

controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of any item (including information) subject to the EAR where a U.S. person knows or has reason to know that the item will be used, directly or indirectly, with respect to certain nuclear, missile, chemical, or biological weapons or nuclear-maritime end-uses as set forth in part 744 of the EAR. In addition, U.S. persons are precluded from exporting any item subject to the EAR to certain restricted end-users, as set forth in part 744 of the EAR, as well as certain persons whose export privileges have been denied pursuant to parts 764 or 766 of the EAR, without authorization from the Department of Commerce; or

(5) The exportation of information subject to licensing requirements under the ITAR or exchanges of information that are subject to regulation by other government agencies.

Dated: August 21, 2007.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. E7-17054 Filed 8-29-07; 8:45 am]

**BILLING CODE 4811-42-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. CGD11-07-013]

#### Drawbridge Operation Regulations; Sacramento River, Rio Vista, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Rio Vista Drawbridge across the Sacramento River, mile 12.8, at Rio Vista, CA. The deviation is necessary to allow the bridge owner, the California Department of Transportation (Caltrans), to conduct required maintenance of the drawspan. This deviation allows for a 4-hour notice for openings.

**DATES:** This deviation is effective from 9 p.m. September 5, 2007 through 5 a.m. on October 21, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50-2, Coast Guard Island, Alameda, CA 94501-5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal

holidays. The telephone number is (510) 437-3516. The Eleventh Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437-3516.

**SUPPLEMENTARY INFORMATION:** Caltrans requested a temporary change to the operation of the Rio Vista Drawbridge, mile 12.8, Sacramento River, at Rio Vista, CA. The Rio Vista Drawbridge navigation span provides a vertical clearance of 17 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal as required by 33 CFR 117.5. Navigation on the waterway consists of both commercial and recreational vessels.

This deviation allows the bridge to require a 4-hour notice for openings. The 4-hour notice for openings during the maintenance period, from 9 p.m. September 5, 2007 through 5 a.m. on October 21, 2007, will allow Caltrans to clear the drawspan of maintenance equipment so as not to delay approaching vessels. This temporary deviation has been coordinated with all affected waterway users. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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 regulations is authorized under 33 CFR 117.35.

Dated: August 22, 2007.

**C.E. Bone,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. E7-17146 Filed 8-29-07; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 161 and 165

[CGD01-04-133]

**RIN 1625-AB17**

#### Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways Within the First Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard revises the regulations governing the Regulated Navigation Area (RNA) in First Coast Guard District waters to require that certain tank vessels and tug/barge combinations transiting Buzzards Bay, Massachusetts, be accompanied by escort tugs and pilots operating under a properly endorsed Federal pilot's license. The Coast Guard establishes a Vessel Movement Reporting System (VMRS) for Buzzards Bay, and requires mandatory participation in the VMRS by vessels subject to the Vessel Bridge-to-Bridge VHF Radiotelephone regulations, including tug/barge combinations. The purpose of this rule is to reduce the likelihood of an incident that might result in a collision, allision, or grounding and the aftermath discharge or release of oil or hazardous material into the navigable waters of the United States.

**DATES:** This rule is effective November 28, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection and copying at the offices of Commander, Coast Guard Sector Southeastern New England, East Providence office, 20 Risho Avenue, East Providence, RI 02914, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, East Providence, RI, 401-435-2351.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Information

On March 29, 2006, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in Volume 71, No. 60, pages 15649 to 15656 of the **Federal Register**, under the heading "Navigation and Waterways Management Improvements, Buzzards Bay, MA". We received 17 comments on the proposed rule. No public meeting was requested and none was held. Pursuant to issues and obligations discussed in *Federalism* below, on September 13, 2006, the Coast Guard held a consultation meeting for Massachusetts cities and towns that border Buzzards Bay. The city of New Bedford and the town of Westport sent representatives to this meeting and were consulted on the Coast Guard's actions with respect to this rulemaking process and their federalism implications. On October 11, 2006, the Coast Guard held a similar consultative meeting with the Acting Commissioner of the

Massachusetts Department of Environmental Protection.

### Background and Purpose

Congress designated Buzzards Bay as an Estuary of National Significance in 1985, one of only five estuaries in the U.S. so designated. The Bay has some of Massachusetts' most productive shellfish beds. It interacts with three very different marine systems, the Atlantic Ocean to the south, Vineyard Sound to the east, and Cape Cod Bay to the north. In 2002, there were nearly 10,000 commercial vessel transits and over 1,200 tank barge transits in Buzzards Bay. An estimated 80% of those tank barges were single hull vessels. Note that the term "single hull" and other terms used in this rule have the same meaning as those found in Title 33, Code of Federal Regulations (CFR), § 165.100(b).

Since 1969 there have been several significant incidents of tank barge groundings with oil spills in Buzzards Bay. These included the grounding of the tank barge *Florida* in 1969 with a spill of approximately 175,000 gallons of No. 2 fuel oil; the grounding of the tank barge *Bouchard* in 1977 with a spill of approximately 81,000 gallons of No. 2 fuel oil; the grounding of the tank barge *ST-85* in 1986 with a spill of approximately 119,000 gallons of gasoline; the grounding of the tug *Marie J. Turecamo* and its asphalt-laden barge in 1999; the grounding of the tug *Mary Turecamo* and its barge *Florida* in 1999 carrying 4.7 million gallons of No. 6 fuel oil; and the grounding of the barge *B-120* in April 2003 with a spill of No. 6 oil estimated to be of approximately 22,000 to 98,000 gallons.

Groundings, allisions, or collisions of single hull tank barges could lead to a significant discharge or release of oil or other hazardous materials, as demonstrated by the incidents noted above, with potentially significant adverse impacts to people, property, the coastal and maritime environment, and the local economy. The purpose of these navigation safety and waterways management regulations for Buzzards Bay is to reduce the likelihood of another incident that might result in the discharge or release of oil or hazardous material, or other serious harm, on the navigable waters of the United States.

After a previous oil spill from the tank barge *North Cape* off of Point Judith, Rhode Island, in 1996, the Coast Guard chartered a Regional Risk Assessment Team (RRAT), comprised of government, commercial, and environmental entities, to examine navigation safety issues within New England waters. The RRAT

recommended, and the Coast Guard implemented, a Regulated Navigation Area (RNA) that imposed certain requirements on single hulled tank barges transiting New England waters, including Buzzards Bay. Regulations governing the RNA in First Coast Guard District waters are contained in 33 CFR 165.100.

Subsequent to an oil spill in Buzzards Bay in April, 2003, noted above, the Coast Guard sponsored a Ports and Waterways Safety Assessment (PAWSA), which was conducted by a cross-section of key Buzzards Bay waterways users and stakeholders, resulting in numerous suggestions for improving navigation safety in the Bay. The safety assessment process is a disciplined approach to identify major waterway safety hazards, estimate risk levels, evaluate potential mitigation measures, and set the stage for implementation of selected measures to reduce risk. The process involved convening a select group of waterway users/stakeholders and conducting a two-day structured workshop to meet these objectives. The assessment process represents a significant part of joint public-private sector planning for mitigating risk in waterways. When applied consistently and uniformly in a number of waterways, the process provides a basis for making best value decisions for risk mitigation investments, both on the local and national level. For further information on the PAWSA project go to: [http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA\\_home.htm](http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_home.htm).

The PAWSA report suggested, in part, that the risk for oil or hazardous material discharge in Buzzards Bay is relatively high, and that one method of reducing that risk, among many that were suggested, might be to "establish requirements for escort tugs." (The PAWSA report is available in docket CGD01-04-133. See **ADDRESSES** above on procedures to access the docket.) The PAWSA also recommended that Recommended Vessel Routes be established to help assist vessel traffic and provide a safer transit route for commercial vessels.

Additionally, in a letter from several members of the U.S. Congressional delegation from Massachusetts, the Coast Guard was asked to consider measures similar to those recommended in the PAWSA, specifically: Assist tugs, Recommended Routes, and an Automatic Identification System (AIS). This letter, along with the Coast Guard's response, is available in the docket.

The Automatic Identification System (AIS) is a maritime navigation safety communications system standardized

by the International Telecommunication Union (ITU) and adopted by the International Maritime Organization (IMO) that provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; receives automatically such information from similarly fitted ships; monitors and tracks ships; and exchanges data with shore-based facilities.

As of December 31, 2004, AIS is required on most commercial vessels either navigating abroad or within a Vessel Traffic Service (VTS) area, such as VTS New York. (See 33 CFR 164.46.) As the vast majority of tug/barge combinations that transit Buzzards Bay are either traveling from or to New York and hence must participate in New York's VTS, they already carry AIS. The Coast Guard plans to propose expanding AIS requirements in the future. Regardless of whether a tug/barge combination is equipped with AIS, under this rule it must still participate in the Vessel Movement Reporting System (VMRS) by either AIS or VHF radiotelephone.

The National Oceanic and Atmospheric Administration (NOAA), at the request of the Coast Guard, has already overlaid recommended vessel routes on navigational charts for Rhode Island Sound, Narragansett Bay, and Buzzards Bay. These recommended vessel routes are currently included on all new editions of charts 13205, 13218, 13221, and 13230. To allow maximum operating flexibility to meet differing conditions and situations, at this time the Coast Guard is not making the recommended vessel routes depicted on these charts mandatory.

Currently, an escort tug is required in Buzzards Bay only for single hull tank barges, unless the single hull tank barge is being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw. Consequently, the vast majority of tug and barge combinations transiting Buzzards Bay employ tugs with twin screws and twin engines, but with no additional positive control.

### Discussion of Comments and Changes

On March 29, 2006, the Coast Guard published a Notice of Proposed Rule Making (NPRM) that proposed amending the current First Coast Guard District RNA to require that all single hull tank barges carrying 5,000 or more barrels of oil or other hazardous material and being towed through Buzzards Bay:

1. Participate in a Vessel Movement Reporting System (VMRS) (33 CFR part 161, subpart B) managed by the U.S. Army Corps of Engineers at its Cape Cod Canal control center on behalf of the Coast Guard.

2. Be accompanied by a federally licensed pilot, who could remain on the escort tug vessel, to monitor the navigation of the tug/barge, and to advise the master of the tug/barge accordingly.

3. Be accompanied by an escort tug between the west entrance to Buzzards Bay and the east end of the Cape Cod Canal.

Seventeen comments were received in response to the NPRM. All late comments received were reviewed and considered. Nine comments concerned the provision in the NPRM that would allow pilots, in times of adverse weather, to remain on the escort tug and to advise the master of the primary tug (i.e., the vessel actually towing the tank barge) from the escort tug. The comments noted that a pilot executing his/her pilotage duties from any vessel other than the primary tug would add little or no value, and may even increase danger due to confusion and communications difficulties.

The Coast Guard concurs with these comments. Accordingly, the provision to permit pilots to advise the master of a primary tug from an escort tug has been removed. Consequently, when this rule applies, pilots will be required to embark the primary tug during transits of Buzzards Bay.

Three comments urged that pilots be required to embark the primary tug only from a pilot boat, not an escort tug. Comments noted that pilot boats are better designed for such transfers of people between two underway vessels, and would be safer than permitting a transfer between a tug escort and primary tug. Many factors must be considered when deciding what constitutes a safe transfer between two underway vessels (e.g., an escort tug and primary tug, or a pilot boat and primary tug), including the design of each vessel, weather, physical abilities of the person transferring, etc. These decisions are better left to those actually on-scene and are not addressed in this rule.

Three comments asked that state-licensed pilots be required in addition to or in place of federally licensed pilots. One comment suggested that pilotage requirements similar to those for Prince William Sound, Alaska, be adopted for Buzzards Bay. In Prince William Sound, pilots are required to be state-licensed, but operate under their federal pilot's license. The Coast Guard notes that the pilotage requirement to

which the commenter refers was enacted by Congress as part of Oil Pollution Act of 1990, Pub. L. 101-380, and that both the Prince William Sound requirement and the request that the Coast Guard adopt a similar requirement in Buzzards Bay by this regulation is contrary to the generally applicable Congressional scheme for state-federal pilotage of vessels in Chapter 85 of Subtitle II of Title 46, U.S. Code.

The Coast Guard has looked carefully at whether, as a matter of federal regulatory exercise of authority, it can vary that generally applicable state-federal pilotage scheme and has concluded that it is without authority to do so. Unlike the Congressionally mandated Prince William Sound state-federal pilotage requirements, this regulation is being promulgated under the Ports and Waterways Safety Act, Public Law 92-340, section 5 (33 U.S.C. 1223(a)(4)). Authority under this Act is not so broad as to support a provision mandating the carriage of a state pilot where such a provision is contrary to the usual Congressional scheme prohibiting states from requiring a state licensed or commissioned pilot on a vessel subject to inspection under part B of subtitle II of Title 46, or is subject to inspection under chapter 37 of that Title.

An examination of the legislative history of that provision shows that nowhere did Congress mention imposing a State commissioned pilot in addition to or in lieu of a Federal pilot on vessels operating on the navigable waters of the United States. Given the long standing Congressional scheme for division of responsibility among Federal and State pilotage on vessels, which these comments would run counter to, and the absence of any legislative history that would suggest that Congress intended the words "operating condition" to include authority to promulgate a regulation that runs counter to that scheme, the Coast Guard is without authority to promulgate such a regulation. Accordingly, the Coast Guard does not adopt the suggestion in these comments.

One comment requested that the Coast Guard conduct a cost-benefit analysis to demonstrate that the benefits of this rule outweigh the cost.

As noted in the NPRM and contained in the docket for this rule (CGD01-04-133), a Regulatory Evaluation was conducted in March 2006. That evaluation found that this rule would prevent approximately 500 barrels of oil from being spilled into Buzzards Bay, would have a negligible impact on consumer energy costs, and would not

have a significant economic impact on a substantial number of small entities.

Some comments stated it was unclear if the pilotage requirement was for a federally licensed pilot in addition to the vessel's master, or if a master (or other crewmember) holding a Federal pilot's license could also serve as pilot while transiting Buzzards Bay.

The requirement in this rule is for a federally licensed pilot in addition to the vessel's master and crew. Under this rule, neither a master of a primary tug nor any member of its crew may serve as pilot while transiting Buzzards Bay. It is intended that the federally licensed pilot be an additional navigation resource to the master and crew of the vessel.

Some comments recommended this rule, particularly the escort tug requirement, apply to single hull tank ships in addition to barges.

The PAWSA report specifically addresses the hazards associated with single hull tank barges and was used as an indicator and resource for this rule. There is no indication in the PASWA that tank ships represent a similar risk of pollution. Consequently, this rule applies only to single hull tank barges, not tank ships.

Some comments asked for clarification on whether or not federally licensed pilots are required aboard escort tugs. They are not.

The requirement is for a federally licensed pilot to be aboard the primary tug towing a single hull tank barge.

Three written comments stated that the requirement for escort tugs should apply to double hull tanks vessels in addition to single hull tank vessels. At the consultative meeting discussed elsewhere in this preamble, the Massachusetts Department of Environmental Protection also urged that all tank vessels transiting Buzzards Bay, both single and double hull, be required to have an escort tug.

The majority of tank barge casualties in Buzzards Bay have been caused by groundings, and the bottom characteristics of the area are generally rocky. Double hulls provide sufficient protection against this type of casualty, and there has never been a major oil spill from a double hull tank barge grounding in Buzzards Bay. Therefore, the Coast Guard does not feel it is necessary to require tug escorts for double hull tank barges at this time. Additionally, the Coast Guard considers that, as adopted in this rule, its three-pronged approach to navigation safety ((1) Mandatory participation in a Vessel Movement Reporting System (VMRS); (2) a federally licensed pilot and (3) a tug escort for single hull tank barges)

constitutes a redundant vessel accident and pollution prevention system that will provide a sufficient measure of safety for tank vessels transiting Buzzards Bay.

Two comments suggested that use of the currently-existing (and voluntary) recommended vessel route in Buzzards Bay be mandated for commercial vessels.

The Coast Guard recognizes that, in light of variations in visibility, traffic density, tides and currents, and other on-scene conditions, and given the uniqueness of vessel and tow configurations and handling characteristics, prudent seamanship (and the Rules of the Road) may dictate departure from any given vessel route. The Coast Guard wishes to avoid creating any situation in which a mariner may feel constrained to follow a set route when conditions may warrant an alternative approach.

Importantly, the VMRS established by this rule will provide the Coast Guard the capability to monitor tank vessel movements in Buzzards Bay, including the capability to ascertain vessel intentions before entering the Bay. Most, if not all, tank vessels currently use the recommended vessel route voluntarily. Through the VMRS established by this rule, the Coast Guard will be able to monitor vessels as they transit the recommended vessel route to query and respond appropriately should a vessel deviate from the route without good and sufficient reason, including, but not limited to, proceeding to an anchorage, or briefly exiting the route to allow an approaching vessel to pass. Consequently, the Coast Guard considers the voluntary recommended vessel route, when combined with the enhanced ability to monitor the usage thereof, to provide an ample measure of safety.

While no comments addressed the proposed requirement that VMRS Buzzard's Bay users attain "approval" from the VMRS center (1) Prior to entering into, or getting underway within, the VMRS area; and (2) prior to meeting, crossing, or overtaking other VMRS users; in keeping with the monitoring—vice directive—function of a Vessel Movement Reporting System, the word "approval" was changed to better reflect the requirement that vessels "notify" the VMRS before undertaking the aforementioned actions.

Two comments suggested that escort tugs should have minimum horsepower or bollard pull requirements.

This rule amends the currently existing Regulated Navigation Area (RNA) for waters within the First Coast Guard District. As defined in the current

RNA, an escort tug is a vessel of "sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision \* \* \*" That definition is the product of several recommendations made by a Regional Risk Assessment Team (RRAT) chartered by the Coast Guard in 1996 to examine tug and barge operation and navigation procedures in the waters of the First Coast Guard District. The RRAT was composed of operators of towing vessels and tank barges, environmental groups, state agencies, and Coast Guard officials. In the Coast Guard Authorization Act of 1998 (Pub. L. 105-383), Congress directed the Coast Guard to adopt the recommendations of the RRAT. Consequently, the Coast Guard believes that definition is sufficient for this amendment to the existing RNA.

One comment requested that oil spill response vessels (OSRVs) and oil spill response barges (OSRBs) be exempt from these regulations. The commenter was concerned that, after one or more of these vessels had been called to respond to an oil spill in Buzzards Bay, its exit from the Bay (after recovering spilled oil) may be delayed due to the requirements of these regulations.

The Coast Guard considers these regulations to be important for all single hull tank barges carrying oil or petroleum products in sufficient quantity, including OSRVs and OSRBs, so as to enhance navigation safety and environmental protection in Buzzard's Bay. Further, we view the impacts of this regulation to be minimal on an OSRV or OSRB. Consequently, we did not provide the requested exemption.

One comment asked that the Commonwealth of Massachusetts be included in any partnership between the Coast Guard and the Army Corps of Engineers to operate a Vessel Movement Reporting System (VMRS) for Buzzards Bay.

The Coast Guard and Army Corps of Engineers are finalizing a Memorandum of Agreement that will delineate the functions and responsibilities of each agency in operating the VMRS. This MOA, once executed, will be added in the final docket for this rule. The Massachusetts Department of Environmental Protection has been and will remain a key partner in the planning and operation of the VMRS for Buzzards Bay.

In addition to the 17 comments received, two joint letters from U.S. Representatives Barney Frank, William D. Delahunt, and James P. McGovern were sent to the Commandant of the Coast Guard on July 26, 2006, and September 14, 2006, respectively. Both

letters urged the Coast Guard to adopt navigation safety provisions for Buzzards Bay similar to those provided for in a Massachusetts oil spill prevention law which had recently been overturned by a Federal court. Specifically, the Representatives requested that the Coast Guard:

1. Institute minimum watch and manning requirements for oil tankers and barges;
2. Mandate the use of State pilots to assist in navigating Buzzards Bay;
3. Mandate the use of tugboat escorts for all oil barges;
4. Institute mandatory navigational routes through state waters; and
5. Mandate a certificate of at least \$1 billion in financial backing to dock in Massachusetts, unless the shipping companies take special safety measures, such as using double hulls.

Although the Coast Guard did not adopt a state pilot requirement, the Coast Guard did adopt a requirement that the primary tug towing a single hull tank barge in Buzzards Bay have on board a federally licensed pilot, in addition to the vessel's master and normal crew complement. Thus, the provisions of this rule, along with other currently existing Federal statutes and regulations, will sufficiently address each of the Representatives' concerns for the following reasons:

1. Federal regulations at 46 CFR 15 comprehensively regulate manning and watchstanding on tank vessels and tugs. Additionally, 33 CFR 164.13(c) specifically requires tankers to have at least two licensed deck officers on watch on the bridge;
2. This rule requires that a federally licensed pilot be employed in addition to the normal crew for the transit of any single hull tank barge through Buzzards Bay;
3. This rule requires escort tugs, in addition to the primary tug, for all single hull tank barges transiting Buzzards Bay;
4. For the reasons discussed in this Notice, while use of the recommended vessel route in Buzzards Bay will not be mandatory, vessel movements within the route will be monitored through the Vessel Movement Reporting System established by this rule; and
5. Under Title VI of the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109-241), the financial liability limits for vessel oil discharge removal costs and damages under the Oil Pollution Act of 1990 (33 U.S.C. 2704) were amended, and the Financial Responsibility for Water Pollution regulations at 33 CFR part 138 will be amended accordingly via separate rulemaking. For further information on

this rulemaking, see docket USCG–2005–21780 at <http://dms.dot.gov/>, or contact Mr. Benjamin White at Coast Guard National Pollution Fund Center at 202–493–6863.

### Regulatory Evaluation

Executive Order 12866, “Regulatory Planning and Review”, 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is “significant” and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule is not significant under Executive Order 12866 and has not been reviewed by OMB.

During the period of analysis, 2006–2014, this rule is expected to cost approximately \$3.9 million net present value (7 percent discount rate). A copy of the regulatory evaluation, which further describes the expected costs and benefits of this rule, is posted in the docket and is available for inspection and copying at the offices of Commander, Coast Guard Sector Southeastern New England, East Providence office, 20 Risho Avenue, East Providence, RI 02914, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

No comments to the NPRM were received challenging the content of the regulatory evaluation, nor claiming a significant adverse economic impact should this rule be implemented as proposed. Nonetheless, to confirm the conclusions of the regulatory evaluation that this rule would not create a significant adverse impact on small entities, the Coast Guard reviewed selected economic data for the period of time between the evaluation’s original publication in March 2006 and the publication of this rule in July 2007. A comparison of the regulatory evaluation’s forecast of tug and barge activity with actual transits validated those projections. For example, the regulatory evaluation projected that there would be 234 transits of loaded tank barges through Buzzards Bay in 2006. The actual number was 208, only an 11% deviation from the projection. A review of more recent cost data associated with tug escort and pilot fees, when compared with revenue data of the small businesses most affected by this rule, also confirmed the fundamental finding of the regulatory evaluation, which is that the cost of compliance with this rule will not have a significant economic impact on a substantial number of small entities.

### 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.

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of tugs and/or single hull barges carrying 5,000 or more barrels of oil or other hazardous materials and intending to transit or anchor in Buzzards Bay, Massachusetts.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule requires escort tugs and federally licensed pilots only for single hull barges, which are being phased out of operation in accordance with the Oil Pollution Act of 1990 (OPA), specifically 46 U.S.C. 3703a, and will be prohibited from operating effective January 1, 2015. Additionally, the VMRS established by this rulemaking applies only to vessels subject to the bridge-to-bridge radiotelephone regulations in § 26.03 (and therefore already equipped with VHF radios), so no additional costs will be incurred to participate in the VMRS. Those vessels with a Coast Guard-approved, properly installed, operational AIS would be relieved from the voice reporting requirements implemented by this rule.

### 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 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 contact Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, Providence, RI, 401–435–2351.

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). 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.

### 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.). The reports required by this rule are considered to be operational communications, transitory in nature, and, do not constitute a collection of information under the Paperwork Reduction Act.

### 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. The U.S. Supreme Court, in the cases of *United States v. Locke*, 529 U.S. 89 (2000) and *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978) has ruled that certain regulations issued pursuant to the Ports and Waterways Safety Act of 1972, as amended, are reserved exclusively to the Coast Guard, and that state regulation in these areas is preempted. In general, only the federal government may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels. Similarly, where the Coast Guard enacts regulations—such as those implemented by this final rule—that control vessel traffic or are otherwise intended to protect navigation and the marine environment, or affirmatively determines that such regulation is unnecessary or inappropriate, a state may not enact rules that conflict with the Coast Guard’s determination in that area, including situations in which the State rules are identical to the federal rules.

The Coast Guard believes that by operation of law and our Agency determination, State law is preempted on the subjects covered by this rulemaking. The Coast Guard’s affirmative decisions: (1) Not to institute mandatory ship routes, but to monitor use of the existing recommend routes

via the Vessel Movement Reporting System created by this rule; (2) to require a federally licensed pilot in addition to the normal crew aboard a tug towing a single hull tank barge thorough Buzzard's Bay, but not to require any other modifications to the applicable manning requirements; and (3) to require an escort tug in addition to the primary tug, for all single hull tank barges transiting Buzzard's Bay, but not for other vessels; each represent a considered determination of the appropriate level of regulation to ensure navigation safety and environmental protection. As such, the Coast Guard has determined that any other non-Coast Guard schemes relating to vessel routing, manning, and tug escort requirements in Buzzards Bay are preempted.

To the extent not otherwise already preempted, this rule is intended to, and does, preempt those provisions of Massachusetts' "Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth," ("MOSPA") regarding enhanced manning requirements for tank barges and tow vessels in Buzzards Bay, see Mass. Gen. Laws ch. 21M § 4, and tugboat escorts for certain waters, see id. § 6. Further, it is the Coast Guard's view that, by Operation of Law, MOSPA's provisions regarding mandatory vessel routes in Massachusetts waters, see id. § 5; and compulsory State pilotage, see Mass. Gen. Laws ch. 103 § 21, are likewise preempted. See *U.S. v. Massachusetts*, 440 F.Supp.2d 24 (D.Mass., 2006), *remanded on other grounds*—F.3d—, 2007 WL 1775913 (1st Cir., June 21, 2007) (NO. 06–2361, 06–2362).

In accordance with E.O. 13132 for regulations with preemptive effect, the following federalism impact statement is provided to document (1) The extent of the Coast Guard's consultation with State and local officials, (2) a summary of the nature of their concerns 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.

The Coast Guard provided elected officials of affected state and local governments notice and an opportunity to consult on this rulemaking. Ten Massachusetts municipalities surrounding Buzzards Bay indicated that they wished to participate, as did the Commonwealth of Massachusetts. Accordingly, the Coast Guard engaged the towns of Bourne, Dartmouth, Fairhaven, Gosnold, Marion, Mattapoisett, Wareham, Westport, Falmouth, the city of New Bedford, and

the Massachusetts Department of Environmental Protection ("DEP") to discuss their concerns. On September 13, 2006, after inviting all parties desiring consultative status to participate, the Coast Guard met with representatives from the city of New Bedford and the town of Westport. On October 11, 2006, the Coast Guard met with the Acting Commissioner of DEP. Representatives from the towns of Bourne, Fairhaven, Marion, and Mattapoisett, and representatives from DEP, spoke at public hearings held on this rulemaking. Ten municipalities (Bourne, Buzzards Bay, Dartmouth, Fairhaven, Gosnold, Marion, Mattapoisett, New Bedford, Wareham, and Westport) submitted statements regarding recommended oil spill prevention measures for Buzzard's Bay. We also received additional written comments to the docket from the towns of Bourne and Mattapoisett, the Massachusetts Attorney General, and DEP.

In general, all consulting state and local officials agreed upon the need for increased oil spill prevention measures in Buzzard's Bay and certain other Massachusetts' waters. The consulted parties' concerns related to the specific mechanisms to accomplish this goal. Essentially, the consulted parties encouraged the Coast Guard to enact regulations that would require (1) Implementation of a mandatory, Coast Guard-administered vessel movement system (2) mandatory use of the existing "recommended vessel route," (3) State-licensed (vice federally licensed) pilots aboard certain tank barges, and (4) escort tugs for both single and double hull tank barges.

As discussed in greater detail in Discussion of comments and changes, above, the Coast Guard is establishing a Vessel Movement Reporting System (VMRS) as urged.

Regarding mandatory ship routes in Buzzard's Bay, as previously indicated, the Coast Guard wishes to avoid creating any situation in which a mariner may feel constrained to follow a set route when operating or weather conditions may warrant an alternative approach. Thus, use of the already existing recommended vessel routes in Buzzards Bay will not be mandatory. Vessel movement along these recommended routes, however, will now be closely tracked through the VMRS established by this rule.

For reasons also set forth above, the Coast Guard is without the authority to require that a tug have a Federal pilot that is also licensed or commissioned by the State. The Coast Guard is, however, requiring a federally licensed pilot

aboard vessels towing certain single hulled tank barges through Buzzard's Bay as an additional navigation resource to the master and crew of the vessel.

With respect to the issue of requiring escort tugs for only single hull tank barges, as opposed to both single and double hulled barges, the Coast Guard believes that mandatory participation in a VMRS, the requirement to embark and employ a federally licensed pilot, and a tug escort requirement together provide a sufficient measure of safety for tank vessels transiting Buzzards Bay. Accordingly, the Coast Guard believes that the concerns for navigation safety and environmental protection underlying the specific recommendations of the consulted State and localities will be met by the regulations promulgated by this final rule.

#### **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 rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule will 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.

#### **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.

#### **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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This 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.

**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.

**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.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) and (34)(i) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g) and (34)(i), as it amends a currently existing Regulated Navigation Area and establishes a VMRS.

An “Environmental Analysis Check List” and “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, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 161.12, add an entry for Buzzard’s Bay, in alphabetical order, and renumber footnotes 5 and 6 to read footnotes 6 and 7. Add a new footnote 5 to table 161.12(c) 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 call sign	Designated frequency (channel designation)—purpose	Monitoring area
* * * * *	* * * * *	* * * * *
Buzzards Bay Buzzards Bay Control <sup>5</sup>	156.600 MHz (Ch. 12) .....	The waters east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°–27.2’ N, longitude 70°–11.7’ W, to the Buzzards Bay Entrance Light in approximate position latitude 41°–23.5’ N, longitude 71°–02.0’ W, and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°–24.6’ N, longitude 70°–57.0’ W, and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford harbor within the confines (north of) the hurricane barrier, and the passages through the Elizabeth Islands, is not considered to be “Buzzards Bay”.
* * * * *	* * * * *	* * * * *

Notes:  
\* \* \* \* \*  
<sup>5</sup> In addition to the vessels denoted in Section 161.16 of this chapter, requirements set forth in subpart B of this chapter also apply to any vessel transiting VMRS Buzzards Bay when equipped with a bridge-to-bridge radiotelephone as defined in part 26 of this chapter.  
\* \* \* \* \*

**PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 3. The authority citation for part 165 is amended to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 4. In § 165.100—

■ a. Revise paragraphs (d)(1)(i) introductory text and (d)(1)(i)(G) to read as set out below; and

■ b. Add paragraph (d)(5) to read as follows:

**§ 165.100 Regulated Navigation Area:  
Navigable waters within the First Coast  
Guard District.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) Except as provided in paragraph (d)(1)(iii) and paragraph 5 of this section, each single hull tank barge, unless being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw, must be accompanied by an escort tug of sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision in the event of—

\* \* \* \* \*

(G) Any other time a vessel may be operating in a Hazardous Vessel Operating Condition as defined in § 161.2 of this Chapter.

\* \* \* \* \*

(5) *Special Buzzards Bay Regulations.*

(i) For the purposes of this section, “Buzzards Bay” is the body of water east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°–27.2’ North, longitude 70°–11.7’ West, to the Buzzards Bay Entrance Light in approximate position latitude 41°–23.5’ North, longitude 71°–02.0’ West, and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°–24.6’ North, longitude 70°–57.0’ West, and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford harbor within the confines (north) of the hurricane barrier, and the passages through the Elizabeth Islands, is not considered to be “Buzzards Bay”.

(ii) *Additional Positive Control for Barges.* Except as provided in paragraph (d)(1)(iii) of this section, each single hull tank barge transiting Buzzards Bay and carrying 5,000 or more barrels of oil or other hazardous material must, in addition to its primary tug, be accompanied by an escort tug of sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision in the event of—

(A) A propulsion failure;

(B) A parted tow line;

(C) A loss of tow;

(D) A fire;

(E) Grounding;

(F) A loss of steering; or

(G) Any other time a vessel may be operating in a Hazardous Vessel Operating Condition as defined in § 161.2 of this subchapter.

(iii) *Federal Pilotage.* Each single hull tank barge transiting Buzzards Bay and carrying 5,000 or more barrels of oil or

other hazardous material must be under the direction and control of a pilot, who is not a member of the crew, operating under a valid, appropriately endorsed, Federal first class pilot’s license issued by the Coast Guard (“federally licensed pilot”). Pilots are required to embark, direct, and control from the primary tug during transits of Buzzards Bay.

(iv) *Vessel Movement Reporting System.* In addition to the vessels denoted in § 161.16 of this chapter, requirements set forth in subpart B of this part also apply to any vessel transiting VMRS Buzzards Bay when equipped with a bridge-to-bridge radiotelephone as defined in part 26 of this chapter.

(A) A VMRS Buzzards Bay user must:

(1) Not enter or get underway in the area without first notifying the VMRS Center;

(2) Not enter VMRS Buzzards Bay if a Hazardous Vessel Operating Condition or circumstance per § 161.2 of this Subchapter exists;

(3) If towing astern, do so with as short a hawser as safety and good seamanship permits;

(4) Not meet, cross, or overtake any other VMRS user in the area without first notifying the VMRS center;

(5) Before meeting, crossing, or overtaking any other VMRS user in the area, communicate on the designated vessel bridge-to-bridge radiotelephone frequency, intended navigation movements, and any other information necessary in order to make safe passing arrangements. This requirement does not relieve a vessel of any duty prescribed by the International Regulations for Prevention of Collisions at Sea, 1972 (33 U.S.C. 1602(c)) or the Inland Navigation Rules (33 U.S.C. 2005).

\* \* \* \* \*

Dated: August 17, 2007.

**T.S. Sullivan,**

*Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.*

[FR Doc. E7–16844 Filed 8–29–07; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2007–0373; A–1–FRL–8461–5]

**Approval and Promulgation of Air  
Quality Implementation Plans;  
Connecticut; Establishment of Interim  
Progress for the Annual Fine Particle  
National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes early fine particulate (PM<sub>2.5</sub>) transportation conformity emission budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT PM<sub>2.5</sub> nonattainment area. This action is being taken under the Clean Air Act.

**DATES:** This direct final rule will be effective October 29, 2007, unless EPA receives adverse comments by October 1, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–0373 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax:* (617) 918–0047.

4. *Mail:* “Docket Identification Number EPA–R01–OAR–2007–0373”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2007–0373. EPA’s policy is that all comments