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Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendix A. Appendix A, Organizations Determined to be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya.

Appendix A to part 550 is amended to provide public notice of the designation of three Malta hotels, *i. e.*, Mistra Village Ltd., Hotel Milano Due, and Marina San Gorg Co. Ltd, as Specially Designated Nationals of Libya.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendix A. All unlicensed transactions with such entities, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting or purporting to act directly or

indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed \$10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to \$250,000 or imprisonment for up to 10 years per count, or both, for individuals and criminal fines of up to \$500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701-1706; 50 U.S.C. 1601-1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa-8 and 2349aa-9; 3 U.S.C. 301; E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX A TO PART 550—ORGANIZATIONS DETERMINED TO BE WITHIN THE TERM "GOVERNMENT OF LIBYA" (SPECIALLY DESIGNATED NATIONALS OF LIBYA)

* * * * *

HOTEL MILANO DUE,
Gzira, Malta.

* * * * *

MARINA SAN GORG CO. LTD.
(a.k.a. Marina San Gorg Holiday Complex),
Malta.

* * * * *

MISTRA VILLAGE LTD.
22 Europa Centre, Floriana, Malta
(registered address);
Xemija Hill, St. Paul's Bay, Malta
(operating address).

* * * * *

Dated: June 28, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 30, 1995.

Dennis M. O'Connell,

*Acting Deputy Assistant Secretary
(Regulatory, Tariff and Trade Enforcement).*

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08-94-006]

RIN 2115-AE81

Regulated Navigation Area; Mississippi River, Miles 88 to 240 Above Head of Passes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final, an interim final rule published in April 1994 extending the upper limits of the Mississippi River Regulated Navigation Area to cover the area between river miles 127 and 240, above Head of Passes, up to the Port of Baton Rouge. This regulation is necessary to improve the safety of barge fleeting areas that exist on the Mississippi River between New Orleans and Baton Rouge, Louisiana, an extremely confined navigation area with a high volume of marine traffic. The Coast Guard believes that the extension of the Regulated Navigation Area has resulted in a decrease in the number of barge breakaways along the lower Mississippi River between New Orleans and Baton Rouge, Louisiana, although the lack of a high water season earlier this spring

may have also contributed to this reduction.

EFFECTIVE DATE: This rule is effective on July 25, 1995.

FOR FURTHER INFORMATION CONTACT: CDR Harvey R. Dexter, Marine Safety Division, Eighth Coast Guard District, telephone: (504) 589-6271.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Jeff Novotny, project officer for the Captain of the Port, New Orleans, Louisiana, LT Verne Gifford, project officer, Eighth Coast Guard District Marine Safety Division, and LT Elisa Holland, project attorney, Eighth District Legal Office.

Regulatory History

On April 28, 1994, the Coast Guard issued an Interim Final Rule extending the upper limits of the Mississippi River Regulated Navigation Area, 33 CFR 165.803, to cover the area between river miles 88 and 240, above Head of Passes, up to the Port of Baton Rouge. (59 FR 21933) This rule was published as an interim rule, effective on the date of publication. The original comment period expired on June 27, 1994. The Coast Guard received three comments during this period. In response to requests from some commenters who wished to gather and provide additional information prior to the issuance of the final rule, the Coast Guard announced a public hearing and reopened the comment period for an additional 90 days on August 12, 1994. (59 FR 41407). Four written comments were received. A public hearing was held on September 2, 1994. Nine persons made oral comments. Of those nine oral commenters, four also provided their comments in written form, two during the original comment period and two during the reopened comment period. Based upon oral testimony and written comments, the Coast Guard prepared this final rule. This rule is being made effective on the date of publication. The interim final rule, effective since April 28, 1994, has contributed to a decrease in barge breakaways. In addition, high water conditions have recently developed and are expected to continue throughout the summer. Therefore, the Coast Guard for good cause finds, under 5 U.S.C. 553(d)(3), that this rule should be made effective in less than 30 days after publication.

Background and Purpose

The regulation was published as an interim final rule in April 1994 due to barge fleet breakaways on the

Mississippi River within the Captain of the Port New Orleans zone, high water conditions and higher than normal river stages which were expected to continue during the summer of 1994. The interim final rule extended the then-existing Regulated Navigation Area (mile 88 to mile 127) (hereinafter referred to as the old RNA) to mile 240 above Head of Passes. The regulation consisted of general procedural and equipment requirements for mooring of barge fleets on the Mississippi River and also outlined additional specific fleeting requirements during periods of high water.

The Regulated Navigation Area extension from mile 127 to mile 240 (hereinafter referred to as the new RNA) was deemed necessary due to data showing that more barge fleet breakaways were occurring in the new RNA than in the old RNA. Casualty investigations appeared to indicate that a majority of the breakaways occurred as the result of a passing tow or deep draft vessel striking the fleet or from large wakes generated by passing vessels. Both of those causal factors increase during high water conditions. Coast Guard fleet inspectors also found that many of the fleeting operations located in the new RNA not only did not conform with the mooring regulations in the old RNA, but also had weak and inadequate moorings and therefore were more vulnerable to breakaways during high water. At the public hearing held on September 2, 1994, the Coast Guard provided statistics showing barge breakaways for the period 1990-July 1994 in both the old and new RNA's. Those statistics supported, in part, the assertions in the interim final rule.

Discussion of Comments and Changes

Seven written comments were received in response to the interim final rule. Six comments contain significant criticism of the interim final rule and the seventh comment supported the Coast Guard's decision to extend the Regulated Navigation Area. Nine oral comments were received at the hearing. Of those nine oral comments, four were also provided in written form. Specific comments are discussed below.

One commenter pointed out that the regulations adopted in the Interim Final Rule were twenty years old and suggested that the regulatory requirements should be reviewed throughout the entire Regulated Navigation Area due to changes in the industry. Four other commenters also made recommendations that a comprehensive review of the regulations was in order. The Coast Guard agrees. Changes in the barge industry, marine

traffic within the RNA, and barge handling and mooring technology make it appropriate to conduct a comprehensive review of these regulations. One commenter recommended the formation of a quality action team composed of industry and Coast Guard personnel to undertake such a review. At a future date, the Coast Guard will publish an advance notice of proposed rulemaking to solicit public comment and participation in comprehensive review of the rules in place throughout the RNA. At that time, a decision will be made concerning the best mechanism for obtaining public input and participation. However, until such time as this review has been completed and changes, if any, are made, the safety of persons and vessels operating within the RNA as well as the environment require that the existing Interim Final Regulations, as modified in this Final Rule, remain in effect.

One commenter stated that the present rule (33 CFR 165.803(d)(2)) allows for subjective determination of the condition of mooring wires and lines and recommended that the Coast Guard work with industry to establish guidelines to be used by Coast Guard inspectors and fleet personnel in determining whether a line is worn or defective. One commenter suggested that the captain of the vessel rather than the person actually inspecting the mooring be able to initial each inspection in the vessel log as required by 33 CFR 165.803 (h) and (i). The Coast Guard will work with industry to arrive at some general guidelines for determining when a line is excessively worn or defective and will examine the possibility of having the master of the tug rather than the person conducting the inspection as part of the comprehensive review of these regulations referred to above. However, we feel that if the person actually completing the inspection were to document the inspection by initiating the log, it will engender a greater sense of responsibility and will result in better inspection of the lines. One commenter recommended that the Regulated Navigation Area should include all fleets, not just those with eight or more barges, that different regulations should be established for different size fleets, and that the regulation should also cover dock facilities. This recommendation will be considered as part of the comprehensive review referred to above.

"Breakaway" is presently defined as "a barge that is adrift and is not under the control of a towing vessel". 33 CFR 165.803(a)(1). One commenter recommended that the definition of

breakaway be redefined to mean a barge that is adrift and is not under the control of or being worked by a towing vessel. It is the Coast Guard's position that the present definition is sufficiently broad to exclude barges that are briefly or temporarily adrift but that are being worked by a tow boat. At the present time, the Coast Guard plans no changes to the definition.

Three commenters recommended that the Coast Guard pursue an aggressive role in monitoring the speed and performance of deep draft vessels operating in the Regulated Navigation Area. The Coast Guard does not have the resources to monitor every deep draft vessel in the Regulated Navigation Area. The Coast Guard relies, in part, on the skill and judgment of the master and pilot to navigate safely. However, the Coast Guard actively investigates barge breakaway incidents involving deep draft vessels if the vessel is clearly identified, and encourages parties to accurately report deep draft vessels navigating unsafely. The Coast Guard will investigate, and, if appropriate, take action against the vessel, the vessel's master or the pilot.

Two comments questioned why the new RNA was extended to mile 240 AHP since the 190 Highway bridge in Baton Rouge at mile 234 AHP is the northern-most point reachable by deep-draft vessel and the interim final rule focuses on deep-draft vessels as the primary cause of barge breakaways. This is an incorrect interpretation of the interim final rule. While deep-draft vessels may contribute to barge breakaways, the main concerns of the Regulated Navigation Area is barge fleeting safety, adequacy of barge moorings, and the additional hazards posed by high water conditions. Although deep-draft vessels cannot transit the Mississippi River further than mile 234 AHP, barge fleeting facilities extend above mile 234 AHP. Both the Port of Baton Rouge and the 190 Highway bridge are at or above mile 234 AHP and a barge breakaway in the river above mile 234 AHP could cause property damage, bridge damage or loss of life. Therefore, the Coast Guard believes the Regulated Navigation Area should remain extended to mile 240 AHP.

Three commenters stated that it would be physically impossible to immediately comply with the stern mooring requirement of 33 CFR 165.803(e)(1) and (2). A number of reasons were cited including high water, availability of contractors and the Army Corps of Engineers permitting process. Two commenters stated that installing stern moorings would be a significant

capital expense, approximately \$8,000 per anchor pile. Three commenters suggested that handling additional and, in many cases, heavier wires would increase the risk of personal injury to crew members. In addition, two commenters stated that the annual operating cost to the facility for maintaining stern wires and boat time for handling stern wires would increase by approximately 10%. For these reasons, as well as those discussed below, at the present time, the Coast Guard will not require stern moorings in the new RNA (mile 127 to mile 240). Stern moorings will still be required in the old RNA (mile 88 to mile 127). Barge fleeting facilities in the old RNA may apply for a waiver of the stern mooring requirement and the COTP, as authorized by 33 CFR 165.803(b), may, if warranted, grant such a waiver. Several commenters made comments which indirectly called into question the usefulness of the stern wires in reducing the likelihood of breakaways. The Coast Guard believes that stern wires do in fact reduce barge breakaways, and is continuing to collect data concerning this issue. However, this requirement will be reviewed as part of the comprehensive review referred to above. Three commenters also requested that enforcement of the interim final rule be postponed until the issues raised during the comment period had been resolved. Based on the comments above concerning the economic impact of stern wire installation and use, the Coast Guard has exercised its enforcement discretion and has not been actively enforcing the requirements of 33 CFR 165.803(e)(1) and (2) in the new RNA. To the best of the Coast Guard's knowledge, no barge fleeting facility in the new RNA has installed stern moorings.

All six commenters took issue with the provisions of 33 CFR 165.803(m)(2)(i) and (iii) and the Coast Guard's interpretation of those provisions. Those provisions require that, during high water, each fleet of between eight and 100 barges be attended by one radar-equipped towboat. The towboat must be immediately operational and within 500 yards of the barges. Those provisions have, in the past, been interpreted to mean that the towboat must stand by and could not perform any work in the fleet. All of the commenters stated that not allowing the stand by tug to work would create an economic hardship. One commenter noted that requiring a stand by boat would cost an additional \$600,000 annually. Another commenter stated the cost of a stand by boat would

be approximately \$180,000 per year per additional standby boat. Both commenters noted that it would be difficult to pass these costs on to the customers. In addition, two commenters noted that there are not enough towboats available. The Coast Guard believes that the goals of promoting safety and preventing barge breakaways in the Regulated Navigation Area can be satisfied if the towboat required by 33 CFR 165.803(m)(2)(i) and (iii) is able to work within the fleet. This is permitted by the language of the existing regulation and no enforcement action will be taken against operators because a boat is being used to work the fleet.

Regulatory Evaluation

In the interim final rule, the Coast Guard asserted that the rule was not a significant regulatory action under section 3(f) of Executive Order 12866 and did not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Coast Guard also asserted that the rule was not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11034), February 26, 1979 and that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the Department of Transportation was unnecessary. The Coast Guard received four comments addressing the issue of whether the interim final rule was a significant regulatory action. Two comments generally stated that the interim final rule, with its requirement of stern moorings and additional standby boats could force barge fleeting facilities out of business. One commenter noted that the requirement of stern moorings would require an immediate capital investment of \$400,000 plus additional operating costs of \$150,000. In addition, the commenter noted that requiring a stand-by boat would cost an additional \$600,000 annually. In short, the commenter stated, the interim final rule would cost him \$1,150,000 the first year and \$750,000 each year thereafter and would put him out of business. The commenter stated this rule would catastrophically disrupt the inland river transportation system. Another commenter echoed these comments, stating that these costs would be prohibitive for most fleets. The final rule deletes the requirement for stern moorings in the new RNA. Additionally, the standby boats required by 33 CFR 165.803(m)(2) (i) and (iii) may perform work within the fleet thereby reducing the economic impact of this requirement. No other requirements contained in the Regulated Navigation

Area constitute a significant regulatory action under section 6(a)(3) of Executive Order 12866. Therefore, this regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs 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 11034), February 26, 1979). The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

The Coast Guard asserted in the interim final rule that since the rule did not require a general notice of proposed rulemaking (as it was published as an interim final rule as allowed by 5 U.S.C. 553(b)(B) & (d)(3)), it was exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*). However, the Coast Guard did review the rule for potential impact on small entities and took the position that the interim final rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard invited comment from parties who felt they were a small entity on which the rule would have significant economic impact. One commenter took issue with the Coast Guard's assertion that notice and public procedure prior to the effective date of the rule would be contrary to public interest, arguing that the extension of the regulated navigation area was not a minor or technical amendment to a rule as contemplated by 5 U.S.C. 553(b)(3) & (d)(3). The commenter stated that an initial and final flexibility analysis under 5 U.S.C. 603 *et seq.*, should be done. The commenter provided information to support the assertion that it was a small entity as defined by 15 U.S.C. 632(a). The commenter noted that the requirement of stern moorings would require an immediate capital investment of \$400,000 plus additional operating costs of \$150,000. In addition, the commenter noted that requiring a stand-by boat would cost an additional \$500,000 annually. In short, the commenter stated, the interim final rule would cost him \$1,150,000 the first year and \$750,000 each year thereafter and would put him out of business. The commenter asserted that the interim final rule would have a significant economic impact on all of the barge fleeing facilities in the new RNA.

Another commenter took exception to the Coast Guard's assertion that the interim final rule would not have a significant economic impact on any small entities. The commenter stated stern moorings would cost approximately \$8,000 per mooring plus 10% in additional operating costs annually. The cost of a standby boat would be approximately \$180,000 per year per additional standby boat. The commenter stated the interim final rule would impose a substantial economic impact on the barge fleets in the RNA if the standby boats were prohibited from working within the barge fleet. As previously noted, this final rule deletes the requirement of stern moorings in the new RNA and the standby boats required by 33 CFR 165.803(m)(2) (i) and (iii) are able to perform work within the fleet. 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.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is § 165.803(i) and the corresponding OMB approval number is OMB Control Number 2115-0092.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Consideration

This final rule has been thoroughly reviewed by the Coast Guard, the lead Federal agency for purposes of the National Environmental Policy Act (NEPA). It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

Accordingly, the interim final rule amending 33 CFR part 165 which was published at 59 FR 21933 on April 28, 1994, is adopted as a final rule with the following changes:

PART 165—[AMENDED]

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; 49 CFR 1.46.

2. In § 165.803, the introductory text and paragraphs (e)(1) and (e)(2) are revised to read as follows:

§ 165.803 Mississippi River—regulated navigation area.

The following is a Regulated Navigation Area—The waters of the Mississippi River between miles 88 and 240 above Head of Passes.

* * * * *

(e) *Mooring to a mooring device.* (1) A barge may be moored to mooring devices if the upstream end of that barge is secured to at least one mooring device and the downstream end is secured to at least one other mooring device, except that from mile 127 to mile 240 a barge may be moored to mooring devices if the upstream end of that barge is secured to at least one mooring device.

(2) Barges moored in tiers may be shifted to mooring devices if the shoreward barge at the upstream end of the tier is secured to at least one mooring device, and the shoreward barge at the downstream end of the tier is secured to at least one other mooring device, except that from mile 127 to mile 240 barges moored in tiers may be shifted to mooring devices if the shoreward barge at the upstream end of the tier is secured to at least one mooring device.

* * * * *

Dated: June 20, 1995.

C.B. Newlin,

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist., Acting.

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