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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket Number USCG-2019-0899]

RIN 1625-AC04

Inland Waterways Navigation: St. Marys River, Sault Ste. Marie, Michigan

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to exempt vessels under 20 meters (65 feet) in length operating in the St. Mary's 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 impede the operations of public response vessels. 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 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0899 using the Federal eRulemaking 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Blake Bonifas, Waterways Management, Ninth Coast Guard District, Cleveland, OH, telephone (216) 902-6066, email Blake.E.Bonifas@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The inland navigation rules for the St. Marys River along Michigan's eastern Upper Peninsula are prescribed by 33 CFR 162.117. These rules include speed limits for stretches of the St. Marys River demarcated by lights.

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, realistically, enforce the speed rules in § 162.117(g) on these vessels.

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. This proposed rule is issued under the authority of 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The Coast Guard is proposing to amend the speed rules in 33 CFR 162.117(g), because, as they are currently written, they are too broad and unnecessarily restrict vessel operations. Specifically, this rule proposes to exempt vessels under 20 meters (65 feet) from the speed rules in 162.117(g). The regulatory text we are proposing appears at the end of this document.

IV. 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 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 fact that we do not anticipate that it will 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.

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 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 amendment will lessen navigation restrictions on public entities, a large majority of recreational vessel owners and private businesses who operate small commercial vessels.

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.

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. If the 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 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 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 \$100,000,000 (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.

F. Environment

We have analyzed this proposed 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 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 an amendment to navigation regulations for speed limits within a waterway. 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. A preliminary 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 proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

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.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

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

Authority: 46 U.S.C 70034; Department of Homeland Security Delegation No. 0170.1

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.

Dated: June 09, 2020.

D. L. Cottrell,

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District.

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