



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2024-1102]

RIN 1625-AA11

### Regulated Navigation Area; Ludington Harbor Channel and Pere Marquette Lake, Ludington, MI

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a regulated navigation area to control vessel movement for certain waters of Lake Michigan, the Ludington Harbor Channel, and Pere Marquette Lake in Ludington, MI. This action is necessary to provide for the safety of life, environment, and property on these navigable waters due to hazardous conditions resulting from increased vessel traffic congestion. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2024-1102 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email Lieutenant Commander Jessica Anderson, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-216-8428, email d09-smb-seclakemichigan-wwm@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
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

Beginning in August 2022, the Coast Guard was notified that sporadic high concentrations of vessels operating in the vicinity of the narrow waters of the Ludington Harbor Channel and Pere Marquette Lake in Ludington, MI, were creating safety and navigation concerns for larger vessels transiting these same waters. Of particular concern, large commercial vessels were forced to take emergent action on several occasions to avoid imminent collision with these highly concentrated vessels. These hazardous conditions were not always present, but arose sporadically, primarily in connection with popular local fishing seasons. Similar concerns were brought to the Coast Guard in the summer and fall of 2023 and 2024.

The purpose of this Regulated Navigation Area is to address safety concerns due to the above hazardous levels of vessel traffic congestion in the Ludington Harbor Channel and Pere Marquette Lake in Ludington, MI. The goal is to prevent loss of life, vessel collisions and groundings, environmental damage, and loss of property resulting from conflicts between varied users of these navigable waterways. These proposed regulations are intended to encompass fishing vessels, pleasure craft, ferries, tow boats,

deep draft vessels, and other commercial vessel traffic. This proposed regulation is necessary due to a significant increase in risks to safety and hazardous conditions due to high volumes of traffic, combined with a unique layout of the navigable waters and relatively narrow channel, requiring additional means to protect waterways users as normal navigation rules are not sufficient. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The Ninth District Commander is proposing to establish a regulated navigation area which would be enforced only when hazardous levels of vessel traffic congestion (“Congestion”) exist. Operations potentially creating Congestion include, but are not limited to, vessels engaged in fishing, recreational fishing derbies, regattas, or permitted marine events. The Captain of the Port, Sector Lake Michigan (“COTP”) will determine when Congestion exists and will notify the public via Broadcast Notice to Mariners and other comparable public notice and will coordinate and inform the harbormaster of Ludington before enforcement of the Regulated Navigation Area. When Congestion exists, vessels and all waterways users, with the exception of Federal or State entities operating in official capacity, would be required to maintain a distance of 440 yards from the bow, 100 yards from the stern, and 35 yards from the port and starboard side of any commercial or recreational vessels greater than 100 feet in length transiting into or out of the Ludington Harbor Channel, starting at 1,000 yards outside the Ludington Harbor entrance and encompassing all navigable waterways within the Ludington Harbor Channel and Pere Marquette Lake.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

*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. This NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the characteristics of the regulated navigation area. The proposed rule is expected to place minimal restrictions on vessel movement and is designed to minimize impact on navigable waters. Vessels may still transit through the regulated navigation area and the impact will be short in duration.

*B. 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 proposed rule would 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 navigation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would call for no 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 proposed 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 proposed 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 proposed rule has implications for federalism or Indian Tribes, please call or email 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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, 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 made a preliminary determination that this action is not likely to have a significant effect on the human environment. This proposed rule involves the establishment of a regulated navigation area which would be enforced only when Congestion exists. During this period of enforcement, vessels would be permitted to operate, albeit it with limited navigation restrictions when large commercial vessels are transiting the regulated waters. Accordingly, it is categorically excluded from further review under paragraph L60(a) of appendix A, table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

**V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment

can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2024-1102 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

*Public meeting.* The Coast Guard previously held a public meeting regarding this issue on November 13, 2024, at the Ludington, Michigan City Hall. We do not plan to hold an additional public meeting, but will consider doing so in conjunction with county and local government leadership based on our analysis from public comment. If such a meeting is held, we will issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

### **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 proposes to amend 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:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.972 to read as follows:

#### **§ 165.972 Regulated Navigation Area; Ludington Harbor Channel and Pere Marquette Lake, Ludington, MI.**

(a) *Location.* The following area is a regulated navigation area: All navigable waters of the Ludington Harbor Channel and Pere Marquette Lake, from surface to bottom, as well as navigable waters of Lake Michigan within 1,000 yards of the Ludington, Michigan harbor entrance.

- (b) *Definitions.* As used in this section:

*Designated representative* of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his or her behalf.

*Hazardous levels of vessel traffic congestion* are as defined at the time by the Captain of the Port or a designated representative. Operations potentially creating hazardous levels of vessel traffic congestion include, but are not limited to, vessels engaged in commercial or recreational fishing, pleasure craft, tow boats, other commercial vessel traffic, recreational fishing derbies, regattas, permitted marine events, or any other condition creating a high concentration of vessels in the regulated navigation area.

*Ludington Harbor entrance* is defined as the waters between the westernmost point of the Ludington Harbor break walls as marked by the Ludington North Breakwater Light (LLNR 18530) and Ludington Harbor South Breakwater Light (LLNR 18555).

*Vessels engaged in fishing* are as identified in the definition found in Rule 3 of the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS), see part 81 of this chapter.

(c) *Navigation Rules*. Nothing in this section shall be construed as relieving any party from their responsibility to comply with applicable rules set forth in the 72 COLREGS.

(d) *Regulations*. The provisions under this paragraph (d) apply only when imposed in specific locations by the Captain of the Port or a designated representative. They are intended to enhance vessel traffic safety during periods and in locations where hazardous levels of vessel traffic congestion are deemed to exist by the Captain of the Port or a designated representative. When hazardous levels of vessel traffic congestion are determined to exist by the Captain of the Port or a designated representative per paragraph (b) of this section, the Captain of the Port or designated representative will

issue a Broadcast Notice to Mariners and other comparable public notice and will coordinate and inform the harbormaster of Ludington, notifying the public of the period and location of enforcement prior to enforcing the provisions under this paragraph (d).

(1) Vessels and all waterways users must maintain a distance of 440 yards from the bow, 100 yards from the stern, and 35 yards from the port and starboard side of any vessel greater than 100 feet in length transiting through the regulated navigation area as described in paragraph (a) of this section.

(2) Federal, State, or local entities operating in official capacity are excepted from this paragraph (d).

(3) In an emergency, the master, pilot, or person directing the movement of the vessel may deviate from this section to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the United States Coast Guard via VHF channel 16 as soon as possible.

(4) Violations of this section should be reported to the Captain of the Port Sector Lake Michigan at (414) 747-7182 or on VHF-Channel 16. Vessels or persons in violation of this section may be subject to the civil and/or criminal penalties set forth in 46 U.S.C. 70036.

Dated: April 14, 2025.

**J.P. Hickey,**  
*Rear Admiral, U.S. Coast Guard,*  
*Commander, Ninth Coast Guard District.*

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