



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG-2020-0521]

RIN 1625-AA11

Connecting waters from Lake Huron to Lake Erie; traffic rules

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the navigation regulations between the Great Lakes. Specifically, this proposed amendment would allow a vessel to overtake another vessel that has slowed its speed to await berth availability or to make the turn for Rouge River and the overtaking vessel has so advised the Canadian Coast Guard Marine communications and Traffic Services Centre located in Sarnia, Ontario. Currently, the regulation only permits vessels to overtake vessels engaged in towing between the west end of Belle Isle and Peche Island Light. We invite your comments on this proposed rulemaking.

DATES: Comments and related materials must reach the Coast Guard on or before **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2020-0521 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 on this proposed rule, call or e-mail Tracy Girard, Sector Detroit, Coast Guard; telephone (313) 568-9564, e-mail Tracy.M.Girard@uscg.mil .

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background, Purpose, and Legal Basis

The purpose of this rulemaking is to update the navigation rule in § 162.134(a)(4) to improve traffic efficiency on the river while maintaining safety. The Canadian Coast Guard has modified their traffic rules to reflect this change and the Lake Carriers Association has endorsed this change. This proposed rule would provide consistency on the river, and would apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations.

III. Discussion of Proposed Rule

This proposed modification to the rule will allow a vessel to overtake another vessel that has slowed its speed to await berth availability or to make the turn for Rouge River and the overtaking vessel has so advised the Canadian Coast Guard Marine Communications and Traffic Services Centre located in Sarnia, Ontario. This will improve traffic efficiency on the river while maintaining safety. Currently 33 CFR

162.134(a)(4) states, “Between the west end of Belle Isle and Peche Island Light, vessels may only overtake vessels engaged in towing.” We propose to replace 33 CFR

162.134(a)(4) with “Between the west end of Belle Isle and Peche Island Light, vessels may overtake vessels if the vessel to be overtaken is engaged in towing or has slowed its speed to await berth availability or to make the turn for Rouge River, and the overtaking vessel has so advised the Canadian Coast Guard Marine Communications and Traffic Services Centre located in Sarnia, Ontario.”

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.

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.

While some owners or operators of vessels intending to transit the regulated areas 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 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 contact 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 contact 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, 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 one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves navigation rules. Normally such actions are 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 preliminary 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. 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 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.

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 <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact 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 <http://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 eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://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 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.

2. In § 162.134, revise paragraph (a)(4) to read as follows:

§ 162.134 Connecting waters from Lake Huron to Lake Erie; traffic rules.

(a)***

(4)Between the west end of Belle Isle and Peche Island Light, vessels may overtake vessels if the vessel to be overtaken is engaged in towing or has slowed its speed to await berth availability or to make the turn for Rouge River, and the overtaking vessel has so advised the Canadian Coast Guard Marine Communications and Traffic Services Centre located in Sarnia, Ontario.

Dated: August 26, 2020

Brad. W. Kelly,
Captain, U.S. Coast Guard,
Captain of the Port Detroit.

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