

The contractor, Agate Construction on behalf of NJDOT, has requested a temporary deviation to the existing regulations for the Route 88/Veterans Memorial Bridge to facilitate necessary repairs. The repairs consist of the replacement of bridge traffic control devices (barrier gates, warning gates, and bridge traffic control signals) along with major electrical rehabilitation. Under this deviation, the vertical-lift span of the drawbridge will be maintained in the closed-to-navigation position from 7 a.m. on December 15, 2010, through 11:59 p.m. on March 15, 2011.

Bridge opening data, supplied by NJDOT and reviewed by the Coast Guard, revealed a small amount of vessel openings of the draw span between the months of December and March in 2008 and 2009. Specifically, the bridge opened for vessels 15, 0, 0, and 4 times during the months of December 2008 to March 2009; and during the months of December 2009 to March 2010, the bridge opened for vessels 14, 0, 0, and 8 times, respectively.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

Vessels that can pass under the bridge without a bridge opening may continue to do so at anytime. The Atlantic Ocean is an alternate route for vessels with mast heights greater than 10 feet. In the event of an emergency, the drawbridge will open for vessels if at least 24 hours' advance notice is given to the bridge operator.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulation is authorized under 33 CFR 117.35.

Dated: October 14, 2010.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 161 and 165

[Docket No. USCG-1998-4399]

RIN 1625-AA58

#### Vessel Traffic Service Lower Mississippi River

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Vessel Traffic Service (VTS) on the Lower Mississippi River and is transferring certain vessel traffic management (VTM) provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. This final rule establishes a mandatory participation VTS by implementing current voluntary practices and operating procedures. This rule facilitates vessel transits, enhances good order, promotes safe navigation, and improves existing waterway operating measures. The rule also proposes minor conforming revisions to the existing VTM provisions and related regulations.

**DATES:** This final rule is effective December 27, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-1998-4399 and are available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-1998-4399 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this 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 the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

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#### I. Abbreviations

- AIS Automatic Identification System
- DHS Department of Homeland Security
- LMR Lower Mississippi River
- LMRWSAC Lower Mississippi River Waterways Safety Advisory Committee
- NDG National Dialogue Group
- NPRM Notice of Proposed Rulemaking
- PAWSS Port and Waterways Safety Systems
- PWSA Ports and Waterways Safety Act
- PWSSC Ports and Waterways Safety Systems Committee
- SNPRM Supplemental Notice of Proposed Rulemaking
- VTC Vessel Traffic Center
- VTM Vessel Traffic Management
- VTS Vessel Traffic Service

#### II. Regulatory History

On April 26, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Vessel Traffic Service Lower Mississippi River" (65 FR 24516) 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 (65 FR 50479) reopening the comment period until December 1, 2000. The Coast Guard received 23 letters containing three comments in response to the NPRM.

On September 20, 2000, the Coast Guard published a notice of public meeting (65 FR 56843) announcing the time and place of a public meeting. On October 24, 2000, the Coast Guard held the meeting in New Orleans, LA, to receive comments on the proposed rule. Twenty-four people attended the meeting and two people spoke.

On November 12, 2009, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) entitled "Vessel Traffic Service Lower Mississippi River" (74 FR 58223). The SNPRM addressed important changes to maritime operations that have taken

place since the NPRM was published,<sup>1</sup> specifically: (1) The Coast Guard has installed and operationally tested a computer based Vessel Traffic Management (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 Lower Mississippi River (LMR), (2) the Vessel Traffic Service (VTS) Center is now fully staffed by trained and certified Coast Guard civilian employees augmented by two onsite Pilot Advisors, (3) remote traffic control light tower operations have been transitioned to the VTS Center, (4) AIS is now fully integrated with the Coast Guard traffic management systems throughout the United States,<sup>2</sup> and (5) the Coast Guard established a voluntary participation VTS in LMR.<sup>3</sup> In the SNPRM, we also addressed the comments received on the NPRM.

We received one letter containing two comments in response to the SNPRM, which are discussed later in this preamble.

### III. Basis and Purpose

This final rule is issued, pursuant to the Ports and Waterways Safety Act (PWSA), as amended, (codified at 33 U.S.C. 1221 *et seq.*), to establish VTSs in the United States. Title I of the PWSA authorizes the Secretary to promulgate regulations to establish and maintain VTSs consisting of measures for controlling or supervising vessel traffic to protect the marine environment. 33 U.S.C. 1223, 1231.

The Coast Guard operates 12 VTSs in the United States. A VTS provides navigation and safety information that enables mariners to 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 hindered by budget constraints, the limitations of voluntary participation, and the temporary or part-time nature of the VTS operation; none of these proved to be a permanent or complete solution to the challenges of navigating the LMR.

This rule establishes mandatory participation for certain classes of vessels in the VTS LMR area. It amends

vessel traffic measures within the Mississippi River Regulated Navigation Area and formalizes the existing, voluntary VTS on the LMR. Additionally, this rule updates certain operating practices, adopts standard traffic management procedures, and informs mariners of certain services provided by VTS LMR.

### IV. Background

#### A. Vessel Traffic Services

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 VTSs in certain ports;
- (2) Made participation mandatory in all VTS ports established in the National VTS regulations; and
- (3) Invested in infrastructure improvement to VTS equipment and standardized operating procedures across all United States VTSs.

In 1997, 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 VTM and VTS systems. The Coast Guard sponsored these discussions, which were hosted by the Committee on Maritime Advanced Information Systems 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 Algiers Point Control Lights have provided longstanding traffic management services.

Vessel movement in the vicinity of Algiers Point/Crescent area is currently subject to regulatory provisions established in 33 CFR 165.810(c). The primary objective of the existing regulatory system in 33 CFR 165.810(c) is to provide 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, and even loss of life.

The existing Control Light operation in 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. The limited scope of the facility has caused further problems at times: Equipment, staffing, and location limitations have sometimes hindered the light operator's ability to ensure the overall safety and efficiency of anticipated vessel traffic beyond the immediate vicinity of Algiers Point.

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

<sup>1</sup> For a more complete discussion of the reasons the Coast Guard published an SNPRM see 74 FR 58223.

<sup>2</sup> For a more complete discussion of AIS Carriage Requirement see the Coast Guard "Automatic Identification System; Vessel Carriage Requirement" final rule published on October 22, 2003, 68 FR 60559.

<sup>3</sup> The Coast Guard established a voluntary participation VTS in the LMR in 2004 that has been continuously operated since that time.

least available at a moment's notice. The availability of these measures can best be assured by operating a Vessel Traffic Center (VTC) for Algiers Point 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.

Through implementation of a continuously-operating VTC at Algiers Point within the framework of the mandatory LMR VTS being created by this rule, the Coast Guard seeks to overcome the limited scope of the existing Control Light operation and use the enhanced system capabilities of the mandatory LMR VTS to improve navigation safety on and around both Algiers Point and the entire LMR.

The procedures and practices in this rule concerning Algiers Point VTC are essentially the same as those currently used in the Algiers Point. This final rule simply moves the Algiers Point provisions from current 33 CFR 165.810(c) to new 33 CFR 161.65(c) to integrate the Algiers Point VTC into the VTS LMR and to consolidate all VTS LMR regulations under one section.

#### B. Stakeholder Involvement

The Coast Guard recognizes that a VTS on the LMR is a valuable asset to all stakeholders that may be impacted by what happens on or near 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 the Lower Mississippi River Waterway Safety Advisory Committee (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 for the entire LMR. Since its formation, the PWSSC 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 the 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. The currently operating, voluntary participation VTS on the LMR, established in 2004, incorporated full use of AIS technology.

#### V. Discussion of Comments and Changes

We received one response containing two comments and a request for a public meeting in response during the SNPRM comment period that ended on January 11, 2010. The Coast Guard determined that no significant issues were raised in the request which would have justified holding such a meeting and none was held.

The first comment recommended against the modeling of VTS LMR after VTS operations in Morgan City, Louisiana, and in Houston-Galveston, Texas, stating that those "VTS zones do not adequately fit the unique operating conditions of the LMR. The Coast Guard agrees in part. Although the VTM system used at VTS LMR is similar to the systems used in both Morgan City and Houston-Galveston, and some VTS operations are standardized through all Coast Guard VTS Centers, the operations of VTS LMR have been tailored to the unique nature of the Mississippi River, including the unique operating requirements at Algiers Point, as evidenced by the presence of Pilot advisors in the VTC and the special operating requirements being imposed at Algiers Point.

The second comment requested that a working group be established under the auspices of the LMRWSAC to address future changes to the VTS system. The Coast Guard agrees that port stakeholders should be involved in any major changes to VTS operations. To the extent that a future change to VTS operations would require a change to the governing regulations such a regulation change would require a rulemaking. As part of the rulemaking process the public and port stakeholders would have ample opportunity to participate. Further, and the Coast Guard intends to continue to consult with the State of Louisiana, the affected state and federal pilot's associations, vessel operators, users, and all other affected stakeholders on VTS operations. However, at this time the Coast Guard is not planning any significant changes to VTS operations on the LMR and therefore does not see the need to establish a separate working group. The Coast Guard encourages stakeholders to provide feedback on VTS operations by contacting VTS LMR.

No changes to the rule text have been made in response to these comments. The text of the final rule is the same as the text proposed in the SNPRM. For a complete discussion of the rule, *please see* the discussion included in the SNPRM at 74 FR 58227.

#### VI. Regulatory Analyses

We developed this 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 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.

Comments on the proposed rule are summarized in the Discussion of Comments and Changes section of this preamble. The Coast Guard received no comments that altered our assessment of impacts in the SNPRM. We have found no additional data or information that changed our findings in the SNPRM. We have adopted the assessment in the SNPRM for this rule as final. Since vessels presently follow the rules outlined in this final rule, the Coast Guard believes that this final rule will only have a minimal economic impact.

This final rule will establish a VTS on the LMR and transfer certain VTM provisions of the Mississippi River, Louisiana—Regulated Navigation Area to the VTS. The rule will 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 database, we estimate the rule will affect 1,796 U.S.-flagged vessels with hailing ports from mile 242.4 Above Head of Passes, which is near Baton Rouge, to the territorial sea boundary, and an estimated 2,294 foreign-flagged vessels.

The requirements for compliance with this rule include:

- Certain classes of commercial vessels will 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 will be required to follow established reporting procedures via radiotelephone when operating within the VTS area.
- The Coast Guard will maintain an operational VTC to monitor and direct traffic within the VTS.

In 2003, the Coast Guard published a final rule that harmonized the AIS carriage and standardization requirements contained in the Maritime Transportation Security Act of 2002

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 that are required to carry AIS equipment for operation in the VTS under this 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.

While this rule will establish a mandatory participation VTS, its principal effect will be to codify current practices. The AIS carriage requirements of this rule have been implemented through prior regulations and we expect that there will not be additional costs to either industry or government resulting from this rule.

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 Vessel Movement Reporting System (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 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 of this 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 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 that increase the efficiency of vessel operations on the LMR 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 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.

In the NPRM, the Coast Guard certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no comments on this certification and have made no changes that would alter our assessment of the impacts in the NPRM.

Vessels are presently following the procedures outlined in this final rule, thus the adoption of these rules would not have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

**C. Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in

understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with: 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).

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 rule calls 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 found 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. Maritime conflict preemption principles apply to PWSA Title I. 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 that Coast Guard regulations have preemptive impact over State law regarding vessel traffic services in United States ports and waterways. Therefore, the regulations proposed in this rulemaking for operation and equipment required on vessels preempt any State laws or regulations on the same subject matter.

Nevertheless, 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.

This participation and consultation has taken place within the Ports and Waterways Safety Systems Committee (PWSSC), which was formed in 1997. This ad-hoc committee of maritime, port community, and public stakeholders has met several times, and the product of these meetings was a conceptual baseline VTS plan (*see* U.S. Coast Guard Docket USCG-1998-4399-0003 at <http://www.regulations.gov>). The State of Louisiana was an active participant of PWSSC meetings and contributed to this plan. The Coast Guard will continue to consult with the State of Louisiana, the Governor's Task Force on Maritime Industry, as well as all affected stakeholders during implementation.

The preemptive impact of this rule is codified in new 33 CFR 161.6. New § 161.6 is slightly modified from the version proposed in the SNPRM to more accurately reflect that maritime conflict preemption principles apply to the regulations in this part. The preemptive impact of new § 161.6 is unchanged from the preemptive impact of proposed § 161.6.

### 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 (adjusted for inflation) or more in any one year. This rule would not impose an unfunded mandate.

### G. Taking of Private Property

This rule will not cause 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 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 rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does 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 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human

environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) and (i) of the Instruction. This rule involves implementing current practices to facilitate vessel transit, promote safe navigation and improve existing waterway operating measures. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

**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 amends 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.

■ 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 § 161.6 to read as follows:

**§ 161.6 Preemption.**

The regulations in this part have preemptive impact over State laws or regulations on the same subject matter. 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 that Coast Guard regulations preempt State laws or regulations regarding vessel traffic services in United States ports and waterways.

■ 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 to 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

Center MMSI <sup>1</sup> call sign	Designated frequency (channel designation)—purpose <sup>2</sup>	Monitoring area <sup>3,4</sup>
* * * * *		
Lower Mississippi River—0036699952:		
New Orleans traffic .....	156.550 MHz (Ch. 11) .....	The navigable waters of the Lower Mississippi River below 29°55.3' N 089°55.6' W (Saxonholm Light) at 86.0 miles Above Head of Passes (AHP), extending down river to Southwest Pass, and, within a 12 nautical mile radius around 28°54.3' N 089°25.7' W (Southwest Pass Entrance Light at 20.1 miles Below Head of Passes.
New Orleans traffic .....	156.600 MHz (Ch. 12) .....	The navigable waters of the Lower Mississippi River bounded on the north by a line drawn perpendicular on the river at 29°55'30" N and 090°12'46" W (Upper Twelve Mile Point) at 109.0 miles AHP and on the south by a line drawn perpendicular at 29°55.3' N 089°55.6' W (Saxonholm Light) at 86.0 miles AHP.
New Orleans traffic .....	156.250 MHz (Ch. 05A) .....	The navigable waters of the Lower Mississippi River below 30°38.7' N 091°17.5' W (Port Hudson Light) at 254.5 miles AHP bounded on the south by a line drawn perpendicular on the river at 29°55'30" N and 090°12'46" W (Upper Twelve Mile Point) at 109.0 miles AHP.
* * * * *		

**Notes:**

<sup>1</sup> Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned by the Federal Communications Commission (FCC) 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 an MMSI number.

<sup>2</sup> In 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.

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

<sup>4</sup> Some 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 § 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 254.5 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 20.1 miles Below Head of Passes).

(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 Carrollton 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 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 checkin with VTS New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to checkin 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.

■ 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 22, 2010.

**Vincent B. Atkins,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Capabilities.*

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