



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG-2013-0027]

RIN 1625-AB84

Inland Waterways Navigation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to exempt vessels under 20 meters (65 feet) in length operating in the St. Marys River along Michigan's eastern Upper Peninsula from certain speed rules. Exempting such vessels from these rules is necessary because enforcement is impractical and the rules impeded the operations of public response vessels.

DATES: Comments and related materials must reach the Coast Guard on or before [45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2013-0027 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) Online: <http://www.regulations.gov>.

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

(3) Hand delivery: Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) Fax: 202-493-2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail CDR Nicholas Wong, Prevention Chief, Sector Sault Sainte Marie, Coast Guard; telephone (906) 635-3220, email Nicholas.l.wong@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. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2013-0027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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. We may change this proposed rule in view of them.

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> at any time. Enter the docket number for this rulemaking (USCG-2013-0027) in the "Search" box and click "Search." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector Sault Sainte Marie, 337 E. Water Street, Sault Sainte Marie, MI 49783-2021, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all 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 the Department of Transportation's Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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 later notice in the Federal Register.

Basis and Purpose

33 CFR 162.117 prescribes inland navigation rules for the St. Marys River along Michigan's eastern Upper Peninsula. These rules include speed limits for stretches of the St. Marys River demarcated by lights. The table below from 162.117(g) depicts these speed rules.

Table 162.117(g)--St. Marys River Speed Rules		
Maximum speed limit between	Mph	Kts
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Light and Point Aux Frenes Light "21"	14	12.2
Munuscong Lake Lighted Buoy "8" and Everens Point	12	10.4
Everens Point and Reed Point	9	7.8
Reed Point and Lake Nicolet Lighted Buoy "62"	10	8.7
Lake Nicolet Lighted Buoy "62" and Lake Nicolet Light "80"	12	10.4
Lake Nicolet Light "80" and Winter Point (West Neebish Channel)	10	8.7
Lake Nicolet Light "80" and Six Mile Point Range Rear Light	10	8.7
Six Mile Point Range Rear Light and lower limit of the St. Marys Falls Canal		
Upbound	8	7
Downbound	10	8.7
Upper limit of the St. Marys Falls Canal and Point Aux Pins Main Light	12	10.4
Note: A vessel must not navigate any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots).		

These speed rules apply to all vessels transiting the St. Marys River between the points in table 162.117(g).

U.S. Coast Guard Vessel Traffic Services (VTS) St. Mary's River monitors and directs vessel traffic movement within the VTS St. Marys River area through a Vessel Movement Reporting System (VMRS). This VTS area overlaps the length of the St. Marys River governed by the speed rules in § 162.117(g). The VMRS requires users, generally including commercial vessels of 20 meters or more, to report information, including their position, course, and speed. These users report their information through radio communications and Automatic Identification System (AIS). Because VTS St. Marys River tracks speed for VMRS users, it can and does enforce the speed rules in § 162.117(g) on these users.

Many non-VMRS vessels transit the length of the St. Marys River governed by the speed rules in § 162.117(g). These vessels generally include private vessels under 20 meters. As non-VMRS users, these vessels are not required to report their speed to the VTS St. Marys River. Additionally, unlike commercial vessels of 20 meters or more, these vessels are not required to operate with AIS, the prevalent means of reporting location, course, and speed to VTS St. Marys River. Because the VTS St. Marys

River cannot track these non-VMRS vessels, it cannot and does not enforce the speed rules in § 162.117(g) on them.

The speed rules in § 162.117(g) also impact the operational effectiveness of public response vessels in the St. Marys River. These vessels include small boats, generally under 20 meters, operated by the U.S. Coast Guard and federal, Canadian, state, and local partners. These small boats respond to pollution incidents, marine casualties, and perform search and rescue and law enforcement operations throughout the St. Marys River. These operations require public vessels to deploy and be on-scene rapidly. The speed rules impede response times and degrade operational effectiveness to the detriment of the boating public and industry.

Because the speed rules in 162.117(g) are not enforceable on non-VMRS users and impact operational effectiveness of public response boats, this rule proposes to exempt vessels under 20 meters (65 feet) from these speed rules.

This proposed exemption is not anticipated to impact the St. Marys River VTS, VMRS, or its users. Additionally, it is not intended to relieve vessels under 20 meters from the responsibility to boat safely and exercise good seamanship.

Discussion of Proposed Rule

Because the Ninth Coast Guard District Commander has determined that the speed rules in 33 CFR 162.117(g), as currently written, are too broad and unnecessarily restrict public vessel operations, this rule proposes to amend these rules. Specifically, this rule proposes to exempt vessels under 20 meters (65 feet) from the speed rules in § 162.117(g).

D. Regulatory Analyses

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

1. 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, as supplemented by Executive Order 13563, Improving Regulations and Regulatory Review, and does not require an assessment of potential costs and benefits under § 6(a)(3) of Executive Order 12866 or § 1 of Executive Order 13563. 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 not adversely affect 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. Rather, permitting vessels under 20 meters to operate free of the speed rules in 33 CFR 162.117(g) will lessen restrictions on the public and enable public vessels to engage unimpeded in response operations.

2. 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.

This proposed rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit between the length of the St. Marys River governed by the speed rules in 33 CFR 162.117(g).

The proposed exemption for vessels under 20 meters to the speed rules in 33 CFR 162.117(g) will not have a

significant economic impact on a substantial number of small entities for the following reason: this proposed amendment will lessen navigation restrictions on the public and private businesses.

Therefore, 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. 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.

3. Assistance for Small Entities

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this 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 Nicholas Wong, Prevention Chief, Sector Sault Sainte Marie, Coast Guard; telephone

(906)635-3220, e-mail Nicholas.L.Wong@uscg.mil. The Coast Guard will not retaliate against small entities that question or object to this proposed rule or any policy or action of the Coast Guard.

4. 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).

5. Federalism

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 does not have implications for federalism.

6. 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.

7. 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 expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. 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.

9. 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.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

11. 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.

12. 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.

13. 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.

14. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 023-01, 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. This proposed rule involves amendments to navigation regulations and thus, is categorically excluded under paragraph 34(i) of the Commandant Instruction. A preliminary Categorical Exclusion Determination (CED) and a preliminary environmental analysis checklist 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 proposed rule.

List of Subjects 33 CFR Part 162

Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 162 as follows:

PART 162 - INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

§ 162.117 [Amended]

2. In § 162.117, revise paragraph (g)(1) to read as follows:

§ 162.117 St. Marys River, Sault Ste. Marie, Michigan.

* * * * *

(g) Speed Rules. (1) The following speed limits

indicate speed over the ground. Vessels, other than those under 20 meters (65 feet) in length, must adhere to the following speed limits.

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Dated: 05 Apr 2013

M. N. PARKS
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District

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