

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.

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Dated: June 20, 1995.

C.B. Newlin,

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

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