



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0212]**

**RIN 1625-AA00**

**Safety Zone;** Tall Ships Challenge Great Lakes 2019, Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is creating safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2019 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 from 12:01 a.m. on June 28, 2019, through 12:01 a.m. on September 2, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0212 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 LT Jason Radcliffe, 9<sup>th</sup> District Waterways Management, U.S. Coast Guard; telephone 216-902-6060, email [jason.a.radcliffe2@uscg.mil](mailto:jason.a.radcliffe2@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 2019, tall ships will be participating in maritime parades, training cruises, races, and mooring in the harbors of Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA. 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 2019 and the participating vessels can be found at: <https://tallshipsnetwork.com/series/tall-ships-challenge-great-lakes-2019/>

In response, on 13 May 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Tall Ships Challenge Great Lakes 2019 [84 FR 20825]. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended 12 June 2019, we received no comments.

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**. Delaying

the effective date of this rule would be impracticable because immediate action is necessary to respond to the safety hazards associated with the imminent arrival of the Tall Ships fleet.

At 12:01 a.m. June 28, 2019, a safety zone will be established around each tall ship participating in this event. The safety zone around each ship will remain in effect as the tall ships travel throughout the Great Lakes. The safety zones will terminate at 12:01 a.m. on September 2, 2019.

These safety zones are necessary to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of tall sailing ships. When operating under sail, they require a substantial crew to manually turn the rudder and adjust the sails, therefore they cannot react as quickly as modern ships. Additionally, during parades of sail, the tall ships will be following a set course through a crowded harbor, and it is imperative that spectator craft stay clear since maneuvering the tall ships to avoid large crowds of spectator craft would not be possible. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to the tall ships. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and low maneuverability of the tall ships could easily result in serious injuries or fatalities. Therefore, the Coast Guard will enforce a safety zone around each ship to ensure the safety of both participants and spectators in these areas. The Coast Guard is making this rulemaking under authority in 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

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

As noted above, we received no comments on our NPRM published 13 May 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The Coast Guard will establish safety zones from 12:01 a.m. on June 28, 2019 until 12:01 a.m. on September 2, 2019. The safety zones will cover 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 2019 Tall Ships Challenge. No vessel or person would 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 shall apply at all times within the safety zone. The regulatory text appears at the end of this document.

### **IV. 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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a

“significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone or through it at slow speed in congested areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow 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 IV.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 would 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 Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), 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 lasting more than one week. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination 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 recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.2.

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

**§ 165.T09-0073 Safety Zone; Tall Ships Challenge Great Lakes 2019; Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and 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 2019 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, June 28, 2019 through 12:01 a.m. on Monday September 2, 2019.

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

Dated: June 20, 2019.

D. L. COTTRELL,  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District.  
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