

Coast Guard Patrol Commander, (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

Dated: June 20, 1995.

Rudy K. Peschel,

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

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33 CFR Part 162

[CGD-09-95-002]

RIN 2115-AF04

Amendment to Inland Waterways Navigation Regulations Establishing Speed Limits on Connecting Waters From Lake Huron to Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing speed limits for vessels, less than 100 gross tons, operating in the nondisplacement mode on connecting waters from Lake Huron to Lake Erie. The normal speed limits in this area are determined in large part by concerns about wake damage. However, lesser wakes are created by nondisplacement vessels. The Coast Guard allowed nondisplacement vessels to operate at higher speeds during two temporary test periods from April 1, 1993 to November 30, 1994, with satisfactory results.

EFFECTIVE DATE: This rule is effective July 11, 1995.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Dave Sprunt, Chief, Case Management Section, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060, (216) 522-3994.

SUPPLEMENTARY INFORMATION: On March 27, 1995, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) regarding this regulation (60 FR 15734). A 60 day comment period was provided and interested persons were invited to submit comments during that period. No comments were received.

Background and Purpose

Current regulations in 33 CFR 162.138 which apply to connecting waters from Lake Huron to Lake Erie set the maximum speed for vessels 20 meters or more in length at limits ranging from 4 to 12 statute miles per hour in various areas. One of the primary purposes of these speed regulations is to limit wake damage, but they were not written to account for the substantially lesser wake-generating characteristics of nondisplacement vessels. During the

1993 and 1994 navigation season, the Commander of the Ninth Coast Guard District temporarily amended 33 CFR 162.138 in order to allow trial runs of these nondisplacement vessels (33 CFR 162.T139), 58 FR 17526, April 5, 1993 and 59 FR 16563 April 7, 1994). A corresponding exemption was granted by the Central Region of the Canadian Coast Guard, which has authority over the Canadian waters in the same area. The two year trial period has proven successful and the Coast Guard has therefore determined that there should now be a permanent amendment to the regulations in order to prevent an unnecessary restriction on the operation of such vessels. It should be noted that this amendment to the speed regulations for nondisplacement vessels does not in any way excuse the general obligation to exercise good seamanship when maneuvering in close quarters or the responsibility for damage which might be caused by a wake which is excessive in a location close to other vessels or shore structures.

The Coast Guard is setting an upper limit of 40 statute miles per hour for nondisplacement vessels 20 meters or more in length but less than 100 gross tons, and is allowing such nondisplacement vessels to overtake other vessels when otherwise safe. All other navigational regulations will remain in force, and the use of this special rule for nondisplacement vessels is subject to the prior approval of the Captain of the Port in order to insure that the special rule is only used by vessels which are of suitable design and which are in fact operated safely in this waterway.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Katherine E. Weathers, Assistant Chief of the Port and Environmental Safety Branch, and Commander M. Eric Reeves, Chief of the Port and Environmental Safety Branch.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment. This regulation is not intended to preempt any state or local regulation which may also be applicable to vessels operating in the nondisplacement mode.

Regulatory Evaluation

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). The Coast Guard expects the economic impact of this rule be so minimal that a full Regulatory Evaluation under paragraph 10e is unnecessary.

Small Entities

The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities. The effect of this regulation is to ease what has now been determined to be an unnecessarily restrictive regulation as applied to one business developing the use of nondisplacement vessels in the area.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 162

Inland waterways, Navigation.

Regulations

In consideration of the foregoing the Coast Guard is amending Part 162 of title 33, Code of Federal Regulations as follows:

PART 162—[AMENDED]

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

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 162.134, paragraph (f) is added to read as follows:

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

* * * * *

(f) The prohibitions in this section on overtaking in certain areas do not apply to vessels operating in the nondisplacement mode. In this section, "nondisplacement mode" means a mode of operation in which the vessel is supported by hydrodynamic forces, rather than displacement of its weight in

the water, to an extent such that the wake which would otherwise be generated by the vessel is significantly reduced.

3. Section 162.138 is revised to read as follows:

§ 162.138 Connecting waters from Lake Huron to Lake Erie; speed rules.

(a) *Maximum speed limit for vessels in normal displacement mode.* (1) Except when required for the safety of the vessel or any other vessel, vessels of 20 meters or more in length operating in normal displacement mode shall proceed at a speed not greater than—

(i) 12 statute miles per hour (10.4 knots) between Fort Gratiot Light and St. Clair Flats Canal Light 2;

(ii) 12 statute miles per hour (10.4 knots) between Peche Island Light and Detroit River Light; and

(iii) 4 statute miles per hour (3.5 knots) in the River Rouge.

(2) The maximum speed limit is 5.8 statute miles per hour (5 knots) in the navigable channel south of Peche Island (under Canadian jurisdiction).

(b) *Maximum speed limit for vessels operating in nondisplacement mode.* (1) Except when required for the safety of the vessel or any other vessel, vessels 20 meters or more in length but under 100 gross tons operating in the nondisplacement mode and meeting the requirements set out in paragraph (c) of this section, may operate at a speed not exceeding 40 miles per hour (34.8 knots)—

(i) During daylight hours (sunrise to sunset);

(ii) When conditions otherwise safely allow; and

(iii) When approval has been granted by the Coast Guard Captain of the Port, Detroit or Commander of the Ninth Coast Guard District prior to each transit of the area.

(2) In this section, "nondisplacement mode" means a mode of operation in which the vessel is supported by hydrodynamic forces, rather than displacement of its weight in the water, to an extent such that the wake which would otherwise be generated by the vessel is significantly reduced.

(c) *Unsafe vessels.* The Captain of the Port or the District Commander may deny approval for operations under paragraph (b) of this section if it appears that the design and operating characteristics of the vessels in question are not safe for the designated waterways, or if it appears that operations under this section have become unsafe for any reason.

(d) *Temporary speed limits.* The District Commander may temporarily establish speed limits or temporarily

amend existing speed limit regulations on the waters described in § 162.130(a).

Dated: June 20, 1995.

Rudy K. Peschel,

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

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33 CFR Part 165

[COTP St. Louis 95-010]

RIN 2115-AA97

Safety Zone; Upper Mississippi River, Mile 412.0 to 796.8

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 412.0 and 796.8. This regulation is required for the prevention of groundings where shoaling has occurred. This regulation will restrict general navigation in the required area for the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on June 26, 1995 and will terminate on July 26, 1995, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Robert Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG A.B. Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S.M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this rule and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, receding river levels after weeks of flood conditions and increased river current have caused shoaling all along this reach of the Upper Mississippi River, leaving insufficient time to publish a proposed rulemaking. The Coast Guard deems it to be in the public's interest to issue a rule without waiting for comment period or delayed effective date because of immediate need to limit barge drafts.

Background and Purpose

The Upper Mississippi River from the mouth, mile 412.0, to mile 796.8, has seen a significant drop in the water level and shoaling has occurred. This rule is required to impose vessel draft limits to prevent groundings within the regulated area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the closed area as conditions permit. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation as an action to protect public safety. A Categorical Exclusion Determination has