

Actions	Compliance	Procedures
(1) Inspect the wiring in the flight deck overhead panels (locations 5VE and 6VE) for chafing and damage.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 12 months.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.
(2) If you find any chafed or damaged wires during any inspection required in paragraph (e)(1) of this AD, repair the affected wire(s) and assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.	Before further flight after each inspection required in paragraph (e)(1) of this AD. Continue to repetitively inspect as specified in paragraph (e)(1) of this AD.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.
(3) If you do not find any chafed or damaged wires during any inspection required in paragraph (e)(1) of this AD, assure correct installation of the wiring in the flight deck overhead panels by reattaching or replacing the wire tie attachment holders and securing any loose wires to the wire tie attachment holders with plastic wire ties.	Before further flight after each inspection required in paragraph (e)(1) of this AD. Continue to repetitively inspect as specified in paragraph (e)(1) of this AD.	Follow RUAG AOT Dornier 228, All Operators Telefax service information No. AOT-228-24-028, Date of Issue: November 9, 2005.

#### Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(g) German AD Number D-2005-438, Effective Date: December 14, 2005, also addresses the subject of this AD. To get copies of the documents referenced in this AD, contact RUAG Services GmbH, P.O. Box 1253, D-82231 Wessling; telephone: (08153) 302506; fax: (08153) 304601. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2006-24095; Directorate Identifier 2006-CE-21-AD.

Issued in Kansas City, Missouri, on March 22, 2006.

#### William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 161 and 165

[CGD01-04-133]

RIN 1625-AA11

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** Subsequent to an Advance Notice of Proposed Rulemaking published in the October 26, 2004, edition of the *Federal Register*, the Coast Guard proposes to revise 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 federally licensed pilots. The Coast Guard also proposes to establish a Vessel Movement Reporting System (VMRS) for Buzzards Bay and to require mandatory participation in the VMRS by vessels subject to the Vessel Bridge-to-Bridge VHF Radiotelephone regulations, including tug/barge combinations. Participation in the Buzzards Bay VMRS could be accomplished either automatically through a vessel's Automatic Identification System (AIS) or via VHF radiotelephone. The purpose of this proposed rulemaking 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:** Comments and related material must reach the Coast Guard on or before June 27, 2006.

**ADDRESSES:** The Commanding Officer, U.S. Coast Guard Sector Southeastern New England maintains the public docket for this notice. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except federal holidays. You may submit comments and related material by:

(1) Mail or delivery to Commanding Officer, U.S. Coast Guard Sector Southeastern New England, 20 Risho Avenue, East Providence, RI 02914-1208.

(2) Fax to 401-435-2399.

(3) Electronically via e-mail at [EleBlanc@msoprov.uscg.mil](mailto:EleBlanc@msoprov.uscg.mil).

(4) The entire public docket may be viewed at the Coast Guard Sector Southeastern New England Web site at <http://www.uscg.mil/d1/units/msoprov/>.

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

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to submit comments and related material pertaining specifically to the navigation safety and waterways management aspects of the proposed rule. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-04-133), and give the reason for each comment. You

may submit your comments and material by mail, hand delivery, fax, or electronic means to the project officer at the addresses or phone numbers listed under **FOR FURTHER INFORMATION CONTACT**, but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Sector Southeastern New England, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meetings

We do not intend to hold additional public meetings on this proposed rule. As part of the Advance Notice of Proposed Rulemaking announced in the October 26, 2004, edition of the **Federal Register**, (Vol. 69, No. 206, pages 62427 to 62430) two public meetings were held to obtain direct feedback from the public on November 16, 2004, at the New Bedford Whaling Museum, and on November 17, 2004, at the Massachusetts Maritime Academy. Comments received at those meetings, as well as written comments, are summarized below. You may submit a request for an additional public meeting to the address contained in **ADDRESSES** above, explaining why an additional public meeting would be beneficial. If we determine that an additional public meeting is necessary, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

This NPRM is subsequent to an Advance Notice of Proposed Rulemaking (ANPRM) published on October 26, 2004 in Volume 69, No. 206, pages 62427 to 62430 of the **Federal Register**, under the heading "Navigation and Waterways Management Improvements, Buzzards Bay, MA". 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 1200 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 proposed 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 incidents of tank barge groundings with oil spills in Buzzards Bay. These include 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 tank barges or other laden vessels could lead to a discharge or release of oil or other hazardous materials, as demonstrated by the incidents noted above, with potentially adverse impacts to people, property, the coastal and maritime environment, and the local economy. The purpose of these proposed regulations for navigation safety and waterways management improvements in 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 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 involves 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 is expected to provide a basis for making best value decisions for risk mitigation investments, both on the local and national level. For further information on PAWSA visit: [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 Routes be established to help assist vessel traffic and provide safer transit routes 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. Automatic Identification System (AIS) is a data transmission system for ship-to-ship, ship-to-shore, and shore-to-ship communication adopted by the International Maritime Organization (IMO). AIS shipboard equipment consists of a transceiver that continually transmits and receives vessel navigational information (position, course, speed, etc.) over VHF-FM maritime frequencies. AIS units operating in proximity to each other automatically create a virtual network. Shore stations can also join these virtual networks, and they may receive shipboard AIS signals, perform network and frequency management and send additional broadcast or individual informational messages to AIS equipped vessels.

As of December 31, 2004, AIS is required on most commercial vessels either navigating abroad or within a Vessel Traffic Service area. (See 33 CFR § 164.46.) Under a separate regulatory initiative, the Coast Guard sought public comments on the notion of expanding AIS requirements beyond the regulations of 33 CFR § 164.46. Expansion of AIS requirements may apply to Buzzards Bay and/or tug/barge combinations. This initiative is still in progress. See **Federal Register** Vol. 68, No. 128 of July 1, 2003, pages 39369 to 39371 and docket [USCG 2003–14787] at <http://dms.dot.gov/>.

The National Oceanic and Atmospheric Administration (NOAA), at the request of the Coast Guard, has already overlaid Recommended Routes on navigational charts for Rhode Island Sound, Narragansett Bay, and Buzzards Bay. These recommended 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 proposing to make 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 (of which most barges are single hull) employ tugs with twin screws and twin engines, but with no additional positive control.

On October 26, 2004, the Coast Guard published an Advance Notice of Proposed Rule Making (ANPRM) that sought public comments regarding the necessity and type, if any, of additional navigation safety measures that might be implemented within Buzzards Bay (See **Federal Register**, Vol. 69, No. 206, pages 62427 to 62430). Approximately forty written comments were received. Additionally, two public meetings were held to obtain direct feedback from the public on November 16, 2004, at the New Bedford Whaling Museum, and on November 17, 2004, at the Massachusetts Maritime Academy. There were 76 and 47 speakers offering comments at each meeting, respectively. Written comments, and a roster of speakers from each meeting, are available for viewing in the docket at <http://www.uscg.mil/d1/units/msoprov/>.

Comments (both oral and written) generally fell within the following categories:

*Root Cause:* Comments noted that the root cause of most maritime incidents in Buzzards Bay could be attributed to human error rather than equipment failure, hazardous weather, or other factors.

The Coast Guard agrees that the root cause of many maritime incidents and casualties, including the B–120 oil spill in Buzzards Bay, may be attributed to human factors. Consequently, in this rulemaking the Coast Guard proposes certain measures such as mandatory pilotage by a federally licensed pilot, escort tugs, and a vessel monitoring system, to reduce the likelihood that human factors may cause an accident, and to mitigate the adverse impact of any casualties that may occur.

*Pilotage:* Comments noted that the proficiency standards for federally licensed pilots were inadequate and in need of revision, and that federally licensed pilots were generally not as experienced in tug/barge navigation as were the captains of the tugs themselves.

Currently, to obtain a Federal pilot's license (or endorsement) to operate a vessel in Buzzards Bay, a person must pass a comprehensive examination, which includes, but is not limited to, performing a chart sketch of the area, demonstrating proficiency in the use of navigational aids, and maneuvering and handling ships in high winds, tides, and currents. Further, a person must complete a specific number of round trips and demonstrate specialized knowledge of the waters for which the license (or endorsement) is issued.

The Coast Guard considers these proficiency standards to be sufficient for monitoring and guiding the movements of tug/barge combinations through Buzzards Bay.

*Crewing:* Comments noted that the crewing requirements for tugs towing barges were inadequate, and recommend increased crewing requirements.

The Coast Guard concurs with the view that current crewing requirements may be insufficient for the navigational demands associated with transiting Buzzards Bay, and so has proposed in this rule to require a federally licensed pilot in addition to the crew to advise the master and assist in the navigation of the vessel.

*Cost/Availability of Escort Tug:* Comments expressed concern regarding the cost of escort tugs and pilotage, and also the availability, or lack of, escort tugs within Buzzards Bay of sufficient capability to provide escort services.

Based on interviews with representatives from various components of the maritime industry,

the Coast Guard considers escort tug capacity to be sufficient to meet the projected demand for escort tugs. In our Regulatory Evaluation that accompanies this rulemaking and is available in the docket (CGD01–04–133), the Coast Guard projects that the demand for escort tugs will decrease over time as progressively fewer transits of Buzzards Bay are made with single hull tank barges. Also, in our Regulatory Evaluation we have documented anticipated costs associated with escort tugs and federally licensed pilots and found those costs, when compared to the benefits realized by the avoidance of vessel casualties and oil spills, to be reasonable.

*Definition of Escort Tug:* Comments noted that “escort tug” should be well-defined in any regulation, and also provided suggestions on what that definition should include.

“Escort tug” as used in this proposed rule has the same meaning as the description of escort tug already found in 33 CFR 165.100(d), *i.e.*, the escort tug must be of “sufficient capability to promptly push or tow the tank barge away from danger or grounding 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 casualty that affects the navigation or seaworthiness of either vessel.”

*Aids to Navigation:* Comments expressed a need for improved aids to navigation within Buzzards Bay, including a wave height indicator at the Buzzards Bay tower, a weather buoy at the east end of the Cape Cod Canal, and auxiliary navigation channels adjacent to the Buzzards Bay recommended vessel route.

The Coast Guard has reviewed the aids to navigation system in Buzzards Bay and has re-positioned several buoys, and has plans to install some new lighted aids and ranges, particularly in Cleveland Ledge and Hog Island channels, in 2006 or 2007, pending funding. Additionally, the National Oceanic and Atmospheric Administration (NOAA) operates a wave height indicator at the Buzzards Bay tower.

*Increased Navigation Risks Due to Presence of Escort Tugs:* Comments noted that escort tugs themselves could increase danger due to additional vessels in the constrained channels of Buzzards Bay and the Cape Cod Canal.

Voluntary use of escort tugs in Buzzards Bay and the Cape Cod Canal

has long been practiced with no adverse impacts on the ability of other vessels to navigate safely. The amount of good water in lower Buzzards Bay is considered sufficient for vessels to navigate safely, even with the addition of escort tugs. Additionally, the U.S. Army Corps of Engineers' authority for (and control of) the Cape Cod Canal encompasses in their entirety the constrained waterways of Cleveland Ledge Channel, Hog Island Channel, and the canal itself (the canal land cut). On those few occasions (primarily in winter when home heating oil deliveries increase) where several tugs with tows and escort tug may converge, or approach converging, near one of these constrained waterways, the Corps would direct vessel traffic to minimize risk of collision. Lastly, this proposed rule includes establishment of a Vessel Movement Reporting System (VMRS) in Buzzards Bay that would provide for monitoring of all tug and tank vessel traffic in the Bay, and would provide an opportunity for the Coast Guard to issue advisories should traffic be congested to a point that adversely affects navigation safety. Consequently, because most tug and tank vessel operators that routinely navigate in Buzzards Bay are already familiar with the Corps' requirements and practices for transiting the Cape Cod Canal, and because VMRS would add an additional means to monitor vessel traffic, it is felt that tug and tank vessel operators should experience little or no difficulty accommodating an escort tug in accordance with this proposed rule.

*Increased Danger to Pilots:* Comments suggested there may be increased danger to a pilot required to embark either an escort tug or primary tug (*i.e.*, the tug towing the tank vessel) from a pilot boat, where no special accommodations to embark a pilot at sea are normally available on a tug.

The Coast Guard recognizes the danger inherent in pilots embarking escort tugs or primary tug while underway within Buzzards Bay. In this proposed rule we permit the federally licensed pilot to monitor the navigation of the tug/barge combination from the escort tug, assuming the federally licensed pilot would embark the escort tug pierside before departing for its escort duty. This practice has been in effect since at least March 10, 2004, when Bouchard Transportation Company agreed to accommodate federally licensed pilots in this manner.

#### *Recommendation for Draft*

*Restrictions:* Comments noted that an effective way to improve navigation safety and reduce the likelihood of a spill would be to reduce the allowable

draft of laden barges transiting Buzzards Bay.

Regulations in 33 CFR 157.455 currently address under-keel clearance requirements (*i.e.*, "draft restrictions") for single-hull tank vessels. Those regulations require, among other things, that owners/operators of single-hull tank barges provide written guidance to towing vessel masters regarding under-keel clearance, and include factors to consider such as controlling depth of water, deepest navigation draft, weather, and other environmental conditions. While under-keel clearance restrictions may expand the margin of error afforded tank vessels being towed through Buzzards Bay, the Bay remains a confined waterway and history has demonstrated that such regulations alone are insufficient to attain the level of navigation safety required for Buzzards Bay. For example, despite being subject to (and complying with) these under-keel clearance regulations, tank vessels continue to ground and spill oil in Buzzards Bay, notably the barge Florida in 1999 and the barge B-120 in 2003. Additionally, more severe under-keel clearance requirements would most likely reduce the amount of oil carried each transit and thus may have the unintended consequence of actually increasing the risk of vessel casualties and oil spills as more vessel traffic would be required to carry a similar amount of oil to meet demand for heating and electrical generation. Lastly, should draft restrictions result in additional voyages with smaller cargoes of oil, the cost of the delivery would rise and would almost assuredly be passed to consumers. Consequently, the Coast Guard considers under-keel regulations in addition to those already found in 33 CFR 157.455 to be unnecessary as they would not add significant value in terms of preventing an incident.

*Miscellaneous:* Some comments noted that current regulations were insufficient to prevent accidents and spills in Buzzards Bay; others commented that current regulations were sufficient, if only they were properly enforced. Other comments suggested that, as an alternative to escort tugs, rescue tugs be strategically stationed in Buzzards Bay, ready to respond at a moment's notice. Although the comments did not specifically recommend the nature or specific mission of a "rescue tug," generally a rescue tug is considered to be a dedicated tugboat equipped to respond and provide assistance to distressed vessels, primarily by towing. Rescue tugs typically have capabilities for pumping, fire fighting, and pollution response. Normally a rescue tug is

continuously manned and "on station", which means it is either at its berth or assigned location (e.g., a designated anchorage) ready for immediate dispatch, or underway presumably involved in a rescue. Evaluations of the potential benefit of rescue tugs in other waterways of the country (specifically, Puget Sound) have determined them to be a high-cost, low-benefit alternative as they have little or no capability to prevent collisions, allisions, or groundings, which is a primary goal of this proposed rule. (See "Regulatory Assessment, Use of Tugs to Protect Against Oil Spills, in the Puget Sound Area", Report Number 9522-022, November 15, 1999, available in the docket.)

The Coast Guard examined both our current regulations and our enforcement policies and determined that additional regulations, as proposed in this rule, were required to achieve our goal of preventing vessel casualties and spills within Buzzards Bay.

#### **Discussion of Proposed Rule**

The proposed amendments to the current First Coast Guard District RNA would require that all single-hull tank barges carrying 5000 or more barrels of oil or other hazardous material and being towed through Buzzards Bay, meet the following requirements:

1. Be accompanied by an escort tug between the west entrance to Buzzards Bay and the east end of the Cape Cod Canal.
2. Be accompanied by a federally licensed pilot, who may remain on the escort tug vessel, to monitor the navigation of the tug/barge, and to advise the master of the tug/barge accordingly.

Additionally, this rule proposes to establish a Vessel Movement Reporting System (VMRS) (33 CFR part 161, subpart B) within Buzzards Bay to monitor the movements of all vessels subject to Vessel Bridge-to-Bridge VHF Radiotelephone regulations (33 CFR part 26), either by AIS, and/or via voice reporting via VHF radiotelephone. Daily operations of the VMRS would be monitored and managed by the U.S. Army Corps of Engineers at its Cape Cod Canal control center on behalf of the Coast Guard. (The Corps has indicated its willingness and ability to perform this function.) The Coast Guard would retain authority to enforce this proposed rule and other regulations to ensure navigation safety. Should the VMRS proposed in this rule ultimately be established, the Coast Guard and the U.S. Army Corps of Engineers will enter into a Memorandum of Understanding to delineate the functions and

responsibilities of each agency in operating the VMRS. This MOU will be a public record and would be available in the final docket CGD01-04-133.

This proposed rule is needed for navigation safety reasons to protect people, property, waterways users, the environment, and the economy from the adverse affects of a spill of oil or other hazardous material. Vessels subject to this proposed rule would be required to have a escort tug and federally licensed pilot, and would also be required to participate in a Vessel Movement Reporting System.

This regulation is proposed under the authority of 33 U.S.C. 1321, in addition to the authority contained in 33 CFR 1.05-1(g)(4). Vessels or persons violating this section would be subject to the civil or criminal penalties set forth in 33 U.S.C. 1232.

### 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 proposed rule, is posted in the docket and is available to the public at <http://www.uscg.mil/d1/units/msoprov/>.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed 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 5000 or more barrels of

oil or other hazardous materials and intending to transit or anchor in Buzzards Bay, Massachusetts.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed 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 proposed in the rule making 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 type-approved, properly installed, operational AIS would be relieved from the voice reporting requirements as proposed in this rule making.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES** above) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 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 proposed 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. 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 proposed rule would call 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 categories of regulation 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.

On August 4, 2004, the Commonwealth of Massachusetts enacted Chapter 251 of the Acts of 2004, an Act Relative to Oil Spill Prevention and Response in Buzzard's Bay and other Harbors and Bays of the Commonwealth. It is the view of the Coast Guard that several provisions of the Massachusetts Act touch categories of regulation reserved to the Federal Government and are preempted per the rulings in *Locke* and *Ray*. The regulations proposed in this notice of proposed rule would likewise touch categories of regulation reserved to the Federal Government, thus becoming further indicia of preemption.

For example, section 11 of the Massachusetts Act purports to impose escort tug requirements on vessels operating in Buzzards Bay. The issue of escort tugs is already addressed in the regulations governing the First District RNA at 33 CFR 165.100 and further addressed in this notice. Section 11 also purports to make the recommended route depicted on the NOAA charts described earlier in this notice mandatory. The Coast Guard has decided not to make this route mandatory at this time. Section 17 of the Massachusetts Act purports to impose a state pilotage requirement on certain vessels engaged in the coastwise trade. It is the view of the Coast Guard that this provision is void by operation of law pursuant to 46 U.S.C. 8501. This notice of proposed rulemaking proposes pilotage by federally licensed pilots for single hull tank barges operating in Buzzards Bay.

Because of the preemption issues described above, the Coast Guard will conduct a Federalism analysis pursuant to E.O. 13132 for any rules promulgated as a result of this notice. Sections 4 and 6 of E.O. 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations

the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Although it is the view of the Coast Guard that certain sections of the Massachusetts law are preempted for reasons independent of any potential rulemaking action here, in order to comply with the spirit of E.O. 13132, the Coast Guard has already begun consultations with the state government of the Commonwealth of Massachusetts. In addition, at the public meetings held in November 2004, the towns of Bourne, Marion, and Westport, Massachusetts also requested consultations, as did 10 other communities in the vicinity of Buzzards Bay through letters to the docket. Such consultations will continue throughout the rulemaking process and we invite comments from those who have expressed a desire to be consulted. We also invite other affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in the rulemaking process by submitting comments to this notice.

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

#### Taking of Private Property

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

#### Environment

As required under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), a preliminary “Environmental Analysis Checklist” was completed for this NPRM. The Checklist is available in the docket where indicated under **ADDRESSES**. The level of NEPA documentation for the Rule is recommended in the Checklist. Comments on this section will be considered before we make the final decision on whether or not the rule should be categorically excluded from further environmental review.

#### 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, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 161.12, amend Table 161.12(c) by adding an entry for Buzzards Bay in alphabetical order to read as follows:

#### **§ 161.12 Vessel operating requirements.**

\* \* \* \* \*

TABLE 161.12(C).—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Center MMSI <sup>1</sup>	Designated frequency (Channel designation)— purpose <sup>2</sup>	Monitoring area <sup>3,4</sup>
*	*	*
Buzzards Bay. Traffic MMSI# .....	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, would not be considered to be "Buzzards Bay".
*	*	*

<sup>1</sup> Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned that identifies ship stations, ship earth stations, coast stations, coast earth stations, and group calls for use by a digital selective calling (DSC) radio, an INMARSAT ship earth station or AIS. AIS requirements are set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with a MMSI number.

<sup>2</sup> In the event of a communication failure, difficulties or other safety factors, the Center may direct or permit a user to monitor and report on any other designated monitoring frequency or the bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13) or 156.375 MHz (Ch. 67), to the extent that doing so provides a level of safety beyond that provided by other means. The bridge-to-bridge navigational frequency, 156.650 MHz (Ch. 13), is used in certain monitoring areas where the level of reporting does not warrant a designated frequency.

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

<sup>4</sup> Some monitoring areas extend beyond navigable waters. Although not required, users are strongly encouraged to maintain a listening watch on the designated monitoring frequency in these areas. Otherwise, they are required to maintain watch as stated in 47 CFR 80.148.

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

3. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(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. Amend § 165.100 by revising paragraphs (d)(1)(i) introductory text and (d)(1)(i)(G) and adding paragraph (d)(5) to read as follows:

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

\* \* \* \* \*

(d) *Regulations*—(1) *Positive control for barges.* (i) Except as provided in paragraph (d)(1)(iii) and paragraph (d)(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, would not be 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 5000 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 Chapter.

(iii) *Federal pilotage.* Each single-hull tank barge transiting Buzzards Bay must be accompanied by a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard (“federally licensed pilot”). The federally licensed pilot may embark upon the primary tug, or may embark upon the escort tug. In either instance, the federally licensed pilot will monitor the navigation of the tug and tank barge and advise the master of the primary tug if/when the tank barge may be standing into danger.

(iv) *Vessel Movement Reporting System.* Effective (date), all vessels subject to the Vessel Bridge-to-Bridge Radiotelephone regulations, § 26.03, including tug/barge combinations, shall participate in the Buzzards Bay Vessel Movement Reporting System (VMRS). The purpose, intent, and applicability of VMRS Buzzards Bay are found in § 161.15 and § 161.16 of this chapter. The Buzzards Bay VMRS Vessel Movement Center (“Center”) is designated as the U.S. Army Corps of Engineers Cape Cod Canal Control, which can be reach via marine radio at VHF 156.600 MHz (VHF CH–12). All vessels will make reports via VHF CH–12, except those vessels with a properly operating Automatic Information System (AIS) that is broadcasting all required information in accordance with § 161.18 of this chapter need not do so. The International Maritime Organization (IMO) Standard Ship Reporting System, found in § 161.18,

will be used for the Buzzards Bay VMRS.

(A) A VMRS Buzzards Bay user shall:  
 (1) Not enter or get underway in the area without prior approval of the VMRS Center;

(2) Not enter VMRS Buzzards Bay if a Hazardous Vessel Operating Condition or circumstance per § 161.2 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 prior approval of 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 (72 COLREGS) or the Inland Navigation Rules.

(6) Make reports and provide other specific information required, and follow other VMRS participation guidelines, as contained in the Buzzards Bay VMRS Operating Manual and/or the Local Notice to Mariners, which will be published and available to the public at least 30 days prior to the effective implementation date of the Buzzards Bay VMRS.

\* \* \* \* \*

Dated: March 21, 2006.

**David P. Pecoske,**

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

[FR Doc. 06-3014 Filed 3-24-06; 4:14 pm]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0281; FRL-8051-1]

**Revisions to the California State Implementation Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the existing Priority Reserve rule, Rule 1309.1, into the South Coast Air Quality Management District (District) portion of the California State Implementation Plan (SIP). Rule 1309.1 was approved into the SIP in 1996 to allow the District to provide emission reduction credits (ERCs) for specific priority sources, such as sources using innovative technology, conducting research operations or providing essential public services. The revision to Rule 1309.1 that we are proposing to approve merely adds specific types of electrical generating facilities to the list of sources entitled to use ERCs from the Priority Reserve. We are proposing to approve the revision to Rule 1309.1 and taking comment on the revision that adds specific types of electrical generating facilities to the sources eligible for ERCs from the Priority Reserve. We plan to follow this proposal with a final action.

**DATES:** Any comments must arrive by April 28, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0281, by one of the following methods: Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

1. E-mail: [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov).
2. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of

your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region IX, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date it was adopted by District and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD .....	1309.1	Priority Reserve .....	05/03/02	12/23/02