

Rule 201 or 202 of Regulation S-T (§§ 232.201 or 232.202 respectively).

By the Commission.

Dated: October 24, 1997.

Margaret H. McFarland,

Deputy Secretary.

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; E-Z Trial

CFR Correction

In title 29 of the Code of Federal Regulations, part 1927 to end, revised as of July 1, 1997, on page 261, in § 2200.203, paragraph (a) should be removed and reserved.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD08-97-020]

RIN 2115-AE84

Regulated Navigation Area Regulations; Mississippi River, LA-Regulated Navigation Area

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is revising the Regulated Navigation Area (RNA) for vessels operating in the Mississippi River below Baton Rouge, Louisiana including South Pass and Southwest Pass by adding additional requirements for vessels of 1,600 gross tons or greater operating in the RNA. This revision requires enhanced safety procedures for vessels of 1,600 gross tons or greater operating on the Mississippi River. The Coast Guard is also requiring moored or anchored passenger vessels with embarked passengers to maintain a manned pilothouse watch for the safety of the vessel, crew and passengers.

DATES: This interim rule is effective October 30, 1997. Comments must reach the Coast Guard on or before December 29, 1997.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Eighth Coast Guard District Marine Safety Division, 501 Magazine Street, Room 1341, New Orleans, LA during

normal office hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-4686.

FOR FURTHER INFORMATION CONTACT: Mr. M. M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District Marine Safety Division, New Orleans, LA or by telephone at (504) 589-4686.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments specifically pertaining to 33 CFR § 165.810(f)(3)(iii) of this rule. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08-97-020) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On August 29, 1997 (62 FR 45775), the Coast Guard published a notice of proposed rulemaking entitled "Regulated Navigation Area Regulations; Mississippi River, LA-Regulated Navigation Area" in the **Federal Register**. No public hearing was requested and none was held. The Coast Guard received 2 letters commenting on the proposed rulemaking. Based on information presented in one of the comments, concerning proposed 33 CFR 165.810(f)(3)(iii), the Coast Guard is reconsidering this provision. This rule is being published as an interim rule and the Coast Guard requests all interested parties to comment on 33 CFR 165.810(f)(3)(iii).

On December 14, 1996, the 36,000 gross ton M/V BRIGHT FIELD, while transiting the Lower Mississippi River, allided with the Riverwalk store complex in New Orleans, Louisiana causing extensive damage and numerous injuries. This marine casualty prompted the Captain of the Port New Orleans to issue Captain of the Port Orders to moored or anchored high capacity passenger vessels operating on the Mississippi River. These orders required those vessels to maintain a manned pilothouse watch in order to monitor river activity and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. The initial intent of this order was to establish an interim measure to prevent future allisions and collisions.

On March 18, 1997 (62 FR 14637, March 27, 1997), the Coast Guard established a temporary regulated navigation area affecting the operation of downbound tows in the Lower Mississippi River from mile 437 at Vicksburg, MS to mile 88 above Head of Passes. These regulations were subsequently amended on March 21 (62 FR 15398, April 1, 1997), March 29 (62 FR 16081, April 4, 1997), April 4 (62 FR 17704, April 11, 1997) and April 20 (62 FR 23358, April 30, 1997). The amendments added additional operating requirements for vessels of 1,600 gross tons or greater; increased the operating limitations on tank barges and ships carrying hazardous chemicals and gasses; and extended the RNA to the boundary of the territorial sea at the approaches to Southwest Pass and South Pass of the Mississippi River.

This RNA and its subsequent amendments was also prompted by unprecedented high waters on the Mississippi River. Conditions on the Lower Mississippi River became so severe that it necessitated the opening of the Bonnet Carre Spillway by the Army Corps of Engineers in order to ease high-water conditions and partially combat very strong river currents. The high-water conditions contributed to numerous barge breakaways and a marked increase in vessel accidents. The additional operating requirements were designed to provide a greater margin of safety for vessels of 1,600 gross tons or greater operating on this waterway.

On April 20 (62 FR 23358, April 30, 1997), the towboat and barge limitations and the chemical and gas ship operating restrictions expired. The regulations affecting self-propelled vessels of 1,600 gross tons or greater were extended until

July 1, 1997. On June 24, 1997 (62 FR 35097, June 30, 1997), the regulations affecting self-propelled vessels of 1,600 gross tons or greater were again extended until October 31, 1997. The purpose of this extension was to maintain the enhanced margin of safety that had been facilitated by these regulations. Although the Lower Mississippi River was receding, dangerous and unpredictable currents remained.

This rule makes permanent the requirements of the temporary RNA, 33 CFR 165.T08-001, and adds those requirements to the permanent RNA established in 33 CFR 165.810. There was no adverse feedback from the public on the extensions or the concomitant operating requirements. Moreover, the additional operating requirements imposed by the temporary RNA increased the level of safety in the RNA. The interim rule is effective immediately upon expiration of the temporary RNA so that there will be no lapse either in watch requirements for anchored or manned passenger vessels and in operating requirements for vessels 1,600 gross tons or greater. A lapse would have a detrimental impact on vessel safety in the RNA. Because of safety considerations, and given the fact that the temporary RNA has been in effect for over six months, good cause exists for making this rule effective upon publication in the **Federal Register**.

Background and Purpose

In the interest of navigation safety in the narrow confines of the Lower Mississippi River, the Coast Guard is making permanent the temporary regulations in 33 CFR 165.T08-001 affecting self-propelled vessels of 1,600 gross tons or greater. The Coast Guard is incorporating the temporary regulations into the permanent regulations at 33 CFR 165.810. The regulated navigation area described in this rule is required to protect vessels, bridges, shoreside facilities, commercial businesses and the public from a safety hazard created by deep-draft vessel operations along the Lower Mississippi River. During 1995 and 1996 over 300 self-propelled vessels of 1,600 gross tons or greater operating on the Mississippi River experienced casualties involving loss of power, loss of steering or engine irregularities. The regulations will enhance the safety of navigation on the river and protect shoreside facilities, including commercial businesses, by causing masters and engineers to take measures that will minimize the risk of steering casualties, engine failures and engine irregularities. They also place the

ship in a manning status and operating condition that will allow the vessel to take prompt and appropriate emergency action should a casualty occur, thereby reducing the likelihood of a cascading series of allisions and collisions following a casualty.

As an enhanced safety precaution for passenger vessels anchored or moored within the regulated navigation area, the Coast Guard is requiring certain passenger vessels to maintain a manned pilothouse watch to monitor river and/or waterway activity and to be immediately available to activate emergency procedures to protect the vessel, crew and passengers in the event of an emergency radio broadcast, danger signal or other visual indication of a problem. This measure will significantly enhance the safety of passenger vessels moored or anchored within the regulated navigation area. Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, will be required to monitor and respond, but may conduct monitoring from a vantage point other than the pilothouse using a portable radio. These vessels were given consideration because of their relatively small size and associated reduced risk while passengers are aboard.

Discussion of Interim Rule

The existing regulation in 33 CFR § 165.810 establishes a Regulated Navigation Area for the waters of the Mississippi River below Baton Rouge, LA, including South Pass and Southwest Pass. By this rule the Coast Guard adds specific operational requirements to certain vessels when transiting, moored or anchored in the Regulated Navigation Area. These requirements are designed to assist in the prevention of allision, collision and grounding, ensure port safety, enhance the safety of moored or anchored passenger vessels and protect the navigable waters of the Mississippi River from environmental harm.

Subsection (e) of this rule addresses additional operating requirements for passenger vessels with embarked passengers. Passenger vessels shall continuously man the pilothouse and remain apprised of river activities in their vicinity by monitoring VHF emergency and working frequencies. This allows an individual operating a passenger vessel to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency broadcast, danger signal or visual indication of a problem is received or detected. An exception to this rule is made for any ferryboat or small

passenger vessel that operates with 49 or fewer passengers. These vessels are not required to continuously man the pilothouse since personnel may monitor VHF frequencies via a portable radio from a vantage point other than the pilothouse.

Subsection (f) of this rule pertains to all self-propelled vessels of 1,600 or more gross tons covered by 33 CFR Part 164. The rule requires that the master shall ensure the vessel is in compliance with 33 CFR Part 164 and that the engine room is manned at all times while the vessel is underway in the RNA. Additionally, this subsection requires the master to ensure the chief engineer has certified that: the main propulsion plant is ready in all aspects for operations including the main propulsion air start systems, fuel systems, lube oil systems, cooling systems and automation systems; automatic or load limiting throttle systems are operating in the manual mode with engines available to immediately answer maneuvering commands; cooling, lubricating and fuel oil systems are within proper temperature parameters; and standby systems are ready to be placed immediately in service. These additional operating conditions are required so long as the vessel is underway in the RNA.

Discussion of Comments and Changes

The Coast Guard received two comments regarding the proposed rulemaking. One comment stated that the proposed rule as written will detrimentally affect the safety of a particular company's operation. It stated that the proposed requirement in 33 CFR Part 165.810(f)(3)(iii), that requires "[a]utomatic or load limiting main propulsion plant throttle systems [to be] operated in the manual mode with engines available to immediately answer maneuvering commands," will reduce the level of safety presently maintained by the company's vessels. The comment explained that the company's vessels presently utilize engine control systems designed to be operated from the bridge. The comment also indicated the control systems can override any of the automatic stop or load limiting functions from the bridge, the engine control room or the emergency maneuvering platform on the engine side. The comment also indicated the company's vessels have the full range of engine speed from all stations. The comment further indicated that requiring operation of the engine control system in the manual mode from the engine control room removed one engineer from emergency response

capabilities and that maneuvering in the manual mode put one more human element into the engine control system. The comment also noted that the company has safety management practices in place that address the concerns expressed in 33 CFR Part 165.810(f)(3)(iii). The comment further recommended that the proposed rule in 33 CFR Part 165.810(f)(3)(iii) be replaced with 33 CFR Part 164.13(b) and that the rule apply to all vessels. The latter regulation requires that "[e]ach tanker must have an engineering watch capable of monitoring the propulsion system, communicating with the bridge, and implementing manual control measures immediately when necessary. The watch must be physically present in the machinery spaces or in the main control space and must consist of at least a licensed engineer."

The Coast Guard agrees in part with that portion of the comment asserting that 33 CFR Part 165.810(f)(3)(iii) could adversely impact the safety of vessels. It is possible that different engine room configurations could cause confusion at to what precisely "manual mode" entails. For example, one master could interpret manual mode as requiring operation of the main engine from the engine-side throttle control while another could read this regulation as allowing engine room watch personnel to operate the main engine from the control booth. This confusion, and the possibility of automatic control systems being placed in jeopardy if main propulsion throttle system computer programs are deactivated or placed in a manual override mode in order to achieve a "manual mode" state, warrants further study by the Coast Guard. The Coast Guard is also reopening to the public a 60 day comment period to specifically address 33 CFR Part 165.810(f)(3)(iii). This will allow the Coast Guard to better ascertain the impact of this subsection upon the public.

Replacing 33 CFR 165.810(f)(3)(iii) with 33 CFR 164.13(b) as recommended in the comments does not address operation of the engines in the manual mode and therefore does not provide the margin of safety the Coast Guard may ultimately find necessary. The proposed regulation does tie at least one engineering watchstander to the engine room for watch responsibilities, limiting that engineer's availability for response to casualties elsewhere. However, the Coast Guard believes the presence of a licensed engineer in the engine room, capable of immediate communications with the bridge, is essential to the safety of the vessel and the port. No changes to the proposed rule were made.

The second comment noted that the proposed rule, as written, would force towboats and tugboats to comply with the same operational requirements that apply to deep-draft vessels even though the requirements are ill-suited for towing operations. The comments noted that the language in the proposed rule does not take into account a recent change to 33 CFR Part 164. In the past, 33 CFR Part 164 only applied to self-propelled vessels of 1,600 or more gross tons. However, the Final Rule on Navigation Safety Equipment for Towing Vessels, published in the July 3, 1996, **Federal Register** (61 FR 35064), amended 33 CFR Part 164 to include "towing vessels of 12 meters or more in length." As a result of this change, the proposed rule would have the unintended result of requiring towboats and tugboats to comply with requirements that do not apply to their mode of operation. The Coast Guard agrees with this comment. The intent of the proposed rule was that it apply only to vessels of 1,600 gross tons or greater, not to towboats or tugboats. The rule has been amended to eliminate this unintended result.

For purposes of clarity and to be more consistent with other sections of this part, the upper boundary of this RNA is no longer defined by the words, "* * * below Baton Rouge." Lower Mississippi River mile 233.9 above Head of Passes will now define the upper limit of this RNA by replacing the words "* * * below Baton Rouge" as found in 33 CFR § 165.810 (a) and (b). This language will more precisely delineate the upper boundary of the RNA thereby avoiding potential confusion as to the exact location of "* * * below Baton Rouge."

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1997). The Coast Guard expects the economic impact of this interim rule to be so minimal that full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulation does not require that additional personnel are required aboard each vessel, rather it requires that existing watchstanding personnel to be immediately available to take necessary action to respond to vessel emergencies. This interim rule

establishes additional requirements in order to enhance vessel safety and better protect property within the RNA. In the event this rule imposes additional costs the Coast Guard believes this burden is far outweighed by the safety benefits accrued from the rule. The prevention of another M/V BRIGHT FIELD-type allision would save shoreside businesses, maritime users and the public in general, tens of millions of dollars in potential property damage and personal injury.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include 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. Because the rule affects deep-draft vessels underway and passenger vessels when passengers are onboard, and because a ferryboat or small passenger vessel carrying 49 people or less may monitor river activities using a portable radio from a vantage point other than the pilot house, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Assistance for Small Entities

In accordance with section 214(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. M.M. Ledet, Vessel Traffic Management Specialist, at the Eighth Coast Guard District Marine Safety

Division, New Orleans, LA or by telephone at (504) 589-4686 for assistance.

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under paragraph 2.B.2(e)(34)(g) of Commandant Instruction M16475.1B (as revised by 61 FR 13563; March 27, 1996), this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Safety measures, and Waterways.

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations to read 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 46 CFR 1.46.

2. In section 165.810, paragraph (a) and (b) introductory text are revised, and new paragraphs (e) and (f) are added to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

(a) *Purpose and applicability.* This section prescribes rules for all vessels operating in the Lower Mississippi River below mile 233.9 above Head of Passes including South Pass and Southwest Pass, to assist in the prevention of allisions; collisions and groundings so as to ensure port safety and protect the navigable waters of the Mississippi River from environmental harm resulting from those incidents,

and to enhance the safety of passenger vessels moored or anchored in the Mississippi River.

(b) Lower Mississippi River below mile 233.9 above Head of Passes including South and Southwest Passes:

* * * * *

(e) Watch requirements for anchored and moored passenger vessels.

(1) Passenger Vessels. Except as provided in paragraph (e)(2) of this section, each passenger vessel with one or more passengers on board, shall:

(i) Keep a continuously manned pilothouse and;

(ii) Monitor river activities and marine VHF emergency and working frequencies of the port so as to be immediately available to take necessary action to protect the vessel, crew and passengers in the event that an emergency radio broadcast, danger signal or visual indication of a problem is received or detected.

(2) Each ferryboat, and each small passenger vessel that operates with 49 or less passengers, may monitor river activities using a portable radio from a vantage point other than the pilothouse.

(f) All self-propelled vessels of 1,600 or more gross tons subject to the regulations at 33 CFR Part 164 shall also comply with the following:

(1) The engine room shall be manned at all times while underway in the RNA.

(2) Prior to embarking a pilot when entering or getting underway in the RNA, the master of each vessel shall ensure that the vessel is in compliance with 33 CFR Part 164.

(3) The master shall ensure that the chief engineer has certified that the following additional operating conditions will be satisfied so long as the vessel is underway within the RNA:

(i) The main propulsion plant is in all respects ready for operations including the main propulsion air start systems, fuel systems, lubricating systems, cooling systems and automation systems;

(ii) Cooling, lubricating and fuel oil systems are at proper operating temperatures;

(iii) Automatic or load limiting main propulsion plant throttle systems are operating in manual mode with engines available to immediately answer maneuvering commands; and

(iv) Main propulsion standby systems are ready to be immediately placed in service.

Dated: October 24, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

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BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 212

Administration of the Forest Development Transportation System

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment streamlines Forest Service rules for administration of the forest transportation system. This amendment was initiated by agency review under the President's Regulatory Reinvention Initiative and is intended to provide clearer, more precise direction for the administration of the forest development transportation system.

DATES: This rule is effective October 30, 1997.

FOR FURTHER INFORMATION CONTACT: Richard W. Sowa, Engineering Staff, Forest Service, USDA, P.O. 96090, Washington, D.C. 20090-6090, (202) 205-1437.

SUPPLEMENTARY INFORMATION: The purpose of this technical amendment is to consolidate direction for the administration of the forest development transportation system. The rules formerly under the separate sections, headed "Allocation, Forest development transportation plan, and Program of work" are now consolidated under one section, "Forest development transportation program."

Following a review of Forest Service regulations under the President's Regulatory Reinvention Initiative, the agency concluded that these sections were so closely related that they should be combined into one streamlined regulation. Also in keeping with National Performance Review objectives of using "plain English" in regulations, the text of sections 212.3 and 212.4 (now section 212.1 (b) and (c) has been edited to remove extraneous words. However, no substantive changes have been made to the rule. Accordingly, by this amendment, the agency is setting out the revised rule in the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is not necessary.

Regulatory Impact

This rule is a technical amendment to consolidate three small sections of an