundaries: Beginning at position 46°46’51.54” N, 92°05’17.03” W (North Pier Light (LLNR 15855)), then northeast to position 46°47’18.96” N, 92°4’0.84”W, then south to position 46°47’11.04” N, 92°03’55.08” W, then southwest to position 46°46’48.46” N, 92°05’15.02” W (South Breakwater Outer Light (LLNR 15845)), then to position 46°46’40.66” N, 92°05’36.59” W near the Duluth Lift Bridge, then to position 46°46’34.04” N, 92°05’39.64” W (Basin Buoy 1 (LLNR 15865)), and then west to position 46°46’36.42” N, 92°06’07.86” W. This area is needed to enhance navigation safety by facilitating the organized and controlled transit of participating vessels through the parade route and minimizing the impact on the maritime community.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive order 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-year of the special local regulations. These proposed regulations involve only the Duluth portion of Duluth/Superior Harbor and would close the Duluth Entry Channel to commercial traffic only for several hours during the actual Parade of Sail on August 18, 2016. The Superior Entry would remain open to vessel traffic at all times. The impact of these proposed regulations will not be significant because these regulations would be in effect for only a portion of one day centered on the Parade of Sail, and most vessel traffic can pass safely around affected areas of Duluth Harbor by transiting through the Superior Entry.

Notice of these special local regulations will be provided prior to the event through Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Draw Events, LLC., is planning to publish information of the event in local newspapers, pamphlets, and Internet sites.

#### 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 regulated areas 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 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 special local regulations lasting no more than 12 hours. 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 100**

Marine safety, Navigation (water), Reporting and recordkeeping 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.T09-0797 to read as follows:

**§ 100.T09-0797 Special Local Regulations:** Tall Ships Duluth 2016 Parade of Sail, Duluth, MN.

- (a) Regulated Areas. (1) Area Duluth Harbor: This Area includes all waters of Lake Superior and Duluth Harbor bounded by Rice's Point to the west and Duluth to the north, within the following boundaries: Beginning at position 46°49'11" N, 92°02'20" W, then due south to position 46°45'12" N, 92°02'20" W, and then west to position 46°45'12" N, 92°05'40" W

(Duluth Marine Terminal South Light (LLNR 15935)).

(2) Area Parade of Sail: This Area includes all waters of Lake Superior and Duluth Harbor bounded by Duluth to the north, within the following boundaries: Beginning at position 46°46'51.54" N, 92°05'17.03" W (North Pier Light (LLNR 15855)), then northeast to position 46°47'18.96" N, 92°4'0.84" W, then south to position 46°47'11.04" N, 92°03'55.08" W, then southwest to position 46°46'48.46" N, 92°05'15.02" W (South Breakwater Outer Light (LLNR 15845)), then to position 46°46'40.66" N, 92°05'36.59" W near the Duluth Lift Bridge, then to position 46°46'34.04" N, 92°05'39.64" W (Basin Buoy 1 (LLNR 15865)), and then west to position 46°46'36.42" N, 92°06'07.86" W.

(b) Special Local Regulations. (1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited unless designated for vessels of that type or entry is authorized by the Captain of the Port (COTP) Duluth or on-scene representatives.

(2) All persons and vessels are authorized by the COTP Duluth to enter areas of these special local regulations in accordance with the following restrictions:

- (i) Area Duluth Harbor: Vessels transiting this Area must do so at a speed of not more than six (6) knots or at no wake speed, whichever is less. Vessels proceeding under sail will not be allowed in this Area unless also propelled by machinery, due to limited maneuvering ability around numerous other spectator craft viewing the Tall Ships.
- (ii) Area Parade of Sail: This Area will be closed to all vessel traffic, except those vessels designated as participants.

(3) The Coast Guard will provide notice of the regulated areas prior to the event through Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene representatives.

(4) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer and any Federal, State, or local officer designated by the Captain of the Port to act on his behalf.

(5) Vessel operators desiring to enter or operate within the regulated areas shall contact the Captain of the Port Duluth by telephone at 218-725-3818, or on-scene representative via VHF radio on channel 16, to obtain permission to do so. Vessel operators given permission to enter, operate, transit through, anchor in, or remain within the regulated areas must comply with all instructions given by COTP Duluth or on-scene representatives.

Dated: August 12, 2016

E. E. Williams,  
Commander, U.S. Coast Guard,  
Captain of the Port Duluth.

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