

any other alternate member from the same district to serve in such member's place and stand if necessary to secure a quorum. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

8. Revise § 920.32 to read as follows:

**§ 920.32 Procedure.**

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, research and promotion activities, or recommendations for regulations pursuant to §§ 920.50 through 920.55 of this part shall require at least eight concurring votes.

(b) Committee meetings may be assembled or held by telephone, video conference, or other means of communication. The committee may vote by telephone, facsimile, or other means of communication. Votes by members or alternates present at assembled meetings shall be cast in person. Votes by members or alternates participating by telephone or other means of communication shall be by roll call; *Provided*, That a video conference shall be considered an assembled meeting, and votes by those participating through video conference shall be considered as cast in person.

9. Add a new § 920.45 to read as follows:

**§ 920.45 Contributions.**

The committee may accept voluntary contributions, but these shall only be used to pay expenses incurred pursuant to § 920.47. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

10. Add a new § 920.47 to read as follows:

**§ 920.47 Production research, marketing research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of kiwifruit. The expense of such projects shall be paid from funds collected pursuant to §§ 920.41 and 920.45.

Dated: November 5, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-27135 Filed 11-10-09; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 161 and 165**

[Docket No. USCG-1998-4399]

**RIN 1625-AA58 (Formerly RIN 2115-AF75)**

**Vessel Traffic Service Lower Mississippi River**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a Vessel Traffic Service (VTS) on the Lower Mississippi River and transfer certain vessel traffic management (VTM) provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. The proposed rule would implement current practices and operating procedures appropriate to an Automatic Identification System (AIS)-based VTS and facilitate vessel transits, enhance good order, promote safe navigation, and improve existing waterway operating measures. The rule also proposes minor conforming revisions to the existing VTM provisions and related regulations.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before January 11, 2010 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-1998-4399 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Commander Jim Larson, Office of Shore Forces (CG-7413), Coast Guard; telephone 202-372-1554, e-mail [James.W.Larson@uscg.mil](mailto:James.W.Larson@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

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**I. 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.

### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-1998-4399), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. 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.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-1998-4399" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 and may change this proposed rule based on your comments.

### B. 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>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-1998-4399" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

### D. Public Meeting

The Coast Guard held a public meeting on October 24, 1998, in New Orleans, Louisiana. We announced this meeting in a notice published in the **Federal Register** on September 18, 1998 (63 FR 49939). This meeting provided the Coast Guard with the opportunity to discuss the Vessel Traffic Service (VTS) concept and the envisioned impact of the Automatic Identification System (AIS) technology to the VTS program.

This meeting also afforded us an opportunity to report the preliminary results of AIS tests conducted on the Lower Mississippi River (LMR). Advances in the use of AIS technology and its impact on the established VTS are not discussed in depth in this rulemaking; however, AIS requirements were the subject of a separate rulemaking published on October 22, 2003 (68 FR 60559).

In addition, the Coast Guard discussed the VTS concept at various Lower Mississippi River Waterways Safety Advisory Committee (LMRWSAC) meetings. LMRWSAC is a federally-chartered advisory committee, chaired by the Eighth Coast Guard District Commander, and is charged with making recommendations to the Coast Guard on matters relating to the transit of vessels and products on the LMR. These open forums have allowed the public the opportunity to comment on both VTS and AIS issues. The public's input has been, and will be, taken into account prior to the final rulemaking.

We are still considering whether to have another public meeting on this issue. The Coast Guard would like your comments on the reasons why another meeting would be beneficial. Send your comments requesting a public meeting to the Docket Management Facility at the address under **ADDRESSES**. If we determine that another public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## II. Abbreviations

### Abbreviation/Explanation

AHP	Above Head of Passes
AIS	Automatic Identification System
CH	Channel
COTP	Captain of the Port
GPS	Global Positioning System
IEC	International Electrotechnical Commission

ITU	International Telecommunications Union
LMRWSAC	Lower Mississippi River Waterways Safety Advisory Committee
MHz	Megahertz
NDG	National Dialogue Group
NEPA	National Environmental Policy Act
NPRM	Notice of Proposed Rulemaking
PAWSS	Port and Waterways Safety Systems
PWSA	Ports and Waterways Safety Act
PWSSC	Ports and Waterways Safety Systems Committee
VMRS	Vessel Movement Reporting System
VTC	Vessel Traffic Center
VTM	Vessel Traffic Management
VTS	Vessel Traffic Service
VTS LMR	Vessel Traffic Service Lower Mississippi River

## III. Background

### A. Regulatory History

On April 26, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Vessel Traffic Service Lower Mississippi River" in the **Federal Register** (65 FR 24616) and requested comments during a 90-day comment period. Due to several requests for additional time to comment, on August 18, 2000, the Coast Guard published a notice in the **Federal Register** (65 FR 50479) reopening the comment period until December 1, 2000, and announcing that the Coast Guard would hold a public meeting. On September 20, 2000, the Coast Guard published a notice of meeting in the **Federal Register** (65 FR 56843) announcing that the Coast Guard would hold a public meeting in New Orleans, Louisiana, on October 24, 2000, to receive public comments on the NPRM.

On October 24, 2000, the Coast Guard held a public meeting in New Orleans on Vessel Traffic Service Lower Mississippi River (VTS LMR). Twenty-four people attended the meeting, and two individuals provided comments.

This proposed rule would amend vessel traffic measures within the Mississippi River Regulated Navigation Area and require vessels as defined in 33 CFR 161.2 to participate in a vessel traffic service (VTS) that will serve the Lower Mississippi River (LMR). Additionally, this proposed rule would update certain operating practices, adopt standard traffic management procedures, and inform mariners of certain services provided by a Coast Guard VTS.

### B. Vessel Traffic Services

The Coast Guard operates 12 VTSs in the United States. A VTS provides navigation and safety information so mariners can make informed decisions during their voyage. In the past, the Coast Guard operated variations of a VTS in the New Orleans area.

Unfortunately, these efforts were plagued by budgetary constraints, the limitations of voluntary participation, and the temporary or part-time nature of the VTS operation. Since disestablishment of the VTS in New Orleans in the 1980s, the Coast Guard, as directed by the Oil Pollution Act of 1990 (OPA 90, Pub. L. 101-380), has:

- (1) Validated the need for a VTS in certain ports;
- (2) Made participation mandatory in all VTS ports; and
- (3) Invested in infrastructure improvement to VTS equipment and standardized operating procedures across all United States VTSs.

The Coast Guard has long recognized the potential benefits of properly established VTSs in U.S. ports and waterways. As a result, the Coast Guard established the Ports and Waterways Safety System (PAWSS) acquisition project to address waterway users' needs and place a greater emphasis on partnerships with industry to reduce risk in the marine environment. As part of PAWSS, the Coast Guard immediately convened a national dialogue group (NDG) comprised of maritime and waterway community stakeholders to identify the needs of waterway users with respect to Vessel Traffic Management (VTM) and VTS systems. The Coast Guard sponsored these discussions, which were hosted by the Committee on Maritime Advanced Information Systems (MAIS) under the auspices of The Marine Board of the National Research Council. Those stakeholders, representing all major sectors of the U.S. and foreign-flagged maritime industry, port authorities, pilots, the environmental community, and the Coast Guard, were tasked to: (1) Identify the information needs of waterway users to ensure safe passage; (2) assist in establishing a process to identify candidate waterways for VTM improvements and VTS installations; and (3) identify the basic elements of a VTS. The goal of the NDG was to provide a foundation for the development of an approach to VTM that would meet the shared government, industry, and public objective of ensuring the safety of vessel traffic in U.S. ports and waterways in a technologically sound and cost effective way.

A federally-operated and locally-adopted VTM facility has been in place in New Orleans Harbor since the 1930s. In an effort to assist the mariner, safeguard the port, ensure good order, and improve safety, the local maritime community implemented the Algiers Point Control Lights. This system evolved from local river pilots standing

watch using lanterns and whistle signals to a 24-hour, federally-staffed communication station with twin control light towers at Governor Nicholls Street Wharf and Gretna Lights. Although not formally recognized as a VTS, the communication station has provided longstanding traffic management services from its inception.

The Algiers Point/Crescent area is currently subject to regulatory provisions established in 33 CFR 165.810(c). The procedures and practices proposed in this rule are essentially the same as those currently used in the Algiers Point/Crescent area, but are being moved to 33 CFR 161.65(c) to consolidate all VTS regulations under one section.

The primary objective of the existing regulatory system is providing an orderly traffic flow around Algiers Point. Algiers Point is one of the most challenging bends to safely navigate on the Mississippi River, particularly in high water conditions. In one of the busiest industrial harbors in the world, vessels must negotiate a 120-degree bend in the river amidst constantly changing hydrographic conditions, congested waters, and various bridges and piers. Mandatory vessel traffic measures, represented by the light signals, are utilized to lessen the potential for mishap during periods of high water. The consequences of improper navigation in this segment of the river are both significant and well-documented. Since 1991, there have been multiple reportable marine casualties within the area covered by this rulemaking. The failure to safely transit this area can quickly lead to a mishap that causes substantial property damage, serious environmental and economic consequences, or loss of life.

The Coast Guard and local mariners recognize that this segment of the waterway warrants great vigilance. The nature of vessel traffic within this area and the anticipated increase in traffic requires that certain vessel traffic measures are active at all times or at least available at a moment's notice. These measures can best be assured by operating a Vessel Traffic Center (VTC) within the framework of a VTS. A VTC is a shoreside facility from which the VTS operates and has the communications capability to interact with marine traffic and respond to developing situations. The existing Control Light operation in the LMR and around Algiers Point has proven valuable in some measures of VTM; however, these measures are narrow in scope, limited to a small area, and only operated during periods of high water. Historically, limitations of equipment,

staffing, and site location hampered the light operator's ability to provide overall safety and efficiency of anticipated vessel traffic beyond the immediate vicinity of Algiers Point. Through implementation of a continuously-operating VTS, the Coast Guard has enhanced system capabilities and improved navigation on the entire LMR.

### C. Stakeholder Involvement

The Coast Guard has long recognized that a VTS on the LMR is a valuable asset to all entities, the "stakeholders", that may be impacted by the waterway either directly or indirectly. In addition, many of the stakeholders who regularly utilize the waterway have advised us that to achieve success, the VTS must meet the needs of the waterway users while imposing the least burden.

In 1997, the Coast Guard formed the Ports and Waterways Safety Systems Committee (PWSSC). The Coast Guard created this ad-hoc committee, a subcommittee under LMRWSAC, of maritime, port community, government, and public stakeholders to define user requirements for a VTS that would accomplish the overall goals of safety and efficiency. Since its formation, PWSSC has met several times, and the product of these meetings was a conceptual baseline VTS plan (see document USCG-1998-4399-0003 at <http://www.regulations.gov>) endorsed by LMRWSAC. Key recommendations of this plan involved the need to implement AIS technology and to incorporate AIS as a key component of any VTS implementation.

### D. Automatic Identification System Concept

AIS technology relies on Global Positioning System (GPS), navigation sensors, and digital communication equipment operating according to standardized protocols (*i.e.*, AIS transponders) that permit the voiceless exchange of navigation information between vessels and shoreside VTCs. The AIS transponders on vessels can broadcast information about the vessel, such as its name or call sign, dimensions, type, position (derived from a GPS input), course, speed, and navigation status. This information is continually updated and received by all AIS-equipped vessels in its vicinity. An AIS-based VTS is able to augment this broadcast with additional safety and navigation information such as weather, tides, currents, and status of navigational aids. This additional information can be relayed to all VTS users for consideration in voyage planning and execution. The advantage of this automatic exchange of

information is that it can be accessed by all mariners, tailored to the mariners' needs and desires, and greatly reduce voice radio exchanges. The ease of operation of the VTS and the reduction of voice interactions should greatly enhance mariners' ability to navigate, improve their situational awareness, and assist them in the performance of their duties, thus reducing the risk of collisions.

The Coast Guard recognizes the importance of AIS and has led the way on various international fronts for acceptance and adoption of this technology. Through its national representation role in the International Maritime Organization (IMO), International Telecommunications Union (ITU), and participation in various other international working groups, including groups within the International Electrotechnical Commission (IEC), the Coast Guard has been a leader in the drafting and/or adoption of various technical standards (e.g., ITU-R M.1371-3, IEC 61993-2, IEC 62320-1). Through comprehensive field testing and based on feedback received from test participants and other interested parties in the area, the Coast Guard established a voluntary-participation VTS on the LMR that incorporated full use of AIS technology in 2004.

In 2003, the USCG published a final rule that harmonized the AIS carriage and standardization requirements contained in the Maritime Transportation Security Act of 2002, Section 102, Public Law 107-295, 116 Stat. 2064, 46 U.S.C. 70114 (November 25, 2002) (MTSA) with the requirements of the International Convention for the Safety of Life at Sea (SOLAS) that established AIS carriage requirements for commercial vessels (33 CFR 164). Because of this prior regulation, all U.S.-flagged commercial vessels required to carry AIS equipment for operation in the VTS under this proposed rule have been in compliance since 2004. Similarly, foreign-flagged vessels have been required to carry AIS equipment under the SOLAS Convention since 2004.

This rulemaking proposes establishing mandatory-participation in the current voluntary VTS on the LMR. This effort is part of a comprehensive safety improvement initiative being implemented by the Coast Guard in consultation with various maritime entities in the area, including LMRWSAC.

The Coast Guard completed a capitalization program in 2004 that provided Coast Guard Sector New Orleans with additional Coast Guard

personnel and a modernized VTC. From this VTC, we have the capability to monitor the movement of VTS users and provide navigation services that will help all requesting mariners plan their transits of the LMR. Because the bend at Algiers Point remains an area of great concern and warrants extra precaution, we also designated the segment of the river between 93.5 and 95 miles Above Head of Passes (AHP) as a VTS Special Area, and provisions formerly set forth in 33 CFR 165.810(c) continue to apply in periods of high water. Due to added concerns with a high number of vessel casualties in the vicinity of Eighty-one Mile Point as a result of unique river conditions, an additional VTS Special Area is being designated on the river between 167.5 and 187.9 miles AHP. Provisions formerly set forth in 33 CFR 165.810(g) continue to apply.

This rule also proposes extending the area of operation of VTS LMR to the area between 20 miles above Baton Rouge to the outer limit of the 12-mile territorial sea boundary.

#### IV. Summary of Changes Between NPRM and SNPRM

The Coast Guard made the following changes to the notice of proposed rulemaking (NPRM) and incorporated them in this supplemental NPRM (SNPRM):

- In the NPRM, we proposed to revise § 26.03 by deleting Table 26.03(f) and revising paragraph (f). We did not make those changes in this proposed rule because the changes were completed in a different rulemaking (68 FR 60559).

- In the NPRM, we discussed the federalism implications of this rule and determined that the proposed rule would have preemptive effect over any State laws or regulations on the same subject matter. We have restated that determination elsewhere in this rule. In addition, we have created a new § 161.6 to explicitly state that this rule has preemptive effect over state law on this subject.

- In the NPRM, we proposed to revise Table 161.12(b) by adding a new entry that describes the LMR VTS area. We did not make those changes in this proposed rule because they were completed in a different rulemaking (68 FR 60559). That rulemaking also redesignated Table 161.12(b) as Table 161.12(c). However, in the table currently designated Table 161.12(c), we propose to revise footnote 6 to indicate the operation of the VTS LMR. In addition, two VTS monitoring areas were proposed for VTS LMR in the NPRM, utilizing VHF channels 12 and 14. Based on the operational experience of VTS LMR, we now propose three VTS

monitoring areas, utilizing VHF channels 11, 12, and 05A. VHF channel 14 is being utilized by the U.S. Army Corps of Engineers for lock operations in the VTS LMR area, and the use of CH 14 by VTS LMR would interfere with lock operations. In lieu of CH 14, the Coast Guard is proposing to utilize VHF CH 11 (156.550 MHz) in the southern section of the VTS LMR area, which is currently designated as a VTS protected frequency for the VTS LMR area in 47 CFR 80.383. The Coast Guard is also proposing to establish an additional northern monitoring area, within the VTS area originally proposed in the NPRM, utilizing VHF Channel 05A. This channel is not currently designated as a VTS protected frequency, but the Coast Guard will be petitioning the FCC for protection status for this channel and has already made frequency use applications through appropriate Federal agencies. Field tests have been conducted on CH 05A during which little other marine traffic was identified, indicating that little impact will result from the Coast Guard's use of this channel.

- Since publishing the NPRM, Coast Guard District Eight established operating requirements in § 165.810 to cover the vicinity of Eighty-one Mile Point (72 FR 41624). The operating requirements for this area are now included in this proposed rule as a new VTS Special Area in § 161.65(e).

- In the NPRM, we proposed to remove § 165.810(c) and redesignate the remaining paragraphs. However, we instead propose to remove and reserve paragraph (c) to preserve the original designations for the remaining paragraphs.

#### V. Discussion of Comments

The Coast Guard received 21 letters commenting on the original proposed rule (65 FR 24616). We held one public meeting where we received two public comments. Many of the public's comments in response to the April 2000 notice of proposed rulemaking (NPRM) have been overtaken by subsequent events. As a result, we summarize below those actions that have taken place since the original round of public comments and this supplemental NPRM (SNPRM). The public will have an opportunity to comment on the current state of VTS LMR operations as addressed in this proposed rulemaking.

Since April 26, 2000, the Coast Guard has installed and operationally tested a Vessel Traffic Management (VTM) system to monitor the Lower Mississippi River (LMR) area addressed in this rulemaking. The system is a computer-based VTM system that

utilizes Automatic Identification System (AIS), closed circuit television cameras (CCTV), radar, and VHF radio communications to monitor and advise vessel traffic on the Mississippi River. Computer-based VTM systems have been operationally proven as a reliable VTM system in seven U.S. ports and are maintained and supported through Coast Guard efforts.

The VTS is now fully staffed by Coast Guard civilian employees, who have undergone a rigorous selection, training, and qualification process. As part of this training and qualification process, we have developed a National VTS Certification Course, based upon the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) VTS Training Curriculum, that each VTS watchstander must complete. In addition to Coast Guard employees, the VTS watch is augmented by two onsite Pilot Advisors, who bring additional knowledge and experience to the VTS operation. The Coast Guard has two Memorandums of Understanding with (1) the Crescent River Port Pilots Association and the Independent River Pilots and (2) the New Orleans and Baton Rouge Steamship Pilots and the Independent New Orleans and Baton Rouge Steamship Pilots, which address the staffing of the VTS with pilot advisors.

In addition to the installation of the VTM system, remote traffic control light tower operations from Governor Nichols Street Wharf and Gretna Light have been safely transitioned to the Coast Guard VTS center. Many of the original public comments expressed concern with the ability of the Coast Guard to safely transition to and monitor the traffic control towers from a consolidated VTS center utilizing an AIS based VTS system. Remote tower operation is further enhanced through the use of CCTV coverage of the river in critical areas. These remote operations have been in place since 2004.

Many of the original public comments addressed concerns with AIS equipment carriage requirements associated with the proposed rule. Since we published the NPRM in the *Federal Register* in 2000, the Coast Guard separated the VTS LMR and AIS rulemaking projects into two separate rulemaking projects (see USCG-2005-21869 for the AIS rulemaking). AIS is now fully integrated with the Coast Guard traffic management systems and has proven to be an effective traffic management tool in LMR, as well as the other U.S. VTS ports.

We feel that the current state of VTS operations on the LMR increases the

safety and efficiency of traffic in the VTS area as proposed in this rulemaking and look forward to addressing new public comments received regarding the proposed rulemaking.

## VI. Discussion of Supplemental Notice of Proposed Rulemaking

This proposed rule would revise regulations in 33 CFR parts 161 and 165 as follows:

### A. Section 161.2 Definitions

We propose to clarify the term “Hazardous Vessel Operating Condition” to make it clear that, in addition to equipment and manning shortcomings, any vessel condition that “may affect the positive control or safe handling” of a vessel, towing vessels in particular, is deemed a “Hazardous Vessel Operating Condition.”

### B. Section 161.6 Preemption

We propose to add this section to explicitly state that this rule has preemptive effect over state law on this subject.

### C. Section 161.12 Vessel Operating Requirements

The Coast Guard proposes to revise Table 161.12(c). Specifically, we modify the VTS LMR entry in the table by changing from two to three monitoring areas and updating the designated frequencies. Additionally, we revise the text in footnote 6 by deleting the reference to VTS LMR.

### D. Section 161.65 Vessel Traffic Service, Lower Mississippi River

The Coast Guard proposes to add a new entry that describes the Lower Mississippi River Vessel Traffic Service area. The VTS area extends from 20 miles north of Baton Rouge to the outer limit of the territorial sea, seaward of Southwest Pass. Within this VTS, there will be two VTS Special Areas.

The Algiers Point VTS Special Area will consist of those waters of the LMR between 93.5 and 95.0 miles Above Head of Passes (AHP). Special operating requirements are proposed to mirror the existing Control Light operations and would be in effect during periods of high water.

The Eighty-one Mile Point VTS Special Area will consist of those waters of the LMR between 167.5 and 187.9 miles AHP. Special operating requirements are proposed to mirror the existing operating requirements and would be in effect at all times.

### E. Section 165.810 Mississippi River, LA—Regulated Navigation Area

The Coast Guard proposes to remove and reserve paragraph (c), the existing

Mississippi River, LA—RNA provisions on Control Lights. The core of these provisions would be added to the special operating requirements of the Algiers Point VTS Special Area in § 161.65(c).

Additionally, we propose to remove and reserve paragraph (g), the existing Mississippi River, LA—RNA provisions around Eighty-one Mile Point. The core of these requirements would be added to the special operating requirements of the Eighty-one Mile Point VTS Special Area in § 161.65(e).

Finally, we propose adding a note at the end of this section alerting the reader that we would move the information previously located in paragraphs (c) and (g) of this section to § 161.65.

## VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### A. 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, 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.

This proposed rule would establish a VTS on the Lower Mississippi River and transfer certain VTM provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. The proposed rule would implement current practices and procedures appropriate to an AIS-based VTS.

Based on data from the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) database, we estimate the proposed rule would affect 1,796 U.S.-flagged vessels with hailing ports from mile 242.4 Above Head of Passes (AHP) (near Baton Rouge) to the territorial sea boundary and an estimated 2,294 foreign-flagged vessels.

The requirements for compliance with this proposed rule include:

- Certain classes of commercial vessels would be required to carry functioning AIS equipment and to employ the AIS equipment while operating within the VTS.
- Commercial vessels not required to carry AIS equipment would be required to follow established reporting procedures via radiotelephone when operating within the VTS area.

- Coast Guard would maintain an operational Vessel Traffic Center (VTC) to monitor and direct traffic within the VTS.

While this proposed rule would establish a mandatory participation Vessel Traffic Service (VTS), its principal effect will be to codify current practices. The requirements of this proposed rule have been implemented through prior regulations and we expect that there would not be additional costs

to either industry or government resulting from this proposed rule.

In 2003, the USCG published a final rule that harmonized the AIS carriage and standardization requirements contained in the Maritime Transportation Security Act of 2002 (MTSA) with the requirements of the International Convention for the Safety of Life at Sea (SOLAS) that established AIS carriage requirements for commercial vessels (33 CFR part 164).

Because of this prior regulation, all U.S.-flagged commercial vessels required to carry AIS equipment for operation in the VTS under this proposed rule have been in compliance since 2004. Similarly, foreign-flagged vessels have been required to carry AIS equipment under the SOLAS Convention since 2004. A list of the categories of commercial vessels and the dates of compliance for AIS carriage are shown in Table 1.

TABLE 1—COMMERCIAL VESSELS: AIS CARRIAGE REQUIREMENTS

Class of vessel	AIS currently required	Compliance date
Self propelled vessels 65 feet or more in length in commercial service and on an international voyage (excludes passenger and fishing vessels).	Yes .....	December 31, 2004.
Passenger Vessels of 150 gross tons or more on an international voyage .....	Yes .....	July 1, 2003.
Tankers on international voyages, regardless of tonnage .....	Yes .....	July 1, 2003.
Vessels of 50,000 gross tons or more, other than tankers or passenger ships, on international voyages.	Yes .....	July 1, 2004.
Vessels of 300 gross tons or more but less than 50,000 gross tons, other than tankers or passenger ships.	Yes .....	December 31, 2004.
Self propelled vessels of 65 feet or more in length in commercial service (excludes fishing vessels and passenger vessels certificated to carry less than 151 passengers for hire).	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Towing Vessels 26 feet or more in length and more than 600 horsepower in commercial service.	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Passenger Vessels certificated to carry more than 150 passengers for hire .....	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Fishing Vessels .....	No.	

Commercial vessels that are not required to carry AIS equipment must maintain radiotelephone communication with the VTC while traversing the VTS. These requirements have been in place since July of 1982, when the Coast Guard established specific radiotelephone frequencies and reporting procedures for vessels operating in the Mississippi River, LA-Regulated Navigation Area.

The Coast Guard has operated a VTC from a shoreside facility in downtown New Orleans since late 1999. This VTC provides the core communications and monitoring functions for the VTS.

The procedures and practices proposed in this proposed rule are the same as those currently in use at the Algiers Point/Crescent area of the VTS. Currently, commercial vessel movements in the VTS traverse the Algiers Point/Crescent area and current compliance with the rules of this area fulfills the requirements of the larger VTS.

As with the costs of the proposed rule, the benefits were also realized through vessel compliance with the prior regulations that established AIS and radiotelephone carriage requirements and the VTC operations center. The principal benefit of changing VTS participation from voluntary to mandatory is to codify

current practices which increase the efficiency of vessel operations on the Lower Mississippi River by consolidating and standardizing vessel operating procedures.

*B. 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.

As previously discussed, the requirements for vessel operation in the Algiers Point and Eighty-one Mile Point special areas were implemented in prior regulations, and most vessels which will be required to participate in the VTS are currently equipped to follow regulations already established in those two areas. As a result, we expect that this rule would not impose additional costs on any of the vessels operating in the VTS LMR.

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 rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*C. 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 consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the rule. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. 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).

#### E. 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 has implications for federalism. A summary of the impact of federalism in this rule follows.

Title I of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et seq.*) authorizes the Secretary to issue regulations to establish and maintain vessel traffic services consisting of measures for controlling or supervising vessel traffic to protect the marine environment. In enacting PWSA in 1972, Congress learned that advance planning and consultation with the affected States and other stakeholders was necessary to develop and implement a VTS. The Coast Guard, throughout the development of the VTS on the Lower Mississippi River, has consulted with the State of Louisiana, the affected state and Federal pilot's associations, vessel operators, users, and all affected stakeholders.

The Coast Guard has determined, after considering the factors developed by the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000), that by enacting Chapter 25 of the Ports and Waterways Safety Act, Congress intended to preempt the field of vessel traffic services in United States ports and waterways. Therefore, the regulations proposed in this rulemaking for operation and equipment required on vessels have preemptive impact over any State laws or regulations that may be enacted on the same subject matter.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations,

as these categories are within a field foreclosed from regulation by the States (see *U.S. v. Locke*, above), the Coast Guard recognizes the key role state and local governments may have in making regulatory determinations. The State of Louisiana and the Coast Guard have worked closely throughout the development of these regulations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by state or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the states.

#### F. 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.

#### G. 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.

#### H. 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.

#### I. 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.

#### J. 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.

#### K. 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.

#### L. 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.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves regulations changing Regulated Navigation Areas and regulations in aid of navigation. 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 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 165

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 161 and 165 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 161.2 [Amended]

2. In § 161.2, revise paragraph (3) of the definition of Hazardous Vessel Operating Condition to read as follows:

§ 161.2 Definitions.

\* \* \* \* \*

Hazardous Vessel Operating Condition

\* \* \* \* \*

(3) Vessel characteristics that affect or restrict maneuverability, such as cargo or tow arrangement, trim, loaded condition, underkeel or overhead

clearance, speed capabilities, power availability, or similar characteristics, which may affect the positive control or safe handling of the vessel or the tow.

\* \* \* \* \*

3. Add a new § 161.6 to read as follows:

§ 161.6 Preemption.

The regulations in part 161 of this subchapter as to vessels have preemptive impact over State law on the same subject. The Coast Guard has determined after considering the factors developed by the Supreme Court in U.S. v Locke, 529 U.S. 89 (2000), that by enacting Chapter 25 of the Ports and Waterways Safety Act (33 U.S.C. 1221 et. seq.), Congress intended to preempt the field of vessel traffic services in United States ports and waterways.

§ 161.12 [Amended]

4. In § 161.12, in Table 161.12(c)—

a. In footnote 6, remove the words "VTS Lower Mississippi River and"; and

b. Amend Table 161.12(c) by revising the entries for New Orleans Traffic, to read as follows:

§ 161.12 Vessel operating requirements.

\* \* \* \* \*

TABLE 161.12(c)—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Table with 3 columns: Center MMSI 1 Call Sign, Designated frequency (Channel designation)-purpose 2, Monitoring Area 3,4. Includes entries for New Orleans Traffic with frequencies 156.550 MHz, 156.600 MHz, and 156.250 MHz (Ch. 05A) and descriptions of navigable waters.

Notes to Table 161.12(c):

1Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned that identifies ship stations, ship earth stations, coast stations, coast earth stations, and group calls for use by a digital selective calling (DSC) radio, an INMARSAT ship earth station or AIS. AIS requirements are set forth in §§ 161.21 and 164.46 of this subchapter. The requirements set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number.

2In the event of a communication failure, difficulties or other safety factors, the Center may direct or permit a user to monitor and report on any other designated monitoring frequency or the bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13) or 156.375 MHz (Channel 67), to the extent that doing so provides a level of safety beyond that provided by other means. The bridge-to-bridge navigational frequency, 156.650 MHz (Ch. 13) is used in certain monitoring areas where the level of reporting does not warrant a designated frequency.

3All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

4Some monitoring areas extend beyond navigable waters. Although not required, users are strongly encouraged to maintain a listening watch on the designated monitoring frequency in these areas. Otherwise, they are required to maintain watch as stated in 47 CFR 80.148.

\* \* \* \* \*

5. Add a new § 161.65 to read as follows:

**§ 161.65 Vessel Traffic Service Lower Mississippi River.**

(a) The Vessel Traffic Service (VTS) area consists of navigable waters of the Lower Mississippi River (LMR) below 30°38.7' N, 91°17.5' W (Port Hudson Light at 255.0 miles Above Head of Passes (AHP)), the Southwest Pass, and those within a 12 nautical mile radius around 28°54.3' N, 89°25.7' W (Southwest Pass Entrance Light at 19.9 miles Below Head of Passes (BHP)).

(b) The Algiers Point VTS Special Area consists of the navigable waters of the LMR bounded on the north by a line drawn from 29°57.62' N, 90°02.61' W to 29°57.34' N, 90°02.60' W and on the south by a line drawn from 29°56.89' N, 90°03.72' W to 29°56.93' N, 90°03.34' W (95.0 and 93.5 miles AHP) during periods of high water—that is, when the Carrolton Gage reads 8.0 feet or above on a rising stage or 9.0 feet or above on a falling stage, or under any other water conditions the Captain of the Port (COTP) deems necessary.

(c) *Additional Algiers Point VTS Special Area Operating Requirements.* The following additional requirements are applicable in the Algiers Point VTS Special Area:

(1) A vessel movement reporting system (VMRS) user must abide by the signals of the Governor Nicholls Street Wharf, 29°57.6' N, 90°03.4' W, and Gretna, 29°55.5' N, 90°03.7' W, Control

Lights (94.3 and 96.6 miles AHP, respectively) in the following manner:

- (i) *Green Light*—May proceed as intended.
- (ii) *Red Light*—Do not proceed, unless otherwise directed by the VTS.
- (iii) *No Light*—Do not proceed, immediately notify VTS and await further directions.

**Note to § 161.65(c)(1):** To provide advance notification to downbound vessels, a traffic repeater signal of Gretna Light is located at Westwego, LA, 29°54.8' N 90°08.3' W (101.4 miles AHP).

(2) A vessel awaiting a signal change or VTS directions must keep clear of other vessels transiting the area.

(d) The Eighty-one Mile Point VTS Special Area consists of navigable waters of the LMR between 167.5 miles AHP and 187.9 miles AHP.

(e) *Additional Eighty-one Mile Point VTS Special Area Operating Requirements.* The following additional requirements are applicable in the Eighty-one Mile Point VTS Special Area:

- (1) Prior to proceeding upriver past 167.5 miles AHP, Sunshine Bridge, vessels must contact VTS New Orleans on VHF Channel 5A to check-in. Vessels must provide name and destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46, and, if applicable, size of tow and number of loaded and empty barges. At 173.7 miles AHP, Bringier Point Light, ascending vessels must contact VTS New Orleans and provide a follow-on position check.

At both check-in and follow-on position check, VTS New Orleans will advise the vessel on traffic approaching Eighty-one Mile Point.

(2) Prior to proceeding downriver past 187.9 miles AHP COS-MAR Lights, vessels must contact VTS New Orleans on VHF Channel 5A to check-in. Vessels must provide name and destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46, and, if applicable, size of tow and number of loaded and empty barges. At 183.9 miles AHP, Wyandotte Chemical Dock Lights, descending vessels must contact VTS New Orleans and provide a follow-on position check. At both check-in and follow-on position check, VTS New Orleans will advise the vessel on traffic approaching Eighty-one Mile Point.

(3) All vessels getting underway between miles 167.5 and 187.9 AHP must check-in with VTS New Orleans on VHF Channel 5A immediately prior to getting underway and must comply with the respective ascending and descending check-in and follow-on points listed in paragraphs (e)(1) and (2) of this section.

(4) Fleet vessels must check-in with VTS New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to check-in if they are operating exclusively within their fleet.

(f) *Reporting Points.* Table 161.65(f) lists the VTS Lower Mississippi River Reporting Points.

TABLE 161.65(f)—VTS LOWER MISSISSIPPI RIVER REPORTING POINTS

Designator	Geographic name	Geographic description	Latitude/longitude/mile marker	Notes
A .....	Algiers Canal Forebay ...	88.0° AHP .....	29°56.6' N; 90°10.1' W	Upbound transiting Algiers Point Special Area.
B .....	Industrial Canal .....	92.7° AHP .....	29°57.2' N; 90°01.68' W	Upbound transiting Algiers Point Special Area.
C .....	Crescent Towing Smith Fleet.	93.5° AHP .....	29°57.50' N; 90°02.62' W	Upbound Towing vessels transiting Algiers Point Special Area.
D .....	Marlex Terminal (Naval Ships).	99.0° AHP .....	29°54.65' N; 90°05.87' W	Downbound transiting Algiers Point Special Area.
E .....	Huey P. Long Bridge ....	106.1° AHP .....	29°55.40' N; 89°57.7' W	Downbound transiting Algiers Point Special Area.

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

6. 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, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

**§ 165.810 [Amended]**

7. In § 165.810—

a. Remove and reserve paragraph (c);

b. Remove and reserve paragraph (g); and

c. Add a note at the end of the section to read as follows:

**§ 165.810 Mississippi River, LA-regulated navigation area.**

\* \* \* \* \*

**Note to § 165.810:** Control Light provisions (previously referenced in paragraph (c) of this section) used to manage vessel traffic during periods of high waters in the vicinity of Algiers Point are located in 33 CFR 161.65(c). The special operating requirements (previously referenced in paragraph (g) of

this section) used to manage vessel traffic in the vicinity of Eighty-one Mile Point are located in 33 CFR 161.65(e).

Dated: October 27, 2009.

**Brian M. Salerno,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.*

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