

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Civil Justice Reform*

This proposed 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.

#### *Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *Indian Tribal Governments*

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.

#### *Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### *Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *Environment*

We have analyzed this proposed 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 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that 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 the reduction in size of a Regulated Navigation Area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### **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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.1325 by revising paragraph (a)(12) to read as follows:

#### **§ 165.1325 Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.**

(a) \* \* \*

12) Umpqua River Bar, Oreg.: From a point on the shoreline at 43°41'20" N., 124°11'58" W. thence westward to 43°41'20" N., 124°13'32" W. thence southward to 43°38'35" N., 124°14'25" W. thence eastward to a point on the shoreline at 43°38'35" N., 124°12'35" W. thence northward along the shoreline to the north end of the training jetty at 43°40'15" N., 124°11'49" W. thence

northward to a point on the west bank of the entrance channel at 43°40'40" N., 124°11'41" W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

\* \* \* \* \*

Dated: March 26, 2010.

**G.T. Blore,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 2010-8208 Filed 4-9-10; 8:45 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket No. USCG-2010-0073]

RIN 1625-AA87

#### **Safety and Security Zones; Tall Ships Challenge 2010, Great Lakes; Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary safety and security zones around each Tall Ship visiting the Great Lakes during the Tall Ships Challenge 2010 race series. These safety and security 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:** Comments and related material must be received by the Coast Guard on or before May 12, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0073 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail LT Yamaris Barril, Inspections, Prevention Department, Ninth Coast Guard District, Cleveland, OH via telephone at (216) 902-6343, or e-mail at [Yamaris.D.Barril@uscg.mil](mailto:Yamaris.D.Barril@uscg.mil).

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### *Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0073), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG-2010-0073” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or

hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### *Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG-2010-0073” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### *Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### *Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

These temporary safety and security 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 these types of ships. 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 along the navigable waters of the United States. Therefore, the Coast Guard is proposing to implement a safety and security zone around each ship to ensure the safety of all Tall Ships while they operate throughout the Great Lakes. 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.

##### **Discussion of Proposed Rule**

This proposed temporary final rule is intended to ensure the safety of the public and vessels during the Tall Ships Challenge 2010. Tall Ships will be participating in parades and then mooring for official events in the harbors of Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; and Chicago, IL. Tall Ships may also visit other harbors while in the Great Lakes.

The Coast Guard proposes to establish temporary safety and security zones around each Tall Ship participating in these events. These safety and security zones will move with the Tall Ships as they travel throughout the Great Lakes. The safety and security zones will be effective from 12:01 a.m. June 23, 2010 through 12:01 a.m. on September 13, 2010.

Upon the navigable waters of the United States, except as discussed below, no vessel or person is allowed within 100 yards of a Tall Ship that is underway or at anchor, unless authorized by the Captain of the Port or the on-scene Official Patrol. Any vessel authorized to enter into a Tall Ship safety and security zone must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene Official Patrol. Even if operating within a Tall Ship safety and security zone under proper authority, except as discussed in the following paragraph, no vessel or person is allowed within 25 yards of a Tall Ship. In addition, upon the navigable waters of the United States, no vessel or person is allowed within 25 yards of any Tall Ship that is moored.

Vessels constrained by their navigational draft or restricted in their ability to maneuver are permitted to transit, in accordance with the Navigational Rules, within 100 yards of a Tall Ship in order to ensure a safe passage. When navigational constraints of channels, rivers, or waterways prohibit vessels from remaining 100 or more yards from a Tall Ship, such vessels are permitted to enter a security

and safety zone but must remain at the greatest possible distance away from the Tall Ships while operating at the minimum speed necessary to maintain a safe course.

The Coast Guard expects the temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with the limited maneuverability during Tall Ships events.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### *Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this proposed 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 safety and security zone around each Tall Ship will be relatively small. Because the safety and security zones will move along the Tall Ships course through the Great Lakes, the zones will exist for only a minimal time in any one particular geographical area and restrictions on vessel movement within any particular geographical area of the Great Lakes is expected to be minimal. Additionally, under certain conditions vessels may still transit through the safety and security zone when permitted by proper authority.

#### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 because each zone will be relatively small and vessels may still transit through a zone with permission from the Official Patrol or when navigation restraints require. However, this proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in an area of water in which a participating Tall Ship is transiting, anchored, or moored between 12:01 a.m. on June 23, 2010 and 12:01 a.m. on September 13, 2010.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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.

#### *Assistance for Small Entities*

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 so that they can better evaluate its effects on them and participate in the rulemaking. 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 contact LT Yamaris Barril, Inspections, Ninth Coast Guard District, Cleveland, OH at (216) 902–6343. 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.

#### *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).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### *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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *Taking of Private Property*

This proposed rule would 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.

#### *Civil Justice Reform*

This proposed 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.

#### *Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### *Indian Tribal Governments*

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.

#### *Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed 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 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety and security zone around each Tall Ship participating in the Tall Ships Challenge 2010 race series. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 figure 2-1, paragraph (34)(g) of the Instruction and neither an environmental assessment nor an environmental impact statement is required.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

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

#### § 165.T09-0073 Safety and Security Zones; Tall Ships Challenge 2010; Great Lakes; Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Chicago, IL

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

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

*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 and security 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.

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

*Tall Ship* means any sailing vessel participating in the Tall Ships Challenge 2010 in the Great Lakes. This includes, but is not limited to, the following: Sailing Vessel (S/V) AMISTAD, S/V APPLIEDORE IV, S/V APPLIEDORE V, HMS BOUNTY, S/V DENIS SULLIVAN, S/V EUROPA, S/V FAZISI, S/V FRIENDS OF GOOD WILL, S/V INLAND SEAS, S/V LAREVENANTE, S/V LYNX, S/V MADELINE, S/V FLAGSHIP NIAGARA, S/V PATHFINDER, S/V PLAYFAIR, S/V PRIDE OF BALTIMORE II, S/V ROALD AMUNDSEN, S/V RED WITCH, S/V ROTALISTE, S/V ROSEWAY, S/V UNICORN, S/V WELCOME, and S/V WINDY.

(b) *Location.* The following area is a safety and security zone: 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) Entry into a safety and security zone described in paragraph (b) of this section is prohibited unless authorized by the

cognizant Coast Guard Captain of the Port or the Official Patrol.

(2) Vessels may request permission to enter into a safety and security zone described in paragraph (b) of this section by contacting the Official Patrol on VHF channel 16.

(3) Any vessel operating within a safety and security zone established by this section must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or the on-scene Official Patrol. Any vessel or person allowed to enter a safety and security zone established by this section must still remain at least 25 yards from any Tall Ship, unless authorized to come within such a distance pursuant to paragraph (c)(4) of this section or permitted to come within such a distance by the cognizant Captain of the Port, his or her designated representative, or the on-scene Official Patrol.

(4) Vessels are permitted to transit through the safety and security zone in waterways that do not provide adequate navigable waters greater than 100 yards from the Tall Ships. Vessels transiting such areas must operate at the minimum speed necessary to maintain a safe course while also maintaining the greatest possible distance away from the Tall Ships.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Wednesday, June 23, 2010 through 12:01 a.m. on Monday September 13, 2010.

(e) *Navigation Rules.* The Navigation Rules must apply at all times within a Tall Ships safety and security zone.

(f) When a Tall Ship approaches within 25 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Tall Ship's safety and security zone unless ordered by or given permission from the cognizant Captain of the Port, his or her designated representative, or the on-scene official patrol to do otherwise.

Dated: March 30, 2010.

**Lorne W. Thomas,**

*Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.*  
[FR Doc. 2010-8204 Filed 4-9-10; 8:45 am]

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