

will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

#### IV. Procedural Determinations

##### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

##### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

##### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

##### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

##### *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

##### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

##### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 11, 2006.

**H. Vann Weaver,**

*Acting Regional Director, Appalachian Region.*

[FR Doc. E6-8620 Filed 6-1-06; 8:45 am]

**BILLING CODE 4310-05-P**

---

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

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

[CGD09-06-032]

RIN 1625-AA00

**Safety and Security Zones; Tall Ships Celebration 2006, Great Lakes, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

---

**SUMMARY:** The Coast Guard proposes to establish safety and security zones around Tall Ships visiting the Great Lakes during Tall Ships Celebration 2006. These safety and security zones will provide for the regulation of vessel traffic in the vicinity of Tall Ships in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the safety 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 reach the Coast Guard on or before June 22, 2006.

**ADDRESSES:** You may mail comments and related material to Ninth Coast Guard District (dpw-1), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Waterways Planning and Development Section (dpw-1) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CDR K. Phillips, Waterways Planning and Development Section, Prevention Department Ninth Coast Guard District, Cleveland, OH at (216) 902-6045.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09-06-032], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to The Ninth Coast Guard District Waterways Planning and Development Section at

the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

During the Tall Ships Celebration 2006, Tall Ships will be participating in parades and then mooring in the harbors of Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, and Chicago, IL. Safety and security zones will be established around Tall Ships participating in these events on 12:01 a.m. (local time) July 10, 2006 and terminate on 12:01 a.m. (local time) August 23, 2006.

These safety and security zones are necessary to protect the public from the hazards associated with limited maneuverability of tall sailing ships and to protect the Tall Ships from potential harm. 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 and on Lake Erie, Saginaw Bay, Lake Huron, Green Bay and Lake Michigan. Therefore, the Coast Guard is proposing to implement a safety and security zone around each ship to ensure the safety of both participants and spectators in these areas. 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**

Upon the navigable waters of the United States, no vessel or person is allowed within 100 yards of a Tall Ship that is underway or at anchor, unless authorized by the cognizant Captain of the Port or on-scene official patrol. When within a Tall Ship safety and security zone vessels 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 pursuant to permission from the on-scene official patrol, 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.

When conditions permit, vessels constrained by their navigational draft or restricted in their ability to maneuver may be allowed by the on-scene official patrol to pass within 100 yards of a tall

ship in order to ensure a safe passage in accordance with the Navigational Rules.

When conditions permit, vessels that must transit via a navigable channel or waterway may be allowed by the on-scene patrol to pass within 100 yards of an anchored Tall Ship or within 25 yards of a moored Tall Ship with minimal delay consistent with security.

**Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety and security zones and the minimal time and limited area from which vessels will be restricted. Vessels may transit through the safety zone with permission from the official on-scene patrol.

**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.

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 a portion of the safety and security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are relatively small and vessels may transit through the safety zone with permission from the official on-scene patrol.

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 CDR K. Phillips, Waterways Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045. 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.

#### 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 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 effect 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### 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 Commandant Instruction M16475.ID, which guides 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### 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; 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. A new temporary § 165.T09–032 is added read as follows:

**§ 165.T09–032 Safety and Security Zone; Huntington Cleveland Harbor Fest, Tall Ship Festival, Green Bay, Wisconsin, Sturgeon Bay, Wisconsin, Tall Ships Chicago 2006, Tall Ship Celebration, Saginaw River, Bay City, MI.**

(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 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. Persons authorized in paragraph (i) to enforce this section are designated as the Official Patrol.

*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 2006 Tall Ships Challenge in the Great Lakes. The following vessels are participating in the 2006 Tall Ships Challenge: Sailing Vessel (S/V) Appledore IV, S/V Denis Sullivan, S/V Appledore V, S/V Friends Good Will, S/V Highlander Sea, S/V Niagara, S/V Madeline, S/V Nina, S/V Picton Castle, S/V Pathfinder, S/V Playfiar, S/V Providence, S/V Pride of Baltimore, S/V St. Lawrence II, S/V Red Witch, S/V Royaliste, S/V Windy, S/V Unicorn, and S/V Windy II.

(b) Safety and Security zone. The following areas are safety and security zones: all navigable waters of United States located in the Ninth Coast Guard District within a 100 yard radius of any Tall Ship sailing vessel.

(c) Effective Period. This section is effective from 12:01 a.m. (local) on Wednesday July 11th, 2006 through 12:01 a.m. (local) on August, 10th 2006.

(d) Regulations. When within a Tall Ship safety and security zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol. No vessel or person is allowed within 25 yards of a Tall Ship that is underway, at anchor, or moored, unless authorized by the cognizant Captain of the Port, his designated representative, or on-scene official patrol.

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

(f) To request authorization to operate within 25 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol on VHF-FM channel 16.

(g) When conditions permit, the on-scene official patrol should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 25

yards of a Tall Ship in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 25 yards of a Tall Ship that is anchored or moored with minimal delay consistent with safety and security.

(h) 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 it is either ordered by, or given permission by Captain of the Port Buffalo, Detroit, Sault Ste. Marie or Lake Michigan, his designated representative, or the on-scene official patrol to do otherwise.

(i) Enforcement. Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section.

(j) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (d), (f), (g), and (h) of this section.

(k) Waiver. Captain of the Port Buffalo, Detroit, Sault Ste. Marie and Lake Michigan, may, within their respective Captain of the Port zones, waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: May 23, 2006.

**T.W. Sparks,**

*Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.*

[FR Doc. E6-8610 Filed 6-1-06; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP Prince William Sound 02-012]

RIN 1625-AA87

#### Security Zones; Port Valdez and Valdez Narrows, Valdez, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise its regulation entitled Port Valdez and Valdez Narrows, Valdez, Alaska—security zones. This change would include more accurate position information for the boundaries of tank

vessels navigating on the Valdez Narrows Optimum Track Line, and establish when the Valdez Narrows Tanker Optimum Track line is activated and subject to enforcement.

**DATES:** Comments and related material must reach the Coast Guard on or before July 3, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket will become part of this docket and will be available for inspection or copying at Marine Safety Office Valdez, 105 Clifton, Valdez, AK 99686 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Duane Lemmon, Chief, Maritime Homeland Security Department, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835-7262.

#### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory History**

The Coast Guard is taking this action to revise 33 CFR 165.1710(a)(3)(71 FR 2154, January 13, 2006) entitled Port Valdez and Valdez Narrows, Valdez, Alaska—security zones. This revision would include more accurate position information for the boundaries of tank vessels navigating on the Valdez Narrows Optimum Track Line, and establish when the Valdez Narrows Tanker Optimum Track line is activated and subject to enforcement.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17-003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17-004—Security zone; Port Valdez, and

§ 165.T17-005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones. That rule created temporary § 165.T17-009, entitled “Port Valdez and Valdez Narrows, Valdez, Alaska—security zone”.

Then on July 31, 2002, we published a temporary final rule (67 FR 49582) that established security zones to extend the temporary security zones that would have expired. This extension was to allow for the completion of a notice-and-comment rulemaking to create permanent security zones to replace the temporary zones.