

Dated: June 1, 2000.

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Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 00-14111 Filed 6-1-00; 4:28 pm]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

COAST GUARD

33 CFR Part 165

[CGD01-98-151]

RIN 2115-AE84

Regulated Navigation Area: Navigable Waters Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the regulations at 33 CFR 165.100 that establish a Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District. This Final Rule makes permanent the existing temporary authority of a Captain of the Port (COTP) to issue exemptions from the positive control of barges provisions of the RNA. These exemptions are authorized in limited circumstances in which an applicant employs equivalent levels of safety in the operation of vessels towing tank barges. This Final Rule removes the expiration date set in the Interim Rule for the exemption authority. The exemption authority is consistent with requirements of the relevant provisions of the Coast Guard Authorization Act of 1998, and with the purposes of environmental protection regulations to reduce the risk of oil spills in the marine environment, while accounting for the impact of the RNA on small entities.

DATES: This Final Rule is effective 1 July 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210-3350.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210-3350; telephone 617-223-8243.

SUPPLEMENTARY INFORMATION:

Regulatory History

After the oil spill that resulted from the grounding of the Tank Barge NORTH CAPE off the coast of Rhode Island in 1996, a group comprised of operators of towing vessels and tank

barges, environmental organizations, State agencies, and Coast Guard officials, formed the Regional Risk Assessment Team (RRAT). The purpose of the RRAT was to review operating procedures for tugs and barges in the Northeast. The RRAT issued a report that included recommended actions to minimize risks peculiar to the transportation of petroleum in the waters of the First Coast Guard District.

On October 13, 1998, the Coast Guard published in the **Federal Register** (63 FR 54639) a Notice of Proposed Rulemaking (NPRM) entitled "Regulated Navigation Area: Navigable Waters within the First Coast Guard District." That NPRM addressed many of the issues that the RRAT also addressed.

On November 13, 1998, Congress enacted the Coast Guard Authorization Act of 1998 (Act). Section 311 of the Act required the Coast Guard, under authority delegated by the Secretary of Transportation, to promulgate regulations for the safety of towing vessels and tank barges in waters of the Northeast not later than December 31, 1998. Section 311(b)(1)(B) of the Act required the Coast Guard to fully consider each recommendation from the RRAT report. On December 30, 1998, the Coast Guard published in the **Federal Register** (63 FR 71764) a Final Rule establishing the RNA for the waters of the Northeast.

After publication of the Final Rule, several companies in the towing and tank barge industry affected by the RNA notified the Coast Guard that they were concerned about the economic impact of the RNA's positive barge control provisions. Acting on these concerns, the Coast Guard published an Interim Rule in the **Federal Register** (64 FR 12746) on March 15, 1999, that temporarily authorized COTPs to exempt vessels from the positive barge control provisions based upon equivalent levels of safety. The Interim Rule also sought out comments on the economic impact of the positive barge control provisions on small entities. We conducted a public meeting on April 16, 1999 in New Haven, CT. The meeting was attended by 13 individuals, and there were 8 speakers.

Background and Purpose

Prior to publication of the Interim Rule, 33 CFR 165.100(d)(1)(i) required that single-hull tank barges carrying petroleum and operating in the navigable waters of the First Coast Guard District either be towed by a tug equipped with twin-screws and two engines, or be escorted by a second tug. Double-hull tank barges and certain small barges in confined waters were

exempt from this requirement. The positive control provision in the RNA addressed the hazards associated with operating single-hull tank barges with single-screw tugs in the First Coast Guard District waters. However, it provided little flexibility to address special circumstances. This Final Rule provides COTPs with the authority to address special circumstances. This exemption authority is consistent with RRAT report that had recommended that the Coast Guard establish a regulatory provision authorizing exemptions in limited circumstances.

Under the final regulations, the COTP may consider exempting operators from the positive barge control provision upon the operator's demonstration of equivalent measures of safety. The exemptions, if granted, would result in the continued use of a single-screw and/or single-engine tug to tow a single-hull tank barge without an escort tug on the navigable waters of the First Coast Guard District. In determining whether to grant an exemption of the positive control provisions, the COTP will consider a variety of factors including, but not limited to, the availability of timely on-call tug assistance, the time of transit, the route, the weather, environmental factors, the amount and grade of cargo, the existence and sufficiency of anchoring and retrieval equipment on a manned barge, transits in protected waters, and the construction of the tank barge, as well as the operators' overall safety record.

Requests for exemptions must be submitted in writing to each COTP in whose zone the barge intends to operate. Operators whose vessels transit multiple COTP zones must apply for the exemption from each COTP. COTPs will consult with each other in such cases. The Final Rule is responsive to the needs of small businesses, and gives the COTP the flexibility to weigh risk while continuing to safeguard the environment.

This rule makes permanent the exemption process of the Interim Rule, which is set to expire on June 30, 2000. Because of the need to keep that exemption process authority, under U.S.C. 553(d)(1), this rule is effective in less than 30 days. Additionally, to remain responsive to industry needs while continuing to protect the environment and for the other reasons stated in the preamble of this rule, the Coast Guard finds good cause under 553 U.S.C. (d)(3) for making this rule effective in less than 30 days.

Discussion of Comments and Changes

The Coast Guard received 84 written comments on the Interim Rule, contained in 9 individual letters to the docket; we received another 22 comments at the public meeting.

General Comments

Several comments generally questioned the effectiveness of the RNA on improving safety. Five comments stated that single-screw tugs have decided safety advantages over twin-screw tugs, especially in narrow channels, shallow drafts, and tight bends where the danger to safe navigation is increased. A related comment suggested that, rather than try to eliminate a whole class of vessels, the Coast Guard eliminate or minimize risk as much as possible.

The overall purpose of the RNA is to improve safety and reduce the risk of an oil spill in First Coast Guard District waters. We believe that these regulations are effective safety measures, because they require operational planning, increase underway safety communications, and improve emergency response preparation. While single-screw tugs may have advantages, they do not have a redundant control system to serve as backup in the event the primary system fails to avoid a collision or grounding. We have not eliminated single-screw tug operation.

The RNA does not preclude the use of single-screw tugs, but it does generally require that tank barges under tow by these tugs employ an escort. Single-screw, or single-engine tugs may continue to tow double-hull barges, or seek an exemption for towing a tank barge with a capacity of less than 25,000 barrels in an area of limited depth or width. The Final Rule adds another exemption authority to address unique situations in which an equivalent level of safety is provided by the operator. By applying the RNA's measures together with those safety measures included in the two national rulemakings for Fire Protection [64 FR 56257] and Emergency Control Measures [65 FR 31806], the Coast Guard will lower the risk of pollution due to spills from tank barges.

Two comments suggested that the Coast Guard create a matrix to assess risk and screen vessels for safety. Consideration for continued service should be based on safety factors that will prevent oil pollution. Some companies already employ numerous operational and equipment precautions to ensure safety; these are things that should be determining factors in

assessing risk. A related comment suggested that the RNA include a "grandfather" clause permitting those small entities that have been hauling petroleum with single-screw tugs prior to January 29, 1999, to continue this method of transporting.

We agree that a matrix may be a useful tool for COTPs to gauge risk factors when considering requests for exemption in some cases. A COTP is not limited in the way he or she evaluates an application. However, we note that the use of a single matrix in each of the five different COTP zones would be difficult in light of risks that may be unique to a particular COTP zone. Companies that employ preventive measures would be advised to identify those measures in any application for exemption under this Final Rule. The COTP will evaluate those measures in the equivalency determination. The result may have the same effect as "grandfathering" in some cases.

Three comments focused on the importance of the tug operator, and suggested enhanced qualification and skill standards consistent with the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The Coast Guard encourages operators, on their own initiative, to increase training and improve their professional skills to further good marine practices. This rule does not preclude any owner of a tank barge from adherence to higher watchkeeping standards. However, Coast Guard District Commanders, including the First District Commander, do not generally have independent authority to establish STCW requirements.

Several comments urged that the Coast Guard establish procedures for transforming the temporary exemption into a permanent program, and that such a program would comply with the meaning and intent of the RRAT, which recommended waivers in certain instances.

We agree. This Final Rule makes a permanent exemption authority consistent with the recommendations of the RRAT report. The purpose of the Interim Rule was to solicit comments on the measures of positive control in the RNA, particularly those from small businesses. Following the period for public comment, and having held a public meeting, the Coast Guard re-evaluated the risks posed by the continued use of a single-screw tug while operating on the temporary exemption. Since we inserted the authority into the RNA, COTPs have evaluated 38 applications under the

temporary exemption authority and granted 32 exemptions. Although no oil spills have been associated with vessels operating under the exemption, we acknowledge that the data is limited to a relatively brief one-year period of time.

One comment suggested that the Coast Guard establish a committee to study, in detail, how many small entities are involved and the type and extent of economic dislocation caused by the regulation. The Office of Advocacy of the Small Business Administration (SBA) has maintained that the use of general statistics is not an effective way to determine the impact of a regulation on any particular small business and that "Small Entity" does not adequately segment the small towing firms affected.

The Coast Guard relied upon the SBA definition of small entity when promulgating this Final Rule. The SBA regulations require the use of their small entity definition in the various industries unless the agency has promulgated specific definitions. The Coast Guard obtained sufficient information when we re-opened the docket with the Interim Rule and conducted additional analysis of the impact on small businesses. The Coast Guard notified over 180 owners of tugs and tank barges in the Northeast, to inform them of the rulemaking and solicit the request for comments from small entities to describe the impact of the positive barge control provisions.

Several comments addressed the cost and safety of towing gear for anchoring and emergencies. They stated that the practice of picking up loose barges with emergency towing gear would place personnel and equipment in peril. Another comment stated that an engine-room fire aboard any tug, single or twin-screw, would render that tug helpless as all engine compressors, steering, and electric wiring are in one engine room.

Anchoring systems and firefighting were not the purpose of this rule. These issues were, however, addressed by the national rulemakings, Emergency Control Measures for Tank Barges, and Fire Protection previously noted.

Comments on Particular Features of Preamble

Comments on Applicability of Rule

One comment recommended that § 165.100(d)(1)(i) be amended to apply to only single-hull tank barges with a capacity of more than 7,500 barrels of oil. The comment recommended a new exemption provision be established to allow COTPs to grant exemptions to single-hull tank barges of this capacity.

We agree that COTPs should have authority to issue exemptions, and have amended the regulations to reflect this change. As such, COTPs may allow a tank barge owner to continue using a single-screw, single-engine tug to tow the barge, provided they employ alternative measures for the positive control of the barge. Rather than limit the exemption criteria solely to barge capacity, however, this rule requires COTPs to consider a host of factors including the barge capacity.

Two comments stated that to achieve its stated goal of reducing the risk of oil spills, the rulemaking's escort tug requirements should apply to tank ships as well as tank barges, or to neither. The rule does not address the considerably greater risks posed by tank ships but poses increased requirements only on tank barges that carry far less oil.

It is true that the RNA does not address tank ships, and neither the RRAT nor the Act addressed that class of vessels. But we disagree that the escort tug should apply to neither tank ships nor tank barges as a result. Towing vessels provide the propulsion for tank barges but are largely unregulated. Tank ships are essentially a towing vessel and tank barge combined as an integral unit and are heavily regulated to reduce the risk of oil spills. In several respects, the RNA, combined with the two national rulemakings previously noted, attempts to raise the level of safety on tugs and tank barges to that of tank ship operations.

Four comments stated their appreciation for the expanded exemption provisions of § 165.100(d)(1)(iii) in the Interim Rule; however it claims that the exemption does not go far enough. Since the RNA is based on a single-hull versus double-hull distinction, it should follow the same timeline established by Congress in OPA 90 for the phase-out of single-hull tank vessels.

Neither the RNA in general, nor the positive barge control provisions specifically, have any impact on the statutory phase-out period for single-hull tank vessels. The RNA, simply, imposes operational requirements on single-hull tank vessels until they are phased-out in accordance with law. By amending the positive control measures, this rule increases the opportunities for single-screw tugs to continue towing single-hull tank barges.

Comments on Background and Purpose

Six comments state that this rulemaking imposes new regulations on the entire single-hull segment of the tank barge industry in the Northeast without properly documenting oil spills

resulting from single-screw propulsion failures. The incident that prompted the legislation underlying this rulemaking had nothing to do with the number of screws on the tug.

As the comment notes, legislation underlies the rulemaking. The RNA establishes four operational measures for the safety of towing vessels and tank barges. These measures are preventive in nature and are designed to increase safety in an emergency. Clearly, it was the intent of the Congress, the RRAT, and the Coast Guard to establish measures to improve the safety during tank barge transits. While the NPRM does identify 12 examples where a redundant propulsion system prevented a grounding or collision, neither the Coast Guard, nor the RRAT sought to make a comparison between tugs with redundant systems and those without. Instead, the intent was to increase the safety of tank barge transits by requiring a redundancy, or ensuring that those tugs without redundant systems had tug escorts.

Comments on Regulatory Analysis

One comment stated that the Summary of Costs assigns arbitrary hourly cost figures for charter tugs, and does not address the fact that in some cases these vessels may not even be available. The comment states that the cost of \$300 per hour is arbitrary when you consider different ports. Worse than the cost per hour is the issue of availability which is uncertain in some areas where no hourly figure can accurately estimate the rule's impact.

We note these comments and have revised our analysis in response to the comments received during the comment period. The data published in the Summary of Costs were gathered from sources such as the Army Corps of Engineers (ACOE) Navigation Data Center, the Coast Guard's Marine Safety Information System, and included telephone surveys with a number of towing vessel and tank barge owners. The Coast Guard analyzed these data, which it published for public consideration. We have revisited our data sources and revised upward the number of impacted transits. The cost of \$300 per hour was used after calling industry sources; we consider that figure to be a reasonable approximation. We note that no comments suggested a more appropriate estimate.

One comment stated that the Summary of Costs provided no allowance for added down-time for tugs and barges while awaiting voyage plan approval, or while waiting for assist tugs to arrive. Additional costs are incurred

as the result of the crew training for anchoring and pickup gear.

We note these comments. The Voyage Plan is only required to be complete before departure, and does not require approval. The cost of crew training for anchoring and retrieval gear is the subject of a separate rulemaking published by Coast Guard Headquarters. However, we have added the cost of training when the escort tug is not familiar with the barge operations.

Two comments stated that the Summary of Costs does not address the issue of lost opportunity costs to impacted companies and the communities they serve. When a barge cannot be used because both single-screw tugs are away with a tank barge, revenue is lost or delayed.

We note these comments. In the short run, while impacted companies are realigning their assets in order to be in compliance with the RNA, there may be some lost profit opportunities for barges. We have taken this into account in our revised Summary of Costs. We note that with the exemptions this may not be a factor at all. We also note that since the interim regulations have been in effect, the Coast Guard has not received a single complaint of a petroleum shortage that was created as a result of these regulations.

Four comments stated that the analysis does not properly address the substantial costs of purchasing additional tugs to comply with the positive control measures. Costs for additional tugs are prohibitively expensive for small businesses and could cause the business to close its doors.

We disagree that the Coast Guard is requiring small businesses to purchase additional tugs. Instead, small businesses have other options available in § 165.100(d)(1)(i) for continued service. The COTP may grant exemptions to those small businesses that employ alternative safety measures for their current vessels.

Four comments state that compelling the use of twin-screw tugs has forced an unfair economic hardship on small businesses, and has seriously depressed the value of single-screw tugs. The analysis does not quantify or address the rulemaking's effect on single-screw tugs, whose value has fallen by about a third since this rulemaking was proposed. Additionally, two comments stated that their small company made a large investment in a single-skin barge before they became aware of the rulemaking. The new regulation has drastically changed their financial equation that served as the basis to purchase this barge.

We agree that the rulemaking may have placed an economic burden on certain small businesses. After publication of the Final Rule on December 30, 1998, the Coast Guard heard from several small tug and tank barge companies claiming that they had been unaware of the rulemaking, and had failed to submit comments to the docket voicing their opinion. As a result, the Coast Guard reopened the docket to learn more about the affects of the positive control measures on their small businesses. In response to the comments received, the First District Commander has amended the regulations to permit companies that own single-screw tugs to continue in the tank barge service, provided alternative safety measures are approved by the COTP. The new exemption may reduce the unexpected costs for those companies that receive exemptions, and will thereby offer them relief for continued service.

Four comments stated that the analysis appears faulty and does not explain how the Regulatory Assessment led the Coast Guard to enact extra burdens on the operators of single-screw tugs. The analysis shows a tug escort rule effectiveness of \$67,561.55 per barrel of oil not spilled which seems way too high. The \$32,103 cost-effectiveness figure published in the **Federal Register** was high. It looks like the Coast Guard may require the transportation industry to spend over \$12 million without preventing any oil from spilling.

We disagree that the RNA will not prevent oil spills from tank barges. However, we have revised the regulatory assessment; a copy is available in the docket.

One comment asked whether the Coast Guard wasn't already doing enough with regulations to prevent another NORTH CAPE scenario. Other rulemakings, such as Fire Suppression and the Emergency Control Measures for Tank Barges, will all reduce the likelihood of oil spilling from barges. Benefit figures for the RNA may be lower because another rule would have prevented many accidents from happening. Under that rule as proposed, a single-hull barge being towed will be fitted with an anchoring system required by a separate rulemaking. The analysis does not properly address how the rulemaking for Emergency Control Measures for Tank Barges and other OPA 90 rulemakings will prevent groundings.

We note these comments. The analysis did take into account the potential benefits of these other rulemakings. Please see the "Benefits"

section of the Regulatory Assessment available in the docket.

One comment asked whether this rulemaking imposed operational conditions, which are, instead, actually equipment regulations that require a second engine and a second screw for the tugs.

The RNA does not contain an option for installing a second engine and second screw. Any such actions would be taken independent of the RNA, even though the result may be that the affected tug would be subject to fewer RNA requirements.

One comment stated that the rulemaking should be declared null and void because the rule makes no mention of hazardous areas or hazardous conditions.

We disagree that the RNA was not based on hazardous conditions. The premise of this rulemaking was the inherent risks associated with the waterborne transportation of petroleum products in the Northeast, which is subject to high-risk transit areas. As a heavily industrialized and oil-dependent region of the country, the Northeast is subject to a high volume of tank barge traffic, particularly during the winter months, due to the demand for home heating oil. These operating conditions include dangerous and often violent winter storms that are unique to the region, and therefore create substantial hazards for the vessel's crew and the environment. As described in the rulemaking's Background and Purpose of the NPRM, the First Coast Guard District has experienced 289 marine casualties involving tank barges from 1992 through 1996. Given this high number of tank barge-related casualties and the potential for another major pollution incident, the Coast Guard promulgated this RNA as required by law, citing these hazardous conditions.

One comment stated that the Coast Guard should explain why it wants to place tug escort rules in 33 CFR part 165 when there are regulations on tug escorts found in 33 CFR part 168. While the Coast Guard did not require tug escorts in the waters of the First District during the 1994 rulemaking, the commentor asks what has changed between 1994 and 1999? Accident histories do not justify the change of position.

We disagree, and note that these regulations are the result of the NORTH CAPE spill in January 1996. We also find that Part 165 is the appropriate subpart for these regional regulations. This subpart permits the District Commander to control vessel traffic operating conditions within his area of responsibility. As it establishes a RNA,

this rulemaking is limited to those waters under the authority of the First District Commander. Accident histories have long been a source of legislated governance of the marine-transportation industry; the most noteworthy of which is the Oil Pollution Act of 1990 which was the result in large part from the grounding of the EXXON VALDEZ.

One comment stated that their company lost revenue because the rule went into effect at the end of the industry's season. There are customers that will not hire tug companies even if they hold exemptions. This rulemaking creates an unjust situation for small entities that are trying to comply with the law. Additionally, one comment stated that this rule will have a significant economic impact on their business. To purchase a new twin-screw, twin-engine tug will cost \$25,000 per month in a mortgage payment. The requirements will not affect large businesses, but may put smaller businesses out of business.

We have amended the rulemaking to ease the economic burden on small entities. By allowing the COTP to grant exemptions for single-screw tugs to continue in towing tank barges, the First District Commander is responsive to the concerns of small entities. This amendment offers relief to those small entities that might experience economic hardship by offering them the option of applying for an exemption for continued service from the COTP.

One comment stated that all federal agencies are required to identify alternative regulatory approaches for small business, small governmental jurisdictions and non-profit organizations.

We agree that the Coast Guard is responsible for considering the economic impact on small entities. As such, the Coast Guard believes that this amended rulemaking satisfies the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) by offering alternatives to small businesses in § 165.100(d)(1)(iii) that will allow them to continue to tow tank barges in the Northeast and accordingly does not place a substantial impact on a significant number of small businesses.

Regulatory Assessment

This rule is not a significant regulatory action under 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 (OMB) under that Order. It is not significant under the regulatory policies and procedures of the Department of

Transportation (DOT) (44 FR 11040; February 26, 1979).

A Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows:

Summary of Benefits

The principal benefits of this rule are protection against oil spillage, human casualties, and property damage that may result from navigation-related incidents of tank barges and towing vessels while underway in the navigable waters of the First Coast Guard District. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled, averted injuries and deaths, and averted damage to vessels and property measured in dollars.

Using information from the Coast Guard Marine Safety Management System from January 1, 1992, to December 31, 1996, we reviewed 96 tank barge casualty cases. These casualties involved vessels that were underway within the boundaries of the First Coast Guard District and which would have been affected by this rule if it had been in effect. This period represents some post OPA-90 experience, is long enough to survey a significant number of casualties, and short enough to avoid old problems which are now solved. These 96 cases provided the pool from which the benefits are estimated. During this base period, there was no reported oil spilled from double-hull barges.

For all four measures, we reviewed each casualty case report to assess whether the casualty could have been prevented or diminished in severity by this rule. A team of Coast Guard analysts assigned an effectiveness degree to which each measure would have positively affected each casualty case. We tabulated data on deaths and injuries, oil spillage, and dollar totals reported for damage to the tank barges, towing vessels, piers, or other structures, and estimated benefits for each measure adjusted to the accurate degree of effectiveness.

Over the period of analysis, the present value of total damages and deaths avoided by the rule would be \$2,192,473 (1998 dollars). Total pollution avoided by the rule would be 1,368.65 barrels. These figures are different from those obtained in earlier Regulatory Assessments due to updating and improvement of the data and methodology.

Summary of Costs

Businesses that use tank barge and towing vessels within the geographic boundaries of the First District, as well as the tank barge and towing vessel industries themselves, will bear the majority of the costs of this rule.

The cost of this rule is the sum of costs from the requirements for positive control for barges, enhanced communications, voyage planning, and restricted navigation areas. These anticipated costs recognize that many of the towing vessels and tank barges operating within the geographic boundaries of the First District are already in compliance with these requirements.

(1) Positive Control for Tank Barges: Data from the First District and U.S. Army Corps of Engineers indicated that there are 21,640 transits occurring within the District each year. Of these transits, we estimate 1.95%, or 421, involve a single-hull, petroleum-laden tank barge being towed by a tug without twin engines or twin screws, and thus, this rule would require an escort or assist tug. The cost of an escort or assist tug is \$300 an hour. It is assumed this escort or assist tug would, on average, spend 20 hours in round trip service on each transit. The cost of the tug for a single transit would therefore be \$6,000. Over the period of analysis, the present value total cost of the escort or assist tug escorts would be \$21,608,076 (1998 dollars).

Another cost of the tug-escort requirement is the cost to familiarize the crew of the escort tug if they are not familiar with the anchor and breakaway gear of the barge they will escort. We estimate this training would be necessary for 60% of the transits and the training would take an average of one hour. Over the period of analysis, the present value total cost of training would be \$215,911.

This requirement also may cause some businesses to incur other costs. First, the resale prices of the existing single-screw tugs in the First Coast Guard District may be slightly lower for at least some period due to this rulemaking. We estimate the present value total cost from lost resale value would be \$150,000. Second, in the short run, while impacted companies are realigning their assets in order to be in compliance with the tug-escort requirement, there may be some lost profit opportunities for barges. We estimate the present value total cost in terms of lost profit would be \$50,000. With permanent waivers, we expect the impact of lost profit or lost resale value may be reduced.

The present value total cost of the positive-control requirement would be \$22,023,987 (\$21,608,076 + \$215,911 + \$150,000 + \$50,000 = \$22,023,987).

(2) Enhanced Communications: This rule would require the person(s) on watch on a towing vessel to make approximately eight securite calls during the average transit in the First District. The cost of this requirement to the operator would be the time added to the crews' watch duties per transit and/or the diminished productivity per transit as a result of this requirement.

Each securite call would take about 0.00833 hours (or 0.5 minutes) per transit. This time represents the number of hours (or minutes) that a crewmember would give up doing other activities during a transit. We assume that the master makes half of the securite calls and the mate makes the other half. Based on a rate of \$350 per 12-hour day, we estimate the average hourly wage for a master of a towing vessel would be \$29.17. Based on a rate of \$250 per 12-hour day, we estimate the average hourly rate for a mate would be \$20.83. As each person makes 4 calls per transit, the total labor time and total labor cost per transit would be 0.0666 hours/transit and \$1.67/transit, respectively (8 calls/transit × 0.00833 hours/call = 0.0666 hours/transit and [(\$29.17/hour × 0.033 hours/transit) + (\$20.83/hour × 0.033 hours/transit) = \$1.67/transit]).

With 11,902 transits of petroleum-laden tank barges (55% of 21,640 total transits) within the First Coast Guard District each year, the total annual time burden of this requirement would be 792.67 hours, and the potential opportunity cost would be \$19,837 per year (\$1.6667/transit × 11,902 transits/year = \$19,837/year). Over the period of analysis, the present value total cost of this requirement would be \$187,393 in 1998 dollars.

Given the existing practices that occur during typical watch duties, we expect the time necessary to make each call would not increase the time spent performing watch duties nor decrease productivity of either crewmember on watch. Without an increase in labor time devoted to watch duties or decrease in productivity, the financial cost of the enhanced-communications requirement would be \$0.

(3) Voyage Planning: Currently we estimate 21,640 transits of tank barges in the First Coast Guard District each year. The Coast Guard estimates that 90% (or 19,476) of these transits already are in compliance with this proposed requirement. Thus, 10% or 2,164 transits currently lack a voyage plan. Further data from the First Coast Guard

District indicates that 55% of the annual transits involve petroleum-laden tank barges. Therefore, we estimate that 55% or 1,190 of the 2,164 petroleum-laden tank barge transits currently lack a voyage plan.

For each transit, as a representative of the owner or operator, the master of the towing vessel spends approximately 0.5 hours (or 30 minutes) preparing a voyage plan. The average wage rate for a towing vessel master is estimated to be \$29.17 per hour. The annual cost of voyage planning would be \$17,357 ($\$29.17/\text{hour} \times 0.5 \text{ hours/transit} \times 1,190 \text{ transits/year} = \$17,357/\text{year}$). Over the period of analysis, the present value total cost of the voyage-planning requirement would be \$163,965 (in 1998 dollars).

(4) Restricted Navigation Areas: This proposed requirement would establish two restricted navigation areas that would bar the traffic of towing vessels with petroleum-laden tank barges. These two areas are Fishers Island Sound and the eastern portion of Cape Cod Bay. Historically and currently there has been no traffic of towing vessels with petroleum-laden tank barges operating within either of these two areas. Thus, the cost of the restricted navigation requirement would be \$0.

Summary

The present value total cost of this rule would be \$22,187,952 (\$22,023,987 for positive control of barges + \$0 for enhanced communications + \$163,965 for voyage planning + \$0 for restricted navigation areas = \$22,187,952). In terms of cost-effectiveness, this rule would prevent 1,368.65 barrels of pollution at a cost of \$16,212 per barrel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include 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 rule would require the following:

(1) positive control measures for tank barges, which require an escort or assist tug during all transits involving towing vessels not equipped with twin-screw/twin-engine propulsion, and that are engaged in towing petroleum-laden single-hull tank barges in the First Coast Guard District;

(2) operators of vessels towing petroleum-laden tank barges initiate and

broadcast secure calls on radio identifying their position at specified locations during a transit in the First District;

(3) a voyage plan be prepared prior to a petroleum-laden tank barge voyage within the First District; and

(4) two restricted navigation areas within the First District that would bar traffic of towing vessels with petroleum-laden tank barges.

The maximum estimated cost of this regulation would be \$22,187,952 with the majority of the cost (or 99%) being the cost of the positive-control requirement. The voyage-planning requirement would have an estimated cost of \$163,965, while the enhanced-communications and restricted-navigation-areas requirements would be expected to have zero financial cost.

We estimate there are currently 11,902 petroleum-laden tank barge transits within the First District per year. We estimate that approximately 95% of the towing vessels that tow petroleum-laden tank barges in the First District are twin-screw, which do not require positive control measures. Also exempted from the positive-control requirement would be all double-hull tank barges that currently make up 29% of the tank barge fleet. Consequently, we estimate that 421 transits would be impacted by the positive-control requirement.

The Small Business Administration, in 13 CFR 121, defines small businesses by either the number of employees or by the amount of a company's receipts in dollars. For examples, a business in the towing-&-tugboat-services industry that has annual revenue no greater than \$5 million is a small entity. However, a business in the water-transportation-of-freight industry that has no more than 500 employees would be a small entity. The Coast Guard does not collect revenue nor number-of-employee information from the businesses it regulates; however, information can be obtained from sources such as Dun & Bradstreet or the U.S. Census.

According to *Dun & Bradstreet Marketplace 1999*, the percentage of companies nationally with annual revenue equal to or less than \$5 million in the towing-&-tugboat-services industry (SIC Code 4492) is about 86%. Regionally, for companies that are located in one of the states within the boundaries of the First District which are in SIC Code 4492, approximately 90% would be considered a small entity. For water transportation of freight, n.e.c. (SIC Code 4449), the percentage of companies nationally with a maximum of 500 employees is approximately 95%, while for

companies located in one of the states within the boundaries of the First Coast Guard District that percentage is approximately 95% as well.

The Coast Guard's Marine Safety Management System (MSMS) database identifies 34 different companies that own tank barges certificated under subchapter O or D within the boundaries of the First District. The MSMS database also identifies 124 different companies located in one of the states within the boundaries of the First District that own towing vessels. These towing vessels are not owned strictly by companies that are engaged in towing & tugboat services or water transportation of freight. Other owners of towing vessels include construction companies and governments.

It is the businesses who hire the towing vessels and tank barges for transporting their goods that directly incur the costs of this rulemaking by having to pay for the escorts or assist tugs. However, some towing vessels and barge owners, the majority of which are small entities, may be affected by the positive-control requirement if they can no longer provide tug service at a competitive price due to the requirement that they employ an escort or assist tug.

On March 15, 1999, an Interim Rule allowed the local COTP to authorize temporary exemptions to the positive-control requirement established in the December 30, 1998, Final Rule. Since inserting this authority into the rule, thirty-two temporary exemptions have been granted with no pollution incidents. These exemptions expire June 30, 2000. Comments from industry have requested that the Coast Guard establish procedures that would transform the temporary exemption into a permanent exemption. In an effort to reduce the impact of the positive-control requirement, this Final Rule allows the COTP to authorize exemptions to the positive-control requirement, and removes the temporary nature of the exemptions that were granted in the Interim Rule. Accordingly, 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.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Commander (m), First Coast Guard District, provided explanatory

information to a number of individuals by telephone.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

The Final Rule calls for no collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Impact on Federalism

This rule would revise the rules at 33 CFR 165.100(d)(1)(iii) that address navigational safety, and voyage planning for towing vessels. We have analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. It is well settled that States are preempted from establishing any requirements for tank vessels and the vessels that tow them in the categories of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning. See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke* ____ U.S. _____, 2000 U.S. LEXIS 1895 (March 6, 2000). Thus, this entire rule falls within preempted categories. Because States may not promulgate rules the categories set out, preemption is not an issue under that Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104-4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This Final Rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraphs 34(g) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Determination of Categorical Exclusion" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 [AMENDED]

1. The citation of authority 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, 160.5; 49 CFR 1.46.

2. Revise § 165.100(d)(1)(iii) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable Waters within the First Coast Guard District

* * * * *

(d) * * *

(1) * * *

(iii) The cognizant Captain of the Port (COTP), upon written application, may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for—

(A) Any tank barge with a capacity of less than 25,000 barrels, operating in an area with limited depth or width such as a creek or small river; or

(B) Any tank barge operating on any waters within the COTP Zone, if the operator demonstrates to the satisfaction of the COTP that the barge employs an equivalent level of safety to that provided by the positive control provisions of this section. Each request for an exemption under this paragraph must be submitted in writing to the cognizant COTP no later than 7 days before the intended transit.

* * * * *

Dated: May 26, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00-14110 Filed 6-5-00; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05-00-018]

RIN 2115-AA97

Safety Zone; Ocean View Beach Park, Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Shore Thing Independence Day Celebration fireworks display to be held at the Ocean View Beach Park, Chesapeake Bay, Virginia. This action will restrict vessel traffic on the Chesapeake Bay within a 500-foot radius of the fireworks display, which will be fired from shore. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 1, 2000.

ADDRESSES: You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, VA, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441-3290.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (CGD05-00-018), indicate the specific section of this document to which each comment applies, and give the reason